



# User Rights Principles 2014

made under section 96-1 of the

*Aged Care Act 1997*

## Compilation No. 18

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## About this compilation

### This compilation

This is a compilation of the *User Rights Principles 2014* that shows the text of the law as amended and in force on 1 January 2025 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the Register for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the Register for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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## Part 1—Preliminary

### 1 Name of principles

These principles are the *User Rights Principles 2014*.

### 3 Authority

These principles are made under section 96-1 of the *Aged Care Act 1997*.

### 4 Definitions

Note: A number of expressions used in these principles are defined in the Act, including the following:

- (a) continuing home care recipient;
- (b) continuing residential care recipient;
- (c) home care agreement;
- (d) personal information;
- (e) resident agreement;
- (f) staff member.

In these principles:

**Act** means the *Aged Care Act 1997*.

**agreed fee**, for a care recipient and an approved provider, means a fee, charge or other payment that is:

- (a) agreed between the care recipient and the approved provider; and
- (b) not prohibited under the Act.

**authorised person** of a care recipient means a person authorised to act on the care recipient's behalf.

**available home care fees amount** has the same meaning as in the *Subsidy Principles 2014*.

**business costs**, for an approved provider of home care:

- (a) means the costs of running a business that are not directly related to the provision of home care (for example, office rent, insurance and marketing); and
- (b) does not include the following:
  - (i) the costs of the matters mentioned in paragraphs 19B(1)(b) and (d) (certain travel and package management);
  - (ii) the costs of providing care or services through a subcontracting arrangement.

**care management** means the service specified in item 1 of the table in clause 1A of Schedule 3 to the *Quality of Care Principles 2014*.

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***care recipient portion*** has the meaning given by section 21CB.

***ceasing home care provider*** has the meaning given by section 21D.

***Commonwealth portion*** has the meaning given by section 21CA.

***flexible care agreement*** means an agreement referred to in Division 4 of Part 3A.

***home care account balance*** has the meaning given by section 48-17 of the Act.

***home care cessation day*** has the meaning given by section 21D.

***home care fees*** has the meaning given by subsection 52D-1(1) of the Act.

***home care service cessation day*** has the meaning given by section 21JA.

***home care setting*** has the meaning given by section 4 of the *Subsidy Principles 2014*.

***implementation date care recipient portion*** has the meaning given by section 21BD.

***implementation date Commonwealth portion*** has the meaning given by section 21BC.

***implementation date unpaid fees***, for an ongoing care recipient, means an amount of home care fees that was payable by the care recipient to the approved provider, but had not been paid, immediately before 1 September 2021.

***implementation date unspent home care amount*** has the meaning given by section 21BB.

***ongoing home care recipient***: a care recipient who is being provided with home care by an approved provider through a home care service on 1 September 2021 is an ***ongoing home care recipient*** if the approved provider was providing home care to the care recipient through a home care service immediately before 1 September 2021.

***package management***:

- (a) means the activities that an approved provider of home care is required to undertake, by or under the Act:
  - (i) in managing the provision of a package of care and services to a care recipient to whom the approved provider provides, or is to provide, home care; and
  - (ii) in managing the quality of the care and services included in the package; and
- (b) does not include care management.

Note: Package management includes, for example, the following:

- (a) activities required to comply with responsibilities under section 63-1 of the Act (accountability);
- (b) activities required to comply with standards set out in the *Quality of Care Principles 2014*;



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- (c) making claims for home care subsidy under section 47-4 of the Act;
- (d) the preparation of individualised budgets under section 21A of these principles;
- (e) the preparation of financial information statements under section 21B of these principles;
- (f) activities the Secretary requires of an approved provider when conducting an assurance review under Part 6.8 of the Act.

**price**, for the home care provided during a payment period to a care recipient by an approved provider, has the meaning given by section 99B of the *Subsidy Principles 2014*.

**residential care setting** has the meaning given by section 4 of the *Subsidy Principles 2014*.

**short-term restorative care** has the meaning given by section 4 of the *Subsidy Principles 2014*.

**specialist dementia care agreement** means an agreement, between the Secretary and an approved provider of a residential care service, for the provision of specialist care for persons with very severe behavioural and psychological symptoms of dementia under the Specialist Dementia Care Program (a program under which the Commonwealth provides grants to some such providers to provide such care).

**unspent home care amount** has the meaning given by section 21C.

## **Part 2—Residential care services**

### **Division 1—Purpose of this Part**

#### **5 Purpose of this Part**

- (1) For section 56-1 of the Act, this Part specifies responsibilities of an approved provider of a residential care service in relation to care recipients to whom the provider provides, or is to provide, residential care, including in relation to the following:
  - (a) the security of tenure that the provider must provide to care recipients for their place in the service (see paragraph 56-1(f) of the Act);
  - (b) the access that persons acting for care recipients, advocates or community visitors may have to the service (see paragraphs 56-1(k) and (l) of the Act);
  - (c) the rights of care recipients (see paragraph 56-1(m) of the Act);
  - (ca) not acting inconsistently with the legal and consumer rights of care recipients (see paragraph 56-1(m) of the Act);
  - (d) restrictions on moving care recipients (see paragraph 56-1(n) of the Act);
  - (e) the information the provider must give care recipients (see paragraph 56-1(n) of the Act).
- (2) This Part also specifies, for subsection 59-1(2) of the Act, requirements that a resident agreement entered into between a care recipient and an approved provider must comply with.

## **Division 2—Responsibilities of approved providers of residential care—general**

### **6 Security of tenure—when approved provider may ask or require care recipient to leave residential care service**

- (1) For paragraph 56-1(f) of the Act, this section specifies the security of tenure that an approved provider of a residential care service must provide to a care recipient for the recipient's place in the service.

Note: The circumstances in which a care recipient may be asked to depart from a residential care service must be specified in a resident agreement between the care recipient and the approved provider of the service (see paragraph 59-1(1)(e) and subsection 59-1(3) of the Act).

*Circumstances in which approved provider may ask care recipient to leave residential care service*

- (2) The approved provider may ask the care recipient to leave the residential care service only if:
- (a) the residential care service is closing; or
  - (b) the residential care service no longer provides accommodation and care suitable for the care recipient, having regard to the care recipient's long-term needs as assessed in accordance with subsection (4), and the approved provider has not agreed to provide care of the kind that the care recipient presently needs; or
  - (c) the care recipient no longer needs the care provided through the residential care service, as assessed by an aged care assessment team; or
  - (ca) the care recipient has been receiving care under a specialist dementia care agreement and a clinical advisory committee constituted in accordance with the agreement has determined that the care recipient is not suitable to continue receiving that care; or
  - (d) the care recipient has not paid any agreed fee to the approved provider within 42 days after the day when it is payable, for a reason within the care recipient's control; or
  - (e) the care recipient has intentionally caused:
    - (i) serious damage to the residential care service; or
    - (ii) serious injury to staff of the approved provider, or to another care recipient; or
  - (f) the care recipient is away from the residential care service for a continuous period of at least 7 days for a reason other than:
    - (i) a reason permitted by the Act; or
    - (ii) an emergency.

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*Suitable accommodation to be available before care recipient can be required to leave residential care service*

- (3) The approved provider must not take action to make the care recipient leave the residential care service, or imply that the care recipient must leave the service, before suitable alternative accommodation is available that:
- (a) meets the care recipient's long-term needs as assessed in accordance with subsection (4); and
  - (b) is affordable by the care recipient.

*Assessing the care recipient's long-term needs*

- (4) For paragraphs (2)(b) and (3)(a), the long-term needs of the care recipient must be assessed by:
- (a) an aged care assessment team; or
  - (b) at least 2 medical or other health practitioners who meet the following criteria:
    - (i) one must be independent of the approved provider and the residential care service, and must be chosen by the care recipient;
    - (ii) both must be competent to assess the aged care needs of the care recipient.

## 7 Security of tenure—notice requirements

*Notice to be given if care recipient asked to leave residential care service*

- (1) If an approved provider of a residential care service decides to ask a care recipient to leave the service, the approved provider must give the care recipient a written notice stating the following information:
- (a) the decision;
  - (b) the reasons for the decision;
  - (c) when the care recipient is to leave;
  - (d) the care recipient's rights in relation to being asked to leave the residential care service, including the right to access:
    - (i) the approved provider's complaints resolution mechanism; and
    - (ii) any other mechanisms available to address complaints; and
    - (iii) people acting for bodies that have been paid advocacy grants.

Note: For complaints resolution mechanisms, see section 56-4 of the Act.

- (2) The approved provider must give the notice to the care recipient at least 14 days before the care recipient is to leave.

*Notice to be given if care recipient no longer required to leave residential care service*

- (3) If:
- (a) the decision to require the care recipient to leave the residential care service was based on the care recipient's behaviour; and

- (b) the approved provider has given the care recipient a notice under subsection (1); and
  - (c) after giving the notice, the approved provider has agreed with the care recipient that, because of a change in the behaviour, the care recipient should not be required to leave the service;
- then the approved provider must give the care recipient a written notice stating that the care recipient is no longer required to leave the residential care service.

## **8 Access to residential care service by people acting for care recipients, advocates and community visitors**

### *Access by people acting for care recipients*

- (1) For paragraph 56-1(k) of the Act, if a care recipient in a residential care service has asked a person to act for the care recipient, the approved provider of the service must allow the person access to the service at any time.

### *Access by advocates and community visitors*

- (2) For paragraph 56-1(l) of the Act, an approved provider of a residential care service must allow a person mentioned in subsection (3) access to the service:
  - (a) during normal business hours; or
  - (b) if a care recipient to whom the provider provides residential care has asked the person to assist the care recipient—at any time.
- (3) For subsection (2), the persons are the following:
  - (a) a person acting as an advocate for a body that has been paid an advocacy grant;
  - (b) a person acting as a community visitor for a body that has been paid a community visitors grant.

## **9 Rights of care recipients provided with residential care**

For the purposes of paragraph 56-1(m) of the Act, the rights of a care recipient who is being provided with, or is to be provided with, residential care include the rights mentioned in the “Charter of Aged Care Rights” set out in Schedule 1.

**Note:** An approved provider must not act in a way which is inconsistent with any rights and responsibilities of care recipients specified in these principles—see paragraph 56-1(m) of the Act.

## **9A Responsibility not to act inconsistently with legal and consumer rights of care recipients**

For the purposes of paragraph 56-1(m) of the Act, an approved provider of residential care must not act in a way which is inconsistent with the legal and consumer rights of a care recipient.

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**10 Other responsibilities—restrictions on moving care recipient within residential care service**

- (1) An approved provider of a residential care service must not move a care recipient to another room, or part of a room, in the residential care service unless:
- (a) the move is at the care recipient's request; or
  - (b) the care recipient agrees to the move after being fully consulted and without being subjected to any pressure; or
  - (c) the move is necessary on genuine medical grounds as assessed by:
    - (i) an aged care assessment team; or
    - (ii) at least 2 medical or other health practitioners who meet the criteria mentioned in subsection (2); or
  - (ca) the care recipient has been receiving care under a specialist dementia care agreement and the move is because a clinical advisory committee constituted in accordance with the agreement has determined that the care recipient is not suitable to continue receiving that care; or
  - (d) the place occupied by the care recipient becomes an extra service place and the care recipient elects not to pay the extra service fee; or
  - (e) the move is necessary to carry out repairs or improvements to the premises where the residential care service operates and the care recipient has the right to return to the room, or the part of the room, if it continues to exist as a room, or part of a room, for care recipients when the repairs or improvements are finished.

Note: These principles may specify other responsibilities of an approved provider—see paragraph 56-1(n) of the Act.

- (2) For subparagraph (1)(c)(ii), the criteria are:
- (a) one practitioner must be independent of the approved provider and the residential care service, and must be chosen by the care recipient; and
  - (b) both practitioners must be competent to assess the aged care needs of the care recipient.

## **Division 3—Responsibilities of approved providers of residential care—provision of information**

### **11 Information to be given to new care recipient about rights and responsibilities**

- (1) For the purposes of paragraph 56-1(n) of the Act, an approved provider of residential care must give a care recipient:
  - (a) information about:
    - (i) the care recipient’s rights in relation to the approved provider’s residential care service under the “Charter of Aged Care Rights” set out in Schedule 1; and
    - (ii) the care recipient’s rights and responsibilities in relation to the service under this Part; and
    - (iii) if the care recipient has not entered into a resident agreement—the matters mentioned in paragraphs 59-1(1)(b) to (h) (requirements for resident agreements) of the Act; and
  - (b) a copy of the “Charter of Aged Care Rights” set out in Schedule 1 that meets the requirements of subsection (3).

Note 1: The approved provider is also required to give information to the care recipient, before the care recipient enters the service, about accommodation payments and accommodation contributions (see section 52F-1 of the Act and Division 1 of Part 4 of the *Fees and Payments Principles 2014* (No. 2)).

Note 2: The approved provider must retain records relating to the “Charter of Aged Care Rights” given under paragraph (1)(b) (see section 8A of the *Records Principles 2014*).

- (2) The approved provider must:
  - (a) assist the care recipient to understand the information and the “Charter of Aged Care Rights” given under subsection (1); and
  - (b) ensure that the care recipient or an authorised person of the care recipient has been given a reasonable opportunity to sign the copy of the “Charter of Aged Care Rights” given under paragraph (1)(b).
- (3) The copy of the “Charter of Aged Care Rights” given under paragraph (1)(b) must:
  - (a) be signed by a staff member of the approved provider; and
  - (b) if the care recipient or an authorised person of the care recipient has signed the copy—include the signature; and
  - (c) if the care recipient or an authorised person of the care recipient has not signed the copy—set out the date on which the care recipient or authorised person was given a reasonable opportunity to sign the copy; and
  - (d) set out the full name of:
    - (i) the care recipient; and
    - (ii) if an authorised person of the care recipient was present at the time the copy was given—the authorised person; and
  - (e) set out the date on which the copy was given to the care recipient.

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- (4) The approved provider must comply with subsections (1) and (2) before, or when, the care recipient enters the approved provider's residential care service.

### 12 Statement of audited accounts

- (1) If Division 5 (Disclosure Standard) of Part 5 of the *Fees and Payments Principles 2014* (No. 2) does not apply to the approved provider of a residential care service, the provider must, if asked, give a care recipient a copy of:
- (a) the most recent statement of the audited accounts of the approved provider's residential care service; or
  - (b) if the residential care service is operated as part of a broader organisation—the most recent statement of the audited accounts of the organisation's aged care component (that includes the residential care service).
- (2) The approved provider is taken to have satisfied the requirement in subsection (1) if:
- (a) Division 2 of Part 4 (which deals with financial reports) of the *Accountability Principles 2014* applies in relation to the approved provider; and
  - (b) the approved provider gives the care recipient a copy of the most recent audited financial report prepared under that Division.

### 13 Information to be given to continuing residential care recipient moving between services

- (1) If a continuing residential care recipient intends to move to another residential care service (the **new service**), the approved provider for the new service must give notice in writing of the following to the care recipient:
- (a) that, if the care recipient enters the new service within 28 days after leaving the previous residential care service:
    - (i) the care recipient may make a written choice before entering the new service, in accordance with Part 8 of the *Fees and Payments Principles 2014* (No. 2), to be covered by the fees and payments arrangements under Chapter 3A of the Act (the **new arrangements**) in relation to the new service; and
    - (ii) the care recipient cannot make a choice to be covered by the new arrangements, after entering the new service, if the care recipient has not made that choice before entering the new service;
  - (b) that, if the care recipient enters the new service 28 days or more after leaving the previous residential care service, the care recipient:
    - (i) cannot make the written choice mentioned in subparagraph (a)(i); and
    - (ii) will be covered by the new arrangements in relation to the new service;
  - (c) that, if the care recipient can, but does not, make a written choice to be covered by the new arrangements, the care recipient will be covered by the fees and payments arrangements (the **existing arrangements**) under the *Aged Care (Transitional Provisions) Act 1997*;



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- (d) that being covered by the new arrangements may result in a change to the fees and payments payable by the care recipient;
  - (e) that, if the care recipient becomes covered by the new arrangements, the care recipient cannot, in the future, decide to be again covered by the existing arrangements.
- (2) The approved provider must give the care recipient a copy of the document titled “New Arrangements for Aged Care—from 1 July 2014”, published by the Department, as it exists on 1 October 2022.

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### Division 4—Resident agreements

#### 14 Entry into resident agreement

- (1) For paragraph 59-1(2)(a) of the Act, this section specifies requirements that a resident agreement between a care recipient and an approved provider must comply with in relation to the way in which, and the process by which, the agreement is entered into.

Note: If a care recipient, or a person proposing to enter a residential care service, is unable to enter into a resident agreement, another person representing the care recipient or person may enter into the agreement on behalf of the care recipient or person (see section 96-5 of the Act).

- (2) The care recipient must be informed of, and helped to understand, the terms of the resident agreement (including any other agreements included in the resident agreement), in particular the terms about the following:
  - (a) the care recipient's rights and responsibilities, including the rights mentioned in the "Charter of Aged Care Rights" set out in Schedule 1;
  - (b) the services to be provided to the care recipient;
  - (c) the fees and other charges to be paid under the agreement.

#### 15 Provisions of resident agreement

- (1) For paragraph 59-1(2)(c) of the Act, this section specifies provisions that a resident agreement between a care recipient and an approved provider must contain.
- (2) A resident agreement must provide that if, within 14 days after signing, the care recipient notifies the provider, in writing, that the care recipient wishes to withdraw from the agreement:
  - (a) the agreement has no effect; and
  - (b) the care recipient is liable for the fees and charges payable for any period when the care recipient was provided with care through the residential care service under the agreement; and
  - (c) the provider is liable to refund any other amount paid by the care recipient under the agreement.
- (3) A resident agreement must provide:
  - (a) that the agreement may be varied:
    - (i) by the approved provider, if the variation is necessary to implement the *A New Tax System (Goods and Services Tax) Act 1999*; or
    - (ii) in any other case, by mutual consent, following adequate consultation, between the care recipient and the approved provider; and
  - (b) that the agreement must not be varied under subparagraph (a)(i) by the provider unless the provider has given reasonable notice in writing about the variation to the care recipient; and

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- (c) that the agreement must not be varied in a way that is inconsistent with the *A New Tax System (Goods and Services Tax) Act 1999*, the *Aged Care Act 1997* or the *Extra Service Principles 2014*.
- (4) A resident agreement must provide that the care recipient has a right to occupy a place at the residential care service:
  - (a) beginning on the day the agreement takes effect or a later day stated in the agreement; and
  - (b) for the period stated in the agreement or for the remainder of the care recipient's lifetime.
- (5) A resident agreement must include any other matters negotiated between the approved provider and the care recipient.

Note: A resident agreement may incorporate the terms of other agreements, including any of the following:

  - (a) an extra service agreement (see subsection 36-1(2) of the Act);
  - (b) an accommodation agreement (see section 52F-6 of the Act);
  - (c) an accommodation bond agreement (see section 57-10 of the *Aged Care (Transitional Provisions) Act 1997*);
  - (d) an accommodation charge agreement (see section 57A-4 of the *Aged Care (Transitional Provisions) Act 1997*).
- (6) A resident agreement must be expressed in plain language and be readily understandable by the care recipient.

## **Part 3—Home care services**

### **Division 1—Purpose of this Part**

#### **16 Purpose of this Part**

- (1) For section 56-2 of the Act, this Part specifies responsibilities of an approved provider in relation to care recipients to whom the approved provider provides, or is to provide, home care through a home care service, including in relation to the following:
  - (a) the security of tenure that the provider must provide to care recipients receiving home care through the service (see paragraph 56-2(f) of the Act);
  - (b) the access that an advocate may have to the service (see paragraph 56-2(j) of the Act);
  - (c) the rights of care recipients (see paragraph 56-2(k) of the Act);
  - (caa) not acting inconsistently with the legal and consumer rights of care recipients (see paragraph 56-2(k) of the Act);
  - (cab) preventing the provider from causing damage to the care recipient's home and other property (see paragraph 56-2(l) of the Act);
  - (cac) providing such information as is reasonably necessary to assist care recipients to choose the best possible care and services (see paragraph 56-2(l) of the Act);
  - (cad) the written plan of care and services that the provider must give care recipients within a specified period of time (see paragraph 56-2(l) of the Act);
  - (cae) the provision of invoices that are clear and in a format that is understandable (see paragraph 56-2(l) of the Act);
  - (caf) the review of home care fees, both periodically and on request by a care recipient (see paragraph 56-2(l) of the Act);
  - (ca) the information the provider must give the Secretary about prices and fees for providing care and services (see paragraph 56-2(l) of the Act);
  - (d) the information the provider must give care recipients (see paragraph 56-2(l) of the Act);
  - (e) the prices and fees that the approved provider may charge care recipients for providing care and services (see paragraphs 56-2(ab) and (l) of the Act).
- (2) This Part also specifies:
  - (a) for paragraphs 46-1(1)(f) and 56-2(l) of the Act and paragraph 46-1(1)(f) of the *Aged Care (Transitional Provisions) Act 1997*, the responsibilities of an approved provider of home care in relation to care recipients to whom the approved provider provides, or has provided, home care in dealing with the care recipients' unspent home care amounts; and
  - (aa) for the purposes of step 1A of the shortfall amount calculator in subsection 48-13(1) of the Act, how an approved provider may elect to

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- return the Commonwealth portion of a care recipient's unspent home care amount to the Commonwealth; and
- (b) for subsection 61-1(2) of the Act, requirements that a home care agreement entered into between a care recipient and an approved provider must comply with; and
  - (c) for clause 1 of Schedule 1 to the Act, and clause 1 of Schedule 1 to the *Aged Care (Transitional Provisions) Act 1997*, the definition of ***unspent home care amount***; and
  - (d) for clause 1 of Schedule 1 to the Act, the definition of ***Commonwealth portion***.

## **Division 2—Responsibilities of approved providers of home care—general**

### **17 Security of tenure**

- (1) For paragraph 56-2(f) of the Act, this section specifies the security of tenure that an approved provider of home care must provide to a care recipient to whom the approved provider provides, or is to provide, home care.
- (2) The approved provider may cease to provide home care to the care recipient only if:
  - (a) the care recipient cannot be cared for in the community with the resources available to the approved provider; or
  - (b) the care recipient notifies the approved provider, in writing, that the care recipient wishes to move to a location where home care is not provided by the provider; or
  - (c) the care recipient notifies the approved provider, in writing, that the care recipient no longer wishes to receive the home care; or
  - (d) the care recipient's condition changes to the extent that:
    - (i) the care recipient no longer needs home care; or
    - (ii) the care recipient's needs, as assessed by an aged care assessment team, can be more appropriately met by other types of services or care; or
  - (e) the care recipient:
    - (i) has not paid to the approved provider, for a reason within the care recipient's control, any home care fee specified in the home care agreement between the care recipient and the approved provider; and
    - (ii) has not negotiated an alternative arrangement with the approved provider for payment of the home care fee; or
  - (f) the care recipient has:
    - (i) intentionally caused serious injury to a staff member of the approved provider; or
    - (ii) intentionally infringed the right of a staff member of the approved provider to work in a safe environment.

### **18 Access to home care service by advocates**

For paragraph 56-2(j) of the Act, an approved provider of home care must allow a person acting as an advocate for a body that has been paid an advocacy grant access to each home care service through which the approved provider provides home care.

## **19 Rights of care recipients provided with home care**

For the purposes of paragraph 56-2(k) of the Act, the rights of a care recipient who is being provided with, or is to be provided with, home care include the rights mentioned in the “Charter of Aged Care Rights” set out in Schedule 1.

**Note:** An approved provider must not act in a way which is inconsistent with any rights and responsibilities of care recipients specified in these principles—see paragraph 56-2(k) of the Act.

### **19AA Responsibility not to act inconsistently with legal and consumer rights of care recipients**

For the purposes of paragraph 56-2(k) of the Act, an approved provider of home care must not act in a way which is inconsistent with the legal and consumer rights of a care recipient.

### **19AB Responsibility to prevent damage to care recipient’s property**

For the purposes of paragraph 56-2(l) of the Act, an approved provider of home care must take reasonable steps to prevent the provider, or a person employed or otherwise engaged by the provider, from causing damage to a care recipient’s home and other property in the course of providing the home care.

### **19AC Responsibility to provide information to assist care recipients to choose best care and services**

For the purposes of paragraph 56-2(l) of the Act, an approved provider of home care must provide such information as is reasonably necessary to assist a care recipient to choose the care and services that best meet his or her goals and assessed needs and preferences, within the limits of the resources available.

### **19AD Responsibility to provide written plan of care and services**

For the purposes of paragraph 56-2(l) of the Act, an approved provider of home care must give to a care recipient a written plan of the care and services that the care recipient will receive:

- (a) before the care recipient commences receiving home care; or
- (b) within 14 days after the care recipient commences receiving home care.

### **19AE Responsibility to provide clear and understandable invoices**

For the purposes of paragraph 56-2(l) of the Act, an approved provider of home care must provide a care recipient with invoices that are clear and in a format that is understandable.

### **19AF Responsibility to review fees periodically and on request**

For the purposes of paragraph 56-2(l) of the Act, an approved provider of home care must:

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- (a) periodically review the home care fees that each care recipient is liable to pay; and
- (b) if requested by a care recipient on the grounds that the care recipient's financial circumstances have changed—review the home care fees that the care recipient is liable to pay.



## **Division 2A—Responsibilities of approved providers of home care— provision of pricing information to Secretary**

### **19B Notice of common care and services and prices and fees**

- (1) An approved provider of home care must give to the Secretary a written notice of the following information:
    - (a) the price that the approved provider charges care recipients to whom the approved provider provides, or is to provide, home care, for providing each of the following kinds of care and services:
      - (i) personal care;
      - (ii) nursing by a registered nurse;
      - (iii) cleaning and household tasks;
      - (iv) light gardening;
      - (v) in-home respite care;
      - (vi) care management;
    - (b) the price per kilometre (if any) that the approved provider charges care recipients to whom the approved provider provides, or is to provide, home care, for travel to a care recipient for the purpose of providing care or services;
    - (d) the price that the approved provider charges care recipients to whom the approved provider provides, or is to provide, home care, for package management;
    - (e) the amount (if any) of the basic daily care fee under section 52D-3 of the Act that the approved provider charges care recipients (other than continuing home care recipients) to whom the approved provider provides, or is to provide, home care;
    - (f) the amount (if any) of the daily amount of home care fees that the approved provider charges continuing home care recipients to whom the approved provider provides, or is to provide, home care in accordance with Division 60 of the *Aged Care (Transitional Provisions) Act 1997*; and
    - (g) contact details for further information about the approved provider's prices and fees.
  - (2) The notice must be given to the Secretary:
    - (a) for a person or body who is an approved provider of home care on the day before this section commences—before 1 July 2019; and
    - (b) for a person or body who becomes an approved provider of home care on or after the day this section commences but before 1 July 2019—before the later of the following:
      - (i) 1 July 2019;
      - (ii) offering to enter into a home care agreement with a care recipient; and
    - (c) for a person or body who becomes an approved provider of home care on or after 1 July 2019—before offering to enter into a home care agreement with a care recipient.
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- (3) If there is a change to the information in a notice given to the Secretary under subsection (1), the approved provider must give the Secretary an updated notice.
- (4) A notice under subsection (1) or (3) must be given in a form approved, in writing, by the Secretary.

Note: The Secretary may make the information in a notice under subsection (1) or (3) publicly available—see section 86-9 of the Act and the *Information Principles 2014*.

**19C Notice of all care and services and prices and fees**

- (1) An approved provider of home care must give to the Secretary a written notice of the following information:
  - (a) the information mentioned in subsection 19B(1);
  - (b) each kind of care, and each service:
    - (i) that the approved provider provides, or is to provide, to care recipients to whom the approved provider provides, or is to provide, home care; and
    - (ii) that is not mentioned in paragraph 19B(1)(a);
  - (c) the price that the approved provider charges care recipients to whom the approved provider provides, or is to provide, home care, for providing each kind of care and service mentioned in paragraph (b).
- (2) The notice must be given to the Secretary:
  - (a) for a person or body who is an approved provider of home care on the day before this section commences—before 1 July 2019; and
  - (b) for a person or body who becomes an approved provider of home care on or after the day this section commences but before 1 July 2019—before the later of the following:
    - (i) 1 July 2019;
    - (ii) offering to enter into a home care agreement with a care recipient; and
  - (c) for a person or body who becomes an approved provider of home care on or after 1 July 2019—before offering to enter into a home care agreement with a care recipient.
- (3) If there is a change to the information in a notice given to the Secretary under subsection (1), the approved provider must give the Secretary an updated notice.
- (4) A notice under subsection (1) or (3) must be given in a form approved, in writing, by the Secretary.

Note: The Secretary may make the information in a notice under subsection (1) or (3) publicly available—see section 86-9 of the Act and the *Information Principles 2014*.

**19D Annual review of notices of care and services and prices and fees**

- (1) An approved provider of home care must, at least once every 12 months:
    - (a) review the information in the notices mentioned in subsections 19B(1) and 19C(1); and
    - (b) after reviewing the information:
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- (i) if there is a change to the information—give the Secretary an updated notice under subsection 19B(3) or 19C(3) (or both); or
    - (ii) if there is no change to the information—give the Secretary a written notice that the approved provider has reviewed the information.
  - (2) A notice under subparagraph (1)(b)(ii) must be given in a form approved, in writing, by the Secretary.
- Note: The Secretary may make the information in a notice under subparagraph (1)(b)(ii) publicly available—see section 86-9 of the Act and the *Information Principles 2014*.

## **Division 3—Responsibilities of approved providers of home care— provision of information to care recipients**

### **20 Information to be given to new care recipient about rights and responsibilities**

- (1) For the purposes of paragraph 56-2(l) of the Act, an approved provider of home care must give a prospective care recipient:
  - (a) information about:
    - (i) the care recipient’s rights in relation to the approved provider’s home care service under the “Charter of Aged Care Rights” set out in Schedule 1; and
    - (ii) the rights and responsibilities of the care recipient and the approved provider, including the care recipient’s rights and responsibilities in relation to the payment of home care fees; and
  - (b) a copy of the “Charter of Aged Care Rights” set out in Schedule 1 that meets the requirements of subsection (3).

**Note:** The approved provider must retain records relating to the “Charter of Aged Care Rights” given under paragraph (1)(b) (see section 8A of the *Records Principles 2014*).

- (2) The approved provider must:
  - (a) assist the care recipient to understand the information and the “Charter of Aged Care Rights” given under subsection (1); and
  - (b) ensure that the care recipient or an authorised person of the care recipient has been given a reasonable opportunity to sign the copy of the “Charter of Aged Care Rights” given under paragraph (1)(b).
- (3) The copy of the “Charter of Aged Care Rights” given under paragraph (1)(b) must:
  - (a) be signed by a staff member of the approved provider; and
  - (b) if the care recipient or an authorised person of the care recipient has signed the copy—include the signature; and
  - (c) if the care recipient or an authorised person of the care recipient has not signed the copy—set out the date on which the care recipient or authorised person was given a reasonable opportunity to sign the copy; and
  - (d) set out the full name of:
    - (i) the care recipient; and
    - (ii) if an authorised person of the care recipient was present at the time the copy was given—the authorised person; and
  - (e) set out the date on which the copy was given to the care recipient.
- (4) The approved provider must comply with subsections (1) and (2) before the care recipient enters the approved provider’s home care service.

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## **21 Information to be given to continuing home care recipient to be provided with new home care service**

- (1) If a continuing home care recipient intends to move to another home care service (the **new service**), the approved provider that is to provide home care to the care recipient through the new service must give notice in writing of the following to the care recipient:
  - (a) that, if the care recipient moves to the new service within 28 days after leaving the previous home care service:
    - (i) the care recipient may make a written choice before moving to the new service, in accordance with Part 8 of the *Fees and Payments Principles 2014 (No. 2)*, to be covered by the fee arrangements under Chapter 3A of the Act (the **new arrangements**) in relation to the new service; and
    - (ii) the care recipient cannot make a choice to be covered by the new arrangements, after moving to the new service, if the care recipient has not made that choice before moving to the new service;
  - (b) that, if the care recipient moves to the new service 28 days or more after leaving the previous home care service, the care recipient:
    - (i) cannot make a written choice mentioned in subparagraph (a)(i); and
    - (ii) will be covered by the new arrangements in relation to the new service;
  - (c) that, if the care recipient can, but does not, make a written choice to be covered by the new arrangements, the care recipient will be covered by the fee arrangements (the **existing arrangements**) under the *Aged Care (Transitional Provisions) Act 1997*;
  - (d) that being covered by the new arrangements may result in a change to the fees payable by the care recipient;
  - (e) that, if the care recipient becomes covered by the new arrangements, the care recipient cannot, in the future, decide to be again covered by the existing arrangements.
- (2) The approved provider must give the care recipient a copy of the document titled “New Arrangements for Aged Care—from 1 July 2014”, published by the Department, as it exists on 1 October 2022.

## **21A Individualised budget to be given to care recipient**

- (1) An approved provider of home care must give a written individualised budget to each care recipient to whom the approved provider provides, or is to provide, home care through a home care service.
- (2) The individualised budget for a care recipient must:
  - (a) be prepared in partnership with the care recipient; and
  - (b) be prepared having regard to the care recipient’s goals and assessed needs, preferences, the resources available and the services selected by the care recipient; and

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- (c) set out an itemised budget for the home care to be provided to the care recipient, as set out in the care recipient's care plan; and
- (d) set out:
  - (i) the amount of home care subsidy payable to the approved provider for the care recipient in respect of the period agreed between the care recipient and the provider; and
  - (ii) the maximum amount of home care fees payable by the care recipient in respect of that period.

Note 1: The amount of home care subsidy payable to the approved provider for the care recipient in respect of a payment period (that is a calendar month) is worked out under section 48-1 of the Act or section 48-1 of the *Aged Care (Transitional Provisions) Act 1997* (as the case requires).

Note 2: The maximum amount of home care fees payable by the care recipient is worked out under Division 52D of the Act, or Division 60 of the *Aged Care (Transitional Provisions) Act 1997* and section 130 of the *Aged Care (Transitional Provisions) Principles 2014* (as the case requires).

- (3) The approved provider must give the individualised budget to the care recipient as soon as practicable after the approved provider has all the necessary information to complete it.
- (4) The approved provider must review and, if necessary, revise the individualised budget for the care recipient if:
  - (a) a change to the care and services to be provided to the care recipient through the home care service is proposed; or
  - (b) the costs of providing the care and services change; or
  - (c) the care recipient requests the approved provider to do so.
- (5) If the approved provider reviews and revises the individualised budget for a care recipient under subsection (4), the approved provider must give the care recipient a copy of the revised individualised budget.
- (6) If the individualised budget for a care recipient is reviewed and revised in response to a request from the care recipient under paragraph (4)(c), the approved provider must give the care recipient a copy of the revised individualised budget within 14 days of the request being made.
- (7) The care recipient must be informed of, and helped to understand, the individualised budget for the care recipient.

#### 21B Financial information statements for payment periods

- (1) If an approved provider provides a care recipient with home care through a home care service in a payment period, the approved provider must give a written statement to the care recipient relating to the payment period.

##### *What statement must contain*

- (2) The statement must inform the care recipient of:
  - (a) transactions during the payment period relating to the care recipient; and

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- (b) any unpaid home care fees relating to previous payment periods.
- (3) The statement must include the following:
  - (a) the amount of home care subsidy for the care recipient in respect of the payment period;
  - (b) the amount of home care fees (if any) paid or payable by the care recipient in respect of the payment period;
  - (c) an itemised list of:
    - (i) the care and services provided to the care recipient during the payment period; and
    - (ii) the matters mentioned in paragraphs 19B(1)(b) and (d) (certain travel and package management) for which the care recipient was charged in respect of the payment period;
  - (d) for each item of care and services, and each matter mentioned in paragraphs 19B(1)(b) and (d)—the price that the approved provider charged the care recipient in respect of the payment period;
  - (e) the total of the prices mentioned in paragraph (d) in respect of the payment period;
  - (ea) the home care account balance in the care recipient's home care account:
    - (i) immediately after the end of the previous payment period; and
    - (ii) immediately after the end of the payment period;
  - (f) the care recipient's unspent home care amount in respect of:
    - (i) the previous payment period; and
    - (ii) the payment period;
  - (fa) the Commonwealth portion of the care recipient's unspent home care amount in respect of:
    - (i) the previous payment period; and
    - (ii) the payment period;
  - (fb) the care recipient portion of the care recipient's unspent home care amount in respect of:
    - (i) the previous payment period; and
    - (ii) the payment period;
  - (g) if, during the payment period, the approved provider received an amount of the care recipient portion of the care recipient's unspent home care amount from another approved provider—the amount that was received.

*Partial periods*

- (4) If the approved provider did not provide the care recipient with home care during the whole of the payment period, the statement must cover the part of the payment period during which the approved provider provided the care recipient with home care.

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*When statement must be given*

- (5) The approved provider must give the statement to the care recipient as soon as practicable after the approved provider has all the necessary information to complete it.

*Informing care recipient of, and helping care recipient to understand, statement*

- (6) The care recipient must be informed of, and helped to understand, the statement.



## **Division 3A—Responsibilities of approved providers of home care— unspent home care amounts**

### **Subdivision A—Election to return, and reporting, Commonwealth portion of unspent home care amount**

#### **21BA Election to return Commonwealth portion of unspent home care amount**

- (1) An approved provider may elect to return the Commonwealth portion of a care recipient's unspent home care amount to the Commonwealth.
- (2) The election:
  - (a) must be in writing; and
  - (b) must be made before 1 March 2022; and
  - (c) must be made in a claim for home care subsidy in respect of a payment period; and
  - (d) must state the Commonwealth portion of the care recipient's unspent home care amount at the end of the previous payment period.
- (3) The election is irrevocable.

#### **21BAA Responsibility to report Commonwealth portion of unspent home care amount**

- (1) This section applies to an approved provider if on 1 September 2021, a care recipient to whom the approved provider is providing home care through a home care service is an ongoing home care recipient.
- (2) The approved provider must, not later than 31 December 2021, report to the Secretary the Commonwealth portion of the care recipient's unspent home care amount at the end of any one of the following payment periods (the **reporting payment period**):
  - (a) the payment period beginning on 1 September 2021;
  - (b) the payment period beginning on 1 October 2021;
  - (c) the payment period beginning on 1 November 2021.
- (3) The report must be made in a claim for home care subsidy in respect of the reporting payment period.
- (4) Subsection (2) ceases to apply to an approved provider if, not later than 31 December 2021, the approved provider makes an election to return the Commonwealth portion of the care recipient's unspent home care amount to the Commonwealth.

**Note:** An election to return the Commonwealth portion of the care recipient's unspent home care amount to the Commonwealth must be made in a claim for home care subsidy in respect of a payment period and must state the Commonwealth portion of the care recipient's unspent home care amount at the end of the previous payment period (see paragraphs 21BA(2)(c) and (d)).

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**Subdivision B—Implementation date amounts for ongoing home care recipients**

**21BB Meaning of *implementation date unspent home care amount***

The *implementation date unspent home care amount* of an ongoing home care recipient is the amount that would have been the unspent home care amount of the care recipient, worked out in accordance with section 21C of these principles as that section was in force immediately before 1 September 2021:

- (a) if the approved provider providing home care to the care recipient had ceased to provide home care to the care recipient immediately before 1 September 2021; and
- (b) disregarding step 4 of the method statement in that section.

**21BC Meaning of *implementation date Commonwealth portion***

The *implementation date Commonwealth portion* of an ongoing home care recipient is the amount that would have been the Commonwealth portion of the care recipient's implementation date unspent home care amount, worked out in accordance with section 21D of these principles as that section was in force immediately before 1 September 2021:

- (a) if the approved provider providing home care to the care recipient had ceased to provide home care to the care recipient immediately before 1 September 2021; and
- (b) as if references in that section to the care recipient's unspent home care amount were references to the implementation date unspent home care amount of the care recipient.

**21BD Meaning of *implementation date care recipient portion***

The *implementation date care recipient portion* of an ongoing home care recipient is the amount that would have been the care recipient portion of the care recipient's implementation date unspent home care amount, worked out in accordance with section 21D of these principles as that section was in force immediately before 1 September 2021:

- (a) if the approved provider providing home care to the care recipient had ceased to provide home care to the care recipient immediately before 1 September 2021; and
- (b) as if references in that section to the care recipient's unspent home care amount were references to the implementation date unspent home care amount of the care recipient.

**Subdivision C—Unspent home care amounts**

**21C Meaning of *unspent home care amount***

The *unspent home care amount* of a care recipient in respect of a payment period is the sum of the following amounts:

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- (a) the Commonwealth portion of the care recipient's unspent home care amount in respect of the payment period;
- (b) the care recipient portion of the care recipient's unspent home care amount in respect of the payment period.

**21CA Meaning of *Commonwealth portion***

*Commonwealth portion—if approved provider has not made election under section 21BA*

- (1) Subsection (2) applies to a care recipient in respect of a payment period if the approved provider providing the care recipient with home care through a home care service has not, under section 21BA, made an election to return the Commonwealth portion of the care recipient's unspent home care amount to the Commonwealth.
- (2) The ***Commonwealth portion*** of the care recipient's unspent home care amount in respect of the payment period is worked out as follows.

***Commonwealth portion calculator (if no election made)***

- Step 1. Identify the amount of the Commonwealth portion of the care recipient's unspent home care amount in respect of the previous payment period.
- Step 2. If section 21CC applies, subtract the amount (if any) of the second difference amount under that section. If the result is negative, the amount is taken to be nil.

The amount (including a nil amount) is the ***Commonwealth portion*** of the care recipient's unspent home care amount in respect of the payment period.

*Commonwealth portion—if approved provider has made election under section 21BA*

- (3) Subsection (4) applies in relation to a care recipient if the approved provider has, under section 21BA, made an election to return the Commonwealth portion of the care recipient's unspent home care amount to the Commonwealth.
- (4) The ***Commonwealth portion*** of a care recipient's unspent home care amount in respect of a payment period is worked out as follows.

***Commonwealth portion calculator (if election made)***

- Step 1. Identify the amount of the Commonwealth portion of the care recipient's unspent home care amount in respect of the previous payment period.

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Step 2. Subtract the amount (if any) by which, under step 1A of the shortfall amount calculator in subsection 48-13(1) of the Act, the price for the home care provided during the payment period to the care recipient was reduced.

The amount (including a nil amount) is the **Commonwealth portion** of the care recipient's unspent home care amount in respect of the payment period.

*Commonwealth portion—payment period ending immediately before 1 September 2021*

- (5) For the purposes of this section, the amount of the Commonwealth portion of a care recipient's unspent home care amount in respect of the payment period ending immediately before 1 September 2021 is:
- (a) for an ongoing home care recipient—the implementation date Commonwealth portion for the care recipient; and
  - (b) for any other care recipient—nil.

## 21CB Meaning of *care recipient portion*

- (1) The **care recipient portion** of a care recipient's unspent home care amount in respect of a payment period is worked out as follows.

### **Care recipient portion calculator**

Step 1. Identify the amount of the care recipient portion of the care recipient's unspent home care amount in respect of the previous payment period.

Step 2. Add the amount (if any) of the care recipient portion of the care recipient's unspent home care amount paid to the approved provider providing the care recipient with home care in the payment period (the **current provider**) by another approved provider under subsection 21F(2) or 37(2).

Step 3. Add the amount (if any) of the care recipient's implementation date unpaid fees paid in the payment period by the care recipient to the current provider.

Step 4. Add the amount (if any) by which the available home care fees amount for the care recipient in respect of the payment period (if any) exceeds the total amount worked out under step 3 of the calculator in section 99B of the *Subsidy Principles 2014*.

This is the **base care recipient portion** for the payment period.

Step 5. If section 21CC applies, subtract the amount of the first difference amount under that section. If the result is negative, the amount is taken to be nil.

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Step 6. If the current provider ceases to provide home care to the care recipient on a day in the payment period and Subdivision D applies, subtract the amount of any home care fees that are payable by the care recipient to the current provider, but have not been paid. If the result is negative, the amount is taken to be nil.

The amount (including a nil amount) worked out under step 6 is the ***care recipient portion*** of the care recipient's unspent home care amount in respect of the payment period.

*Care recipient portion for payment period ending immediately before 1 September 2021*

- (2) For the purposes of step 1, the amount of the care recipient portion for the payment period ending immediately before 1 September 2021 is:
- (a) for an ongoing home care recipient—the implementation date care recipient portion of the care recipient; and
  - (b) for any other care recipient—nil.

*Care recipient portion for previous payment period for new care recipients*

- (3) For the purposes of step 1, if a care recipient first began receiving home care from an approved provider in a payment period, the amount of the care recipient portion of the care recipient's unspent home care amount in respect of the previous payment period is nil.

## 21CC Difference amounts

- (1) This section applies if the price for the home care provided during a payment period to a care recipient by an approved provider is greater than the sum of the following:
- (a) the amount (if any) by which the price was reduced under step 1A of the shortfall amount calculator in subsection 48-13(1) of the Act;
  - (b) the care recipient contribution amount (if any) worked out under section 99C of the *Subsidy Principles 2014* for the care recipient in respect of the payment period;
  - (c) the amount of home care subsidy for the care recipient in respect of the payment period.
- (2) The amount by which the price exceeds the sum of the amounts mentioned in subsection (1) is the ***first difference amount***.
- (3) The amount (if any) by which the first difference amount exceeds the base care recipient portion under subsection 21CB(1) is the ***second difference amount***.

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### Subdivision D—Responsibilities if approved provider ceases to provide care

#### 21D Application of Subdivision

This Subdivision applies if:

- (a) an approved provider (the *ceasing home care provider*) ceases on a particular day (the *home care cessation day*) to provide home care to a care recipient; and
- (b) Subdivision F does not apply.

#### 21E Responsibility to give notice to care recipient or their estate

- (1) The ceasing home care provider must give a notice in accordance with this section.
- (2) The notice must (subject to subsection (3)):
  - (a) specify:
    - (i) the home care cessation day; and
    - (ii) the care recipient's unspent home care amount; and
    - (iii) the Commonwealth portion and care recipient portion of the care recipient's unspent home care amount; and
    - (iv) if unpaid home care fees were deducted by the ceasing home care provider under step 6 of the care recipient portion calculator in subsection 21CB(1)—the amount of fees that were deducted; and
  - (b) explain:
    - (i) if the ceasing home care provider ceases to provide home care to the care recipient because the care recipient has died—the effect of item 1 of the table in subsection 21F(2); and
    - (ii) otherwise—the effect of items 2 and 3 of that table and the effect of subsection 21F(3).
- (3) However, if the unspent home care amount, the Commonwealth portion or the care recipient portion is nil, the notice must state that the amount or portion is nil.

*When notice must be given*

- (4) The notice must be given within 56 days after the home care cessation day.

*Who notice is given to*

- (5) The notice must be given to:
  - (a) the care recipient; or
  - (b) if the care recipient has died—the care recipient's legal personal representative.

Note: A copy of the notice may also be required to be given to a new approved provider of a care recipient under subsection 21G(1).

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### **21F Responsibility to pay care recipient portion and Commonwealth portion of unspent home care amount**

- (1) Each of the care recipient portion and the Commonwealth portion of a care recipient's unspent home care amount in respect of the payment period in which the approved provider ceased to provide home care to the care recipient is payable in accordance with this section if the portion is more than nil.

**Note:** Notices may be required to be given under section 21G in relation to payments made under this section.

#### *Payment of care recipient portion*

- (2) The ceasing home care provider must pay the care recipient portion in accordance with the following table.

<b>Payment of care recipient portion</b>			
<b>Item</b>	<b>Column 1 If ...</b>	<b>Column 2 the approved provider must pay the care recipient portion to this person ...</b>	<b>Column 3 within this period ...</b>
1	the ceasing home care provider ceases to provide home care to the care recipient because the care recipient dies	the care recipient's estate	14 days after the ceasing home care 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 ceasing home care provider is notified, within 56 days after the home care cessation day, that the care recipient has entered into a home care agreement with a new approved provider	the new approved provider	70 days after the home care cessation day.
3	neither item 1 nor 2 applies	the care recipient	70 days after the home care cessation day.

#### *When Commonwealth portion becomes due and payable*

- (3) The Commonwealth portion is due and payable by the approved provider to the Commonwealth at the end of 70 days after the home care cessation day.

**Note:** 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.

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### 21G Responsibility to give notices to new approved provider and the Commonwealth

#### *Notice for new approved provider*

- (1) If the ceasing home care provider pays another approved provider (the **new provider**) the care recipient portion of the care recipient's unspent home care amount under item 2 of the table in subsection 21F(2), the ceasing home care provider must give a copy of the notice given under section 21E relating to the care recipient to the new provider at the time the amount is paid.

#### *Notice for the Commonwealth*

- (3) If:
  - (a) the Commonwealth portion of the care recipient's unspent home care amount will become due and payable to the Commonwealth under subsection 21F(3); or
  - (b) the Commonwealth portion of the care recipient's unspent home care amount is nil;the ceasing home care provider must, within 70 days after the home care cessation day, give a notice containing that information to the Secretary, in a form approved, in writing, by the Secretary.

### Subdivision F—Responsibilities if care recipient transfers between home care services operated by same approved provider

#### 21JA Application of Subdivision

This Subdivision applies if an approved provider:

- (a) ceases on a particular day (the **home care service cessation day**) to provide home care to a care recipient through a particular home care service; and
- (b) starts to provide home care to the care recipient through another home care service;

without ceasing to provide home care to the care recipient.

#### 21JB Responsibility to pay Commonwealth portion of unspent home care amount

- (1) The Commonwealth portion of a care recipient's unspent home care amount in respect of the payment period in which the approved provider ceased to provide home care to the care recipient through the particular home care service is payable in accordance with this section if the Commonwealth portion is more than nil.
- (2) The Commonwealth portion is due and payable by the approved provider to the Commonwealth at the end of 70 days after the home care service cessation day.

**Note:** 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.



**21JC Responsibility to give notice to the Commonwealth**

If:

- (a) the Commonwealth portion of the care recipient's unspent home care amount will become due and payable to the Commonwealth under section 21JB; or
- (b) the Commonwealth portion of the care recipient's unspent home care amount is nil;

the ceasing home care provider must, within 70 days after the home care service cessation day, give a notice containing that information to the Secretary, in a form approved, in writing, by the Secretary.

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## **Division 3B—Responsibilities of approved providers of home care—pricing**

### **21K Costs that are not to be charged for separately**

An approved provider of home care must not charge a care recipient to whom the approved provider provides home care the following kinds of costs (however described) as a separate charge:

- (a) business costs;
- (b) costs of providing care or services through a subcontracting arrangement.

### **21KA Cap on prices for care management and package management**

*Maximum daily prices for care management and package management*

- (1) The following table specifies the maximum prices for care management and package management for a day for a care recipient.

<b>Maximum daily prices for care management and package management</b>			
<b>Item</b>	<b>If, on the day, the care recipient's level of care as a prioritised home care recipient determined under subsection 23B-1(1) of the Act is ...</b>	<b>the maximum price for care management for the day for the care recipient is ... (\$)</b>	<b>and the maximum price for package management for the day for the care recipient is ... (\$)</b>
1	Level 1	5.86	4.39
2	Level 2	10.30	7.72
3	Level 3	22.41	16.81
4	Level 4	33.98	25.49

*Cap on care management price for a period*

- (2) An approved provider of home care must not charge a care recipient to whom the approved provider provides home care a price for care management in respect of a period that is more than the sum of the maximum prices for care management for the days in the period for the care recipient.

*Cap on package management price for a period*

- (3) An approved provider of home care must not charge a care recipient to whom the approved provider provides home care a price for package management in respect of a period that is more than the sum of the maximum prices for package management for the days in the period for the care recipient.

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*Payment periods in respect of which no charge for package management permitted*

- (4) An approved provider of home care must not charge a care recipient any amount for package management in respect of a payment period if the approved provider does not provide any care or services to the care recipient during that payment period other than care management.
- (5) Subsection (4) does not apply to the payment period during which the care recipient enters the service through which home care is provided.

**21L Prices and certain costs to be kept to reasonable amounts**

- (1) An approved provider of home care must not charge a care recipient to whom the approved provider provides home care a price that is more than a reasonable amount for:
  - (a) provision of care or a service; or
  - (b) a matter mentioned in paragraph 19B(1)(b) or (d) (certain travel and package management).
- (2) An approved provider of home care must not charge a care recipient to whom the approved provider provides home care, as part of the price that the approved provider charges the care recipient for providing care or services, more than a reasonable amount of the following costs:
  - (a) business costs;
  - (b) costs of providing care or services through a subcontracting arrangement.

**21M Prices charged for common care and services, and fees, to be those in home care agreement**

- (1) This section applies if a home care agreement is in force between a care recipient and an approved provider on a day.
- (2) Subject to this section:
  - (a) if the approved provider provides care or a service mentioned in paragraph 19B(1)(a) to the care recipient on the day, the price charged for the care or service must be the price mentioned for the care or service in the notice that is included in the home care agreement under paragraph 23(2)(ba) (the *applicable notice*); and
  - (b) if the approved provider charges the care recipient for a matter mentioned in paragraph 19B(1)(b) or (d) in relation to care or services provided to the care recipient on the day, the price charged for the matter must be the price mentioned for the matter in the applicable notice; and
  - (c) if the approved provider charges the care recipient an amount of the basic daily care fee under section 52D-3 of the Act in relation to care or services provided to the care recipient on the day, the amount charged for the fee must be the amount of the fee mentioned in the applicable notice; and
  - (d) if the approved provider charges the care recipient an amount of the daily amount of home care fees under Division 60 of the *Aged Care*

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*(Transitional Provisions) Act 1997* in relation to care or services provided to the care recipient on the day, the amount charged for the fees must be the amount of the fees mentioned in the applicable notice.

- (3) Paragraph (2)(a) does not apply if the home care agreement specifies a different price for the care or service and the reason for the different price.
- (4) Paragraph (2)(b) does not apply if the home care agreement specifies a different price for the matter and the reason for the different price.
- (5) Paragraph (2)(c) does not apply if the home care agreement specifies a different amount of the fee and the reason for the different amount.
- (6) Paragraph (2)(d) does not apply if the home care agreement specifies a different amount of the fees and the reason for the different amount.

## Division 4—Home care agreements

### 22 Entry into home care agreement

- (1) For paragraph 61-1(2)(a) of the Act, this section specifies requirements that a home care agreement between a care recipient and an approved provider must comply with in relation to the way in which, and the process by which, the agreement is entered into.

**Note:** If a care recipient, or a person proposing to receive care through a home care service, is unable to enter into a home care agreement, another person representing the care recipient or person may enter into the agreement on behalf of the care recipient or person (see section 96-5 of the Act).

- (2) The approved provider must offer a home care agreement to the prospective care recipient before a date for the start of the provision of home care is agreed.
- (3) The care recipient must be informed of, and helped to understand, the terms of the home care agreement, in particular the terms about the following:
  - (a) the care recipient's rights and responsibilities, including the rights mentioned in the "Charter of Aged Care Rights" set out in Schedule 1;
  - (b) the services to be provided to the care recipient;
  - (c) the fees and other charges to be paid under the agreement.

### 23 Provisions of home care agreement

- (1) For paragraph 61-1(2)(c) of the Act, this section specifies provisions that a home care agreement between a care recipient and an approved provider must contain.
- (2) A home care agreement must contain the following:
  - (a) the date when the provider will start to provide home care to the care recipient;
  - (b) statements specifying:
    - (i) that the home care will be delivered on a consumer directed care basis; and
    - (ii) the care and services that the care recipient will receive; and
    - (iii) the level of home care to be provided; and
    - (iv) the care recipient's rights in relation to decisions about the care and services that are to be provided; and
    - (v) that the provider will give a care plan and an individualised budget, and any changes to those documents, to the care recipient;
  - (ba) a copy of the current notice given to the Secretary by the approved provider under section 19B (the **current notice**);
  - (bb) if the care recipient is to be charged a price for care or a service that is different from the price mentioned for the care or service in the current notice—the different price and the reason for the different price;

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- (bc) if the care recipient is to be charged a price for a matter that is different from the price mentioned for the matter in the current notice—the different price and the reason for the different price;
- (c) for a care recipient other than a continuing home care recipient—a statement setting out:
  - (i) which fees (if any), referred to in Division 52D of the Act, the provider will charge the care recipient; and
  - (ii) if the care recipient is to be charged an amount of the basic daily care fee under section 52D-3 of the Act that is different from the amount of the fee mentioned in the current notice—the different amount and the reason for the different amount;
- (ca) for a continuing home care recipient—a statement:
  - (i) that the provider may charge the care recipient home care fees in accordance with Division 60 of the *Aged Care (Transitional Provisions) Act 1997*; and
  - (ii) setting out which fee (if any), as determined in accordance with section 130 of the *Aged Care (Transitional Provisions) Principles 2014*, the provider will charge; and
  - (iii) if the care recipient is to be charged a daily amount of home care fees in accordance with Division 60 of the *Aged Care (Transitional Provisions) Act 1997* that is different from the daily amount of home care fees mentioned in the current notice—setting out the different amount and the reason for the different amount;
- (cb) a statement that the provider will give the care recipient a statement of the available funds and the expenditure in respect of each month for the care and services provided to the care recipient during the month;
- (cc) a statement that any care recipient portion of the care recipient's unspent home care amount will be paid in accordance with Division 3A of this Part;
- (d) provision for financial information to be given to the care recipient about the home care that the care recipient will receive, including a statement that the approved provider must, within 7 days after a request by the care recipient, give the care recipient:
  - (i) a clear and simple presentation of the financial position of the home care service, including the costs of home care, that explains any ongoing fees payable by the care recipient; and
  - (ii) a copy of the most recent statement of the audited accounts of the home care service or, if the home care service is operated as part of a broader organisation, the most recent statement of the audited accounts of the organisation's aged care component (that includes the home care service);
- (e) a guarantee that all reasonable steps will be taken to protect the confidentiality, so far as legally permissible, of information provided by the care recipient, and details of the use of the information that is to be made by:
  - (i) the provider; and
  - (ii) each person or body to whom the information is disclosed by the provider;

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- (f) a statement that the care recipient may suspend, on a temporary basis, the provision of the home care, from a particular date;
- (g) the conditions under which either party may terminate the provision of home care.

Note: For the suspension of home care services mentioned in paragraph (f), see section 46-2 of the Act.

- (3) A home care agreement must provide:
  - (a) that the agreement may be varied:
    - (i) by the approved provider, if the variation is necessary to implement the *A New Tax System (Goods and Services Tax) Act 1999*; or
    - (ii) in any other case, by mutual consent, following adequate consultation, of the care recipient and approved provider; and
  - (b) that the agreement must not be varied under subparagraph (a)(i) by the provider unless the provider has given reasonable notice in writing about the variation to the care recipient; and
  - (c) that the agreement must not be varied in a way that is inconsistent with the *A New Tax System (Goods and Services Tax) Act 1999*, the *Aged Care Act 1997* or the *Extra Service Principles 2014*.
- (4) A home care agreement must:
  - (a) state that the care recipient is entitled to make, without fear of reprisal, a complaint about the provision of the home care; and
  - (b) state the mechanisms for making such a complaint.
- (5) A home care agreement must be expressed in plain language and be readily understandable by the care recipient.

## **Part 3A—Flexible care services**

### **Division 1—Purpose of this Part**

#### **23AA Purpose of this Part**

For section 56-3 of the Act, this Part specifies responsibilities of an approved provider of a flexible service in relation to care recipients to whom the approved provider provides, or is to provide, flexible care in the form of short-term restorative care, including in relation to the following:

- (a) the maximum amount that an approved provider may charge for the provision of care and services (see paragraph 56-3(a) of the Act);
- (b) the access that an advocate may have to the service (see paragraph 56-3(k) of the Act);
- (c) the rights of care recipients (see paragraph 56-3(l) of the Act);
- (ca) not acting inconsistently with the legal and consumer rights of care recipients (see paragraph 56-3(l) of the Act);
- (cb) preventing the provider from causing damage to the care recipient's home and other property (see paragraph 56-3(m) of the Act);
- (cc) providing such information as is reasonably necessary to assist care recipients to choose the best possible care and services (see paragraph 56-3(m) of the Act);
- (cd) the written plan of care and services that the provider must give care recipients within a specified period of time (see paragraph 56-3(m) of the Act);
- (ce) the provision of invoices that are clear and in a format that is understandable (see paragraph 56-3(m) of the Act);
- (cf) the review of fees on request by a care recipient (see paragraph 56-3(m) of the Act);
- (d) the information the provider must give care recipients (see paragraph 56-3(m) of the Act);
- (e) flexible care agreements in respect of short-term restorative care (see paragraph 56-3(m) of the Act).



## **Division 2—Responsibilities of approved providers of flexible care—general**

### **23AB Maximum amount that may be charged for care and services—short-term restorative care**

- (1) For paragraph 56-3(a) of the Act, this section specifies the maximum amount that an approved provider may charge for the provision of care and services in respect of flexible care in the form of short-term restorative care.
- (2) If the short-term restorative care is provided in a residential care setting, the maximum amount is the amount obtained by rounding down to the nearest cent the amount equal to 85% of the basic age pension amount (worked out on a per day basis).
- (3) If the short-term restorative care is provided in a home care setting, the maximum amount is the amount obtained by rounding down to the nearest cent the amount equal to 17.5% of the basic age pension amount (worked out on a per day basis).

### **23AC Access by advocates to flexible care service—short-term restorative care**

For paragraph 56-3(k) of the Act, an approved provider of a flexible care service through which short-term restorative care is provided must allow a person acting as an advocate for a body that has been paid an advocacy grant access to the provider's flexible care service.

### **23AD Rights of care recipients—short-term restorative care**

For the purposes of paragraph 56-3(l) of the Act, the rights of a care recipient who is being provided with, or is to be provided with, short-term restorative care include the rights mentioned in the “Charter of Aged Care Rights” set out in Schedule 1.

**Note:** An approved provider must not act in a way which is inconsistent with any rights and responsibilities of care recipients specified in these principles—see paragraph 56-3(l) of the Act.

### **23ADA Responsibility not to act inconsistently with legal and consumer rights of care recipients**

For the purposes of paragraph 56-3(l) of the Act, an approved provider of a flexible care service through which short-term restorative care is provided must not act in a way which is inconsistent with the legal and consumer rights of a care recipient.

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**23ADB Responsibility to prevent damage to care recipient's property**

For the purposes of paragraph 56-3(m) of the Act, an approved provider of a flexible care service through which short-term restorative care is provided in a home care setting must take reasonable steps to prevent the provider, or a person employed or otherwise engaged by the provider, from causing damage to a care recipient's home and other property in the course of providing the flexible care service.

**23ADC Responsibility to provide information to assist care recipients to choose best care and services**

For the purposes of paragraph 56-3(m) of the Act, an approved provider of a flexible care service through which short-term restorative care is provided in a home care setting must provide such information as is reasonably necessary to assist a care recipient to choose the care and services that best meet his or her goals and assessed needs and preferences, within the limits of the resources available.

**23ADD Responsibility to provide written plan of care and services**

For the purposes of paragraph 56-3(m) of the Act, an approved provider of a flexible care service through which short-term restorative care is provided in a home care setting must give to a care recipient a written plan of the care and services that the care recipient will receive:

- (a) before the care recipient commences receiving short-term restorative care; or
- (b) within 7 days after the care recipient commences receiving short-term restorative care.

**23ADE Responsibility to provide clear and understandable invoices**

For the purposes of paragraph 56-3(m) of the Act, an approved provider of a flexible care service through which short-term restorative care is provided in a home care setting must provide a care recipient with invoices that are clear and in a format that is understandable.

**23ADF Responsibility to review fees on request**

For the purposes of paragraph 56-3(m) of the Act, an approved provider of a flexible care service through which short-term restorative care is provided in a home care setting must, if requested by a care recipient on the grounds that the care recipient's financial circumstances have changed, review the short-term restorative care fees that the care recipient is liable to pay.

## **Division 3—Responsibilities of approved providers of flexible care— provision of information**

### **23AE Information to be given to new care recipient about rights and responsibilities—short-term restorative care**

- (1) For the purposes of paragraph 56-3(m) of the Act, an approved provider of a flexible care service through which short-term restorative care is provided must give a prospective care recipient:
  - (a) information about:
    - (i) the care recipient’s rights in relation to the service under the “Charter of Aged Care Rights” set out in Schedule 1; and
    - (ii) the rights and responsibilities of the care recipient and the approved provider; and
  - (b) a copy of the “Charter of Aged Care Rights” set out in Schedule 1 that meets the requirements of subsection (3).

Note: The approved provider must retain records relating to the “Charter of Aged Care Rights” given under paragraph (1)(b) (see section 8A of the *Records Principles 2014*).

- (2) The approved provider must:
  - (a) assist the care recipient to understand the information and the “Charter of Aged Care Rights” given under subsection (1); and
  - (b) ensure that the care recipient or an authorised person of the care recipient has been given a reasonable opportunity to sign the copy of the “Charter of Aged Care Rights” given under paragraph (1)(b).
- (3) The copy of the “Charter of Aged Care Rights” given under paragraph (1)(b) must:
  - (a) be signed by a staff member of the approved provider; and
  - (b) if the care recipient or an authorised person of the care recipient has signed the copy—include the signature; and
  - (c) if the care recipient or an authorised person of the care recipient has not signed the copy—set out the date on which the care recipient or authorised person was given a reasonable opportunity to sign the copy; and
  - (d) set out the full name of:
    - (i) the care recipient; and
    - (ii) if an authorised person of the care recipient was present at the time the copy was given—the authorised person; and
  - (e) set out the date on which the copy was given to the care recipient.
- (4) The approved provider must comply with subsections (1) and (2) before the care recipient enters the approved provider’s flexible care service.

## Division 4—Flexible care agreements

### 23AF Entry into flexible care agreement—short-term restorative care

- (1) An approved provider of a flexible care service through which short-term restorative care is to be provided must offer a flexible care agreement to a prospective care recipient before a date for the start of the provision of short-term restorative care is agreed.
- (2) The approved provider must ensure that the care recipient is informed of, and helped to understand, the terms of the flexible care agreement, in particular the terms about the following:
  - (a) the care recipient's rights and responsibilities, including the rights mentioned in the "Charter of Aged Care Rights" set out in Schedule 1;
  - (b) the services to be provided to the care recipient;
  - (c) the fees and other charges to be paid under the agreement.

### 23AG Provisions of flexible care agreement—short-term restorative care

- (1) A flexible care agreement in respect of short-term restorative care must contain the following:
  - (a) the care recipient's goals;
  - (b) the care and services that the care recipient will receive, in the form of an agreed care plan;
  - (c) the period for which the care and services will be provided;
  - (d) the policies and practices that the approved provider will follow in setting the fees that the care recipient will be liable to pay to the approved provider for the provision of the care and services;
  - (e) a statement of the fees that the care recipient will be liable to pay to the approved provider for the provision of the care and services provided;
  - (f) a statement that the care recipient may suspend, on a temporary basis for up to 7 days, the provision of the short-term restorative care, including the circumstances in which the short-term restorative care may be suspended;
  - (g) the conditions under which either party may terminate the provision of short-term restorative care;
  - (h) the care recipient's responsibilities as a recipient of the short-term restorative care.
- (2) A flexible care agreement in respect of short-term restorative care must provide:
  - (a) that the agreement may be varied by mutual consent, following adequate consultation, of the care recipient and approved provider; and
  - (b) that the agreement must not be varied in a way that is inconsistent with the *Aged Care Act 1997* or the *Extra Service Principles 2014*.
- (3) A flexible care agreement in respect of short-term restorative care must:

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- (a) include details of the complaints resolution mechanism that the approved provider will use to address complaints made by, or on behalf of, the care recipient; and
  - (b) state that the care recipient will also be entitled to make a complaint about the provision of the short-term restorative care to the Quality and Safety Commissioner.
- (4) A flexible care agreement in respect of short-term restorative care must be expressed in plain language and be readily understandable by the care recipient.
- (5) A flexible care agreement in respect of short-term restorative care must not contain any provision that would have the effect of the care recipient being treated less favourably in relation to any matter than the care recipient would otherwise be treated, under any law of the Commonwealth, in relation to that matter.

## **Part 5—Transitional provisions**

### **Division 1—Transitional provisions relating to the User Rights Amendment (Consumer Directed Care) Principles 2015**

#### **25 Individualised budgets for care recipients being provided with home care**

##### *Individualised budget given to care recipient before 1 July 2015*

- (1) Subsections (2) and (3) apply in relation to an approved provider of home care if:
  - (a) the approved provider is providing, or is to provide, home care to a care recipient on or after 1 July 2015; and
  - (b) the approved provider gave a written individualised budget to the care recipient before 1 July 2015.
- (2) The approved provider is taken to have complied with subsections 21A(1), (2) and (3) in relation to the care recipient.
- (3) To avoid doubt, subsections 21A(4) to (7) apply in relation to the approved provider and the individualised budget.

##### *Individualised budget not given to care recipient before 1 July 2015*

- (4) Subsection (5) applies in relation to an approved provider of home care if:
  - (a) the approved provider was providing home care to a care recipient before 1 July 2015; and
  - (b) the approved provider will be continuing to provide home care to the care recipient on or after 1 July 2015; and
  - (c) the approved provider did not give a written individualised budget to the care recipient before 1 July 2015.
- (5) The approved provider must comply with subsections 21A(1), (2) and (3) in relation to the care recipient as soon as practicable after 1 July 2015.

#### **26 Home care agreements**

The amendments of subsection 23(2) of these principles made by items 2, 3 and 4 of Schedule 1 to the *User Rights Amendment (Consumer Directed Care) Principles 2015* apply in relation to a home care agreement entered into between a care recipient and an approved provider on or after 1 July 2015.

## **Division 2—Transitional provisions relating to the Aged Care Legislation Amendment (Increasing Consumer Choice) Principles 2016**

### **27 Meaning of *Amending Principles***

In this Division:

*Amending Principles* means the *Aged Care Legislation Amendment (Increasing Consumer Choice) Principles 2016*.

### **28 Application of amendments made by Part 1 of Schedule 1 to the Amending Principles**

Paragraph 23(2)(cba) (provisions of home care agreement) of these principles, as inserted by Part 1 of Schedule 1 to the Amending Principles, applies in relation to any home care agreements, whether entered into before or after this section commences.

### **30 Application of amendments made by Part 2 of Schedule 1 to the Amending Principles**

- (1) Paragraph 21B(2)(f) (monthly statement of available funds and expenditure to be given to care recipient) of these principles, as inserted by Part 2 of Schedule 1 to the Amending Principles, applies in relation to notices given after this section commences.
- (2) Division 3A of Part 3 of these principles, as inserted by Part 2 of Schedule 1 to the Amending Principles, 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 the day this section commences.
- (3) Paragraph 23(2)(cc) (provisions of home care agreement) of these principles, as inserted by Part 2 of Schedule 1 to the Amending Principles, applies in relation to agreements entered into after this section commences.

**Part 5** Transitional provisions

**Division 3** Transitional provision relating to the Aged Care Quality and Safety Commission  
(Consequential Amendments) Rules 2018

Section 32

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**Division 3—Transitional provision relating to the Aged Care Quality  
and Safety Commission (Consequential Amendments)  
Rules 2018**

**32 Transitional provision in relation to flexible care agreements**

Subsection 23AG(3) of these principles, as amended by Schedule 1 to the *Aged Care Quality and Safety Commission (Consequential Amendments) Rules 2018*, applies in relation to a flexible care agreement in respect of short-term restorative care entered into on or after 1 January 2019.



## **Division 4—Transitional provisions relating to the User Rights Amendment (Charter of Aged Care Rights) Principles 2019**

### **33 Charter of Aged Care Rights to be given to existing care recipient**

- (1) An approved provider must give an existing care recipient a copy of the “Charter of Aged Care Rights” set out in Schedule 1 that meets the requirements of subsection (3).
- (2) The approved provider must:
  - (a) assist the existing care recipient to understand the “Charter of Aged Care Rights” given under subsection (1); and
  - (b) ensure that the existing care recipient or an authorised person of the existing care recipient has been given a reasonable opportunity to sign the copy of the “Charter of Aged Care Rights” given under subsection (1).
- (3) The copy of the “Charter of Aged Care Rights” given under subsection (1) must:
  - (a) be signed by a staff member of the approved provider; and
  - (b) if the existing care recipient or an authorised person of the existing care recipient has signed the copy—include the signature; and
  - (c) if the existing care recipient or an authorised person of the existing care recipient has not signed the copy—set out the date on which the existing care recipient or authorised person was given a reasonable opportunity to sign the copy; and
  - (d) set out the full name of:
    - (i) the existing care recipient; and
    - (ii) if an authorised person of the existing care recipient was present at the time the copy was given—the authorised person; and
  - (e) set out the date on which the copy was given to the existing care recipient.
- (4) The approved provider must comply with subsections (1) and (2):
  - (a) if the approved provider is an approved provider of residential care—no later than 30 September 2019; or
  - (b) if the approved provider is an approved provider of a flexible care service through which short-term restorative care is provided in a residential care setting—no later than 30 September 2019; or
  - (c) if the approved provider is an approved provider of home care—no later than 31 December 2019; or
  - (d) if the approved provider is an approved provider of a flexible care service through which short-term restorative care is provided in a home care setting—no later than 31 December 2019.
- (5) In this section:

***existing care recipient*** means:

**Part 5** Transitional provisions

**Division 4** Transitional provisions relating to the User Rights Amendment (Charter of Aged Care Rights) Principles 2019

**Section 33**

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- (a) for an approved provider of residential care—a care recipient who is being provided with residential care by that provider on 30 June 2019; or
- (b) for an approved provider of home care—a care recipient who is being provided with home care by that provider on 30 June 2019; or
- (c) for an approved provider of a flexible care service through which short-term restorative care is provided—a care recipient who is being provided with flexible care in the form of short-term restorative care by that provider on 30 June 2019.

## **Division 5—Transitional provisions relating to the Aged Care Legislation Amendment (Comparability of Home Care Pricing Information) Principles 2019**

### **34 Transitional provision in relation to home care agreements and pricing**

- (1) This section applies to an approved provider of home care and a care recipient if the approved provider is providing home care to the care recipient on 30 June 2019.
- (2) Division 3B of Part 3 of these principles, as inserted by Schedule 2 to the *Aged Care Legislation Amendment (Comparability of Home Care Pricing Information) Principles 2019*, applies on and after 1 July 2020 in relation to the approved provider and the care recipient.
- (3) Section 23 of these principles, as amended by Schedule 2 to the *Aged Care Legislation Amendment (Comparability of Home Care Pricing Information) Principles 2019*, applies on and after 1 July 2020 in relation to the home care agreement entered into between the approved provider and the care recipient.

## Section 35

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### **Division 6—Transitional provisions relating to the Aged Care Legislation Amendment (Improved Home Care Payment Administration) Instrument 2021**

#### **35 Definitions**

In this Division:

*care recipient portion* has the same meaning as in the old principles.

*cessation day* has the same meaning as in sections 21E, 21F and 21G of the old principles.

*Commonwealth portion* has the same meaning as in the old principles.

*old principles* means these principles as in force immediately before 1 September 2021.

*transfer portion* has the same meaning as in the old principles.

*unspent home care amount* has the same meaning as in the old principles.

#### **36 Giving notices and making payments—general**

- (1) This section applies if:
  - (a) before 1 September 2021, an approved provider ceased to provide home care to a care recipient; and
  - (b) immediately before 1 September 2021, the approved provider had not:
    - (i) given a notice relating to the care recipient under section 21E of the old principles; or
    - (ii) if the care recipient portion or the Commonwealth portion of the care recipient's unspent home care amount was more than nil, and item 1 or 3 of the table in subsection 21F(2) of the old principles applied—paid that portion in accordance with section 21F of the old principles; or
    - (iii) given a notice relating to the Commonwealth portion of the care recipient's unspent home care amount under subsection 21G(3) of the old principles.
- (2) Despite the amendments made by the *Aged Care Legislation Amendment (Improved Home Care Payment Administration) Instrument 2021*, the old principles continue to apply to the approved provider in relation to each thing mentioned in paragraph (1)(b) that the approved provider had not done before 1 September 2021.

#### **37 Giving notices and making payments—transfer portion**

- (1) This section applies if:
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- (a) before 1 September 2021, an approved provider (the *first provider*) had ceased to provide home care to a care recipient; and
- (b) the transfer portion of the care recipient's unspent home care amount was more than nil; and
- (c) the first 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; and
- (d) immediately before 1 September 2021, the first provider had not paid the transfer portion of the care recipient's unspent home care amount to the new approved provider in accordance with item 2 of the table in subsection 21F(2) of the old principles.

*Payment and notice—care recipient portion*

- (2) The first provider must:
  - (a) pay the care recipient portion of the care recipient's unspent home care amount to the new approved provider within 70 days after the cessation day; and
  - (b) at the time the care recipient portion is paid, give the new approved provider a copy of the notice given by the first provider under section 21E of the old principles relating to the care recipient.

*Payment and notice—Commonwealth portion*

- (3) The Commonwealth portion of the care recipient's unspent home care amount is due and payable by the first provider to the Commonwealth at the end of 70 days after the cessation day.

Note: 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.

- (4) If:
  - (a) the Commonwealth portion of the care recipient's unspent home care amount will become due and payable to the Commonwealth under subsection (3); or
  - (b) the Commonwealth portion of the care recipient's unspent home care amount is nil;

the first provider must, within 70 days after the cessation day, give a notice containing that information to the Secretary, in a form approved, in writing, by the Secretary.

## Section 38

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### **Division 7—Transitional provisions relating to the Aged Care Legislation Amendment (Capping Home Care Charges) Principles 2022**

#### **38 Definitions**

In this Division:

*amending principles* means by the *Aged Care Legislation Amendment (Capping Home Care Charges) Principles 2022*.

*exit amount* has the same meaning as in the old principles.

*old principles* means these principles as in force immediately before 1 January 2023.

#### **39 Application of amendments**

The amendments made by the amending principles apply in relation to care or services provided on or after 1 January 2023.

#### **40 Exit amounts**

##### *General*

- (1) Despite the amendments made by the amending principles, the old principles continue to apply in relation to the deduction of an exit amount when an approved provider ceased to provide home care to a care recipient before 1 January 2023.

##### *Notices under section 21E*

- (2) Without limiting subsection (1), if:
  - (a) before 1 January 2023, an approved provider ceased to provide home care to a care recipient; and
  - (b) immediately before 1 January 2023, the approved provider had not given a notice relating to the care recipient under section 21E of the old principles;then, despite the amendments made by the amending principles, section 21E of the old principles continues to apply to the approved provider in relation to that notice.

## Schedule 1—Charter of Aged Care Rights

Note: See sections 9, 19 and 23AD.

### 1 Meaning of *I, me* and *my*

If a clause of this Schedule uses the expression *I, me* or *my*, the clause applies to a care recipient who is provided with:

- (a) residential care; or
- (b) home care; or
- (c) flexible care in the form of short-term restorative care.

### 2 Care recipient's rights

I have the right to:

- 1. safe and high quality care and services;
- 2. be treated with dignity and respect;
- 3. have my identity, culture and diversity valued and supported;
- 4. live without abuse and neglect;
- 5. be informed about my care and services in a way I understand;
- 6. access all information about myself, including information about my rights, care and services;
- 7. have control over and make choices about my care, and personal and social life, including where the choices involve personal risk;
- 8. have control over, and make decisions about, the personal aspects of my daily life, financial affairs and possessions;
- 9. my independence;
- 10. be listened to and understood;
- 11. have a person of my choice, including an aged care advocate, support me or speak on my behalf;
- 12. complain free from reprisal, and to have my complaints dealt with fairly and promptly;
- 13. personal privacy and to have my personal information protected;
- 14. exercise my rights without it adversely affecting the way I am treated.

## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

### Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe how an amendment is to be made. If, despite the misdescription, the amendment can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and “(md not incorp)” is added to the amendment history.



**Endnote 2—Abbreviation key**

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

## Endnotes

### Endnote 3—Legislation history

### Endnote 3—Legislation history

Name	Registration	Commencement	Application, saving and transitional provisions
User Rights Principles 2014	25 June 2014 (F2014L00808)	1 July 2014 (s 2)	
User Rights Amendment (Consumer Directed Care) Principles 2015	30 June 2015 (F2015L01016)	1 July 2015 (s 2(1) item 1)	—
Aged Care Legislation Amendment (Independent Complaints Arrangements) Principle 2015	24 Dec 2015 (F2015L02122)	Sch 1 (item 15): 1 Jan 2016 (s 2(1) item 1)	—
Aged Care Legislation Amendment (Short-term Restorative Care) Principles 2016	5 May 2016 (F2016L00670)	Sch 1 (items 145–147): 6 May 2016 (s 2(1) item 1)	—
Aged Care Legislation Amendment (Increasing Consumer Choice) Principles 2016	23 Sept 2016 (F2016L01492)	Sch 1 (items 1–3): 24 Sept 2016 (s 2(1) item 2) Sch 1 (items 45–55): 27 Feb 2017 (s 2(1) item 3)	—
User Rights Amendment (Home Care Pricing) Principles 2018	29 Aug 2018 (F2018L01209)	30 Aug 2018 (s 2(1) item 1)	—
User Rights Amendment (Specialist Dementia Care Program) Principles 2018	12 Dec 2018 (F2018L01741)	13 Dec 2018 (s 2(1) item 1)	—
Aged Care Quality and Safety Commission (Consequential Amendments) Rules 2018	24 Dec 2018 (F2018L01840)	Sch 1 (items 16–19): 1 Jan 2019 (s 2(1) item 1)	—
Aged Care Legislation Amendment (Comparability of Home Care Pricing Information) Principles 2019	14 Mar 2019 (F2019L00288)	Sch 1 (items 3–9) and Sch 3: 15 Mar 2019 (s 2(1) items 2, 4) Sch 2 (items 2–6): 1 July 2019 (s 2(1) item 3)	—
User Rights Amendment (Charter of Aged Care Rights) Principles 2019	22 Mar 2019 (F2019L00356)	Sch 1 (items 1–15), Sch 2 and Sch 3: 1 July 2019 (s 2(1) item 1)	—
Aged Care Legislation Amendment (Royal Commission Response No. 1) Principles 2021	30 June 2021 (F2021L00923)	Sch 1 (items 13–16): 1 July 2021 (s 2(1) item 2)	—
Aged Care Legislation Amendment (Improved Home Care Payment Administration) Instrument 2021	18 Aug 2021 (F2021L01133)	Sch 1 (items 8–22): 1 Sept 2021 (s 2(1) item 1)	—
Aged Care Legislation Amendment (Improved Home Care Payment Administration) Principles 2022	30 Aug 2022 (F2022L01142)	Sch 1 (item 5) and Sch 2: 1 Sept 2022 (s 2(1) item 1)	—
Aged Care Legislation Amendment (Residential Aged Care Funding) Instrument 2022	29 Sept 2022 (F2022L01276)	Sch 2 (items 40, 41): 1 Oct 2022 (s 2(1) item 1)	—

## Endnote 3—Legislation history

Name	Registration	Commencement	Application, saving and transitional provisions
Aged Care Legislation Amendment (Capping Home Care Charges) Principles 2022	19 Dec 2022 (F2022L01700)	Sch 1 (items 13–36): 1 Jan 2023 (s 2(1) item 1)	—
Aged Care Legislation Amendment (July Indexation and Other Measures) Instrument 2023	26 June 2023 (F2023L00866)	Sch 3: 1 July 2023 (s 2(1) item 1)	—
Aged Care Legislation Amendment (July Indexation) Instrument 2024	27 June 2024 (F2024L00791)	Sch 3: 1 July 2024 (s 2(1) item 1)	—
Aged Care Legislation Amendment (January Subsidy Increase) Instrument 2025	13 Dec 2024 (F2024L01663)	Sch 3: 1 Jan 2025 (s 2(1) item 1)	—

## Endnotes

### Endnote 4—Amendment history

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### Endnote 4—Amendment history

Provision affected	How affected
<b>Part 1</b>	
s 2.....	rep LIA s 48D
s 4.....	am F2016L00670; F2016L01492; F2018L01209; F2018L01741; F2019L00288; F2019L00356; F2021L00923; F2021L01133; F2022L01700
<b>Part 2</b>	
<b>Division 1</b>	
s 5.....	am F2019L00356
<b>Division 2</b>	
s 6.....	am F2018L01741
s 9.....	am F2019L00356
s 9A.....	ad F2019L00356
s 10.....	am F2018L01741
<b>Division 3</b>	
s 11.....	rs F2019L00356 am F2021L00923
s 13.....	am F2022L01276
<b>Division 4</b>	
s 14.....	am F2019L00356
<b>Part 3</b>	
<b>Division 1</b>	
s 16.....	am F2016L01492; F2018L01209; F2019L00288; F2019L00356; F2021L01133; F2022L01700
<b>Division 2</b>	
s 17.....	am F2019L00288; F2019L00356; F2021L00923
s 18.....	am F2019L00288
s 19.....	am F2019L00356
s 19AA.....	ad F2019L00356
s 19AB.....	ad F2019L00356
s 19AC.....	ad F2019L00356
s 19AD.....	ad F2019L00356
s 19AE.....	ad F2019L00356
s 19AF.....	ad F2019L00356
<b>Division 2A</b>	
Division 2A.....	ad F2018L01209
s 19A.....	ad F2018L01209 am F2019L00288 rep F2019L00288
s 19B.....	ad F2019L00288

## Endnote 4—Amendment history

Provision affected	How affected
	am F2022L01700
s 19C .....	ad F2019L00288
s 19D .....	ad F2019L00288
<b>Division 3</b>	
Division 3 heading.....	rs F2018L01209
s 20 .....	am F2019L00288
	rs F2019L00356
	am F2021L00923
s 21 .....	am F2019L00288; F2022L01276
s 21A .....	ad F2015L01016
	am F2019L00288
s 21B .....	ad F2015L01016
	am F2016L01492; F2019L00288
	rs F2021L01133
	am F2022L01142; F2022L01700
<b>Division 3A</b>	
Division 3A heading.....	am F2022L01700
Division 3A.....	ad F2016L01492
	rs F2021L01133
<b>Subdivision A</b>	
Subdivision A .....	rs F2021L01133
s 21BA .....	ad F2021L01133
s 21BAA .....	ad F2021L01133
<b>Subdivision B</b>	
Subdivision B .....	rs F2021L01133
s 21BB .....	ad F2021L01133
	am F2022L01700
s 21BC .....	ad F2021L01133
s 21BD .....	ad F2021L01133
<b>Subdivision C</b>	
Subdivision C .....	rs F2021L01133
s 21C .....	ad F2016L01492
	rs F2021L01133
s 21CA .....	ad F2021L01133
s 21CB .....	ad F2021L01133
	am F2022L01700
s 21CC .....	ad F2021L01133
	am F2022L01142
<b>Subdivision D</b>	
Subdivision D .....	rs F2021L01133

## Endnotes

### Endnote 4—Amendment history

Provision affected	How affected
s 21D.....	ad F2016L01492 rs F2021L01133
s 21E .....	ad F2016L01492 rs F2021L01133 am F2022L01700
s 21F .....	ad F2016L01492 rs F2021L01133
s 21G.....	ad F2016L01492 rs F2021L01133
s 21H.....	ad F2016L01492 rs F2021L01133 rep F2022L01700
Subdivision E.....	ad F2021L01133 rep F2022L01700
s 21J .....	ad F2016L01492 am F2019L00288 rs F2021L01133 rep F2022L01700
<b>Subdivision F</b>	
Subdivision F.....	ad F2021L01133
s 21JA .....	ad F2021L01133
s 21JB .....	ad F2021L01133
s 21JC .....	ad F2021L01133
<b>Division 3B</b>	
Division 3B.....	ad F2019L00288
s 21K.....	ad F2019L00288 rs F2022L01700
s 21KA .....	ad F2022L01700 am F2023L00866; F2024L00791; F2024L01663
s 21L .....	ad F2019L00288 rs F2022L01700
s 21M .....	ad F2019L00288 am F2022L01700
<b>Division 4</b>	
s 22.....	am F2016L01492; F2019L00288; F2019L00356
s 23.....	am F2015L01016; F2016L01492; F2019L00288; F2021L01133; F2022L01700
<b>Part 3A</b>	
<b>Division 1</b>	
s 23AA.....	ad F2016L00670 am F2019L00356

## Endnote 4—Amendment history

Provision affected	How affected
<b>Division 2</b>	
s 23AB .....	ad F2016L00670
s 23AC .....	ad F2016L00670
s 23AD .....	ad F2016L00670
	am F2019L00356
s 23ADA .....	ad F2019L00356
s 23ADB .....	ad F2019L00356
s 23ADC .....	ad F2019L00356
s 23ADD .....	ad F2019L00356
s 23ADE .....	ad F2019L00356
s 23ADF .....	ad F2019L00356
<b>Division 3</b>	
s 23AE .....	ad F2016L00670
	rs F2019L00356
	am F2021L00923
<b>Division 4</b>	
s 23AF .....	ad F2016L00670
	am F2019L00356
s 23AG .....	ad F2016L00670
	am F2018L01840
Part 4 .....	rep F2018L01840
s 24 .....	am F2015L02122
	rep F2018L01840
<b>Part 5</b>	
Part 5 .....	ad F2015L01016
<b>Division 1</b>	
s 25 .....	ad F2015L01016
	am F2019L00288
s 26 .....	ad F2015L01016
<b>Division 2</b>	
Division 2 .....	ad F2016L01492
s 27 .....	ad F2016L01492
s 28 .....	ad F2016L01492
s 29 .....	ad F2016L01492
	rep F2022L01700
s 30 .....	ad F2016L01492
s 31 .....	ad F2016L01492
	rep F2022L01700
<b>Division 3</b>	
Division 3 .....	ad F2018L01840

## Endnotes

### Endnote 4—Amendment history

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Provision affected	How affected
s 32.....	ad F2018L01840
<b>Division 4</b>	
Division 4 .....	ad F2019L00356
s 33.....	ad F2019L00356
	am F2021L00923
<b>Division 5</b>	
Division 5 .....	ad F2019L00288
s 34.....	ad F2019L00288
<b>Division 6</b>	
Division 6 .....	ad F2021L01133
s 35.....	ad F2021L01133
s 36.....	ad F2021L01133
s 37.....	ad F2021L01133
<b>Division 7</b>	
Division 7 .....	ad F2022L01700
s 38.....	ad F2022L01700
s 39.....	ad F2022L01700
s 40.....	ad F2022L01700
<b>Schedule 1</b>	
Schedule 1.....	rs F2019L00356
Schedule 2.....	am F2015L01016; F2016L01492
	rep F2019L00356
Schedule 3.....	ad F2016L00670
	rep F2019L00356