

SECURITY OF TENURE

Residents of aged care facilities (nursing homes and hostels) and people receiving community care services in their homes have their right to 'Security of Tenure' protected by the *Aged Care Act 1997 – User Rights Principles*. This means that residents cannot be asked to leave their facility, and clients of community care packages cannot have their services withdrawn, without valid reasons and certain procedures being followed. These are outlined in the above legislation and explained below.

RESIDENTIAL CARE

Each resident's tenure in an aged care service is formally agreed between the resident or their representative and the residential aged care facility. A section on Security of Tenure is included in the Resident Agreement which is signed by the resident or their representative on entry to the facility.

A resident may only be asked to leave the facility if:

- The facility is closing
- The facility no longer provides accommodation and care suitable for the resident according to their long-term assessed needs, and the provider has not agreed to provide the care that the resident currently needs
- The resident no longer needs the care provided by the facility as assessed by an Aged Care Assessment Team (ACAT)
- The resident has not paid the agreed fees to the provider within 42 days after the due date, for a reason within the resident's control
- The resident has intentionally caused serious damage to the facility; or serious injury to the provider, an employee of the facility, or to another resident
- The resident is away from the facility for a continuous period of at least 7 days for a reason other than permitted by the *Aged Care Act 1997* or an emergency

If a resident is asked to leave, the service provider is required to give them at least 14 days written notice and include the following information:

- The decision and the reasons for the decision
- When the resident is to leave
- The resident's rights concerning security of tenure, including their right to complain by way of the facility's internal complaints system or via the external Aged Care Complaints Resolution Scheme and the resident's right to contact an advocate for support. Advocare is funded under the Act to provide advocacy support

No action may be taken to make the resident leave, or imply that the resident must leave, before suitable, affordable, alternative accommodation is available that meets the resident's long term needs.

RESIDENTIAL CARE (Con't)

Sometimes residents may be asked to leave because their care and accommodation needs have increased to the point where the facility is no longer able to meet their needs. If this is the case, the resident must be assessed by an ACAT or at least two medical or other health practitioners competent to assess their aged care needs.

One of these must be independent and chosen by the resident or their representative. Alternatively, if the resident has been asked to leave because they no longer require the care provided by the facility, for example, their health has improved to the point where they are again able to care for themselves, they must first be assessed by an ACAT.

If the resident has been asked to leave due to their behaviour, and their behaviour has changed, it may be agreed between the service provider and the resident that they may stay. In this case, the resident must be provided with a notice stating that they are no longer required to leave the facility.

WITHIN THE FACILITY

Residents also have rights protecting them from being moved around unduly within the facility.

A resident may only be moved to another bed or room if:

- The move is at their request
- The move is necessary on genuine medical grounds for the resident as assessed by an independent medical practitioner or professional member of an ACAT
- The move is necessary because repairs or improvements to the facility need to be carried out. In this case, the resident has the right to return to their bed or room if it continues to exist following the repairs or improvements

COMMUNITY AGED CARE PACKAGES

Clients who receive community care services also have rights which ensure that their services may not be withdrawn without valid reason and that certain procedures must be followed if the service is to be withdrawn. These rights to 'Security of Tenure' are spelt out within the *Aged Care Act 1997 – User Rights Principles*. A section on Security of Tenure is included in the service contract which is signed by the client or their representative on commencement of the service.

There are some situations where services may be withdrawn or reallocated to another client. This can **only** occur if:

- The client can no longer be cared for in the community because the service provider does not have sufficient resources to provide the care needed. **For example:** if the client requires a greater amount of care and assistance than is able to be provided by the service
- The client tells the service provider (in writing) that they wish to move to a place where the service is not available. **For example:** The client decides to relocate to a smaller, more remote area where the services they need are not available

COMMUNITY AGED CARE PACKAGES (Con't)

- The client tells the community service provider (in writing) that they no longer need the service to continue. **For example:** The client may decide that they do not need the service because they have a friend or family member who is able to provide the care they need
- The client's condition changes to the point where they no longer need the care provided. **For example:** Their medical illness improves to the point where they are able to manage on their own
- The client's needs can be better met by other types of care or services (this must be assessed by an ACAT). **For example:** the client is no longer able to manage in their home with the current services and may need to move into a hostel or nursing home to receive the level of care they need

ACCESS TO ADVOCATES

Residents of residential aged care facilities and clients who receive community care services have the right to have an advocate of their choice to act on their behalf if they have concerns about the services they are receiving. An advocate may be a friend, family member, or professional advocate from an agency such as Advocare. *The Aged Care Act 1997* stipulates that the service provider must allow the advocate access to the facility or community service.

For more information contact **Advocare**
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