

## EXPLANATORY STATEMENT

### *Aged Care Act 1997*

#### *Prioritised Home Care Recipients Principles 2016*

#### Authority

The *Aged Care Act 1997* (the Act) provides for the regulation and funding of aged care services. Persons who are approved under the Act to provide aged care services (approved providers) can be eligible to receive subsidy payments in respect of the care they provide to approved care recipients.

Section 96-1 of the Act allows the Minister to make Principles providing for various matters required or permitted by a Part or section of the Act.

#### Purpose

The *Aged Care Legislation Amendment (Increasing Consumer Choice) Act 2016* (the Amendment Act) makes changes to the Act which give effect to the first stage of the home care reforms announced by the Government in the 2015-16 Federal Budget.

The Amendment Act allows for the development of a new set of principles, the Prioritised Home Care Recipients Principles (the Principles), under section 96-1 of the Act, to specify additional detail on matters relating to the prioritisation of people seeking subsidised home care.

The Principles set out additional matters to be considered in deciding to make or vary a determination that a person is a prioritised home care recipient under section 23B-1 of the Act, as inserted by the Amendment Act, and circumstances in which such a determination will cease.

A separate legislative instrument will amend other Principles made under section 96-1 of the Act. In addition, separate legislative instruments will amend the *Aged Care (Subsidy, Fees and Payments) Determination 2014* and the *Aged Care (Transitional Provisions) (Subsidy and Other Measures) Determination 2014*.

#### Background

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

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

1. Funding for a home care package will follow the care recipient, replacing the current system where home care places are allocated to individual approved providers to deliver services in a particular location or region. This will provide more choice for people in selecting an approved provider and will allow flexibility for care recipients to change provider, including if they move

to another area to live. Approved providers will no longer have to apply for new home care places through the Aged Care Approvals Round (ACAR), significantly reducing red tape and regulation for businesses.

2. There will be a consistent national approach to prioritising access to home care through My Aged Care. The Amendment Act establishes a framework for a new national prioritisation process which will assign home care packages to people who have been approved for care. This will allow for a more equitable and flexible distribution of home care packages based on an individual's needs and circumstances, and the time they have been waiting for care, regardless of where they live.
3. There will be a simplified process for organisations seeking to become approved providers under the Act. This will encourage new providers to enter the home care market, supporting greater choice for consumers. All providers will still need to demonstrate their suitability to become an approved provider and meet quality standards.

#### Documents Incorporated by Reference

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

#### Consultation

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

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

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

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

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

The Principles commence at the same time as the Amendment Act on 27 February 2017.

The Principles are a legislative instrument for the purposes of the *Legislation Act 2003*.

**Details of the *Prioritised Home Care Recipients Principles 2016***

**Part 1 – Preliminary**

**1 Name of Determination**

Section 1 provides how the proposed instrument is to be cited, that is, as the *Prioritised Home Care Recipients Principles 2016*.

**2 Commencement**

Section 2 sets out the commencement of this instrument. The whole instrument will commence on 27 February 2017, at the same time as the *Aged Care Legislation Amendment (Increasing Consumer Choice) Act 2016* (the Amendment Act).

**3 Authority**

Section 3 provides that the authority for making the Principles is section 96-1 of the *Aged Care Act 1997* (the Act).

**4 Definitions**

Section 4 defines certain terms used in the Principles.

Act means the Aged Care Act 1997.

A number of other expressions used throughout the Principles are defined in Schedule 1 of the Act.

**Part 2 – Prioritised home care recipients**

**5 Matters to be considered in deciding to make or vary a determination**

Paragraph 23B-1(4)(a)(ii) of the Act (as inserted by the Amendment Act) provides that the *Prioritised Home Care Recipients Principles* may specify a later day that the Secretary must consider when deciding whether to determine that a person is a prioritised home care recipient under subsection 23B-1(1) (as inserted by the Amendment Act).

Section 5 allows the Secretary to consider the assignment of a home care package in circumstances where a person that has already been approved for home care seeks and obtains subsequent approval for a higher level of care.

Subsection 5(1) specifies that, if the Secretary is considering to assign a home care package (i.e. prioritise a person for a level of care), and the level of care being considered is higher than the level of care the care recipient was first approved for (i.e. the level of care their approval was first limited to under section 22-2 of the Act at the time they were first approved for care), then the Secretary must consider the date that the person was approved at the higher level of care (i.e. the date they first had their approval limited at the higher level of care).

Subsection 5(2) provides that when deciding whether to vary a prioritised home care recipient's determination to increase the level of care as a prioritised home care

recipient, and the level of care being considered by the Secretary is higher than the level of care the person first had their approval limited at under section 22-2 of the Act, the date that the Secretary must consider is the date that the person first had their approval limited for the higher level of care.

In practice, subsections 5(1) and (2) mean that the assignment of a home care package will always relate to the date the person was approved for a particular level of home care. For example there may be circumstances where a person is originally approved for a level 2 home care package and while waiting for this package to become available, requests a subsequent assessment for home care and as a result is approved for a level 4 home care package. In this scenario, Section 5 will mean that the assignment of a level 2 home care package will be based on the date of the original level 2 approval, whereas the assignment of a level 4 home care package will be based on the date of the subsequent level 4 approval, not the original level 2 approval.

## **6 Cessation of determinations—person is not provided with home care within specified period**

Paragraph 23B-3(c) of the Act (as inserted by the Amendment Act) provides for the Prioritised Home Care Recipients Principles to specify that a person's prioritisation determination will cease if the person is not provided with home care within a period of time after first being assigned a home care package.

Subsection 6(1) specifies that this period is 56 days from the date a determination is made under subsection 23B-1(1) of the Act (as inserted by the Amendment Act). In practice, this will mean that a prioritised care recipient will have 56 days to commence receiving care once notified they have been assigned a home care package.

If a prioritised home care recipient does not commence receiving care within the specified period their prioritisation determination will cease, meaning that the home care package will no longer be assigned to them.

This period can be extended to 84 days if the prioritised home care recipient or their representative notifies the Secretary under subsection 6(3) that they wish for more time. This notification needs to be given within the original 56 day period.

Subsection 6(2) provides that if a person's determination that they are a prioritised home care recipient is varied under subsection 23B-2(1) of the Act (as inserted by the Amendment Act) during the period specified in subsection 6(1), then the period of time they have to commence care will start from the date that the variation is made (including if this period has been extended under subsection 6(3)).

This means that if a person's determination that they are a prioritised home care recipient is varied to a higher level of care (they are assigned a higher level home care package) within the specified period, the period of time that a person has to commence receiving care will be 'reset' starting from the date the variation to their prioritisation determination is made (the date they are assigned a higher level home care package). This is to acknowledge that additional time may be required for the person to renegotiate for care at the higher level and/or for the person to find a provider who can deliver the appropriate services at their new (higher) package level.

If the person has not already notified the Secretary under subsection 6(3) at the time the variation to their determination has been made, they may notify that they wish the extended period of 84 days to apply.

## **7 Cessation of determinations—person ceases to be provided with home care in specified circumstances**

Section 7 specifies additional circumstances in which a person will no longer have a home care package assigned to them (i.e. their determination as a prioritised home care recipient will cease to have effect under section 23B-3 of the Act).

Paragraph 7(1)(a) provides that a person will no longer have a home care package assigned to them if they cease to be provided with subsidised home care for a continuous period of 56 days. This paragraph will apply when a care recipient ceases care with a home care provider and does not recommence care with that provider, or another provider, within the specified period.

Paragraph 7(1)(b) provides that a person will no longer have a home care package assigned to them when they enter residential aged care (other than respite care). This is in recognition that in these circumstances a care recipient would be receiving alternative care and home care would no longer be appropriate.

Subsection 7(2) provides that if a person's determination that they are a prioritised home care recipient is varied under subsection 23B-2(1) of the Act, the period of time they have to recommence care under subsection 7(1) will start from the date that the variation is made (including if this period has been extended under subsection 7(3)).

Subsection 7(3) allows the period to be extended to 84 days if the prioritised home care recipient or their representative notifies the Secretary within the 56 days that they would like a longer period to recommence care.

Subsection 7(4) makes it clear that the period does not include periods where the care recipient is on leave from their home care package (that care is suspended under section 46-2 of the Act).

## **Statement of Compatibility with Human Rights**

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

### **Prioritised Home Care Recipients Principles 2016**

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

#### **Overview of the Legislative Instrument**

The Increasing Choice for Older Australians 2015-16 Budget Measure provided for a consistent national approach to prioritising access to home care. The *Prioritised Home Care Recipients Principles 2016* (the Principles), created under section 96-1 of the *Aged Care Act 1997* (the Act), specify additional detail on matters relating to the prioritisation of home care recipients.

The Principles set out additional matters to be considered in deciding to make or vary a determination that a person is a prioritised home care recipient under section 23B-1 of the Act as inserted by the *Aged Care Legislation Amendment (Increasing Consumer Choice) Act 2016* (the Amendment Act), and circumstances in which such a determination will cease.

#### **Human Rights Implications**

This legislative instrument engages the following human rights:

- the right to equality and freedom from discrimination.

The legislative instrument promotes the right to equality and freedom from discrimination for older persons as set out in articles 2, 16 and 26 of the International Covenant on Civil and Political Rights. For the first time, there will be a nationally consistent approach to prioritising access to home care. This will allow a more equitable distribution of home care packages to people based on their individual needs and circumstances and the time a person has been waiting for care, regardless of where they live.

#### **Conclusion**

This legislative instrument is compatible with human rights as it promotes the human right to equality and freedom from discrimination.

**The Hon Sussan Ley MP  
Minister for Health and Aged Care**