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# HOME CARE PACKAGES: THE PROVIDER'S GUIDE TO PREPARING AGREEMENTS

INCORPORATING CONSUMER DIRECTED CARE

May 2015

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## ABOUT US

**Home Care Today** is a national resource that aims to support both consumers and Home Care providers to work together to implement consumer direction in Home Care packages.

Home Care Today supports consumers accessing home care by providing information, resources and peer supports to make the most of the benefits and opportunities that CDC can offer.

To providers, Home Care Today offers a range of tools, resources and learning modules that will assist them to implement CDC across their organisations.

## DISCLAIMER

This guide provides some general practical advice for Home Care providers and is not intended as legal or financial advice. This website should not be the only source of information for providers of Home Care. Home Care Today encourages anyone who has questions about providing Home Care to get the relevant professional advice to discuss their organisation's particular situation.

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### Who can I contact for further information or assistance?

Please feel free to contact us for assistance or conversations regarding the implementation of CDC.

#### Email us at:

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# Home Care Packages: The Provider’s Guide to Preparing Agreements incorporating Consumer Directed Care

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## 1. Introduction

The purpose of this Guide is to assist approved providers (AP) in Home Care to prepare and or review their Home Care Agreement. The guide considers the legislative framework and good practice principles relevant to constructing and negotiating an agreement between Home Care providers and their consumers. The Home Care Agreement documents the agreed relationship you are entering into with a consumer to provide support through a Home Care package. A consumer must be offered a Home Care Agreement before their package commences.

There are a number of templates available for Home Care Agreements and this guide does not offer a template or endorse those available in the marketplace. Instead it outlines the factors Home Care providers need to consider when preparing, reviewing or adapting an agreement for use within your organisation.

It is not a requirement to prepare a new Home Care Agreement for consumers transitioning to CDC, as long as the new requirements for CDC are being met, such as the provision of financial statements.

## 2. Legal Frameworks for Home Care Packages

The legal framework underpinning the Home Care Packages Programme includes:

- *The Aged Care Act 1997 (Cth)*

Your main reference point for understanding the Act and associated principles and guidelines should be the [Guide to Aged Care Law](#)<sup>i</sup>.

- *The Aged Care (Transitional Provisions) Act 1997*
- Principles made under the Act (such as the User Rights and Quality of Care Principles)
- Determinations made under the Act (such as setting relevant subsidy and supplement levels)<sup>ii</sup>
- Home Care Standards<sup>iii</sup>

Currently there are two documents that outline requirements of home care package providers in relation to Consumer Directed Care (CDC):

- Department of Social Services Home Care Packages Programme Guidelines, July 2014<sup>iv</sup>
- Conditions of allocation made under the Aged Care Act 1997 (for example, conditions applying to all packages and/or specific conditions applying to individual providers or services such as CDC)<sup>v</sup>

As of the 1 July 2015 these requirements will be incorporated into the Guide to Aged Care Law and the User Rights Principles will be amended to incorporate CDC requirements.

The *User Rights Principles*<sup>vi</sup>, June 2014, Part 3 outline items that should be included in a Home Care Agreement.

In addition there are general pieces of legislation that cover the relationship between Home Care Providers and consumers such as:

- Australian Consumer Law<sup>vii</sup> that covers provider contract conduct, unfair terms and practices and information standards
- Anti-discrimination legislation.<sup>viii</sup>

### 3. What a Home Care Agreement should include

The following table outlines the essential contents of a Home Care Agreement. Those areas highlighted in red indicate the significant changes from a previous non-CDC agreement.

<b>AGREEMENT</b>	1. Care recipient details
	2. Provider details
	<p>3. <b>Package details</b></p> <p>Statements specifying whether the care will be delivered on a consumer directed care basis (up until June 2015), the care and services to be provided and the level of home care to be provided. This will not be required after 1 July 2015 when all packages are delivered on a CDC basis.</p>
	4. <b>Date of commencement</b> of home care services
	<p>5. <b>Care and services</b> to be provided to the consumer:</p> <ul style="list-style-type: none"> <li>• <b>The consumer's right to decide the kind of care and services to be provided</b></li> <li>• Any conditions under which the provider will deliver the services (for example notice required for cancellation of a service, conditions relating to the provision of aids and equipment)</li> <li>• The organisation's policy on the provision of equipment and subsequent ownership of the equipment</li> <li>• Statement that the provider will develop the care plan in consultation with the consumer and provide a copy of the care plan and any subsequent negotiated changes to that care plan to the care recipient. The care plan should be an attachment as it is subject to change.</li> </ul>
	<p>6. <b>The package budget and the consumer's contribution</b></p> <ul style="list-style-type: none"> <li>• Any <b>fees payable</b> by the consumer and how those fees are calculated (as the consumer may not have had their DHS assessment at the time of signing the agreement this needs to be worded carefully)</li> <li>• Provision for the consumer to purchase additional services above the package.</li> <li>• Payment method</li> <li>• <b>How financial statements are provided and the conditions for contingency and unspent funds.</b></li> </ul>
	7. How the consumer can obtain information about the <b>financial position of the service.</b>
	8. <b>The consumer's personal information:</b> Confidentiality policy and how confidential information will be used.

	9. Conditions for <b>suspension</b> of care by the consumer and <b>termination</b> of the agreement by the provider (Security of tenure).
	10. Additional support if the consumer has <b>diverse needs</b> (e.g. Telephone Interpreter Service)
	11. Provision for signature and consent
ATTACHMENTS	Care Plan
	Charter of Care Recipient's Rights and Responsibilities – Home Care
	The organisation's complaints process including access to advocacy services and the Aged Care Complaints Scheme.

If a consumer has previously been receiving a home care package from your organisation, you do not need to prepare a new home care agreement or amend the existing agreement. However, budgets and monthly income and expenditure statements provided to consumers from 1 July 2015 will be expected to comply with the proposed requirements in the Principles which are to take effect from that date.<sup>ix</sup>The most important factor is that you take time to communicate clearly with consumer the new arrangements to ensure they understand the changes.

#### 4. Your options for constructing a Home Care Agreement

There are a number of different approaches that you can use to construct a Home Care Agreement, which include:

- developing your own Home Care Agreement based on this guide, which you may wish to get reviewed by a lawyer
- utilising a number of Home Care Agreement templates available from legal firms or peak bodies that you can purchase and adapt to your own organisation
- involving consumers in the development of the Home Care Agreement to gain their input and increase the likelihood of creating an Agreement that can be easily understood by consumers.

Regardless of which method you choose you should review the agreement in line with the issues raised in this guide. In particular, you need to take into account the characteristics of your consumers.

Examples of template agreements include:

- e-Tools (in conjunction with ACSA) <http://www.e-tools.com.au/ehcp.htm>
- Hynes Legal – Simply legal <http://simplylegal.com.au/aged-care-retirement-living-legal-templates/home-care-documents/packages>

You will need to enquire with these organisations about the cost of using these templates. Reference to these sources does not constitute an endorsement of these agreement templates. Each service needs to make an assessment of their suitability and compliance with legislation.

## 5. Good practice guidelines for negotiating the Home Care Agreement with a consumer

The Home Care Agreement documentation is important to get right to ensure consumer satisfaction and reduce the possibility of misunderstanding. Equally important is the process by which this agreement is reached. The aim of CDC in Home Care is to encourage and empower the consumer by providing all of the relevant information in a way that is easily understood so that they can make informed decisions about their support.

The Home Care Standards guide highlights in Standard 3 the importance of Service User Rights and Responsibilities. The three standards of particular relevance here are:

*3.1 Information provision*

*3.3 Complaints and Service user Feedback and*

*3.5 Independence*

You should review these standards to ensure that your approach to consumer directed care has been considered and your policies and procedures adjusted accordingly.

Your procedures should outline good practice principles and provide a guide for staff who are involved with explaining and reaching agreements with consumers. These procedures should cover areas such as:

- Increasing staff awareness that the first contact with consumers can be overwhelming and that they can experience information overload.
- Focussing on education of intake/assessment staff in relation to discussing contractual arrangements and walking consumers through the agreement, ensuring the consumer is not under any duress and that they understand what they are signing.
- Ensuring that the consumer knows that they do not have to sign the agreement.
- If a consumer refuses to sign, you need to have an established process and guide for staff that still enables the delivery of the service, covering the intent of what has been negotiated.
- As many agreements are now very long, it can be helpful to include a plain language letter that helps summarise what the agreement includes.<sup>1</sup>
- Ensuring that where a person has nominated a representative or has a legal guardian, that the representative or guardian is included in the process of negotiating the agreement.

Some services have prepared a consumer information booklet that can be provided to the consumer and their support networks prior to signing the agreement. This could contain much of the information about how the service operates as listed in the table on page 5. A shorter agreement could then refer to the fact that these conditions have been understood and agreed to.

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<sup>1</sup> If you choose to have lengthy and complex agreement and it is then signed by the consumer (after being explained by the adviser), there is a risk that a court will take the view that the consumer did not fully understand it and it may then be unenforceable. This is particularly in view of the fact that consumers may not have the funds to engage their own lawyers to explain the agreement to them.

## 6. Factors to consider in preparing your Home Care Agreement for Consumer Directed Care

There are a number of factors to consider when preparing a Home care Agreement to ensure that it is fair, easily understood by your consumers and is not in any way discriminatory against people with special needs.

### 6.1 Providing information in a format that consumers can understand

It is important that the agreement be written in plain English so that you and the consumer fully understand it. If an agreement contains words or phrases that you do not understand, then it is likely that the consumer will not understand it either. This could lead to confusion and disputation.

When considering people with special needs, especially in relation to language or literacy, the need for a short and simple agreement is essential. This will also reduce the cost and time in interpreting and translating information.

#### What is a plain language?

*Plain language involves making sure that documents are written in the most direct and clear way so that readers can easily understand and use the information. It removes jargon and unnecessary official, legal or bureaucratic wording. It replaces lengthy, complex sentences with concise ones. It pays attention to design and layout of documents to make them as accessible as possible. Plain language is a vital tool for clear communication.<sup>x</sup>*

*This is the key to the whole plain language movement in law: that it is possible to express legal concepts in plain language, without loss of certainty and precision, even in areas of law that are complex. It is the assumption on which all plain language legal drafters rely. Without it, there would be no plain language movement in law.<sup>xi</sup>*

For further information about preparing plain language documents and testing readability, see Appendix A.

### 6.2 Considering the needs of people whose first language is not English or who have communication difficulties (e.g. sight or hearing impairment, cognitive impairment)

The following laws operate at a federal level and the Australian Human Rights Commission has statutory responsibilities under them:

- Age Discrimination Act 2004
- Australian Human Rights Commission Act 1986
- Disability Discrimination Act 1992
- Racial Discrimination Act 1975
- Sex Discrimination Act 1984

Commonwealth laws and the state/territory laws generally cover the same grounds and areas of discrimination. However, there are some 'gaps' in the protection that is offered between different states and territories and at a Commonwealth level.

In addition, there are circumstances where only the Commonwealth law would apply or where only the state law would apply. For more detailed information consult *A guide to Australia's anti-discrimination laws.*<sup>xii</sup>

In negotiating the agreement, you need to ensure that you are not discriminating against any groups with diverse needs.

### **6.2.1 People whose first language is not English**

The Home Care Guidelines state:

*Where required, the provider should arrange for the Home Care Agreement, including the care plan, to be made available to the consumer in a language other than English. Any additional costs associated with the translation must be clearly explained to the consumer.*

*The Department of Immigration and Border Protection provides a national Translating and Interpreting Service (TIS) – phone 131 450.*

*Home care providers are able to use TIS to provide interpreting services to assist home care consumers to understand their Home Care Package, including the Home Care Agreement, the individualised budget and monthly statements. Home care providers have been given a unique code that can be quoted to access TIS interpreting services.<sup>xiii</sup>*

### **6.2.2 People with a sensory disability**

The NSW Government has produced a comprehensive [Guide to effective communication for people with a sensory disability](#).<sup>xiv</sup>

This provides strategies that should be followed if negotiating Home Care Agreements with a person who is blind, visually impaired, deaf or hard of hearing or deaf-blind.

### **6.2.3 People with cognitive impairments**

A person with dementia or other cognitive impairment may have a legal guardian or have chosen a person to be their representative in matters relating to their Home Care services.

The person's guardian or representative must be present when the Home Care Agreement is being negotiated. However, it is also important to include the person receiving the services in the discussion and ensure that, as much as is possible, they understand the conditions under which their Home Care services will be provided.

### **6.2.4 Aboriginal and Torres Strait Islander people**

It is important that Aboriginal and Torres Strait Islander people have the opportunity to talk with someone they trust about what is in the Home Care Agreement, particularly if their first language is not English or they are not literate in English. The use of cultural brokers or advocates may be a good way to do this. The following guides provide more information about effective communication strategies with Aboriginal and Torres Strait Islander people.

[Communicating Effectively with Aboriginal and Torres Strait Islander people](#)<sup>xv</sup> (Queensland Health)

[Working with older Aboriginal and Torres Strait Islander people - research to practice briefing 8](#) (Benevolent Society)<sup>xvi</sup>

### **6.2.5 People who have low literacy levels**

For people who cannot read the Home Care Agreement and do not have someone to assist them, Home Care Providers should carefully read through the information with consumers and ensure they have understood and agreed to the conditions of the agreement. The

consumer should be made aware of their right to have someone else present when negotiating the agreement.

### 6.3 Fair contracts and Australian Consumer Law

The Home Care Agreement is an agreement to provide goods and services and thus is covered under [Australian Consumer Law \(ACL\)](#)<sup>xvii</sup>. This legislation, which aims to protect consumers and ensure fair trading in Australia, is a Commonwealth, State and Territory law that took effect from 1 January 2011 and includes unfair contract terms legislation introduced on 1 July 2010. Under the ACL, consumers have the same protections, and businesses have the same obligations and responsibilities, across Australia. Australian courts and tribunals (including those of the states and territories) can enforce the ACL. The regulators of this law include:

- the Australian Competition and Consumer Commission (ACCC)
- the Australian Securities and Investments Commission (ASIC)
- each state and territory consumer protection agency.

The ACL replaces previous Commonwealth, State and Territory consumer protection legislation. It is contained in a schedule to the *Competition and Consumer Act 2010 (CCA)*. Aspects of the ACL are reflected in the *Australian Securities and Investments Commission Act 2001 (Cth) (ASIC Act)*<sup>xviii</sup>, to protect consumers of financial products and services.

#### What does the Australian Consumer Law cover?

The ACL includes:

- a national unfair contract terms law covering standard form contracts;
- a national law guaranteeing consumer rights when buying goods and services, which replaces existing laws on conditions and warranties;
- a national product safety law and enforcement system;
- a national law for unsolicited consumer agreements, which replaces existing State and Territory laws on door-to-door sales and other direct marketing;
- simple national rules for lay-by agreements;
- new penalties, enforcement powers and consumer redress.

The [Australian Consumer Law Unfair Contracts Guide](#)<sup>xix</sup> provides the following guidance on what might constitute an unfair contract. It is recommended that Home Care Providers read the full Guide.

#### Meaning of 'unfair'

*In deciding whether a term in a standard form consumer contract is unfair, the court will apply the three limbed test for unfairness. The test for unfairness, under Sch 2, s. 24(1) of the Act and s. 12BG of the ASIC Act, states that a term of a consumer contract is unfair if it:*

- *would cause a significant imbalance in the parties' rights and obligations arising under the contract; and*
- *is not reasonably necessary to protect the legitimate interests of the party who would be advantaged by the term; and*
- *would cause detriment (whether financial or otherwise) to a party if it were to be applied or relied on.*

*All three limbs of the unfairness test must be proven, on the balance of probabilities, to exist for a court to decide that a term is unfair.*

### **A transparent term**

*A lack of transparency regarding a term in a standard form consumer contract may cause a significant imbalance in the parties' rights and obligations. A term is considered to be transparent if it is:*

- *expressed in reasonably plain language*
- *legible*
- *presented clearly*
- *readily available to any party affected by the term.*

## APPENDIX A TESTING THE READABILITY OF YOUR AGREEMENT

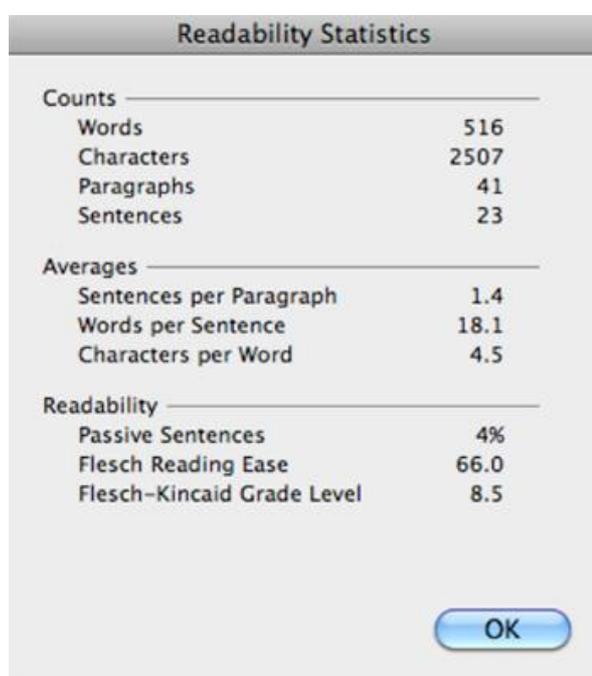
You can test the readability of your document via a number of readability tests on the internet. In English speaking countries the average reading age of the population is around 13 years or the equivalent of 7 or 8 years of schooling. Different tests provide different measures – you can read more about these on a number of sites:

[The readability test tool](#)

[Applying readability tests to a document](#)

While it's an imperfect tool, Microsoft Word's readability statistics can help you assess readability.

In Word, go to Preferences > Spelling and Grammar. Under the 'Grammar' section, check the 'Readability Statistics' box. The next time you run a spell check, a box with readability statistics will pop up.



Readability Statistics	
<b>Counts</b>	
Words	516
Characters	2507
Paragraphs	41
Sentences	23
<b>Averages</b>	
Sentences per Paragraph	1.4
Words per Sentence	18.1
Characters per Word	4.5
<b>Readability</b>	
Passive Sentences	4%
Flesch Reading Ease	66.0
Flesch-Kincaid Grade Level	8.5

Not all of these statistics will be relevant. Generally, focus on the averages and readability.

### **Sentences per paragraph**

For web writing, we recommend around no more than six sentences per paragraph. One or two sentence paragraphs are fine. You can [read more about sentences here](#).

### **Words per sentence**

Ensure it's around 15 words per sentence or less. (Remember this is an average.) If your average is over 15 words, edit the text with aim of reducing sentence length.

### **Passive sentences**

Aim for less than five per cent. See [verbs and voice](#) for an explanation of the passive voice and how and why to avoid it.

### **Flesch-Kincaid grade level**

This readability test ranks how easy or difficult content is to read. The number represents the years of education required to understand the text. This figure is a guide and will vary depending on the

context and audience of the text. Aim for around **eight years**. You can find this test at this website:

[The readability test tool](#)

**EXAMPLE:**

The following is an example of an agreement clause that is in easy to read language.

*All clients will be asked to pay a Basic Fee for the cost of their care. The fee is negotiable. The maximum contribution is 17.5% of the standard single aged pension. Your contribution will increase in line with the pension increases in March and September each year. The increase is negotiated between you (and/or your advocate) and the Program Manager. You may ask for a review of your fees at any time.*

Testing the readability of this clause gives a result on the Flesh-Kincaid index = **5.6 years** of schooling, meaning that it can be understood by someone who has reached literacy levels equivalent to year 5 or 6.

## REFERENCES and ENDNOTES

The Guide to Aged Care Law – <http://guides.dss.gov.au/guide-aged-care-law> should be your major reference for any legislative guidance on the provision of Home Care Packages.

- <sup>i</sup> Guide to Aged Care Law <http://guides.dss.gov.au/guide-aged-care-law> (accessed May 2015)
- <sup>ii</sup> Aged Care Act 1997(Cth), Principles and Determinations <http://guides.dss.gov.au/guide-aged-care-law/1/4> (accessed May 2015)
- <sup>iii</sup> Aged Care Quality Agency information for Home Care Services <http://www.aacqa.gov.au/providers/home-care-services> (accessed May 2015)
- <sup>iv</sup> Department of Social Services *Home Care Packages Guidelines*, July 2014 [https://www.dss.gov.au/sites/default/files/documents/08\\_2014/home\\_care\\_packages\\_guidelines\\_2014.pdf](https://www.dss.gov.au/sites/default/files/documents/08_2014/home_care_packages_guidelines_2014.pdf) (accessed May 2015)
- <sup>v</sup> Guide to Aged Care Law *Conditions of Allocation* <http://guides.dss.gov.au/guide-aged-care-law/3/3/4> (accessed May 2015)
- <sup>vi</sup> User Rights Principles, 2014 <http://www.comlaw.gov.au/Details/F2014L00808>
- <sup>vii</sup> Australian Consumer Law [www.consumerlaw.gov.au](http://www.consumerlaw.gov.au) (accessed May 2015)
- <sup>viii</sup> Australian Human Rights Commission *A guide to Australia's anti-discrimination laws* <https://www.humanrights.gov.au/guide-australias-anti-discrimination-laws> (accessed May 2015)
- <sup>ix</sup> Department of Social Services (2015) Home Care Packages Programme Consultation Paper <https://engage.dss.gov.au/home-care-packages/>
- <sup>x</sup> Plain Language Australia [www.plainlanguageaustralia.com](http://www.plainlanguageaustralia.com) (accessed May 2015)
- <sup>xi</sup> Law Foundation [www.lawfoundation.net.au/ljf/app/&id=/2FD34F71BE2A0155CA25714C001739DA](http://www.lawfoundation.net.au/ljf/app/&id=/2FD34F71BE2A0155CA25714C001739DA) (accessed May 2015)
- <sup>xii</sup> Australian Human Rights Commission *A guide to Australia's anti-discrimination laws* (see vi)
- <sup>xiii</sup> Translating and Interpreting Services for Home Care Packages: Information for Home Care Package providers (2015) Department of Social Services, My Aged Care. [https://www.dss.gov.au/sites/default/files/documents/04\\_2015/final\\_fact\\_sheet\\_-\\_provider\\_-\\_translating\\_and\\_interpreting\\_service\\_tis\\_2\\_april\\_2015.docx](https://www.dss.gov.au/sites/default/files/documents/04_2015/final_fact_sheet_-_provider_-_translating_and_interpreting_service_tis_2_april_2015.docx) (accessed May 2015)
- <sup>xiv</sup> NSW Government Family and Community Services (2014) *A NSW Government agency guide for effective communication for people with a sensory disability* [http://www.facs.nsw.gov.au/\\_data/assets/file/0009/298071/FACS\\_effective\\_communication\\_for\\_disability\\_July2014.pdf](http://www.facs.nsw.gov.au/_data/assets/file/0009/298071/FACS_effective_communication_for_disability_July2014.pdf) (accessed May 2015)
- <sup>xv</sup> Queensland Health *Communicating Effectively with Aboriginal and Torres Strait Islander people*<sup>xv</sup> [http://www.health.qld.gov.au/deadly\\_ears/docs/hp-res-comeffect.pdf](http://www.health.qld.gov.au/deadly_ears/docs/hp-res-comeffect.pdf) (accessed May 2015)
- <sup>xvi</sup> *Working with older Aboriginal and Torres Strait Islander people - research to practice briefing 8* (Benevolent Society) <http://www.benevolent.org.au/search?q=working%20with%20ATSI&type=#sthash.H9qy0Zhf.dpuf> (accessed May 2015)
- <sup>xvii</sup> Australian Consumer Law [www.consumerlaw.gov.au](http://www.consumerlaw.gov.au) (accessed May 2015)
- <sup>xviii</sup> Australian Securities and Investments Commission Act 2010 (Cth) [www.comlaw.gov.au/Details/C2014C00470](http://www.comlaw.gov.au/Details/C2014C00470) (accessed May 2015)
- <sup>xix</sup> Australian Consumer Law *Unfair Contracts Guide* [http://www.consumerlaw.gov.au/content/the\\_acl/downloads/unfair\\_contract\\_terms\\_guide.PDF](http://www.consumerlaw.gov.au/content/the_acl/downloads/unfair_contract_terms_guide.PDF) (accessed May 2015)