



Home care – a guide to your consumer rights

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Contents

| | |
|---|-----------|
| About this guide | 2 |
| Understanding home care | 3 |
| Key terms explained | 3 |
| Before you sign a Home Care Agreement | 4 |
| Find the right provider for you | 4 |
| Uninvited sales – take your time or just say ‘no’ | 4 |
| Understand your agreement | 5 |
| What to look for in your agreement | 5 |
| Look out for unfair terms in your Home Care Agreement | 6 |
| You can ask someone to assist you with your agreement | 6 |
| Look out for false promises | 7 |
| Getting the most out of your Home Care Package | 8 |
| Make sure you get what was agreed | 8 |
| Check any changes to your agreement | 9 |
| Check your monthly statements | 9 |
| You can change providers at any time | 9 |
| Where to go if you need more information or help | 10 |
| Older Persons Advocacy Network (OPAN) | 10 |
| Aged Care Complaints | 10 |
| My Aged Care | 10 |
| State consumer protection agencies | 11 |
| ACCC | 11 |
| Scamwatch | 11 |
| Translating and Interpreting Service (TIS) | 12 |
| Hearing assistance | 12 |



About this guide

When you buy goods or services in Australia you have consumer rights under the Australian Consumer Law. You have the same rights when you buy home care goods or services, or receive them through a government-funded Home Care Package.

This guide explains your consumer rights, which apply in the same way whether you use government funding or your own money.

These rights are in addition to the rights and responsibilities you have under other laws like the *Aged Care Act 1997* (Aged Care law).

Understanding home care

Key terms explained

Home Care Package – The Home Care Package program is a government-subsidised program that provides support for older people who want to stay living at home. There are four levels of Home Care Packages, ranging from basic care needs to high care needs. Each level receives a different amount of funding. An aged care assessment needs to be carried out to determine the level of care and support you require.

Approved Home Care Provider ('provider') – Once you are assigned a Home Care Package by the government, you can choose a provider who will manage your Home Care Package.

Home Care Agreement ('agreement') – Your agreement is a legal contract with your provider that sets out:

- the details of what your package will provide
- who will provide the services
- how much the services will cost
- any exit amount that will be deducted from funds that are left in your package if you choose to end the agreement.

Home Care Services ('services') – The types of services that can help support older people to stay at home include:

- domestic assistance (laundry, dishwashing, house cleaning)
- gardening and maintenance
- meals and shopping
- safety and security (personal response systems, fall detectors and medical alarms)
- social and recreational support (social worker visitation and support groups)
- nursing and personal care (bathing, mobility, dressing)
- transport services.

Before you sign a Home Care Agreement

Find the right provider for you

Once you are assigned a Home Care Package you must enter into an agreement within a specified time. You have the right to **choose your own provider**, so take time to do some research. Ask questions and find out what others have said about them, to ensure you find a provider who best suits your needs.

If you can, speak with several providers before making a final decision. Remember to compare costs such as exit amounts. You can only choose one provider at a time and they are responsible for managing all the services under your agreement.

If you need assistance deciding on providers, ask a trusted source such as a family member, advocate, friend or community worker and if you can, talk to people who have used those services or check reviews online.

For a list of providers, call My Aged Care on 1800 200 422 or go to their website at www.myagedcare.gov.au

Uninvited sales – take your time or just say ‘no’

Home care providers won't normally be sold at your door or over the phone, but it's important to know your rights if you are approached by a home care provider or any seller without invitation.

Sometimes a business – either a provider or sales person acting on their behalf – may come to you directly to sell home care services without being invited. The consumer law protects you when dealing with uninvited door-to-door or telephone sales. **Avoid signing anything on the spot.**

If you are approached by a business without previous contact, they must:

- tell you their name, the business they represent and that they are contacting you to try to sell particular goods or services
- only approach you within the permitted hours for telemarketing and making uninvited house visits. A business is not allowed to visit you:
 - on Sundays or public holidays
 - before 9 am or after 6 pm on weekdays
 - before 9 am or after 5 pm on Saturdays.
- give or send a copy of agreements in plain and clear language.

Take your time and if you feel pressured, you can just say ‘no’. They must leave on request if you ask them to do so.

If you sign an agreement with someone who approached you directly without invitation, under the consumer law, you have 10 business days to change your mind. This is called a ‘cooling off period’.

When this applies, businesses are not allowed to provide services to you in this time, so you should select a start date with your new provider after this 10 business day period.

For more information about telemarketing and door-to-door sales see www.accc.gov.au/consumers/sales-delivery/telemarketing-door-to-door-sales

Understand your agreement

Your agreement with your provider is the contract which sets out the terms including the cost, services and responsibilities. It is important that you understand these.

Never sign anything you don't understand – take time to look over the agreement carefully and ask questions. Ask someone independent to read the agreement or seek advice from someone you know and trust.

Make sure your agreement includes important information such as your care and services plan, package budget and your contribution towards the cost of your package.

For more information about entering an agreement go to www.accc.gov.au/consumers/contracts-agreements/entering-into-a-contract

What to look for in your agreement

Who is providing services – While you can only have one provider at a time, make sure you understand who is managing your Home Care Package and who is providing your services, as these may differ. Some providers employ their own direct care staff while others use staff from other organisations to deliver care. If a provider uses staff from another organisation to deliver services to you, your provider is still responsible for the quality of those services.

How much services cost – Make sure the agreement is clear about the cost of care and services in your budget. Look for and ask about administration or case management charges and exit amounts. Ask for a better price if you can, especially with exit amounts. If you need or want specific items in your agreement (e.g. after hours care), discuss these with the provider and don't be afraid to ask about the costs associated with those requests. You have a right to query fees and services.

Exit amount and process – Consider whether there is an exit amount you will have to pay if you end your agreement. Some providers may charge high exit amounts while others may have none at all. Understand how much it will cost you to end the agreement and how you do this. Remember that the exit amount can only be taken from your Home Care Package unspent funds. Under the Aged Care law, if you have a zero unspent fund balance, a provider cannot charge the exit amount as a debt. Insist that your agreement includes a term that makes it clear that exit fees will not be payable if your provider makes changes to your agreement that you don't consent to.

Providers must display their exit amount on the service finder on the My Aged Care website. You can use the My Aged Care service finder as a starting point to compare providers. If your consumer guarantee rights have been breached, providers may not be able to charge an exit fee.

Look out for unfair terms in your Home Care Agreement

The Australian Consumer Law protects you from unfair terms in standard contracts. Standard contracts are those where a business does not let you negotiate or have a say on the terms, for example, 'take it or leave it' contracts (e.g. Home Care Agreement).

A term may be 'unfair' if it gives more rights to a provider than to you. The agreement should be a balance of rights and obligations on you and the provider.

A term that says a provider can change your agreement without telling you or getting your consent is likely to be unfair.

An advocate or legal adviser may be able to assist you to identify unfair terms.

If you feel there is a term in your agreement which is unfair, you should first contact your provider and then if you need to, contact your state consumer protection agency.

For more information about the unfair contract terms laws see www.accc.gov.au/consumers/contracts-agreements/unfair-contract-terms

You can ask someone to assist you with your agreement

If you need assistance with your agreement you can ask someone to act on your behalf such as an advocate or a power of attorney. You can also get advice from others such as a family member, friend, solicitor, or government funded advocate or solicitor, to help you.

Look out for false promises

Most businesses want to do the right thing and give you all the information you need to make a decision. But some businesses won't always be up front and honest with you.

When comparing providers you may find lots of promises in glossy brochures or websites that have little information about the costs and services. If this is the case it helps to ask lots of questions so you are really sure you are getting what was promised.

If a provider makes a promise to you, or provides you with information verbally, it's best to ask for it in writing. Some offers may be too good to be true.

It's against the law for providers or salespeople to lie or mislead you. It's also against the law to leave out important information, where to do so is misleading.

If you enter into a Home Care Agreement, and you find that you haven't been given what was agreed or have been given unclear information you may have a right to a remedy if the provider did not supply what they promised.

For example:

- If a provider promises that they can give you 10 hours of domestic assistance per week but only really provide 5 hours, this would be misleading and illegal.
- If a provider hides important information such as charges in fine print this may also be misleading and illegal.

You should dispute such issues with your provider. If this is unsuccessful, seek help from the Older Persons Advocacy Network.

For more information see www.accc.gov.au/consumers/misleading-claims-advertising

Watch out for scams

Australians over the age of 65 are often targeted by scammers. Be aware that scammers may contact you over the phone, online or at your home. They may ask you for your personal information, banking details or to make a payment. They may even pretend to be a well-known business or government agency such as Centrelink or the Australian Tax Office. Never give them information, remote access to your computer or payment in any form unless you are 100 per cent sure they are who they say they are. If unsure, don't use the contact details they give you – look them up yourself or ask a trusted source to help you. Check to see who they are through an independent source such as the phone book or by doing a Google search.



Getting the most out of your Home Care Package

Occasionally problems can arise when you receive goods or use services. You have rights under the Aged Care law but the consumer law also includes protections that may help you if things go wrong. You have rights and you can stand up for them.

Make sure you get what was agreed

The Aged Care law requires providers to ensure good quality services are provided to consumers. Under the Australian Consumer Law, when you purchase goods or services in Australia you have automatic rights called **consumer guarantees**. Guarantees are like promises a business has to give you by law.

Home care services, like any other service, must be:

- provided with acceptable care and skill. Your provider must be careful and make sure they don't cause any loss or damage to you
- fit for purpose. The services you receive must give you the results that you and the provider have agreed to
- delivered within a reasonable time when there is no agreed end date.

You can make a claim to your provider (to fix a problem) if any of these guarantees aren't met. This can include asking for a refund or cancellation, or for services to be done again. In some cases you can also claim compensation for damages or loss caused by the poor service.

For example, if the provider:

- fails to turn up when they agreed to, or
- does not take care when cleaning your house and causes damage.

You can consider using your consumer rights and ask the provider to fix the problem.

If you buy or lease equipment using Home Care Package funds the consumer guarantees also apply. This means the goods need to:

- be safe, durable and free from faults
- be acceptable in appearance
- do all the things someone would normally expect them to do
- meet any extra promises made about performance, condition and quality, such as lifetime guarantees and money back offers.

Just like services, if the guarantees relating to goods aren't met you have a right to make a claim to the seller to fix the problem. If it's a minor problem you can ask the seller to fix it. If it is a major problem, or a problem that can't be fixed at all or within a reasonable time, you have the right to ask for your money back or get a replacement.

Consumer guarantees do not apply in some situations like, for example, if you simply change your mind or if you misused the good.

For more information on consumer guarantees see www.accc.gov.au/consumers/consumer-rights-guarantees/consumer-guarantees

Check any changes to your agreement

A provider might need to change your agreement from time to time but should only do so with your consent. A provider should discuss any changes with you. Make sure you understand what the changes mean for you. If you don't understand the changes, don't sign anything and seek independent advice.

If you are not happy with the new terms you can change providers, but discuss the problem with your provider first. Only agree to changes that you understand and are happy with. If a term in your agreement prevents you from cancelling after a change without paying an exit fee, this term may be unfair.

Check your monthly statements

When your home care services have started, your provider must give you a monthly itemised statement that explains what your Home Care Package funds have been used for and any unspent funds you have accumulated.

Providers must make sure they tell you about all their fees and charges. If extra fees and charges appear on your monthly statements that were not agreed (or you weren't told about) you should ask the provider to explain. If you aren't satisfied with their explanation or you think you were misled about the fees, you have the right to make a complaint. See the next section for more information about where to go for help.

You can change providers at any time

You can change providers to get a better deal, or for convenience or because you've had some problems. If you decide to switch providers, do your research to make sure any new provider is right for you.

Remember if you switch to a new provider, your old provider can charge you an exit amount (if you agreed to one when you signed the Home Care Agreement and there has been no breach of your consumer rights). Your old provider can take this amount from your unspent funds. If you have any remaining unspent funds after the exit amount has been charged, these will be transferred to your new provider.

Remember that under the consumer guarantees for both goods and services you may be entitled to terminate your service and if you do so, your provider should not charge you an exit fee. For example, if you experience a major failure of your service and exercise your right to end the agreement you should not be charged an exit fee.

You and your old provider must agree to an end date. Your services with your new provider can start the day after you finish with your old provider. The Aged Care law requires your old provider to help you transfer to your new provider.

Where to go if you need more information or help

If you have any problems, speak first with your provider. If you are hesitant about doing this because you feel it may affect the services you are receiving, remember that you have a right to complain and this should not impact the services you receive.

If you cannot fix your problem with the provider then the following organisations might be able to assist.

Older Persons Advocacy Network (OPAN)

OPAN is funded by the Department of Health to deliver the National Aged Care Advocacy Program. It provides free, independent and confidential advocacy services to older people using or planning to use Australian Government funded aged care services. You should contact this service first. For more information go to www.opan.com.au or phone 1800 700 600.

Aged Care Complaints

If you have any concerns about aged care services provided to you or someone else, you can call Aged Care Complaints on 1800 550 552 or visit www.agedcarecomplaints.gov.au for more information.

My Aged Care

For more information about accessing a home care package or finding a provider, call My Aged Care on 1800 200 422.

The www.myagedcare.gov.au website has specific information for Indigenous consumers as well as people with diverse needs. This includes resources in other languages. My Aged Care is provided by the Department of Health.

State consumer protection agencies

Your local consumer protection agency can help you with your consumer rights. They may also be able to assist you with any other issues you have with goods or services generally.

Australian Capital Territory

Access Canberra, (02) 6207 3000

New South Wales

NSW Fair Trading, 13 32 20

Northern Territory

NT Consumer Affairs, 1800 019 319

Queensland

Office of Fair Trading Queensland, 13 74 68

South Australia

Consumer and Business Services, 131 882

Tasmania

Consumer, Building and Occupational Services Tasmania, 1300 654 499

Victoria

Consumer Affairs Victoria, 1300 55 81 81

Western Australia

Department of Mines, Industry Regulation and Safety (Consumer Protection)
Western Australia, 1300 304 054

For more information go to the contact section of www.consumerlaw.gov.au

ACCC

For more information visit www.accc.gov.au/agedcare or to find other resources about the Australian Consumer Law visit www.accc.gov.au/publications. To report a problem use the online form or phone 1300 302 502.

The ACCC does not provide dispute or complaint resolution services.

Scamwatch

For more information about scams and how to avoid them, see the ACCC's Scamwatch website www.scamwatch.gov.au

Translating and Interpreting Service (TIS)

If you speak a language other than English, you can call TIS on 131 450. They will be able to help you talk to any of these organisations.

Information about TIS is available at www.tisnational.gov.au

Hearing assistance

If you have a hearing or speech impairment you can contact the National Relay Service at www.relayservice.gov.au or phone 133 677.

The National Relay Service will be able to help you talk to any of these organisations.



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