Aged Care (Transitional Provisions) Act 1997

No. 223, 1997

Compilation No. 14

Compilation date:	1 September 2021
Includes amendments up to:	Act No. 2, 2021
Registered:	24 September 2021

Prepared by the Office of Parliamentary Counsel, Canberra

Authorised Version C2021C00372 registered 24/09/2021

About this compilation

This compilation

This is a compilation of the *Aged Care (Transitional Provisions) Act 1997* that shows the text of the law as amended and in force on 1 September 2021 (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 Legislation Register (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 series page on the Legislation 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 series page on the Legislation 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If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

Contents

Chapter 1—Introduction 1

Division 1—Preliminary matters 1

1-1 Short title 1
1-2 Commencement 1
1-2A Act applies to continuing care recipients 1
1-3 Identifying defined terms 1
1-4 Tables of Divisions and Subdivisions do not form part of this Act 2

Division 2—Objects 3

2-1 The objects of this Act 3

Division 3—Overview of this Act 5

3-1 General 5
3-2 Preliminary matters relating to subsidies 5
3-3 Subsidies (Chapter 3) 6
3-4 Responsibilities of approved providers 6
3-5 Grants 6

Division 4—Application of this Act 7

4-1 Application of this Act 7
4-2 Binding the Crown 7

Chapter 3—Subsidies 8

Division 40—Introduction 8

40-1 What this Chapter is about 8

Part 3.1—Residential care subsidy 9

Division 41—Introduction 9

41-1 What this Part is about 9
41-2 Residential care subsidy also dealt with in Aged Care (Transitional Provisions) Principles 9
41-3 Meaning of *residential care* 9

Division 42—Who is eligible for residential care subsidy? 11

42-1 Eligibility for residential care subsidy 11
42-2 Leave from residential care services 12
42-3 Working out periods of leave 15

Authorised Version C2021C00372 registered 24/09/2021

42-7 Exceeding the number of places for which there is an allocation ... 16
42-8 Notice of refusal to pay residential care subsidy ... 16

Division 43—How is residential care subsidy paid? 17
43-1 Payment of residential care subsidy ... 17
43-2 Meaning of *payment period* ... 17
43-3 Advances ... 17
43-4 Claims for residential care subsidy ... 18
43-4A Variations of claims for residential care subsidy ... 20
43-5 Deductions for fees ... 20
43-6 Capital repayment deductions ... 21
43-8 Non-compliance deductions ... 22
43-9 Recovery of overpayments ... 23

Division 44—What is the amount of residential care subsidy? 24
44-1 What this Division is about ... 24

Subdivision 44-A—Working out the amount of residential care subsidy 24
44-2 Amount of residential care subsidy ... 24

Subdivision 44-B—The basic subsidy amount 25
44-3 The basic subsidy amount ... 25

Subdivision 44-C—Primary supplements 27
44-5 Primary supplements ... 27
44-5A The accommodation supplement ... 27
44-5B Meaning of *supported resident* ... 28
44-5C Meaning of *post-2008 reform resident* ... 29
44-5D Meaning of *pre-2008 reform resident* ... 29
44-5E Meaning of *pre-entry leave* ... 30
44-6 The concessional resident supplement ... 30
44-7 Meaning of *concessional resident* ... 31
44-8 Meaning of *assisted resident* ... 34
44-8AA Determinations for sections 44-7 and 44-8 ... 37
44-8AB Determination of value of person's assets ... 39
44-8A The charge exempt resident supplement ... 40
44-8B Meaning of *charge exempt resident* ... 42
44-9 Person taken not to be a supported resident, a concessional resident or an assisted resident if asset information not provided ... 42
44-10 How to work out the value of a person's assets ... 43

Authorised Version C2021C00372 registered 24/09/2021

44-11 Definitions relating to *supported residents, concessional residents* and *assisted residents* 45
44-12 The respite supplement 48
44-13 The oxygen supplement 49
44-14 The enteral feeding supplement 50
44-15 Requests for further information 52
44-16 Additional primary supplements 52

Subdivision 44-D—Reductions in subsidy 53
44-17 Reductions in subsidy 53
44-18 The extra service reduction 53
44-19 The adjusted subsidy reduction 53
44-20 The compensation payment reduction 54

Subdivision 44-E—The income test 57
44-21 The income test 57
44-22 Daily income tested reduction taken to be zero in some circumstances 58
44-23 Effect on daily income tested reduction of failure to give requested information 59
44-24 The care recipient's *total assessable income* 61
44-26 The care recipient's *total assessable income free area* 65

Subdivision 44-F—Other supplements 66
44-27 Other supplements 66
44-28 The pensioner supplement 67
44-29 The viability supplement 69
44-30 The hardship supplement 71
44-31 Determining cases of financial hardship 72

Part 3.2—Home care subsidy 75

Division 45—Introduction 75
45-1 What this Part is about 75
45-2 Home care subsidy also dealt with in Aged Care (Transitional Provisions) Principles 75
45-3 Meaning of *home care* 76

Division 46—Who is eligible for home care subsidy? 77
46-1 Eligibility for home care subsidy 77
46-2 Suspension of home care services 77
46-4 Notice of refusal to pay home care subsidy 78

Authorised Version C2021C00372 registered 24/09/2021

Division 47—On what basis is home care subsidy paid? 79
47-1 Payability of home care subsidy 79
47-2 Meaning of *payment period* 79
47-4 Claims for home care subsidy 79
47-4A Variations of claims for home care subsidy 80
47-5 Recovery of overpayments 81
Division 48—What is the amount of home care subsidy? 82
48-1 Amount of home care subsidy 82
Part 3.3—Flexible care subsidy 83
Division 49—Introduction 83
49-1 What this Part is about 83
49-2 Flexible care subsidy also dealt with in Aged Care (Transitional Provisions) Principles 83
49-3 Meaning of *flexible care* 83
Division 50—Who is eligible for flexible care subsidy? 84
50-1 Eligibility for flexible care subsidy 84
50-2 Kinds of care for which flexible care subsidy may be payable 85
50-3 Exceeding the number of places for which there is an allocation 85
50-4 Notice of refusal to pay flexible care subsidy 86
Division 51—On what basis is flexible care subsidy paid? 87
51-1 Payment of flexible care subsidy 87
Division 52—What is the amount of flexible care subsidy? 88
52-1 Amounts of flexible care subsidy 88
Chapter 4—Responsibilities of approved providers 89
Part 4.2—User rights 89
Division 57—What are the responsibilities relating to accommodation bonds? 89
57-1 What this Division is about 89
Subdivision 57-A—The basic rules 90
57-2 Basic rules about accommodation bonds 90
Subdivision 57-C—Accommodation bond agreements 93
57-9 Contents of accommodation bond agreements 93

Authorised Version C2021C00372 registered 24/09/2021

57-10 Accommodation bond agreements may be incorporated into other agreements 94
57-11 Agreements cannot affect requirements of this Division 95

Subdivision 57-D—Amounts of accommodation bonds 95
57-12 Maximum amount of accommodation bond 95
57-13 Maximum amount of accommodation bond if care recipient moves between certain aged care services 97
57-14 Accommodation bond in cases of financial hardship 98
57-15 Revocation of determinations of financial hardship 100

Subdivision 57-E—Payment of accommodation bonds 101
57-16 Period for payment of accommodation bond 101
57-17 Payment of an accommodation bond by periodic payments 101

Subdivision 57-F—Rights of approved providers 102
57-18 Approved provider may retain income derived 102
57-19 Amounts to be deducted from accommodation bond balance 103
57-20 Retention amounts 104

Subdivision 57-H—Charging an accommodation bond instead of an accommodation charge 106
57-23 Charging an accommodation bond instead of an accommodation charge 106

Division 57A—What are the responsibilities relating to accommodation charges? 108
57A-1 What this Division is about 108

Subdivision 57A-A—The basic rules 108
57A-2 Basic rules about accommodation charges 108

Subdivision 57A-B—Accommodation charge agreements 111
57A-3 Contents of accommodation charge agreements 111
57A-4 Accommodation charge agreements may be incorporated into other agreements 112
57A-5 Agreements cannot affect requirements of this Division 112

Subdivision 57A-C—Daily accrual amounts of accommodation charges 112
57A-6 Maximum daily accrual amount of accommodation charge 112

Authorised Version C2021C00372 registered 24/09/2021

57A-7 Accommodation charge not to accrue after provision of care has ceased 114
57A-8A Maximum amount of accommodation charge if care recipient moves between aged care services 114
57A-9 Accommodation charge in cases of financial hardship 115
57A-10 Revocation of determinations of financial hardship 117
Subdivision 57A-D—Payment of accommodation charges 118
57A-11 Accommodation charge may be payable not more than one month in advance 118
57A-12 Approved provider may charge interest 118
Division 58—What are the responsibilities relating to resident fees? 119
58-1 Responsibilities relating to resident fees 119
58-2 Maximum daily amount of resident fees 119
58-3 Standard resident contribution 121
58-3A Meaning of *pre-September 2009 resident* and *post-September 2009 resident* 121
58-3B Standard resident contribution—protected residents 123
58-3C Standard resident contribution—certain pre-2008 reform residents 124
58-5 Extra service amount 126
58-6 Maximum daily amount of resident fees for reserving a place 126
Division 60—What are the responsibilities relating to home care fees? 127
60-1 Responsibilities relating to home care fees 127
60-2 Maximum daily amount of home care fees 127
Chapter 6—Administration 129
Division 84—Introduction 129
84-1 What this Chapter is about 129
Part 6.1—Reconsideration and review of decisions 130
Division 85—Reconsideration and review of decisions 130
85-1 Reviewable decisions 130
85-2 Deadlines for making reviewable decisions 133

Authorised Version C2021C00372 registered 24/09/2021

85-3 Secretary must give reasons for reviewable decisions 133
85-4 Secretary may reconsider reviewable decisions 133
85-5 Reconsideration of reviewable decisions 134
85-8 AAT review of reviewable decisions 135

Chapter 7—Miscellaneous 136

Division 96—Miscellaneous 136
96-1 Aged Care (Transitional Provisions) Principles 136
96-2 Delegation of Secretary's powers and functions 136
96-4 Care provided on behalf of an approved provider 139
96-5 Care recipients etc. lacking capacity to enter agreements 140
96-6 Applications etc. on behalf of care recipients 140
96-7 Withdrawal of applications 140
96-13 Regulations 141

Schedule 1—Dictionary 142
1 Definitions 142

Endnotes 149

Endnote 1—About the endnotes 149

Endnote 2—Abbreviation key 151

Endnote 3—Legislation history 152

Endnote 4—Amendment history 155

Authorised Version C2021C00372 registered 24/09/2021

Authorised Version C2021C00372 registered 24/09/2021

An Act to deal with transitional matters in connection with the *Aged Care (Living Longer Living Better) Act 2013*, and for other purposes

Chapter 1—Introduction

Division 1—Preliminary matters

1-1 Short title

This Act may be cited as the *Aged Care (Transitional Provisions) Act 1997*.

1-2 Commencement

This Act commences on 1 July 2014.

1-2A Act applies to continuing care recipients

This Act applies only in relation to *continuing care recipients.

1-3 Identifying defined terms

(1) Many of the terms in this Act are defined in the Dictionary in Schedule 1.

(2) Most defined terms are identified by an asterisk appearing at the start of the term: as in "*aged care service". The footnote that goes with the asterisk contains a signpost to the Dictionary.

(3) An asterisk usually identifies the first occurrence of a term in a subsection, note or definition. Later occurrences of the term in the same subsection, note or definition are not asterisked.

---

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

(4) Terms are not asterisked in headings, tables or diagrams.

(5) The following basic terms used throughout the Act are not identified with an asterisk:

Terms that are not identified		
Item	**This term:**	**is defined in:**
1	approved provider	Schedule 1
2	care	Schedule 1
3	home care	section 45-3
4	home care service	Schedule 1
5	flexible care	section 49-3
6	flexible care service	Schedule 1
7	provide	section 96-4
8	residential care	section 41-3
9	residential care service	Schedule 1
10	Secretary	Schedule 1

1-4 Tables of Divisions and Subdivisions do not form part of this Act

Tables of Divisions and tables of Subdivisions do not form part of this Act.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

Division 2—Objects

2-1 The objects of this Act

(1) The objects of this Act, in conjunction with the *Aged Care Act 1997*, are as follows:

(a) to provide for funding of *aged care that takes account of:

(i) the quality of the care; and

(ii) the *type of care and level of care provided; and

(iii) the need to ensure access to care that is affordable by, and appropriate to the needs of, people who require it; and

(iv) appropriate outcomes for recipients of the care; and

(v) accountability of the providers of the care for the funding and for the outcomes for recipients;

(b) to promote a high quality of care and accommodation for the recipients of *aged care services that meets the needs of individuals;

(c) to protect the health and well-being of the recipients of aged care services;

(d) to ensure that aged care services are targeted towards the people with the greatest needs for those services;

(e) to facilitate access to aged care services by those who need them, regardless of race, culture, language, gender, economic circumstance or geographic location;

(f) to provide respite for families, and others, who care for older people;

(g) to encourage diverse, flexible and responsive aged care services that:

(i) are appropriate to meet the needs of the recipients of those services and the carers of those recipients; and

(ii) facilitate the independence of, and choice available to, those recipients and carers;

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

(h) to help those recipients to enjoy the same rights as all other people in Australia;

(i) to plan effectively for the delivery of aged care services that:

(i) promote the targeting of services to areas of the greatest need and people with the greatest need; and

(ii) avoid duplication of those services; and

(iii) improve the integration of the planning and delivery of aged care services with the planning and delivery of related health and community services;

(j) to promote ageing in place through the linking of care and support services to the places where older people prefer to live.

(2) In construing the objects, due regard must be had to:

(a) the limited resources available to support services and programs under this Act and the *Aged Care Act 1997*; and

(b) the need to consider equity and merit in accessing those resources.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

Division 3—Overview of this Act

3-1 General

This Act, in conjunction with the *Aged Care Act 1997*, provides for the Commonwealth to give financial support:

(a) through payment of subsidies for the provision of *aged care; and

(b) through payment of grants for other matters connected with the provision of aged care.

Subsidies are paid under Chapter 3 of this Act and Chapter 3 of the *Aged Care Act 1997* (but Chapters 2 and 4 of the *Aged Care Act 1997* and Chapter 4 of this Act are also relevant to subsidies), and grants are paid under Chapter 5 of the *Aged Care Act 1997*.

3-2 Preliminary matters relating to subsidies

Before the Commonwealth can pay subsidy to an approved provider of *aged care under Chapter 3 of this Act, a number of approvals and similar decisions may need to have been made under Chapter 2 of the *Aged Care Act 1997*. These may relate to:

(b) the *aged care service in question (for example, for residential care services and flexible care services the requirement that *places have been allocated in respect of the service); or

(c) the recipient of aged care (for example, the requirement that the recipient has been approved as a recipient of the type of aged care that is provided).

Note: For the approval of providers of aged care, see Part 7A of the *Quality and Safety Commission Act.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

3-3 Subsidies (Chapter 3)

A number of different kinds of subsidy can be paid under Chapter 3 of this Act. They are paid for *aged care that has been provided. Eligibility for a subsidy depends on:

(a) particular approvals and similar decisions having been made under Chapter 2 of the *Aged Care Act 1997*; and

(b) the circumstances in which the care is provided (for example, whether the care is provided in a residential care service that meets its *accreditation requirement).

3-4 Responsibilities of approved providers

Approved providers have certain responsibilities under Chapter 4 of this Act and Chapter 4 of the *Aged Care Act 1997*. These responsibilities relate to:

(a) the quality of care they provide; and

(b) user rights for the people to whom care is provided; and

(c) accountability for the care that is provided, and the basic suitability of their *key personnel.

Failure to meet these responsibilities can lead to the imposition of sanctions on an approved provider under Part 7B of the *Quality and Safety Commission Act, which may affect amounts of subsidy payable to the provider.

3-5 Grants

The Commonwealth makes grants under Chapter 5 of the *Aged Care Act 1997* to contribute to costs associated with:

(a) the establishment or enhancement of *aged care services (for example, *residential care grants); or

(c) support services related to the provision of aged care (for example, *advocacy grants).

The grants are (in most cases) payable under agreements with the recipients of the grants, and may be subject to conditions.

---

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

Division 4—Application of this Act

4-1 Application of this Act

(1) This Act applies in all the States and Territories.

(2) However, this Act does not apply in any external Territory, except Norfolk Island, the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands.

(3) Despite subsection (1), Part 3.1 applies in relation to the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands as if those Territories were part of Western Australia and were not Territories.

Note: This has the effect that references in Part 3.1 to a Territory do not apply to the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands, and that references in that Part to a State will be relevant to Western Australia as if it included those Territories.

(4) Despite subsection (1), Part 3.1 applies in relation to Norfolk Island as if Norfolk Island were part of New South Wales and were not a Territory.

Note: This has the effect that references in Part 3.1 to a Territory do not apply to Norfolk Island, and that references in that Part to a State will be relevant to New South Wales as if it included Norfolk Island.

4-2 Binding the Crown

(1) This Act binds the Crown in each of its capacities.

(2) This Act does not make the Crown liable to be prosecuted for an offence.

---

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

Chapter 3—Subsidies

Division 40—Introduction

40-1 What this Chapter is about

The Commonwealth pays subsidies to approved providers for *aged care that has been provided. These subsidies are:

- *residential care subsidy (see Part 3.1);
- *home care subsidy (see Part 3.2);
- *flexible care subsidy (see Part 3.3).

A number of approvals and other decisions may need to have been made under Chapter 2 of the *Aged Care Act 1997* before a particular kind of payment can be made (see section 5-2 of that Act). For example, an approved provider can only receive subsidy for providing residential care or flexible care in respect of which a *place has been allocated. Receipt of payments under this Chapter gives rise to certain responsibilities, that are dealt with in Chapter 4 of this Act and Chapter 4 of the *Aged Care Act 1997*.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

Part 3.1—Residential care subsidy

Division 41—Introduction

41-1 What this Part is about

The *residential care subsidy is a payment by the Commonwealth to approved providers for providing residential care to care recipients.

Table of Divisions

41 Introduction
42 Who is eligible for residential care subsidy?
43 How is residential care subsidy paid?
44 What is the amount of residential care subsidy?

41-2 Residential care subsidy also dealt with in Aged Care (Transitional Provisions) Principles

*Residential care subsidy is also dealt with in the Aged Care (Transitional Provisions) Principles. Provisions in this Part indicate when a particular matter is or may be dealt with in those Principles.

Note: The Aged Care (Transitional Provisions) Principles are made by the Minister under section 96-1.

41-3 Meaning of *residential care*

(1) ***Residential care*** is personal care or nursing care, or both personal care and nursing care, that:

(a) is provided to a person in a residential facility in which the person is also provided with accommodation that includes:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

(i) appropriate staffing to meet the nursing and personal care needs of the person; and

(ii) meals and cleaning services; and

(iii) furnishings, furniture and equipment for the provision of that care and accommodation; and

(b) meets any other requirements specified in the Aged Care (Transitional Provisions) Principles.

(2) However, residential care does not include any of the following:

(a) care provided to a person in the person's private home;

(b) care provided in a hospital or in a psychiatric facility;

(c) care provided in a facility that primarily provides care to people who are not frail and aged;

(d) care that is specified in the Aged Care (Transitional Provisions) Principles not to be residential care.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

Division 42—Who is eligible for residential care subsidy?

42-1 Eligibility for residential care subsidy

(1) An approved provider is eligible for *residential care subsidy in respect of a day if the Secretary is satisfied that, during that day:

(a) the approved provider holds an allocation of *places for residential care subsidy that is in force under Part 2.2 of the *Aged Care Act 1997* (not being a *provisional allocation); and

(b) the approved provider provides residential care to a care recipient in respect of whom an approval is in force under Part 2.3 of the *Aged Care Act 1997* as a recipient of residential care; and

(c) the residential care service through which the care is provided meets its *accreditation requirement (if any) applying at that time (see section 42-4 of the *Aged Care Act 1997*).

Note 1: A care recipient can be taken to be provided with residential care while he or she is on *leave from that care (see section 42-2).

Note 2: If the care recipient's approval under Part 2.3 of the *Aged Care Act 1997* is not in force, subsidy will not be payable. (For example, the approval may have been given only for a limited period.)

(2) However, the approved provider is not eligible in respect of residential care provided to the care recipient during that day if:

(a) it is excluded because the approved provider exceeds the approved provider's allocation of *places for residential care subsidy (see section 42-7); or

(b) the approved provider stopped providing residential care to the person during that day; or

(c) subject to subsections (3) and (4), another approved provider would, but for this paragraph, also be eligible for *residential

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

care subsidy in respect of residential care provided to the same care recipient during that day.

(3) Paragraph (2)(c) does not apply if the approved provider started providing residential care to the care recipient before the other approved provider.

(4) Paragraph (2)(c) does not apply if:

(a) the care recipient is on *leave under section 42-2 from the residential care service through which the approved provider provides residential care to the care recipient at a level that is not a *high level of residential care; and

(b) the care recipient's approval under Part 2.3 of the *Aged Care Act 1997* is not limited under subsection 22-2(3) of that Act to a *low level of residential care; and

(c) the other approved provider is providing to the care recipient, on a temporary basis, a high level of residential care; and

(d) the approved provider referred to in paragraph (a) is unable to provide that high level of residential care.

Note: Eligibility may also be affected by Division 7 of the *Aged Care Act 1997* (relating to a person's approval as a provider of aged care services) or Division 20 of that Act (relating to a person's approval as a recipient of residential care).

(5) Despite any other provision of this Act, an approved provider operating a residential care service is not eligible for *residential care subsidy for a care recipient in respect of a day if the care recipient is on *leave from that service on that day because of subsection 42-3(3).

42-2 Leave from residential care services

(1) On each day during which a care recipient is on *leave under this section from a residential care service, the care recipient is taken, for the purposes of this Part (other than section 42-3) and for the purposes of section 63Q of the *Quality and Safety Commission

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

Act, to be provided with residential care by the approved provider operating the residential care service.

(2) A care recipient is on *leave under this section from a residential care service on each day of any period during which the care recipient attends a hospital for the purpose of receiving hospital treatment, so long as the day is on or after the day on which the care recipient *enters the residential care service.

Note: Attending a hospital for a period of extended hospital leave may result in the Minister determining a lower basic subsidy amount for the recipient for days occurring during that period, which will affect the amount of subsidy that is payable (see section 44-3).

(3) A care recipient is on *leave under this section from a residential care service on a day if:

(a) during the whole of that day, the care recipient is absent from the residential care service; and

(b) either:

(i) the care recipient does not, during that day, attend a hospital for the purpose of receiving hospital treatment; or

(ii) the care recipient does, during that day, attend a hospital for that purpose and the day is before the day on which the care recipient *enters the residential care service; and

(ba) the care recipient is not on leave under subsection (3B) on that day; and

(c) the number of days on which the care recipient has previously been on leave under this subsection, during the current financial year, is less than 52.

Note: If a care recipient is taken not to have been provided with care because the maximum number of days has been exceeded, subsidy will not be payable in respect of those days. However, the care recipient may agree to pay a fee to the approved provider to reserve the care recipient's *place in the service. The maximum amount in such a case is set by section 58-6.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

Section 42-2

(3AA) For the purposes of paragraph (3)(c), disregard days on which the care recipient is on *leave from the residential care service because of subsection 42-3(3).

(3A) A care recipient is on *leave under this section from a residential care service on a day if:

(a) *flexible care subsidy is payable in respect of the care recipient and the day; and

(b) the requirements specified in the Aged Care (Transitional Provisions) Principles for the purposes of this paragraph are met.

Note: If a care recipient is on leave for at least 30 days continuously under subsections (2) and (3A), this may result in the Minister determining a lower basic subsidy amount for the recipient for days occurring during that period, which will affect the amount of residential care subsidy that is payable (see section 44-3).

(3B) A care recipient is on *leave under this section from a residential care service (the ***affected service***) on a day if:

(a) during the whole of that day, the care recipient is absent from the affected service; and

(b) either:

(i) the care recipient does not, during that day, attend a hospital for the purpose of receiving hospital treatment; or

(ii) the care recipient does, during that day, attend a hospital for that purpose and the day is before the day on which the care recipient *enters the affected service; and

(c) the Minister determines under subsection 42-2A(1) of the *Aged Care Act 1997* that there is a situation of emergency for that day for the affected service or a class of residential care services that includes the affected service.

(4) Despite subsections (2), (3), (3A) and (3B), a care recipient cannot be on *leave under this section from a residential care service

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

during any period during which the residential care in question would have been *respite care.

42-3 Working out periods of leave

(1) In working out the days on which a care recipient is on *leave under section 42-2:

(a) include the day on which the period commenced; and

(b) do not include the day on which the approved provider recommenced, or commenced, providing residential care to the care recipient.

Note: Absences that do not include an overnight absence from a residential care service are not counted as *leave because of paragraph (b).

(2) Subject to subsection (3), a care recipient cannot be on *leave under section 42-2 from a residential care service before he or she *enters the service.

(3) A care recipient may be on leave under section 42-2 on the days during the period starting on the later of:

(a) the day on which he or she was notified that there was a vacancy in the residential care service in question; or

(aa) the day on which he or she accepted a place in the residential care service; or

(b) the day that is 7 days, or such other period as is specified in the Aged Care (Transitional Provisions) Principles, before the day on which the person *enters the residential care service;

and ending at the end of the day before the day the person enters the residential care service.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

42-7 Exceeding the number of places for which there is an allocation

(1) For the purposes of a person's eligibility for *residential care subsidy, residential care provided to a particular care recipient on a particular day is excluded if:

(a) the number of care recipients provided with residential care by the approved provider during that day exceeds the number of *places included in the approved provider's allocation of places for residential care subsidy; and

(b) the Secretary decides, in accordance with subsection (2), that the residential care provided to that particular care recipient on that day is to be excluded.

(2) In deciding under paragraph (1)(b) which residential care is to be excluded, the Secretary must:

(a) make the number of exclusions necessary to ensure that the number of *places for which *residential care subsidy will be payable does not exceed the number of places included in the approved provider's allocation of places for residential care subsidy; and

(b) exclude the residential care in the reverse order in which the care recipients *entered the residential care service for the provision of residential care.

42-8 Notice of refusal to pay residential care subsidy

(1) If:

(a) an approved provider has claimed *residential care subsidy in respect of a person; and

(b) the approved provider is not eligible for residential care subsidy in respect of that person;

the Secretary must notify the approved provider, in writing, accordingly.

(2) A notice given under subsection (1) is not a legislative instrument.

---

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

Division 43—How is residential care subsidy paid?

43-1 Payment of residential care subsidy

(1) Residential care subsidy is payable by the Commonwealth to an approved provider in respect of each *payment period (see section 43-2) during which the approved provider is eligible under section 42-1. However, it is not payable in respect of any days during that period on which the approved provider is not eligible.

(2) Residential care subsidy is separately payable by the Commonwealth in respect of each residential care service through which the approved provider provides residential care.

(3) The Secretary may, in accordance with the Aged Care (Transitional Provisions) Principles, deduct from the amount of residential care subsidy otherwise payable in respect of a *payment period such of the following amounts as apply to the residential care service in question:

(a) deductions for fees (see section 43-5);

(b) *capital repayment deductions (see section 43-6);

(d) non-compliance deductions (see section 43-8).

43-2 Meaning of *payment period*

A ***payment period*** is:

(a) a calendar month; or

(b) such other period as is set out in the Aged Care (Transitional Provisions) Principles.

43-3 Advances

(1) Subject to subsection 43-4(2), *residential care subsidy is payable by the Commonwealth in advance, in respect of a *payment period, at such times as the Secretary thinks fit.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

(2) The Secretary must work out the amount of an advance to be paid to an approved provider in respect of the first *payment period or the second payment period for a residential care service by estimating the amount of *residential care subsidy that will be payable for the days in that period.

(3) The Secretary must work out the amount of an advance to be paid to an approved provider in respect of subsequent *payment periods for a residential care service by:

(a) estimating the amount of *residential care subsidy that will be payable (taking into account any deductions under subsection 43-1(3)) for the days in the period; and

(b) increasing or reducing that amount to make any adjustments that the Secretary reasonably believes are necessary to take account of likely underpayments or overpayments in respect of advances previously paid under this section.

(4) The amounts of advances must be worked out in accordance with any requirements set out in the Aged Care (Transitional Provisions) Principles.

(5) The Secretary may, in deciding whether to reduce the amount of an advance under paragraph (3)(b), take into account the likelihood of the Commonwealth's right to recover a particular overpayment being waived under section 95-6 of the *Aged Care Act 1997*.

Note: Subsection (5) allows the Secretary to take account of waivers in respect of overpayments caused, for example, by some cases of incorrect determinations of the *ordinary incomes of care recipients.

43-4 Claims for residential care subsidy

(1) For the purpose of obtaining payment of *residential care subsidy in respect of a residential care service through which an approved provider provides residential care, the approved provider must, as soon as practicable after the end of each *payment period, give to the Secretary:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

(a) a claim, in the form approved by the Secretary, for residential care subsidy that is payable in respect of the residential care service for that payment period; and

(b) any information relating to the claim that is stated in the form to be required, or that the Secretary requests; and

(c) copies of any documents relating to the claim, or to the payment of *residential care subsidy, that are stated in the form to be required, or that the Secretary requests.

(2) An advance of *residential care subsidy is not payable in respect of a *payment period for the residential care service if the approved provider has not given to the Secretary under subsection (1) a claim relating to the second last preceding payment period for the service.

Example: An advance of subsidy is not payable for March if the Secretary has not been given a claim for January of the same year (assuming the *payment periods are all calendar months—see section 43-2).

(3) Subsection (2) does not apply to the first *payment period or the second payment period for a residential care service.

(4) If all the places in a residential care service are transferred from one person to another, subsection (2) does not apply to the first 2 *payment periods for the residential care service that occur after the transfer took effect.

(5) If:

(a) apart from this subsection, the operation of paragraph (1)(c) would result in the acquisition of property from a person otherwise than on just terms; and

(b) the acquisition would be invalid because of paragraph 51(xxxi) of the Constitution;

the Commonwealth is liable to pay compensation of a reasonable amount to the person in respect of the acquisition.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

43-4A Variations of claims for residential care subsidy

(1) An approved provider may vary the claim made in respect of a *payment period within:

(a) 2 years after the end of the payment period; or

(b) such longer period as is determined in respect of the claim by the Secretary.

(2) In determining a longer period for the purposes of paragraph (1)(b), the Secretary must be satisfied that a variation is required:

(a) due to an administrative error made by the Commonwealth or an agent of the Commonwealth; or

(b) because the Commonwealth or an agent of the Commonwealth considers that the circumstances of a care recipient are different from those on the basis of which subsidy was claimed.

Note: Determinations of periods under paragraph (1)(b) are reviewable under Part 6.1.

(3) A determination made under paragraph (1)(b) is not a legislative instrument.

43-5 Deductions for fees

The Secretary may, on behalf of the Commonwealth, enter into an agreement with an approved provider, under which:

(a) amounts equal to the fees payable by the approved provider for applications made under this Act are to be deducted from amounts of *residential care subsidy otherwise payable to the approved provider in respect of the residential care service specified in the agreement; and

(b) so far as amounts are so deducted, the approved provider ceases to be liable to the Commonwealth for payment of the fees.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

43-6 Capital repayment deductions

(1) Capital repayment deductions apply in respect of a residential care service if:

(a) the approved provider is granted *extra service status under Division 32 of the *Aged Care Act 1997* in respect of the service, or in respect of a *distinct part of the service; and

(b) the Commonwealth has previously made capital payments in respect of the service, whether or not the payments were made to that approved provider; and

(c) the payments have not been repaid to the Commonwealth.

The capital repayment deductions are applied in accordance with an agreement entered into under this section.

(2) The Secretary may, on behalf of the Commonwealth, enter into an agreement with the approved provider, under which:

(a) amounts equal to the capital payments made in respect of the service are to be deducted from amounts of *residential care subsidy otherwise payable to the approved provider in respect of the service; and

(b) so far as amounts are so deducted, the approved provider ceases to be liable to the Commonwealth for repayment in respect of the capital payments.

Note: Entering into such an agreement may be a condition of the granting of *extra service status (see paragraph 32-8(5)(b) of the *Aged Care Act 1997*).

(3) However, only a proportion of the amounts equal to the capital payments made in respect of the service are to be deducted under the agreement if:

(a) *extra service status is granted only in respect of a *distinct part of the service; or

(b) some or all of the capital payments were made more than 5 years before the first of the deductions is to be made; or

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

(c) the circumstances (if any) specified in the Aged Care (Transitional Provisions) Principles apply.

The proportion is to be worked out in accordance with the Aged Care (Transitional Provisions) Principles.

(4) The agreement must provide for the deductions to be completed within 3 years after the making of the first deduction.

(5) In this section:

capital payment means:

(a) a *residential care grant; or

(b) a payment of a kind specified in the Aged Care (Transitional Provisions) Principles.

43-8 Non-compliance deductions

(1) Subject to subsection (2), non-compliance deductions apply in respect of a residential care service if conditions, to which the allocation of the *places included in the service are subject under section 14-5 or 14-6 of the *Aged Care Act 1997*, relating to:

(a) the proportion of care to be provided to *supported residents, *concessional residents and *assisted residents; or

(b) the proportion of care to be provided to recipients of *respite care;

have not been met.

(2) The Aged Care (Transitional Provisions) Principles may specify circumstances in which non-compliance deductions do not apply even if the conditions referred to in subsection (1) have not been met.

(3) The Secretary must notify the approved provider conducting a residential care service if, in respect of a *payment period, non-compliance deductions apply in respect of the residential care service. The notice must be in writing and must set out why non-compliance deductions apply.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

(3A) A notice given under subsection (3) is not a legislative instrument.

(4) The amount of a non-compliance deduction is the amount worked out in accordance with the Aged Care (Transitional Provisions) Principles.

Note: Non-compliance deductions do not affect the maximum fees payable by residents (see Division 58).

43-9 Recovery of overpayments

This Division does not affect the Commonwealth's right to recover overpayments under Part 6.5 of the *Aged Care Act 1997*.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

Division 44—What is the amount of residential care subsidy?

44-1 What this Division is about

Amounts of *residential care subsidy payable under Division 43 to an approved provider are worked out under this Division in respect of each residential care service. The amount in respect of a residential care service is determined by adding together amounts worked out, using the residential care subsidy calculator in section 44-2, in respect of individual care recipients in the service.

Table of Subdivisions

44-A Working out the amount of residential care subsidy
44-B The basic subsidy amount
44-C Primary supplements
44-D Reductions in subsidy
44-E The income test
44-F Other supplements

Subdivision 44-A—Working out the amount of residential care subsidy

44-2 Amount of residential care subsidy

(1) The amount of *residential care subsidy payable to an approved provider for a residential care service in respect of a *payment period is the amount worked out by adding together the amounts of residential care subsidy for each care recipient:

(a) to whom the approved provider provided residential care through the residential care service during the period; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

(b) in respect of whom the approved provider was eligible for residential care subsidy during the period.

(2) This is how to work out the amount of *residential care subsidy for a care recipient in respect of the *payment period.

Residential care subsidy calculator

Step 1. Work out the ***basic subsidy amount*** using Subdivision 44-B.

Step 2. Add to this amount the amounts of any ***primary supplements*** worked out using Subdivision 44-C.

Step 3. Subtract the amounts of any ***reductions in subsidy*** worked out using Subdivision 44-D.

Step 4. Subtract any further reduction worked out by applying the ***income test*** under Subdivision 44-E.

Step 5. Add the amounts of any ***other supplements*** worked out using Subdivision 44-F.

The result is the ***amount of residential care subsidy*** for the care recipient in respect of the payment period.

Subdivision 44-B—The basic subsidy amount

44-3 The basic subsidy amount

(1) The basic subsidy amount for the care recipient in respect of the *payment period is the sum of all the basic subsidy amounts for the days during the period on which the care recipient was provided with residential care through the residential care service in question.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

Section 44-3

(2) The basic subsidy amount for a day is the amount determined by the Minister by legislative instrument.

(3) The Minister may determine different amounts (including nil amounts) based on any one or more of the following:

(a) the *classification levels for care recipients being provided with residential care;

(aa) whether the care recipient's approval under Part 2.3 of the *Aged Care Act 1997* is limited under subsection 22-2(3) of that Act to a *low level of residential care;

(b) whether the residential care being provided is *respite care;

(c) the times at which a care recipient *entered a residential care service;

(ca) whether a care recipient is on *extended hospital leave;

(cb) whether an appraisal of a care recipient's care needs is received after the end of the period mentioned in paragraph 26-1(a) or (b) of the *Aged Care Act 1997* (whichever is applicable);

(cc) whether a reappraisal of a care recipient's care needs is received after the end of the reappraisal period for the classification determined under section 27-2 of the *Aged Care Act 1997*;

(d) the State or Territory in which a residential care service is located;

(e) any other matters specified in the Aged Care (Transitional Provisions) Principles;

(f) any other matters determined by the Minister.

(4) The Minister must not determine a different amount for a day based on the care recipient being on *extended hospital leave that is less than half of the amount that would have been the basic subsidy amount if the care recipient had not been on extended hospital leave on that day.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

Subdivision 44-C—Primary supplements

44-5 Primary supplements

The primary supplements for the care recipient under step 2 of the residential care subsidy calculator in section 44-2 are such of the following supplements as apply to the care recipient in respect of the *payment period:

(aaa) the accommodation supplement (see section 44-5A);

(a) the concessional resident supplement (see section 44-6);

(aa) the charge exempt resident supplement (see section 44-8A);

(b) the respite supplement (see section 44-12);

(c) the oxygen supplement (see section 44-13);

(d) the enteral feeding supplement (see section 44-14);

(e) any additional primary supplements (see section 44-16).

Note: Most of the supplements under this Subdivision are taken into account in applying the income test under Subdivision 44-E. (The supplements under Subdivision 44-F are not taken into account in applying the income test.)

44-5A The accommodation supplement

(1) The accommodation supplement for the care recipient in respect of the *payment period is the sum of all the accommodation supplements for the days during the period on which:

(a) the care recipient was provided with residential care (other than *respite care) through the residential care service in question; and

(b) the care recipient was eligible for an accommodation supplement.

(2) The care recipient is eligible for an accommodation supplement on a particular day if, on that day:

(a) the care recipient's *classification level is not the lowest applicable classification level; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

(b) the care recipient is a *supported resident; and

(d) the residential care provided to the care recipient is not provided on an extra service basis for the purposes of Division 36 of the *Aged Care Act 1997*.

(3) The accommodation supplement for a particular day is the amount:

(a) determined by the Minister by legislative instrument; or

(b) worked out in accordance with a method determined by the Minister by legislative instrument.

(4) The Minister may determine different amounts (including nil amounts) or methods based on any one or more of the following:

(a) the value of assets held by a care recipient;

(b) any other matter specified in the Aged Care (Transitional Provisions) Principles.

44-5B Meaning of *supported resident*

(1) A person is a ***supported resident*** on a particular day if:

(a) on that day, the person is being provided with residential care (other than *respite care) through a residential care service; and

(b) on that day, the person is a *post-2008 reform resident; and

(c) the amount determined by the Secretary by legislative instrument in relation to that day for the purposes of this paragraph is equal to or more than the value of the person's assets at the time at which the person *entered the residential care service or such other time specified in the Aged Care (Transitional Provisions) Principles.

Note: Some *supported residents may be required to pay an *accommodation bond or an *accommodation charge—see sections 57-12 and 57A-6.

If there is financial hardship

(2) A person is also a ***supported resident*** if:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

(a) a determination is in force under section 57-14 or 57A-9 in respect of the person; and
(b) the person is a *post-2008 reform resident.

44-5C Meaning of *post-2008 reform resident*

A person is a ***post-2008 reform resident*** if the person is being provided with residential care through a residential care service and the person is not a *pre-2008 reform resident.

44-5D Meaning of *pre-2008 reform resident*

(1) A person is a ***pre-2008 reform resident*** if:
(a) the person is being provided with residential care through a residential care service; and
(b) either:
(i) the person *entered a residential care service before 20 March 2008; or
(ii) the person was on *pre-entry leave from a residential care service immediately before 20 March 2008 and the person entered the residential care service on or after 20 March 2008 at the end of that pre-entry leave; and
(c) the person has not had a break in residential care of more than 28 days between:
(i) the last residential care service through which residential care was provided, or taken to be provided, to the person before 20 March 2008 and the next residential care service through which residential care is provided, or taken to be provided, to the person; and
(ii) any residential care service through which residential care is provided, or taken to be provided, to the person on or after 20 March 2008 and the next residential care service through which residential care is provided, or taken to be provided, to the person.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

(2) The period:

(a) beginning on the day on which a person ceases to be provided with residential care through a residential care service (other than because the person is on *leave from the residential care service); and

(b) ending on the day on which the person *enters, or begins *pre-entry leave, with the next residential care service through which residential care is provided, or taken to be provided, to the person;

is a ***break in residential care*** for the person.

(3) For the purposes of subsections (1) and (2), a person is not provided, or taken to be provided, with residential care during any period during which the person is being provided with *respite care.

44-5E Meaning of *pre-entry leave*

A care recipient is on ***pre-entry leave*** from a residential care service on a particular day if, on that day, the care recipient is taken to be provided with residential care by the residential care service because the care recipient is on *leave under section 42-2 because of subsection 42-3(3).

44-6 The concessional resident supplement

(1) The concessional resident supplement for the care recipient in respect of the *payment period is the sum of all the concessional resident supplements for the days during the period on which:

(a) the care recipient was provided with residential care (other than *respite care) through the residential care service in question; and

(b) the care recipient was eligible for a *concessional resident supplement.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

(2) The care recipient is eligible for a concessional resident supplement on a particular day if, on that day:
   (a) the care recipient's *classification level is not the *lowest applicable classification level; and
   (b) the care recipient is a *concessional resident or an *assisted resident; and
   (d) the residential care provided to the care recipient is not provided on an extra service basis for the purposes of Division 36 of the *Aged Care Act 1997*.

(4) The concessional resident supplement for a particular day is the amount determined by the Minister by legislative instrument.

(5) Subject to subsection (6), the Minister may determine different amounts (including nil amounts) based on any one or more of the following:
   (a) the amount of an *accommodation bond paid by, or an *accommodation charge charged to, a care recipient for *entry to a residential care service;
   (b) the value of assets held by a care recipient;
   (c) whether the residential care with which a care recipient is provided is *respite care;
   (d) any other matters specified in the Aged Care (Transitional Provisions) Principles.

(6) The Minister must determine lower amounts in respect of *assisted residents than the Minister determines in respect of *concessional residents.

44-7 Meaning of *concessional resident*

If the applicable time is before 1 July 2005

(1) A person is a ***concessional resident*** if the person is being provided with residential care (other than *respite care) through a residential

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

care service, the applicable time under subsection (2) is before 1 July 2005 and, at the applicable time:

(a) the person was receiving an *income support payment; and

(b) the person had not been a *homeowner for 2 years or more, or owned a home that was occupied by:

(i) the *partner or a *dependent child of the person; or

(ii) a carer of the person who had occupied the home for the past 2 years and, at the entry time, was eligible to receive an income support payment; or

(iii) a *close relation of the person who had occupied the home for the past 5 years and, at the entry time, was eligible to receive an income support payment; and

(c) the value of the person's assets was less than:

(i) the amount obtained by rounding to the nearest $500.00 (rounding $250.00 upwards) an amount equal to 2.5 times the *basic age pension amount at the time in question; or

(ii) such other amount as is specified in, or worked out in accordance with, the Aged Care (Transitional Provisions) Principles.

Note: A *concessional resident cannot be required to pay an *accommodation bond or an *accommodation charge—see sections 57-12 and 57A-6.

If the applicable time is on or after 1 July 2005

(1A) A person is also a ***concessional resident*** if:

(a) the person is being provided with residential care (other than *respite care) through a residential care service; and

(b) the applicable time under subsection (2) is on or after 1 July 2005; and

(c) the person is a *pre-2008 reform resident; and

(d) there is in force a determination covered by subsection (1B) or (1C).

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

(1B) Subject to subsection (1D), this subsection covers a determination, made under section 44-8AA before the person *entered the residential care service, that the conditions in paragraphs (1)(a), (b) and (c) would have been met for the person at the time specified in the determination if the references in subparagraphs (1)(b)(ii) and (iii) to the entry time had been references to the time specified in the determination.

(1C) Subject to subsection (1E), this subsection covers a determination, made under section 44-8AA when or after the person *entered the residential care service, that the conditions in paragraphs (1)(a), (b) and (c) were met at the applicable time under subsection (2).

(1D) If:

(a) a determination covered by subsection (1B) is made in relation to a person; and

(b) the time specified in the determination is on or after 20 September 2009;

subsection (1B) has effect as if the reference to paragraph (1)(c) were a reference to that paragraph modified by omitting "2.5" from subparagraph (i) and substituting "2.25".

(1E) If:

(a) a determination covered by subsection (1C) is made in relation to a person; and

(b) the applicable time under subsection (2) is on or after 20 September 2009;

subsection (1C) has effect as if the reference to paragraph (1)(c) were a reference to that paragraph modified by omitting "2.5" from subparagraph (i) and substituting "2.25".

What is the applicable time?

(2) The applicable time is:

(a) if:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

(i) the person had, within 28 days prior to *entry to the residential care service, been provided with residential care through another residential care service; and

(ii) the person had paid an *accommodation bond for entry to that other service;

the time that was, under this subsection, the applicable time in respect of that other service; or

(b) in any other case—the time at which the person entered the residential care service.

If there is financial hardship (whatever the applicable time)

(3) A person is also a ***concessional resident*** if:

(a) a determination is in force under paragraph 57-14(1)(a) or 57A-9(1)(a) in respect of the person; and

(b) the person is a *pre-2008 reform resident.

44-8 Meaning of *assisted resident*

If the applicable time is before 1 July 2005

(1) A person is an ***assisted resident*** if the person is being provided with residential care (other than *respite care) through a residential care service, the applicable time under subsection (2) is before 1 July 2005 and, at the applicable time:

(a) the person was receiving an *income support payment; and

(b) the person had not been a *homeowner for 2 years or more, or owned a home that was occupied by:

(i) the *partner or a *dependent child of the person; or

(ii) a carer of the person who had occupied the home for the past 2 years and, at the entry time, was eligible to receive an income support payment; or

(iii) a *close relation of the person who had occupied the home for the past 5 years and, at the entry time, was eligible to receive an income support payment; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

(c) the value of the person's assets was less than:

(i) the amount obtained by rounding to the nearest $500.00 (rounding $250.00 upwards) an amount equal to 4 times the *basic age pension amount at the time in question; or

(ii) such other amount as is specified in, or worked out in accordance with, the Aged Care (Transitional Provisions) Principles;

but more than:

(iii) the amount obtained by rounding to the nearest $500.00 (rounding $250.00 upwards) an amount equal to 2.5 times the *basic age pension amount at the time in question; or

(iv) such other amount as is specified in, or worked out in accordance with, the Aged Care (Transitional Provisions) Principles.

Note: An *assisted resident may be required to pay an *accommodation bond or an *accommodation charge.

If the applicable time is on or after 1 July 2005

(1A) A person is also an ***assisted resident*** if:

(a) the person is being provided with residential care (other than *respite care) through a residential care service; and

(b) the applicable time under subsection (2) is on or after 1 July 2005; and

(c) the person is a *pre-2008 reform resident; and

(d) there is in force a determination covered by subsection (1B) or (1C).

If there is financial hardship (whatever the applicable time)

(1AA) A person is also an ***assisted resident*** if:

(a) a determination is in force under paragraph 57-14(1)(b) or 57A-9(1)(b) in respect of the person; and

(b) the person is a *pre-2008 reform resident.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

(1B) Subject to subsection (1D), this subsection covers a determination, made under section 44-8AA before the person *entered the residential care service, that the conditions in paragraphs (1)(a), (b) and (c) would have been met for the person at the time specified in the determination if the references in subparagraphs (1)(b)(ii) and (iii) to the entry time had been references to the time specified in the determination.

(1C) Subject to subsection (1E), this subsection covers a determination, made under section 44-8AA when or after the person *entered the residential care service, that the conditions in paragraphs (1)(a), (b) and (c) were met at the applicable time under subsection (2).

(1D) If:

(a) a determination covered by subsection (1B) is made in relation to a person; and

(b) the time specified in the determination is on or after 20 September 2009;

subsection (1B) has effect as if the reference to paragraph (1)(c) were a reference to that paragraph modified by:

(c) omitting "4" from subparagraph (i) and substituting "3.61"; and

(d) omitting "2.5" from subparagraph (iii) and substituting "2.25".

(1E) If:

(a) a determination covered by subsection (1C) is made in relation to a person; and

(b) the applicable time under subsection (2) is on or after 20 September 2009;

subsection (1C) has effect as if the reference to paragraph (1)(c) were a reference to that paragraph modified by:

(c) omitting "4" from subparagraph (i) and substituting "3.61"; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

(d) omitting "2.5" from subparagraph (iii) and substituting "2.25".

What is the applicable time?

(2) The applicable time is:

(a) if:

(i) the person had, within 28 days prior to *entry to the residential care service, been provided with residential care through another residential care service; and

(ii) the person had paid an *accommodation bond for entry to that other service;

the time that was, under this subsection, the applicable time in respect of that other service; or

(b) in any other case—the time at which the person entered the residential care service.

44-8AA Determinations for sections 44-7 and 44-8

Making determinations

(1) The Secretary may make a determination (the ***resident status determination***) described in section 44-7 or 44-8 if:

(a) the person mentioned in that section has applied, in a form approved by the Secretary, for the resident status determination; and

(b) the Secretary has made a determination (the ***asset value determination***) under section 44-8AB of the value of the person's assets at the time that is specified in the resident status determination; and

(c) the Secretary is satisfied of the matters relating to the person that are to be set out in the resident status determination.

Note: The time specified in a determination covered by subsection 44-7(1C) or 44-8(1C) is the applicable time under subsection 44-7(2) or 44-8(2).

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

Giving notice of decision on resident status determination

(2) Within 14 days after deciding whether or not to grant the application, the Secretary must notify the person in writing of:
  (a) the decision; and
  (b) if the Secretary made the resident status determination—the content of the determination.

When the resident status determination comes into force

(3) The resident status determination comes into force on the day it is made or an earlier day stated in the determination to be the day on which the determination comes into force.

When the resident status determination ceases to be in force

(5) The resident status determination ceases to be in force when the asset value determination ceases to be in force, if:
  (a) the person was not being provided with residential care (other than *respite care) through a residential care service when the resident status determination came into force; and
  (b) the person has not been provided with such care between:
    (i) the time the resident status determination came into force; and
    (ii) the time the asset value determination ceases to be in force.

Note: Subsections 44-8AB(3) and (4) explain how to work out when the asset value determination ceases to be in force.

(6) The Secretary may by written instrument revoke the resident status determination if he or she ceases to be satisfied of any of the matters relating to the person that are set out in the determination. The determination ceases to be in force on a day specified in the instrument (which may be before the instrument is made).

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

(7) Within 14 days after revoking the resident status determination, the Secretary must give written notice of the revocation and the day on which the determination ceases being in force to:
   (a) the person; and
   (b) each approved provider (if any) who has provided the person with residential care (other than *respite care) through a residential care service since the determination ceased to be in force.

(8) A resident status determination made under subsection (1) is not a legislative instrument.

44-8AB Determination of value of person's assets

Making determinations

(1) The Secretary must determine the value, at the time specified in the determination, of a person's assets in accordance with section 44-10, if the person:
   (a) applies in the approved form for the determination; and
   (b) gives the Secretary sufficient information to make the determination.

   The time specified must be at or before the determination is made.

   Note: The determination may affect the maximum amount of accommodation bond or charge for the person under section 57-12 or 57A-6, as well as whether the person is a *supported resident under section 44-5B, a concessional resident under section 44-7 or an assisted resident under section 44-8.

Giving notice of the determination

(2) Within 14 days after making the determination, the Secretary must give the person a copy of the determination.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

When the determination is in force

(3) The determination is in force for the period specified in, or worked out under, the determination.

(4) However, the Secretary may by written instrument revoke the determination if he or she is satisfied that it is incorrect. The determination ceases to be in force on a day specified in the instrument (which may be before the instrument is made).

(5) Within 14 days after revoking the determination, the Secretary must give written notice of the revocation and the day the determination ceases being in force to:
  (a) the person; and
  (b) if the Secretary is aware that the person has given an approved provider a copy of the determination—the approved provider.

(6) A determination made under subsection (1) is not a legislative instrument.

44-8A The charge exempt resident supplement

(1) The charge exempt resident supplement for the care recipient in respect of the *payment period is the sum of all the charge exempt resident supplements for the days during the period on which:
  (a) the care recipient was provided with residential care (other than *respite care) through the residential care service in question; and
  (b) the care recipient was eligible for a charge exempt resident supplement.

(2) The care recipient is eligible for a charge exempt resident supplement on a particular day (whether before or after this section commences) if, on that day:
  (a) the care recipient is a *charge exempt resident; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

(c) the residential care provided to the care recipient is not provided on an extra service basis for the purposes of Division 36 of the *Aged Care Act 1997*.

(3) The charge exempt resident supplement for a particular day is:
(a) $12.17; or
(b) such other amount as the Minister determines by legislative instrument.

(4) The Minister may determine different amounts (including nil amounts) under subsection (3) based on any one or more of the following:
(aa) the maximum rate of accommodation supplement;
(a) the maximum rate of concessional resident supplement;
(b) if the care recipient is an *assisted resident—whether a reduced amount of concessional resident supplement is payable in respect of the care recipient under subsection 44-6(6);
(ba) if the care recipient is a *supported resident—the amount of the accommodation supplement that is payable in respect of the care recipient on a particular day;
(c) any other matters specified in the Aged Care (Transitional Provisions) Principles.

(5) In the circumstances specified in the Aged Care (Transitional Provisions) Principles, the Secretary may determine that an amount of charge exempt resident supplement that would otherwise be payable for a particular care recipient is not payable to the provider concerned.

(6) In that case, the Secretary must:
(a) use his or her best endeavours to find the care recipient or, if the care recipient is deceased, the care recipient's legal representatives or such other person as is specified in the Aged Care (Transitional Provisions) Principles; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

(b) if the appropriate person can be found under paragraph (a)—pay the amount directly to the appropriate person or to the care recipient's estate, as the case requires.

If no appropriate person can be found under paragraph (a), the Secretary need not take any further action in relation to the amount.

44-8B Meaning of *charge exempt resident*

A person is a ***charge exempt resident*** if:

(a) at any time on 30 September 1997, the person occupied an approved nursing home bed in a nursing home approved under section 40AA of the *National Health Act 1953* (as then in force); and

(b) the person is receiving residential care, having *entered an *aged care service at any time after 30 September 1997 (whether before or after this section commences); and

(c) apart from this section, the person would have been eligible to pay an *accommodation charge for the entry.

Note 1: A *concessional resident cannot be a ***charge exempt resident***, because concessional residents cannot be required to pay an accommodation charge and therefore do not meet the test in paragraph (c).

Note 2: A charge exempt resident cannot be required to pay an accommodation charge: see paragraph 57A-2(1)(b).

44-9 Person taken not to be a supported resident, a concessional resident or an assisted resident if asset information not provided

If:

(a) a care recipient is provided with residential care through a residential care service at a particular time; and

(b) at that time, the care recipient has not given to the approved provider conducting the residential care service sufficient information about the care recipient's assets for the approved provider to determine whether the care recipient is a

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

*supported resident, an *assisted resident or a *concessional resident;

the person is taken, for the purposes of this Act, not to be a supported resident under subsection 44-5B(1), a concessional resident under subsection 44-7(1) or an assisted resident under subsection 44-8(1) at that time.

Note: This section does not affect whether a person is a concessional resident under subsection 44-7(1A) or an assisted resident under subsection 44-8(1A).

44-10 How to work out the value of a person's assets

(1) Subject to this section, the value of a person's assets for the purposes of section 44-5A, 44-5B, 44-7, 44-8 or 44-8AB is to be worked out in accordance with the Aged Care (Transitional Provisions) Principles.

(1A) If a person who is receiving a *service pension, an *income support supplement or a *veteran payment has an income stream (within the meaning of the *Veterans' Entitlements Act 1986*) that was purchased on or after 20 September 2007, the value of the person's assets:

(a) is taken to include the amount that the Secretary determines to be the value of that income stream that would be included in the value of the person's assets if Subdivision A of Division 11 of Part IIIB of the *Veterans' Entitlements Act 1986* applied for the purposes of this Act; and

(b) is taken to exclude the amount that the Secretary determines to be the value of that income stream that would not be included in the value of the person's assets if Subdivision A of Division 11 of Part IIIB of the *Veterans' Entitlements Act 1986* applied for the purposes of this Act.

(1B) If a person who is not receiving a *service pension, an *income support supplement or a *veteran payment has an income stream (within the meaning of the *Social Security Act 1991*) that was

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

purchased on or after 20 September 2007, the value of the person's assets:

(a) is taken to include the amount that the Secretary determines to be the value of that income stream that would be included in the value of the person's assets if Division 1 of Part 3.12 of the *Social Security Act 1991* applied for the purposes of this Act; and

(b) is taken to exclude the amount that the Secretary determines to be the value of that income stream that would not be included in the value of the person's assets if Division 1 of Part 3.12 of the *Social Security Act 1991* applied for the purposes of this Act.

(1C) The value of a person's assets is taken to include the amount that the Secretary determines to be the amount:

(a) if the person is receiving a *service pension, an *income support supplement or a *veteran payment—that would be included in the value of the person's assets if Subdivisions B and BB of Division 11 and Subdivision H of Division 11A of Part IIIB of the *Veterans' Entitlements Act 1986* applied for the purposes of this Act; and

(b) otherwise—that would be included in the value of the person's assets if Division 2 of Part 3.12 and Division 8 of Part 3.18 of the *Social Security Act 1991* applied for the purposes of this Act.

Note 1: Subdivisions B and BB of Division 11 of Part IIIB of the *Veterans' Entitlements Act 1986*, and Division 2 of Part 3.12 of the *Social Security Act 1991*, deal with disposal of assets.

Note 2: Subdivision H of Division 11A of Part IIIB of the *Veterans' Entitlements Act 1986*, and Division 8 of Part 3.18 of the *Social Security Act 1991*, deal with the attribution to individuals of assets of private companies and private trusts.

(2) In working out the value at a particular time of the assets of a person who is or was a *homeowner then, disregard the value of a home that, at the time, was occupied by:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

(a) the *partner or a *dependent child of the person; or
(b) a carer of the person who:
(i) had occupied the home for the past 2 years; and
(ii) was eligible to receive an *income support payment at the time; or
(c) a *close relation of the person who:
(i) had occupied the home for the past 5 years; and
(ii) was eligible to receive an *income support payment at the time.

(3) The value of the assets of a person who is a *member of a couple is taken to be 50% of the sum of:
(a) the value of the person's assets; and
(b) the value of the assets of the person's *partner.

(4) A reference to the value of the assets of a person is, in relation to an asset owned by the person jointly or in common with one or more other people, a reference to the value of the person's interest in the asset.

(5) A determination under paragraph (1A)(a), (1A)(b), (1B)(a) or (1B)(b) or subsection (1C) is not a legislative instrument.

44-11 Definitions relating to *supported residents, concessional residents* and *assisted residents*

(1) In sections 44-7, 44-8, and 44-10 and in this section:

child: without limiting who is a child of a person for the purposes of this section and sections 44-7, 44-8 and 44-10, each of the following is the ***child*** of a person:
(a) a stepchild or an adopted child of the person;
(b) someone who would be the stepchild of the person except that the person is not legally married to the person's partner;

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

(c) someone who is a child of the person within the meaning of the *Family Law Act 1975*;
(d) someone included in a class of persons specified for the purposes of this paragraph in the Aged Care (Transitional Provisions) Principles.

close relation, in relation to a person, means:
(a) a parent of the person; or
(b) a sister, brother, child or grandchild of the person; or
(c) a person included in a class of persons specified in the Aged Care (Transitional Provisions) Principles.

Note: See also subsection (5).

dependent child has the meaning given by subsection (2).

homeowner has the meaning given by the Aged Care (Transitional Provisions) Principles.

member of a couple means:
(a) a person who is legally married to another person, and is not living separately and apart from the person on a permanent basis; or
(aa) a person whose relationship with another person (whether of the same sex or a different sex) is registered under a law of a State or Territory prescribed for the purposes of section 2E of the *Acts Interpretation Act 1901* as a kind of relationship prescribed for the purposes of that section, and who is not living separately and apart from the other person on a permanent basis; or
(b) a person who lives with another person (whether of the same sex or a different sex) in a de facto relationship, although not legally married to the other person.

parent: without limiting who is a parent of a person for the purposes of this section and sections 44-7, 44-8 and 44-10,

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

someone is the ***parent*** of a person if the person is his or her child because of the definition of ***child*** in this section.

partner, in relation to a person, means the other *member of a couple of which the person is also a member.

(2) A young person (see subsection (3)) is a ***dependent child*** of a person (in this subsection referred to as the ***adult***) if:

(a) the adult:

(i) is legally responsible (whether alone or jointly with another person) for the day-to-day care, welfare and development of the young person; or

(ii) is under a legal obligation to provide financial support in respect of the young person; and

(aa) in a subparagraph (a)(ii) case—the adult is not included in a class of people specified for the purposes of this paragraph in the Aged Care (Transitional Provisions) Principles; and

(b) the young person is not:

(i) in full-time employment; or

(ii) in receipt of a social security pension (within the meaning of the *Social Security Act 1991*) or a social security benefit (within the meaning of that Act); or

(iii) included in a class of people specified in the Aged Care (Transitional Provisions) Principles.

(3) A reference in subsection (2) to a ***young person*** is a reference to any of the following:

(a) a person under 16 years of age;

(b) a person who:

(i) has reached 16 years of age, but is under 25 years of age; and

(ii) is receiving full-time education at a school, college or university;

(c) a person included in a class of people specified in the Aged Care (Transitional Provisions) Principles.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

(4) The reference in paragraph (2)(a) to care does not have the meaning given in the Dictionary in Schedule 1.

(5) For the purposes of paragraph (b) of the definition of ***close relation*** in subsection (1), if one person is the child of another person because of the definition of ***child*** in this section, relationships traced to or through the person are to be determined on the basis that the person is the child of the other person.

44-12 The respite supplement

(1) The respite supplement for the care recipient in respect of the *payment period is the sum of all the respite supplements for the days during the period on which:
  (a) the care recipient was provided with residential care through the residential care service in question; and
  (b) the care recipient was eligible for a respite supplement.

(2) The care recipient is eligible for a respite supplement on a particular day if, on that day:
  (a) the residential care provided through the residential care service:
    (i) was provided as *respite care; and
    (ii) meets any requirements specified in the Aged Care (Transitional Provisions) Principles; and
  (b) the care recipient's approval under Part 2.3 of the *Aged Care Act 1997* was not limited so as to preclude the provision of respite care; and
  (c) the number of days on which the care recipient had previously been provided with residential care as respite care during the financial year in which the day occurred does not equal or exceed the number specified, for the purposes of this paragraph, in the Aged Care (Transitional Provisions) Principles; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

(d) immediately before that day, the number of successive days on which the care recipient had been provided with residential care as respite care does not equal the number specified, for the purposes of this paragraph, in the Aged Care (Transitional Provisions) Principles.

(3) The respite supplement for a particular day is the amount determined by the Minister by legislative instrument.

(4) The Minister may determine different amounts (including nil amounts) based on any one or more of the following:

(a) the different levels of care at which a care recipient may be assessed under section 22-4 of the *Aged Care Act 1997*;

(d) whether a care recipient continues to be provided with residential care through a residential care service immediately after ceasing to be provided with *respite care through that service;

(e) whether a care recipient is a *member of a couple;

(f) any other matters specified in the Aged Care (Transitional Provisions) Principles.

44-13 The oxygen supplement

(1) The oxygen supplement for the care recipient in respect of the *payment period is the sum of all the oxygen supplements for the days during the period on which:

(a) the care recipient was provided with residential care through the residential care service in question; and

(b) a determination was in force under subsection (2) in relation to the care recipient; and

(c) the residential care provided through the residential care service included administering oxygen to the care recipient in circumstances of a kind specified in the Aged Care (Transitional Provisions) Principles.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

(2) The Secretary may determine that a care recipient is eligible for an oxygen supplement.

Note: Refusals to make determinations are reviewable under Part 6.1.

(2A) A determination made under subsection (2) is not a legislative instrument.

(3) In deciding whether to make a determination, the Secretary must comply with any requirements, and have regard to any matters, specified in the Aged Care (Transitional Provisions) Principles.

(4) An approved provider that is providing, or is to provide, residential care to a care recipient may apply to the Secretary, in the form approved by the Secretary, for a determination under subsection (2) in respect of the care recipient.

(5) The Secretary must notify the applicant, in writing, of the Secretary's decision on whether to make the determination. The notice must be given within 28 days after the decision is made.

(6) The oxygen supplement for a particular day is the amount:
(a) determined by the Minister by legislative instrument; or
(b) worked out in accordance with a method determined by the Minister by legislative instrument.

(7) The Minister may determine different amounts (including nil amounts) or methods based on any matters determined by the Minister by legislative instrument.

44-14 The enteral feeding supplement

(1) The enteral feeding supplement for the care recipient in respect of the *payment period is the sum of all the enteral feeding supplements for the days during the period on which:
(a) the care recipient was provided with residential care through the residential care service in question; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

(b) a determination was in force under subsection (2) in relation to the care recipient; and

(c) the residential care provided through the residential care service included providing enteral feeding to the care recipient in circumstances of a kind specified in the Aged Care (Transitional Provisions) Principles.

(2) The Secretary may determine that a care recipient is eligible for an enteral feeding supplement.

Note: Refusals to make determinations are reviewable under Part 6.1.

(2A) A determination made under subsection (2) is not a legislative instrument.

(3) In deciding whether to make a determination, the Secretary must comply with any requirements, and have regard to any matters, specified in the Aged Care (Transitional Provisions) Principles.

(4) An approved provider that is providing, or is to provide, residential care to a care recipient may apply to the Secretary, in the form approved by the Secretary, for a determination under subsection (2) in respect of the care recipient.

(5) The Secretary must notify the applicant, in writing, of the Secretary's decision on whether to make the determination. The notice must be given within 28 days after the decision is made.

(6) The enteral feeding supplement for a particular day is the amount:

(a) determined by the Minister by legislative instrument; or

(b) worked out in accordance with a method determined by the Minister by legislative instrument.

(7) The Minister may determine different amounts (including nil amounts) or methods based on any matters determined by the Minister by legislative instrument.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

44-15 Requests for further information

(1) If the Secretary needs further information to determine an application under section 44-13 or 44-14, the Secretary may give to the applicant a notice requesting the further information:
  (a) within the period specified in the notice; or
  (b) if no period is specified in the notice—within 28 days after receiving the notice.

(2) The application is taken to be withdrawn if the applicant does not give the further information within whichever of those periods applies.

Note: The period for giving further information can be extended—see section 96-7.

(3) The notice must contain a statement setting out the effect of subsection (2).

44-16 Additional primary supplements

(1) The Aged Care (Transitional Provisions) Principles may provide for additional primary supplements.

(2) The Aged Care (Transitional Provisions) Principles may specify, in respect of each such supplement, the circumstances in which the supplement will apply to a care recipient in respect of a *payment period.

(3) The Minister may determine by legislative instrument, in respect of each such supplement, the amount of the supplement, or the way in which the amount of the supplement is to be worked out.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

Subdivision 44-D—Reductions in subsidy

44-17 Reductions in subsidy

The reductions in subsidy for the care recipient under step 3 of the residential care subsidy calculator in section 44-2 are such of the following reductions as apply to the care recipient in respect of the *payment period:

(a) the extra service reduction (see section 44-18);

(b) the adjusted subsidy reduction (see section 44-19);

(c) the compensation payment reduction (see section 44-20).

44-18 The extra service reduction

(1) The extra service reduction for the care recipient in respect of the *payment period is the sum of all the extra service reductions for days during the period on which:

(a) the care recipient was provided with residential care through the residential care service in question; and

(b) the care is provided in respect of a place that is an *extra service place (see Division 31 of the *Aged Care Act 1997*), or the care is required, under a condition of a kind specified in paragraph 32-8(3)(b) of the *Aged Care Act 1997*, to be provided on an extra service basis.

(2) The extra service reduction for a particular day is an amount equal to 25% of the daily rate of the extra service fee in force for the *place under Division 35 of the *Aged Care Act 1997*.

44-19 The adjusted subsidy reduction

(1) The adjusted subsidy reduction for the care recipient in respect of the *payment period is the sum of all the adjusted subsidy reductions for days during the period on which:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

(a) the care recipient is provided with residential care through the residential care service in question; and

(b) the residential care service, or the part of the residential care service through which the care is provided, is determined by the Minister in writing to be an adjusted subsidy residential care service.

(1A) A determination made under paragraph (1)(b) is not a legislative instrument.

(2) The adjusted subsidy reduction for a particular day is the amount determined by the Minister by legislative instrument.

(3) The Minister may determine different amounts based on any matters determined by the Minister by legislative instrument.

44-20 The compensation payment reduction

(1) The compensation payment reduction for the care recipient in respect of the *payment period is the sum of all compensation payment reductions for days during the period:

(a) on which the care recipient is provided with residential care through the residential care service in question; and

(b) that are covered by a compensation entitlement.

(2) For the purposes of this section, a day is covered by a compensation entitlement if:

(a) the care recipient is entitled to compensation under a judgment, settlement or reimbursement arrangement; and

(b) the compensation takes into account the cost of providing residential care to the care recipient on that day; and

(c) the application of compensation payment reductions to the care recipient for preceding days has not resulted in reductions in subsidy that, in total, exceed or equal the part of the compensation that relates, or is to be treated under

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

subsection (5) or (6) as relating, to future costs of providing residential care.

(3) The compensation payment reduction for a particular day is an amount equal to the amount of *residential care subsidy that would be payable for the care recipient in respect of the *payment period if:

(a) the care recipient was provided with residential care on that day only; and

(b) this section and Subdivision 44-F did not apply.

(4) However, if:

(a) the compensation payment reduction arises from a judgment or settlement that fixes the amount of compensation on the basis that liability should be apportioned between the care recipient and the compensation payer; and

(b) as a result, the amount of compensation is less than it would have been if liability had not been so apportioned; and

(c) the compensation is not paid in a lump sum;

the amount of the compensation payment reduction under subsection (3) is reduced by the proportion corresponding to the proportion of liability that is apportioned to the care recipient by the judgment or settlement.

(5) If a care recipient is entitled to compensation under a judgment or settlement that does not take into account the future costs of providing residential care to the care recipient, the Secretary may, in accordance with the Aged Care (Transitional Provisions) Principles, determine:

(a) that, for the purposes of this section, the judgment or settlement is to be treated as having taken into account the cost of providing that residential care; and

(b) the part of the compensation that, for the purposes of this section, is to be treated as relating to the future costs of providing residential care.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

Note: Determinations are reviewable under Part 6.1.

(6) If:

(a) a care recipient is entitled to compensation under a settlement; and

(b) the settlement takes into account the future costs of providing residential care to the recipient; and

(c) the Secretary is satisfied that the settlement does not adequately take into account the future costs of providing residential care to the care recipient;

the Secretary may, in accordance with the Aged Care (Transitional Provisions) Principles, determine the part of the compensation that, for the purposes of this section, is to be treated as relating to the future costs of providing residential care.

Note: Determinations are reviewable under Part 6.1.

(7) A determination under subsection (5) or (6) must be in writing and notice of it must be given to the care recipient.

(7A) A determination under subsection (5) or (6) is not a legislative instrument.

(8) A reference in this section to the costs of providing residential care does not include a reference to an amount that is or may be payable as an *accommodation bond, except to the extent provided in the Aged Care (Transitional Provisions) Principles.

(9) In this section, the following terms have the same meanings as in the *Health and Other Services (Compensation) Act 1995*:

compensation
compensation payer
judgment
reimbursement arrangement
settlement.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

Subdivision 44-E—The income test

44-21 The income test

(1) The income test for the care recipient under step 4 of the residential care subsidy calculator in section 44-2 is applied by working out the amount (if any) of the income tested reduction in respect of the *payment period.

(2) The income tested reduction in respect of the *payment period is the sum of all the *daily income tested reductions for days during the period on which the care recipient is provided with residential care through the residential care service in question.

(3) The *daily income tested reduction for a particular day is worked out as follows:

Income tested reduction calculator

Step 1. Work out the care recipient's *total assessable income on a yearly basis (see section 44-24).

Step 2. Work out the care recipient's *total assessable income free area (see section 44-26).

Step 3. If the care recipient's *total assessable income does not exceed the care recipient's *total assessable income free area, the income tested reduction is zero.

Step 4. If the care recipient's *total assessable income exceeds the care recipient's *total assessable income free area, the smallest of the following amounts (rounded down to the nearest cent) is the *__daily income tested reduction__:

(a) the amount equal to $^{5}/_{12}$ of that excess (worked out on a per day basis);

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

(b) the amount equal to 135% of the *basic age pension amount for that day (worked out on a per day basis);

(c) the amount worked out in respect of the *payment period using steps 1, 2 and 3 of the residential care subsidy calculator in section 44-2, less the amount of any charge exempt resident supplement under section 44-8A (worked out on a per day basis).

Note: In some circumstances, a different *daily income tested reduction will apply under section 44-22 or 44-23.

44-22 Daily income tested reduction taken to be zero in some circumstances

(1) The *daily income tested reduction in respect of the care recipient is taken to be zero for each day, during the *payment period, on which one or more of the following applies:
   (a) the care recipient was provided with *respite care;
   (b) a determination was in force under subsection (2) in relation to the care recipient;
   (c) the care recipient was included in a class of people specified in the Aged Care (Transitional Provisions) Principles.

(2) The Secretary may, in accordance with the Aged Care (Transitional Provisions) Principles, determine that the *daily income tested reduction in respect of the care recipient is to be taken to be zero.

Note: Refusals to make determinations are reviewable under Part 6.1.

(3) The determination ceases to be in force at the end of the period (if any) specified in the determination.

Note: Decisions specifying periods are reviewable under Part 6.1.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

(4) In deciding whether to make a determination, the Secretary must have regard to the matters specified in the Aged Care (Transitional Provisions) Principles.

(5) Application may be made to the Secretary, in the form approved by the Secretary, for a determination under subsection (2) in respect of a care recipient. The application may be made by:
  (a) the care recipient; or
  (b) an approved provider that is providing, or is to provide, residential care to the care recipient.

(6) The Secretary must notify the care recipient and the approved provider, in writing, of the Secretary's decision on whether to make the determination. The notice must be given:
  (a) if an application for a determination was made under subsection (5)—within 28 days after the application was made, or, if the Secretary requested further information in relation to the application, within 28 days after receiving the information; or
  (b) if such an application was not made—within 28 days after the decision is made.

(7) A determination under subsection (2) is not a legislative instrument.

44-23 Effect on daily income tested reduction of failure to give requested information

(1) If the care recipient fails to give to the Secretary information, within the time specified in a notice under subsection 44-24(8), that the Secretary requests for the purpose of determining the care recipient's *total assessable income under section 44-24, the *daily income tested reduction in respect of the care recipient, for each day during the period:
  (a) starting on the day on which the care recipient failed to give the information; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

(b) finishing at the end of the day before the day on which the care recipient gives to the Secretary the information requested;

is the amount worked out under subsection (4) of this section.

(2) If the care recipient elects, by a written notice given to the Secretary, not to give any information to the Secretary for the purpose of determining the care recipient's *total assessable income under section 44-24, the *daily income tested reduction in respect of the care recipient, for each day during the period:

(a) starting on the day on which the care recipient made the election; and

(b) finishing at the end of, the day before the day on which the care recipient gives to the Secretary a written notice revoking the election;

is the amount worked out under subsection (4) of this section.

(3) The Secretary must not, while the election is in force, request the care recipient to give information for the purpose of determining the care recipient's *total assessable income under section 44-24.

(4) For the purpose of subsections (1) and (2), the *daily income tested reduction in respect of the care recipient is whichever is the lesser of the following amounts (rounded down to the nearest cent):

(a) the amount equal to 135% of the *basic age pension amount for that day (worked out on a per day basis);

(b) the amount worked out in respect of the *payment period using steps 1, 2 and 3 of the residential care subsidy calculator in section 44-2 (worked out on a per day basis).

Note: Care recipients are not obliged to give information to the Secretary. However, if they do not, the amount of residential care subsidy paid for their care may be reduced, and the amount of resident fees that they are liable to pay may therefore increase (see Division 58).

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

44-24 The care recipient's *total assessable income*

(1) If the care recipient is not entitled to an *income support payment, his or her ***total assessable income*** is the amount the Secretary determines to be the amount that would be worked out as the care recipient's ordinary income for the purpose of applying Module E of Pension Rate Calculator A at the end of section 1064 of the *Social Security Act 1991*.

Note: Determinations are reviewable under Part 6.1.

(2) If the care recipient is entitled to a *service pension, his or her ***total assessable income*** is the sum of:

(a) the amount of the care recipient's service pension reduced by the amount worked out under subsection 5GA(3) of the *Veterans' Entitlements Act 1986* to be the care recipient's minimum pension supplement amount; and

(b) the amount the Secretary determines to be the amount that would be worked out as the care recipient's ordinary/adjusted income for the purpose of applying Module E of the Rate Calculator in Schedule 6 to the *Veterans' Entitlements Act 1986*.

Note: Determinations are reviewable under Part 6.1.

(3) If the care recipient is entitled to an *income support supplement, his or her ***total assessable income*** is the sum of:

(a) the amount of the care recipient's income support supplement reduced by the amount worked out under subsection 5GA(3) of the *Veterans' Entitlements Act 1986* to be the care recipient's minimum pension supplement amount; and

(b) the amount the Secretary determines to be the amount that would be worked out as the care recipient's ordinary/adjusted income for the purpose of applying Module E of the Rate Calculator in Schedule 6 to the *Veterans' Entitlements Act 1986*.

Note: Determinations are reviewable under Part 6.1.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

(3A) If the care recipient is entitled to a *veteran payment, his or her ***total assessable income*** is the sum of:

(a) the amount of the care recipient's veteran payment reduced by the amount worked out under subsection 5GA(3) of the *Veterans' Entitlements Act 1986* to be the care recipient's minimum pension supplement amount; and

(b) the amount the Secretary determines to be the amount that would be worked out as the care recipient's ordinary/adjusted income for the purpose of applying Module E of the Rate Calculator in Schedule 6 to the *Veterans' Entitlements Act 1986*.

Note: Determinations are reviewable under Part 6.1.

(4) If the care recipient is entitled to an *income support payment (other than a *service pension, an *income support supplement or a *veteran payment), his or her ***total assessable income*** is the sum of:

(a) the amount of the care recipient's income support payment reduced by, if the payment is an income support payment within the meaning of subsection 23(1) of the *Social Security Act 1991*, the amount worked out under subsection 20A(4) of that Act to be the care recipient's minimum pension supplement amount; and

(b) the amount the Secretary determines to be the amount that would be worked out as the care recipient's ordinary income for the purpose of applying Module E of Pension Rate Calculator A at the end of section 1064 of the *Social Security Act 1991*.

Note: Determinations are reviewable under Part 6.1.

(4A) However, the reduction referred to in paragraph (4)(a) does not apply if:

(a) the care recipient's income support payment is special benefit or youth allowance under the *Social Security Act 1991*; or

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

(b) the care recipient has not reached pension age (within the meaning of subsections 23(5A), (5B), (5C) and (5D) of that Act) and the rate of the care recipient's income support payment is worked out in accordance with the Rate Calculator at the end of section 1066A, 1067L, 1068, 1068A or 1068B of that Act.

(5) The Aged Care (Transitional Provisions) Principles may specify amounts that are to be taken, in relation to specified kinds of care recipients, to be excluded from determinations under subsection (1) or paragraph (2)(b), (3)(b), (3A)(b) or (4)(b).

(6) For the purpose of making a determination under subsection (1) or paragraph (4)(b) of the amount that would be worked out as the care recipient's ordinary income for the purpose referred to in that subsection or paragraph, the relevant provisions of the *Social Security Act 1991* apply as if:

(a) paragraph 8(8)(zc) of that Act were omitted; and

(b) section 1176 of that Act were omitted; and

(c) any other provision of the social security law (within the meaning of the *Social Security Act 1991*) were omitted:

(i) that has the direct or indirect effect of excluding an amount from a person's ordinary income (within the meaning of that Act); and

(ii) that is specified in the Aged Care (Transitional Provisions) Principles.

Note: The effect of this subsection is that certain amounts that would not be included when working out a person's ordinary income under the *Social Security Act 1991* will be included for the purposes of working out a care recipient's total assessable income under this section.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

(7) For the purpose of making a determination under paragraph (2)(b), (3)(b) or (3A)(b) of the amount that would be worked out as the care recipient's ordinary/adjusted income for the purpose referred to in the relevant paragraph, the relevant provisions of the *Veterans' Entitlements Act 1986* apply as if:

(a) section 59X of that Act were omitted; and

(b) any other provision of the *Veterans' Entitlements Act 1986* were omitted:

(i) that has the direct or indirect effect of excluding an amount from a person's ordinary/adjusted income (within the meaning of that Act); and

(ii) that is specified in the Aged Care (Transitional Provisions) Principles.

Note: The effect of this subsection is that certain amounts that would not be included when working out a person's ordinary/adjusted income under the *Veterans' Entitlements Act 1986* will be included for the purposes of working out a care recipient's total assessable income under this section.

(8) The Secretary may, by notice in writing, request one or more of the following:

(a) the care recipient;

(b) a person acting for or on behalf of the care recipient;

(c) any other person whom the Secretary believes has information that would assist the Secretary in making the determination;

to give, within the period specified in the notice, to the Secretary such information as is specified in the notice for the purposes of making the determination.

Note: A person is not obliged to provide the information.

(9) A determination under subsection (1) or paragraph (2)(b), (3)(b), (3A)(b) or (4)(b) takes effect on the day specified by the Secretary. The day may be earlier than the day on which the determination is made.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

(10) The Secretary must notify, in writing, the care recipient of any determination under subsection (1) or paragraph (2)(b), (3)(b), (3A)(b) or (4)(b).

(11) The notice must include such matters as are specified in the Aged Care (Transitional Provisions) Principles.

(12) A determination made under subsection (1) or paragraph (2)(b), (3)(b), (3A)(b) or (4)(b) is not a legislative instrument.

44-26 The care recipient's *total assessable income free area*

General rule

(1) The ***total assessable income free area*** for a care recipient (other than a *protected resident) is the sum of:
   (a) the amount worked out by applying point 1064-B1 of Pension Rate Calculator A at the end of section 1064 of the *Social Security Act 1991*; and
   (b) the amount worked out under point 1064-BA4 of Pension Rate Calculator A at the end of section 1064 of the *Social Security Act 1991*; and
   (c) the amount worked out by applying point 1064-E4 of Pension Rate Calculator A at the end of section 1064 of the *Social Security Act 1991*.

Protected residents

(2) The ***total assessable income free area*** for a care recipient who is a *protected resident is the sum of:
   (a) the amount worked out by applying old point 1064-B1; and
   (b) the amounts referred to in paragraphs (1)(b) and (c).

Note: ***Old point 1064-B1*** is defined in subsection (6).

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

Definition

(6) In this section:

old point 1064-B1 means point 1064-B1 of Pension Rate Calculator A at the end of section 1064 of the *Social Security Act 1991*, as that point has effect on 19 September 2009.

Subdivision 44-F—Other supplements

44-27 Other supplements

(1) The other supplements for the care recipient under step 5 of the residential care subsidy calculator in section 44-2 are such of the following supplements as apply to the care recipient in respect of the *payment period:

(a) the pensioner supplement (see section 44-28);

(b) the viability supplement (see section 44-29);

(c) the hardship supplement (see section 44-30);

(e) any other supplement set out in the Aged Care (Transitional Provisions) Principles for the purposes of this paragraph.

Note: The supplements under this Subdivision are not taken into account in applying the income test under Subdivision 44-E. (The supplements under Subdivision 44-C are taken into account in applying the income test.)

(2) The Aged Care (Transitional Provisions) Principles may specify, in respect of each other supplement set out for the purposes of paragraph (1)(e), the circumstances in which the supplement will apply to a care recipient in respect of a *payment period.

(3) The Minister may determine by legislative instrument, in respect of each such supplement, the amount of the supplement, or the way in which the amount of the supplement is to be worked out.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

44-28 The pensioner supplement

(1) The pensioner supplement for the care recipient in respect of the *payment period is the sum of all the pensioner supplements for the days during the period on which:

(a) the care recipient was provided with residential care through the residential care service in question; and

(b) the care recipient was eligible for a pensioner supplement.

(2) Subject to subsections (3), (5) and (6), the care recipient is eligible for a pensioner supplement on a particular day if:

(a) the care recipient is a *pre-2008 reform resident; and

(b) if the day falls before 20 March 2008—on that particular day any of the following apply to the care recipient:

(i) the care recipient was receiving an *income support payment;

(ii) the care recipient had a *dependent child;

(iii) the care recipient was provided with *respite care;

(iv) the care recipient was included in a class of people specified in the Aged Care (Transitional Provisions) Principles; and

(c) if the day falls on or after 20 March 2008—on that particular day any of the following apply to the care recipient:

(i) the care recipient was receiving an income support payment;

(ii) the care recipient had a dependent child;

(iii) the care recipient was included in a class of people specified in the Aged Care (Transitional Provisions) Principles.

(3) The care recipient is not eligible for a pensioner supplement on a particular day if:

(a) an *accommodation bond was paid, or agreed to be paid, by the care recipient for *entry to the residential care service; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

(b) either:

(i) if the time (the ***entry time***) of the care recipient's entry was before 20 September 2009—that accommodation bond exceeded the amount obtained by rounding to the nearest $500.00 (rounding $250.00 upwards) an amount equal to 10 times the *basic age pension amount; or

(ii) if the time (the ***entry time***) of the care recipient's entry was on or after 20 September 2009—that accommodation bond exceeded the amount obtained by rounding to the nearest $500.00 (rounding $250.00 upwards) an amount equal to 9 times the *basic age pension amount;

unless, on that day, the care recipient had a dependent child.

(4) For the purposes of subsection (3), if the care recipient elects under subsection 57-17(1) to pay an *accommodation bond by periodic payments, the amount of the accommodation bond is taken to be what would have been payable by the care recipient in accordance with Subdivision 57-D had the care recipient paid it as a lump sum.

(5) If the care recipient has failed to give to the Secretary information that the Secretary requests for the purpose of determining the care recipient's *total assessable income under section 44-24, the care recipient is not eligible for a pensioner supplement for any of the days during the period:

(a) starting on the day on which the care recipient failed to give to the Secretary that information; and

(b) finishing at the end of the day before the day on which the care recipient gave to the Secretary that information.

(6) If the care recipient has elected not to give any information to the Secretary for the purpose of determining the care recipient's *total assessable income under section 44-24, the care recipient is not eligible for a pensioner supplement for any of the days during the period:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

(a) starting on the day on which the care recipient made the election; and

(b) finishing at the end of the day before the day on which the care recipient gives to the Secretary a written notice revoking the election.

Note: Care recipients are not obliged to give the Secretary the information. They can choose not to give the information, but, in addition to the effect this has on the income test (see section 44-23), a pensioner supplement will not apply.

(7) The pensioner supplement for a particular day is the amount determined by the Minister by legislative instrument.

(8) The Minister may determine different amounts (including nil amounts) based on any matters determined by the Minister by legislative instrument.

44-29 The viability supplement

(1) The viability supplement for the care recipient in respect of the *payment period is the sum of all the viability supplements for the days during the period on which:

(a) the care recipient was provided with residential care through the residential care service in question; and

(b) the service was the subject of a determination under subsection (2).

(2) The Secretary may, in accordance with the Aged Care (Transitional Provisions) Principles, make a determination by legislative instrument under this subsection in respect of a residential care service if satisfied that the determination should be made having regard to:

(a) how small the service is, and the size of the population that it serves; and

(b) the degree of isolation of the service's location; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

(c) any other matters specified in the Aged Care (Transitional Provisions) Principles.

Note: Refusals to make determinations are reviewable under Part 6.1.

(3) The Secretary must not make a determination under subsection (2) in respect of a residential care service if the residential care service, or a *distinct part of the residential care service, has *extra service status.

(4) A person may apply to the Secretary, in the form approved by the Secretary, for a determination under subsection (2) in respect of a residential care service.

(5) If the Secretary needs further information to determine the application, the Secretary may give to the applicant a notice requesting the further information:

(a) within the period specified in the notice; or

(b) if no period is specified in the notice—within 28 days after receiving the notice.

(6) The application is taken to be withdrawn if the applicant does not give the further information within whichever of those periods applies. The notice must contain a statement setting out the effect of this subsection.

Note: The period for giving the further information can be extended—see section 96-7.

(7) The Secretary must notify the person, in writing, of the Secretary's decision on whether to make the determination. The notice must be given:

(a) if an application for a determination was made under subsection (4)—within 28 days after the application was made, or, if the Secretary requested further information under subsection (5), within 28 days after receiving the information; or

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

(b) if such an application was not made—within 28 days after the decision is made.

(8) The viability supplement for a particular day is the amount:
(a) determined by the Minister by legislative instrument; or
(b) worked out in accordance with a method determined by the Minister by legislative instrument.

(9) The Minister may determine different amounts or methods based upon:
(a) the number of *places included in residential care services; and
(b) the size of the population served by residential care services; and
(c) the degree of isolation of residential care services; and
(d) whether residential care services are, or could be, co-located with other residential care services; and
(e) any other matters determined by the Minister by legislative instrument.

44-30 The hardship supplement

(1) The hardship supplement for the care recipient in respect of the *payment period is the sum of all the hardship supplements for the days during the period on which:
(a) the care recipient was provided with residential care through the residential care service in question; and
(b) the care recipient was eligible for a hardship supplement.

(2) Subject to subsection (4), the care recipient is eligible for a hardship supplement on a particular day if:
(a) the Aged Care (Transitional Provisions) Principles specify one or more classes of care recipients to be care recipients for whom paying the maximum daily amount of resident fees

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

worked out under section 58-2 would cause financial hardship; and

(b) on that day, the care recipient is included in such a class.

(3) Subject to subsection (4), the care recipient is also eligible for a hardship supplement on a particular day if a determination is in force under section 44-31 in relation to the care recipient.

(4) The care recipient is not eligible for a hardship supplement in respect of a day if, on that day, the care recipient is being provided with residential care on an extra service basis (see Division 36 of the *Aged Care Act 1997*).

(5) The hardship supplement for a particular day is the amount:

(a) determined by the Minister by legislative instrument; or

(b) worked out in accordance with a method determined by the Minister by legislative instrument.

(6) The Minister may determine different amounts (including nil amounts) or methods based on any matters determined by the Minister by legislative instrument.

44-31 Determining cases of financial hardship

(1) The Secretary may, in accordance with the Aged Care (Transitional Provisions) Principles, determine that the care recipient is eligible for a hardship supplement if the Secretary is satisfied that paying the maximum daily amount of resident fees worked out under section 58-2 would cause the care recipient financial hardship.

Note: Refusals to make determinations are reviewable under Part 6.1.

(2) In deciding whether to make a determination under this section, and in determining a lesser amount, the Secretary must have regard to the matters (if any) specified in the Aged Care (Transitional Provisions) Principles.

---

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

(3) A determination under this section ceases to be in force at the end of a specified period, or on the occurrence of a specified event, if the determination so provides.

Note: Decisions to specify periods or events are reviewable under Part 6.1.

(4) Application may be made to the Secretary, in the form approved by the Secretary, for a determination under this section. The application may be made by:

(a) the care recipient; or

(b) an approved provider who is providing, or is to provide, residential care to the care recipient.

(5) If the Secretary needs further information to determine the application, the Secretary may give to the applicant a notice requesting the applicant to give the further information:

(a) within 28 days after receiving the notice; or

(b) within such other period as is specified in the notice.

(6) The application is taken to have been withdrawn if the information is not given within whichever of those periods applies. The notice must contain a statement setting out the effect of this subsection.

Note: The period for giving the further information can be extended—see section 96-7.

(7) The Secretary must notify the care recipient and the approved provider, in writing, of the Secretary's decision on whether to make the determination. The notice must be given:

(a) within 28 days after receiving the application; or

(b) if the Secretary has requested further information under subsection (5)—within 28 days after receiving the information.

(8) If the Secretary makes the determination, the notice must set out:

(a) any period at the end of which; or

(b) any event on the occurrence of which;

the determination will cease to be in force.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

Section 44-31

(9) A determination under subsection (1) is not a legislative instrument.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

Part 3.2—Home care subsidy

Division 45—Introduction

45-1 What this Part is about

The *home care subsidy is a payment by the Commonwealth to approved providers for providing home care to care recipients.

However, any *unspent home care amount (which may include home care subsidy) of a care recipient must be dealt with by an approved provider in accordance with the User Rights Principles.

Table of Divisions

45 Introduction
46 Who is eligible for home care subsidy?
47 On what basis is home care subsidy paid?
48 What is the amount of home care subsidy?

45-2 Home care subsidy also dealt with in Aged Care (Transitional Provisions) Principles

*Home care subsidy is also dealt with in the Aged Care (Transitional Provisions) Principles. Provisions of this Part indicate when a particular matter is or may be dealt with in those Principles.

Note: The Aged Care (Transitional Provisions) Principles are made by the Minister under section 96-1.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

45-3 Meaning of *home care*

(1) ***Home care*** is care consisting of a package of personal care services and other personal assistance provided to a person who is not being provided with residential care.

(2) The Aged Care (Transitional Provisions) Principles may specify care that:

(a) constitutes home care for the purposes of this Act; or

(b) does not constitute home care for the purposes of this Act.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

Division 46—Who is eligible for home care subsidy?

46-1 Eligibility for home care subsidy

(1) An approved provider is eligible for *home care subsidy in respect of a day if the Secretary is satisfied that:

(a) the approval of the approved provider is in respect of home care; and

(b) on that day there is in force a *home care agreement under which a care recipient approved under Part 2.3 of the *Aged Care Act 1997* in respect of home care is to be provided with home care by the approved provider through a home care service; and

(c) the home care service is a notified home care service; and

(d) the care recipient is a *prioritised home care recipient; and

(e) on that day the approved provider provides the care recipient with such home care (if any) as is required under the home care agreement; and

(f) the approved provider has agreed in the claim relating to the day to deal with the care recipient's *unspent home care amount in accordance with the User Rights Principles.

Note: Eligibility may also be affected by Division 7 of the *Aged Care Act 1997* (relating to a person's approval as a provider of aged care services) or Division 20 of that Act (relating to a person's approval as a recipient of home care).

(2) For the purposes of paragraph (1)(c), a home care service is a ***notified home care service*** if the approved provider has notified the Secretary of the information required by section 9-1A of the *Aged Care Act 1997* in relation to the home care service.

46-2 Suspension of home care services

(1) A care recipient who is being provided with home care by an approved provider in accordance with a *home care agreement may

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

request the approved provider to suspend, on a temporary basis, the provision of that home care, commencing on a date specified in the request.

(2) The approved provider must comply with the request.

(3) The Aged Care (Transitional Provisions) Principles may specify requirements relating to the suspension, on a temporary basis, of home care.

46-4 Notice of refusal to pay home care subsidy

(1) If:

(a) an approved provider has claimed *home care subsidy in respect of a person; and

(b) the approved provider is not eligible for home care subsidy in respect of that person;

the Secretary must, within 28 days after receiving the claim, notify the approved provider in writing accordingly.

(2) A notice given under subsection (1) is not a legislative instrument.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

Division 47—On what basis is home care subsidy paid?

47-1 Payability of home care subsidy

(1) *Home care subsidy is payable by the Commonwealth to an approved provider in respect of each *payment period (see section 47-2) during which the approved provider is eligible under section 46-1.

(1A) However, *home care subsidy is not payable:

(a) in respect of any days during a *payment period on which the approved provider is not eligible; or

(b) in respect of a payment period if the approved provider has not given to the Secretary under section 47-4:

(i) a claim in respect of the payment period; and

(ii) a claim in respect of each preceding payment period (if any) ending on or after the first day on which the approved provider is eligible under section 46-1.

(2) *Home care subsidy is separately payable by the Commonwealth in respect of each home care service through which an approved provider provides home care.

47-2 Meaning of *payment period*

A ***payment period*** is:

(a) a calendar month; or

(b) such other period as is set out in the Aged Care (Transitional Provisions) Principles.

47-4 Claims for home care subsidy

For the purpose of obtaining payment of *home care subsidy in respect of a home care service through which an approved provider provides home care, the approved provider must, as soon as

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

practicable after the end of each *payment period, give to the Secretary:

(a) a claim, in the form approved by the Secretary, for home care subsidy that is, or may become, payable in respect of the service for that payment period; and

(b) any information relating to the claim that is stated in the form to be required, or that the Secretary requests.

47-4A Variations of claims for home care subsidy

(1) An approved provider may vary the claim made in respect of a *payment period within:

(a) either:

(i) the period specified in the Aged Care (Transitional Provisions) Principles; or

(ii) if no such period is specified—2 years after the end of that payment period; or

(b) such longer period as is determined in respect of the claim by the Secretary.

(1A) Without limiting subparagraph (1)(a)(i), the Aged Care (Transitional Provisions) Principles may specify different periods in respect of different classes of variations.

(2) In determining a longer period for the purposes of paragraph (1)(b), the Secretary must be satisfied that a variation is required:

(a) due to an administrative error made by the Commonwealth or an agent of the Commonwealth; or

(b) because the Commonwealth or an agent of the Commonwealth considers that the circumstances of a care recipient are different from those on the basis of which subsidy was claimed.

Note: Determinations of periods under paragraph (1)(b) are reviewable under Part 6.1.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

(3) A determination made under paragraph (1)(b) is not a legislative instrument.

47-5 Recovery of overpayments

This Division does not affect the Commonwealth's right to recover overpayments under Part 6.5 of the *Aged Care Act 1997*.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

Division 48—What is the amount of home care subsidy?

48-1 Amount of home care subsidy

(1) The amount of *home care subsidy that is payable to an approved provider in respect of a *payment period for a home care service is the sum of the amounts of home care subsidy payable to the approved provider in respect of each care recipient:

(a) in respect of whom there is in force a *home care agreement for provision of home care provided through the service during the period; and

(b) in respect of whom the approved provider was eligible under section 46-1 for home care subsidy during the period.

(2) The amount of *home care subsidy payable to the approved provider in respect of a care recipient in respect of the *payment period is the amount:

(a) specified in the Aged Care (Transitional Provisions) Principles; or

(b) worked out in accordance with a method specified in the Aged Care (Transitional Provisions) Principles.

(3) Without limiting subsection (2), the Aged Care (Transitional Provisions) Principles made for the purposes of subsection (2) may authorise the making of legislative instruments by the Minister.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

Part 3.3—Flexible care subsidy

Division 49—Introduction

49-1 What this Part is about

The *flexible care subsidy is a payment by the Commonwealth to approved providers for providing flexible care to care recipients.

Table of Divisions

49 Introduction
50 Who is eligible for flexible care subsidy?
51 On what basis is flexible care subsidy paid?
52 What is the amount of flexible care subsidy?

49-2 Flexible care subsidy also dealt with in Aged Care (Transitional Provisions) Principles

*Flexible care subsidy is also dealt with in the Aged Care (Transitional Provisions) Principles. Provisions of this Part indicate when a particular matter is or may be dealt with in those Principles.

Note: The Aged Care (Transitional Provisions) Principles are made by the Minister under section 96-1.

49-3 Meaning of *flexible care*

Flexible care means care provided in a residential or community setting through an *aged care service that addresses the needs of care recipients in alternative ways to the care provided through residential care services and home care services.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

Division 50—Who is eligible for flexible care subsidy?

50-1 Eligibility for flexible care subsidy

(1) An approved provider is eligible for *flexible care subsidy in respect of a day if the Secretary is satisfied that, during that day:

(a) the approved provider holds an allocation of *places for flexible care subsidy that is in force under Part 2.2 of the *Aged Care Act 1997* (other than a *provisional allocation); and

(b) the approved provider:

(i) provides flexible care to a care recipient who is approved under Part 2.3 of the *Aged Care Act 1997* in respect of flexible care; or

(ii) provides flexible care to a care recipient who is included in a class of people who, under the Aged Care (Transitional Provisions) Principles, do not need approval under Part 2.3 of the *Aged Care Act 1997* in respect of flexible care; or

(iii) is taken to provide flexible care in the circumstances set out in the Aged Care (Transitional Provisions) Principles; and

(c) the flexible care is of a kind for which flexible care subsidy may be payable (see section 50-2).

(2) However, the approved provider is not eligible in respect of flexible care provided to the care recipient if the care is excluded because the approved provider exceeds the approved provider's allocation of *places for *flexible care subsidy (see section 50-3).

Note: Eligibility may also be affected by Division 7 of the *Aged Care Act 1997* (relating to a person's approval as a provider of aged care services) or Division 20 of that Act (relating to a person's approval as a recipient of flexible care).

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

50-2 Kinds of care for which flexible care subsidy may be payable

(1) The Aged Care (Transitional Provisions) Principles may specify kinds of care for which *flexible care subsidy may be payable.

(2) Kinds of care may be specified by reference to one or more of the following:
   (a) the nature of the care;
   (b) the circumstances in which the care is provided;
   (c) the nature of the locations in which it is provided;
   (d) the groups of people to whom it is provided;
   (e) the period during which the care is provided;
   (f) any other matter.

Note: Examples of the kinds of care that might be specified are:
   (a) care for *people with special needs;
   (b) care provided in small, rural or remote communities;
   (c) care provided through a pilot program for alternative means of providing care;
   (d) care provided as part of co-ordinated service and accommodation arrangements directed at meeting several health and community service needs.

50-3 Exceeding the number of places for which there is an allocation

(1) For the purposes of an approved provider's eligibility for *flexible care subsidy, flexible care provided to a particular care recipient on a particular day is excluded if:
   (a) the number of care recipients provided with flexible care by the approved provider during that day exceeds the number of *places included in the approved provider's allocation of places for flexible care subsidy; and
   (b) the Secretary decides, in accordance with subsection (2), that the flexible care provided to that particular care recipient on that day is to be excluded.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

(2) In deciding under paragraph (1)(b) which flexible care is to be excluded, the Secretary must:

(a) make the number of exclusions necessary to ensure that the number of *places for which *flexible care subsidy will be payable does not exceed the number of places included in the approved provider's allocation of places for flexible care subsidy; and

(b) exclude the flexible care in the reverse order in which the care recipients in question *entered the flexible care service for the provision of flexible care.

50-4 Notice of refusal to pay flexible care subsidy

(1) If:

(a) an approved provider has claimed *flexible care subsidy in respect of a person; and

(b) the approved provider is not eligible for flexible care subsidy in respect of that person;

the Secretary must notify the approved provider, in writing, accordingly.

(2) A notice given under subsection (1) is not a legislative instrument.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

Division 51—On what basis is flexible care subsidy paid?

51-1 Payment of flexible care subsidy

(1) *Flexible care subsidy in respect of a particular kind of flexible care is payable in accordance with the Aged Care (Transitional Provisions) Principles.

(2) The Aged Care (Transitional Provisions) Principles may, in relation to each kind of flexible care, provide for one or more of the following:
   (a) the periods in respect of which *flexible care subsidy is payable;
   (b) the payment of flexible care subsidy in advance;
   (c) the way in which claims for flexible care subsidy are to be made;
   (d) any other matter relating to the payment of flexible care subsidy.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

Division 52—What is the amount of flexible care subsidy?

52-1 Amounts of flexible care subsidy

(1) The amount of *flexible care subsidy that is payable in respect of a day is the amount:

(a) determined by the Minister by legislative instrument; or

(b) worked out in accordance with a method determined by the Minister by legislative instrument.

(2) The Minister may determine rates of or methods for working out *flexible care subsidy based on any matters determined by the Minister by legislative instrument.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

Chapter 4—Responsibilities of approved providers

Part 4.2—User rights

Division 57—What are the responsibilities relating to accommodation bonds?

57-1 What this Division is about

If an approved provider charges an *accommodation bond for the *entry of a care recipient to a residential care service or flexible care service, several rules must be followed. These relate particularly to prudential arrangements, *accommodation bond agreements, the amount of the bond and its payment, treatment of income derived from the bond, deductions from the bond and refunding the bond.

If an approved provider has been given or loaned an *entry contribution, several rules must be followed. Rules set out in Part 3A.3 of the *Aged Care Act 1997* relate particularly to prudential arrangements and payment of interest on *entry contribution balances. Other rules are set out in section 71 of the *Aged Care (Consequential Provisions) Act 1997*.

Table of Subdivisions

57-A The basic rules
57-C Accommodation bond agreements
57-D Amounts of accommodation bonds
57-E Payment of accommodation bonds
57-F Rights of approved providers

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

57-H Charging an accommodation bond instead of an accommodation charge

Subdivision 57-A—The basic rules

57-2 Basic rules about accommodation bonds

(1) The rules relating to charging an *accommodation bond for the *entry of a person to a residential care service, or flexible care service, as a care recipient are as follows:

(aa) at the time of entry, at least one of the following must be true:

(i) if the accommodation bond is charged for the entry of the care recipient to a residential care service—the care recipient is not eligible to pay an *accommodation charge under subsection 57A-2(1);

(ii) the service, or the *distinct part of the service through which the care recipient is to receive care, has *extra service status;

(iii) section 57-23 allows the approved provider to charge an accommodation bond for the entry;

(iv) if the accommodation bond is charged for the entry of the care recipient to a flexible care service—the care recipient requires a level of care that corresponds to a *low level of residential care provided through a residential care service;

Note: If a care recipient's assets at the time of the care recipient's *entry to the residential care service or *flexible care service are less than the care recipient's minimum permissible asset value (as defined in subsection 57-12(3)), the care recipient cannot be required to pay an *accommodation bond—see section 57-12.

(ab) the person is not a *charge exempt resident;

(b) the entry must not be for the purpose of the provision of *respite care;

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

(c) the approved provider conducting the residential care service or flexible care service must comply with the prudential requirements (see section 52M-1 of the *Aged Care Act 1997*);

(d) the approved provider must, before the recipient enters the service, provide the care recipient with such information about the accommodation bond as is specified in the Aged Care (Transitional Provisions) Principles;

(e) the approved provider must have entered into an *accommodation bond agreement (see section 57-9) with the care recipient before, or within 21 days after, the care recipient entered the service;

Note: This time limit is extended in some cases if certain legal processes relating to the care recipient's mental impairment are in progress—see subsection (2) of this section.

(f) another person must not be required to pay the accommodation bond as a condition of the care recipient entering the residential care service or flexible care service;

(g) the accommodation bond must not exceed the maximum amount under section 57-12 or 57-13, paragraph 57-14(1)(b) or section 57-23, as the case requires, and the care recipient must not be charged more than one accommodation bond in respect of entering the service;

(h) the accommodation bond must not be charged if a determination is in force under paragraph 57-14(1)(a) that paying an accommodation bond would cause the care recipient financial hardship;

(i) payment of the accommodation bond can only be required during a period specified in section 57-16;

(j) payment of the accommodation bond by periodic payments must meet the requirements set out in section 57-17;

(k) the approved provider must not use the accommodation bond unless the use of the bond is *permitted (see section 52N-1 of the *Aged Care Act 1997*);

Note: For the use of bonds charged before 1 October 2011, see Part 2 of Schedule 1 to the *Aged Care Amendment Act 2011.*

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

(ka) the approved provider must comply with the prudential requirements (see section 52M-1 of the *Aged Care Act 1997*);

(l) the approved provider is entitled to income derived from investing the *accommodation bond balance (see section 57-18);

(m) amounts must not be deducted from the accommodation bond balance, except for amounts deducted under section 57-19;

(o) the approved provider must not charge an accommodation bond if:

(i) a sanction has been imposed on the approved provider under section 63N of the *Quality and Safety Commission Act; and

(ii) the sanction prohibits the charging of an accommodation bond for the entry;

(p) any other rules specified in the Aged Care (Transitional Provisions) Principles.

(2) If, at the end of the 21 days mentioned in paragraph (1)(e):

(a) the approved provider and the care recipient have not entered into an *accommodation bond agreement; and

(b) a process under a law of the Commonwealth, a State or a Territory has begun for a person (other than an approved provider) to be appointed, by reason that the care recipient has a mental impairment, as the care recipient's legal representative;

the time limit in that paragraph is extended until the end of 7 days after:

(c) the appointment is made; or

(d) a decision is made not to make the appointment; or

(e) the process ends for some other reason;

or for such further period as the Secretary allows, having regard to any matters specified in the User Rights Principles.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

Subdivision 57-C—Accommodation bond agreements

57-9 Contents of accommodation bond agreements

(1) An agreement between an approved provider and a person proposing to *enter, or having entered, as a care recipient to a residential care service, or flexible care service, through which the approved provider provides care is an ***accommodation bond agreement*** if it sets out the following:

(a) the amount of the *accommodation bond that:

(i) will be payable if the care recipient enters the residential care service or flexible care service; or

(ii) if the care recipient has already entered the residential care service or flexible care service—is payable;

(b) the care recipient's proposed date of entry, or date of entry, to the residential care service or flexible care service;

(c) how the accommodation bond is to be paid, and if the accommodation bond is to be paid by periodic payments, the conditions relating to the periodic payments (which must comply with the requirements of section 57-17);

(d) when the accommodation bond is payable;

(e) the amount of each retention amount (within the meaning of section 57-20) that will be deducted from the *accommodation bond balance;

(f) when retention amounts and other amounts permitted by section 57-19 to be deducted from the accommodation bond balance will be deducted;

(g) unless the care recipient has already entered the residential care service or flexible care service—the conditions that will apply if the care recipient agrees to pay the accommodation bond but then does not enter the residential care service or flexible care service (including the conditions that will apply if the person chooses not to enter the service);

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

(h) whether agreeing to pay the accommodation bond entitles the care recipient to specific accommodation or additional services within the residential care service or flexible care service;

(i) if the accommodation bond is such an amount that, under subsection 44-28(3), the care recipient would not be eligible for a *pensioner supplement—any additional resident fees that will be payable by the care recipient as a result of not being so eligible;

(j) any financial hardship provisions that apply to the care recipient;

(k) the circumstances in which the accommodation bond balance must be refunded and the way the amount of the refund will be worked out;

(l) such other matters as are specified in the Aged Care (Transitional Provisions) Principles.

(2) The User Rights Principles may specify, but are not limited to, matters relating to the following:

(a) the specific entitlements of care recipients arising from entering into an *accommodation bond agreement;

(d) a care recipient's obligations;

(e) alleviating financial hardship.

57-10 Accommodation bond agreements may be incorporated into other agreements

For the purposes of this Division, a person is taken to have entered into an *accommodation bond agreement if the person has entered into an agreement that contains the provisions required by section 57-9.

Example: These provisions may be included in a *resident agreement.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

57-11 Agreements cannot affect requirements of this Division

The requirements of this Division apply despite any provision of an *accommodation bond agreement, or any other agreement, to the contrary.

Subdivision 57-D—Amounts of accommodation bonds

57-12 Maximum amount of accommodation bond

(1) Subject to subsection (2) and sections 57-13 and 57-14, the maximum amount of an *accommodation bond for the *entry of a person as a care recipient to a residential care service or flexible care service is whichever is the lowest of the following:

(a) the amount of the accommodation bond specified in the *accommodation bond agreement;

(b) an amount that, when subtracted from an amount equal to the value of the care recipient's assets at the time of the care recipient's entry to the residential care service or flexible care service, leaves an amount at least equal to the care recipient's minimum permissible asset value (see subsection (3));

(c) such amount as is specified in, or worked out in accordance with, the Aged Care (Transitional Provisions) Principles.

Note: The operation of this section may be modified if, before entering an accommodation bond agreement, the care recipient gives the approved provider a determination under section 44-8AB of the value of the care recipient's assets. See subsection (5).

(2) If:

(a) a care recipient proposes to *enter a residential care service, or flexible care service, conducted by an approved provider; and

(b) the care recipient does not, before entering an *accommodation bond agreement, give to the approved provider sufficient information about the care recipient's

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

assets for the approved provider to be able to determine the amounts referred to in paragraph (1)(b);

the maximum amount of an *accommodation bond for the entry of the person as a care recipient to the residential care service or flexible care service is the lesser of the amounts referred to in paragraphs (1)(a) and (c).

(3) A care recipient's ***minimum permissible asset value*** is:

(a) if the time (the ***entry time***) of the care recipient's *entry to the residential care service or flexible care service is before 20 September 2009:

(i) the amount obtained by rounding to the nearest $500.00 (rounding $250.00 upwards) an amount equal to 2.5 times the *basic age pension amount at the entry time; or

(ii) such higher amount as is specified in, or worked out in accordance with, the Aged Care (Transitional Provisions) Principles; or

(b) if the time (the ***entry time***) of the care recipient's entry to the residential care service or flexible care service is on or after 20 September 2009:

(i) the amount obtained by rounding to the nearest $500.00 (rounding $250.00 upwards) an amount equal to 2.25 times the *basic age pension amount at the entry time; or

(ii) such higher amount as is specified in, or worked out in accordance with, the Aged Care (Transitional Provisions) Principles.

(4) The value of a care recipient's assets is to be worked out in the same way as it would be worked out under section 44-10 for the purposes of section 44-5B, 44-7 or 44-8.

(5) However, subsections (1), (2) and (3) are modified as described in the table, and subsection (4) does not apply, if, before entering the

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

*accommodation bond agreement, the care recipient gives the approved provider a copy of a determination that:

(a) is a determination under section 44-8AB of the value of the care recipient's assets at a time (the ***valuation time***) that is before or at the time (the ***entry time***) the care recipient *enters the residential care service or flexible care service; and

(b) is in force at the entry time, if that is after the valuation time.

Modifications of subsections (1), (2) and (3)

	If:	Subsections (1), (2) and (3) have effect as if:
1	The valuation time is before the entry time	(a) the references in paragraph (1)(b) and subsection (3) to the time of the care recipient's *entry to the residential care service or flexible care service were references to the valuation time; and (b) the value of the care recipient's assets at the valuation time were the value specified in the determination
2	The valuation time is at the entry time	The value of the care recipient's assets at the entry time were the value specified in the determination

57-13 Maximum amount of accommodation bond if care recipient moves between certain aged care services

If:

(a) an *accommodation bond has been paid by a care recipient for *entry to an aged care service (the ***original service***) that is a residential care service or a flexible care service; and

(b) the care recipient ceases being provided with residential care, or flexible care, through the original service (other than because the care recipient is on *leave); and

(c) the care recipient enters another aged care service that is a residential care service or a flexible care service within 28

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

days after the day on which the care recipient ceased being provided with care by the original service;

the maximum amount of the accommodation bond for the entry of the care recipient to the other service is the amount of the accommodation bond balance that was refunded or is payable to the care recipient under Division 52P of the *Aged Care Act 1997* in respect of the accommodation bond referred to in paragraph (a).

57-14 Accommodation bond in cases of financial hardship

(1) The Secretary may determine, in accordance with the Aged Care (Transitional Provisions) Principles, that a person:

(a) must not be charged an *accommodation bond because payment of an accommodation bond would cause the person financial hardship; or

(b) must not be charged an accommodation bond of more than a specified maximum amount because payment of more than that amount would cause the person financial hardship.

Note: Refusals to make determinations are reviewable under Part 6.1.

(2) Without limiting the circumstances that constitute financial hardship for the purposes of this section, such circumstances include any circumstances specified in the Aged Care (Transitional Provisions) Principles.

(3) The determination ceases to be in force at the end of a specified period or on the occurrence of a specified event, if the determination so provides.

Note: Decisions to specify periods or events are reviewable under Part 6.1.

(4) Application may be made to the Secretary, in the form approved by the Secretary, for a determination under subsection (1) that payment of an *accommodation bond, or an accommodation bond of more than a specified maximum amount, would cause the person financial hardship. The application may be made by:

(a) the person; or

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

(b) an approved provider to which the accommodation bond, or a larger accommodation bond, would otherwise be paid.

(5) If the Secretary needs further information to determine the application, the Secretary may give to the applicant a notice requiring the applicant to give the further information:

(a) within 28 days after receiving the notice; or

(b) within such other period as is specified in the notice.

The application is taken to have been withdrawn if the information is not given within whichever of those periods applies. The notice must contain a statement setting out the effect of this subsection.

Note: The period for giving the further information can be extended—see section 96-7.

(6) The Secretary must notify the person and the approved provider, in writing, of the Secretary's decision on whether to make the determination. The notice must be given:

(a) within 28 days after receiving the application; or

(b) if the Secretary has requested further information under subsection (5)—within 28 days after receiving the information.

(7) If the Secretary makes a determination, the notice must:

(a) set out any period at the end of which, or any event on the occurrence of which, the determination will cease to be in force; and

(b) if the determination is that a person must not be charged an *accommodation bond of more than a specified maximum amount—specify the maximum amount of the accommodation bond.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

57-15 Revocation of determinations of financial hardship

(1) The Secretary may, in accordance with the Aged Care (Transitional Provisions) Principles, revoke a determination made under section 57-14.

Note: Revocations of determinations are reviewable under Part 6.1.

(2) Before deciding to revoke the determination, the Secretary must notify the person, and an approved provider who is providing or is to provide residential care or flexible care to the person, that revocation is being considered. The notice must be in writing and must:

(a) invite the person and the approved provider to make submissions, in writing, to the Secretary within 28 days after receiving the notice; and

(b) inform them that if no submissions are made within that period, the revocation takes effect on the day after the last day for making submissions.

(3) In making the decision whether to revoke the determination, the Secretary must consider any submissions received within the period for making submissions. The Secretary must make the decision within 28 days after the end of that period.

(4) The Secretary must notify, in writing, the person and the approved provider of the decision.

(5) The notice must be given to the person and the approved provider within 28 days after the end of the period for making submissions. If the notice is not given within that period, the Secretary is taken to have decided not to revoke the determination.

(6) A revocation has effect:

(a) if the person and the approved provider received notice under subsection (4) on the same day—the day after that day; or

(b) if they received the notice on different days—the day after the later of those days.

---

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

Subdivision 57-E—Payment of accommodation bonds

57-16 Period for payment of accommodation bond

A care recipient must not be required to pay an *accommodation bond:

(a) before the end of such period as is specified in the Aged Care (Transitional Provisions) Principles; or

(b) if no period is specified—before the end of 6 months;

after *entry to the residential care service or flexible care service.

Note: However, under sections 57-18 and 57-20, amounts representing income derived and retention amounts are payable from the date a care recipient *enters a residential care service or a flexible care service.

57-17 Payment of an accommodation bond by periodic payments

(1) A care recipient may elect that an *accommodation bond is to be paid, in whole or in part, by periodic payments.

(2) The Aged Care (Transitional Provisions) Principles may specify:

(a) the frequency of periodic payments; and

(b) the method for working out amounts of periodic payments (including a method where only part of the *accommodation bond is to be paid by periodic payments); and

(c) any other matters relating to periodic payments.

(3) The method specified in the Aged Care (Transitional Provisions) Principles for working out amounts of periodic payments must have regard to:

(a) the income that the approved provider could be expected to have derived; and

(b) the retention amounts that would have been permitted to be deducted under section 57-20;

if the *accommodation bond had been paid as a lump sum.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

Subdivision 57-F—Rights of approved providers

57-18 Approved provider may retain income derived

(1) An approved provider may retain income derived from the investment of an *accommodation bond balance in respect of an *accommodation bond paid to the approved provider.

(2) Despite section 57-16, if a care recipient pays an *accommodation bond to an approved provider after the due date (see subsection (6)), the care recipient may be required to pay to the approved provider an amount representing the income the approved provider could be expected to have derived, through investing the *accommodation bond balance, during the period:

(a) beginning on the due date; and

(b) ending on the day on which the *accommodation bond was paid.

(3) If the care recipient is provided with care for 2 months or less, the care recipient may be required to pay to the approved provider an amount representing the income the approved provider could be expected to have derived, through investing the *accommodation bond balance, during:

(a) the whole of the month in which the care recipient *entered the residential care service or flexible care service; and

(b) the 2 following months;

unless the Aged Care (Transitional Provisions) Principles specify that a lesser amount is payable.

Example: If a care recipient *entered a residential care service on 20 January and left on 3 March, the amount would be the amount the approved provider could have been expected to have derived if the care recipient received care for the whole of January, February and March.

(4) The Aged Care (Transitional Provisions) Principles may specify a method for working out the amounts referred to in subsections (2) and (3).

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

(5) The Aged Care (Transitional Provisions) Principles may provide that, in the circumstances specified in the Aged Care (Transitional Provisions) Principles, an approved provider must not retain income derived, from the investment of an *accommodation bond balance, in respect of periods specified in the Aged Care (Transitional Provisions) Principles.

(6) In this section:

due date means:

(a) in relation to an *accommodation bond payable by a care recipient for *entry to a residential care service—the day on which the care recipient entered the residential care service; or

(b) in relation to an accommodation bond payable by a care recipient for entry to a flexible care service—the day on which the care recipient entered the flexible care service.

57-19 Amounts to be deducted from accommodation bond balance

(1) An approved provider to whom an *accommodation bond was paid by a care recipient may deduct from the *accommodation bond balance:

(a) retention amounts in respect of the accommodation bond (see section 57-20); and

(b) amounts owed to the approved provider by the care recipient under an *accommodation bond agreement, a *resident agreement or an *extra service agreement; and

(c) amounts, worked out in accordance with the Aged Care (Transitional Provisions) Principles, representing interest on the amounts referred to in paragraph (b).

(2) The approved provider must not deduct any other amounts from the *accommodation bond balance.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

57-20 Retention amounts

(1) A retention amount must not exceed the amount specified in, or worked out in accordance with, the Aged Care (Transitional Provisions) Principles.

(2) The Aged Care (Transitional Provisions) Principles may provide that, in the circumstances specified in the Aged Care (Transitional Provisions) Principles, an approved provider must not deduct any amounts from an *accommodation bond balance in respect of periods specified in the Aged Care (Transitional Provisions) Principles.

(3) Subject to subsections (4) and (5), a retention amount may be deducted from an *accommodation bond balance for each month, or part of a month, during which the care recipient concerned is:
  (a) provided with residential care through the residential care service in respect of which the *accommodation bond was paid; or
  (b) provided with flexible care through the flexible care service in respect of which the accommodation bond was paid.

(4) Subject to subsection (5), retention amounts may only be deducted during the period of 5 years, or such other period specified in the Aged Care (Transitional Provisions) Principles, starting on the latest of the following days:
  (a) the day on which the care recipient *entered the residential care service or flexible care service;
  (c) if a determination under paragraph 57-14(1)(a) is in force in respect of the care recipient—the day after the day on which the determination ceases to be in force;
  (d) such other day as is worked out in accordance with the Aged Care (Transitional Provisions) Principles.

(5) If, before the *accommodation bond was paid, amounts had already been deducted from an *accommodation bond balance in respect of another accommodation bond previously paid by the care recipient,

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

the period of 5 years referred to in subsection (4) is reduced by each month in respect of which a retention amount was so deducted.

Note: The effect of this subsection is that all periods spent in residential care or flexible care after an *accommodation bond is first paid will count towards the 5 year maximum under subsection (4) for deducting retention amounts.

Example: If a care recipient initially spends 6 weeks in residential care and then moves to another residential care service, retention amounts can be deducted for 3 months in respect of the 6 weeks of care (see subsection (6)), but after that only for up to 4 years and 9 months.

(6) For the purposes of this section, if the care recipient is provided with care for 2 months or less, the care recipient is taken, for the purposes of working out retention amounts payable, to have received that care during:

(a) the whole of the month in which the care recipient *entered the residential care service or flexible care service; and

(b) the 2 following months;

unless the Aged Care (Transitional Provisions) Principles specify that care is taken to have been provided for a shorter period.

Example: A care recipient who *entered a residential care service on 20 January and left on 3 March would be taken to have received care for the whole of January, February and March. Therefore, retention amounts could be deducted for each of these months.

(7) Deduction of retention amounts must comply with any other requirements specified in the Aged Care (Transitional Provisions) Principles.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

Subdivision 57-H—Charging an accommodation bond instead of an accommodation charge

57-23 Charging an accommodation bond instead of an accommodation charge

(1) This section applies if:

(a) a care recipient has entered into an *accommodation bond agreement (the ***original agreement***) for *entry to an aged care service (the ***original service***) that is a residential care service or a flexible care service; and

(b) the care recipient ceases being provided with residential care or flexible care through the original service (other than because the care recipient is on *leave); and

(c) within 28 days after the cessation, the care recipient enters another aged care service (the ***later service***) that is a residential care service or a flexible care service and for which entry an *accommodation charge would become payable (disregarding subparagraph 57A-2(1)(a)(iv)); and

(d) the approved provider of the later service and the care recipient agreed, before the care recipient entered the later service, that an accommodation bond, instead of an accommodation charge, can be charged for the entry of the person to the later service.

(2) If this section applies:

(a) the approved provider of the later service can charge an *accommodation bond for the *entry of the person to the later service; and

(b) if the care recipient has paid the full amount of the accommodation bond relating to the original agreement—the maximum amount of the new accommodation bond is the amount of the accommodation bond balance that was refunded or is payable to the care recipient under

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

Division 52P of the *Aged Care Act 1997* in respect of the accommodation bond relating to the original agreement; and

(c) in any other case—the maximum amount of the new accommodation bond is the amount of the accommodation bond that was payable under the original agreement, less any retention amounts that would have been permitted to be deducted under section 57-20 in respect of the original service if the accommodation bond had been paid as a lump sum.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

Division 57A—What are the responsibilities relating to accommodation charges?

57A-1 What this Division is about

If an approved provider charges an *accommodation charge for the *entry of a care recipient to a residential care service, several rules must be followed. These relate particularly to *accommodation charge agreements, the amount of the charge that accrues and its payment, and treatment of charge payments received.

Table of Subdivisions

57A-A The basic rules
57A-B Accommodation charge agreements
57A-C Daily accrual amounts of accommodation charges
57A-D Payment of accommodation charges

Subdivision 57A-A—The basic rules

57A-2 Basic rules about accommodation charges

(1) The rules relating to charging an *accommodation charge for the *entry of a person to a residential care service as a care recipient are as follows:

(a) at the time of entry, all of the following must be true:

(i) the person requires a *high level of residential care;

(ii) the person's approval as a care recipient of residential care is not limited under section 22-2 of the *Aged Care Act 1997* to a *low level of residential care;

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

(iii) the service, or the *distinct part of the service through which the care recipient is to receive care, does not have *extra service status;

(iv) section 57-23 does not allow the approved provider to charge an *accommodation bond for the entry;

Note: If a care recipient's assets at the time of the care recipient's *entry to the residential care service are less than the care recipient's minimum permissible asset value (as defined in subsection 57-12(3)), the care recipient cannot be required to pay an *accommodation charge—see section 57A-6.

(b) the person is not a *charge exempt resident;

(c) the entry must not be for the purpose of the provision of *respite care;

(d) the approved provider must, before the care recipient enters the service, provide the care recipient with such information about the accommodation charge as is specified in the Aged Care (Transitional Provisions) Principles;

(e) the approved provider must have entered into an *accommodation charge agreement (see section 57A-3) with the care recipient before, or within 21 days after, the care recipient entered the service;

Note: This time limit is extended in some cases if certain legal processes relating to the care recipient's mental impairment are in progress—see subsection (2) of this section.

(f) another person must not be required to pay the accommodation charge as a condition of the care recipient entering the residential care service;

(g) the daily amount at which the accommodation charge accrues must not exceed the maximum provided for by section 57A-6 or 57A-8A or paragraph 57A-9(1)(b) and the care recipient must not be charged more than one accommodation charge in respect of entering the service;

(h) the accommodation charge must not accrue for any day in contravention of the requirements of section 57A-7 (which deals with cessation of the provision of care);

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

(i) the accommodation charge must not be charged if a determination is in force under paragraph 57A-9(1)(a) that paying an accommodation charge would cause the care recipient financial hardship;

(j) the approved provider must comply with the requirements of section 57A-11 relating to payment of the accommodation charge;

(k) the care recipient may be required in accordance with section 57A-12 to pay interest to the approved provider if some or all of the accommodation charge is not paid within the time that section permits;

(m) the approved provider must not charge an accommodation charge if:

(i) a sanction has been imposed on the approved provider under section 63N of the *Quality and Safety Commission Act; and

(ii) the sanction prohibits the charging of an accommodation charge for the entry;

(n) any other rules specified in the Aged Care (Transitional Provisions) Principles.

(2) If, at the end of the 21 days mentioned in paragraph (1)(e):

(a) the approved provider and the care recipient have not entered into an *accommodation charge agreement; and

(b) a process under a law of the Commonwealth, a State or a Territory has begun for a person (other than an approved provider) to be appointed, by reason that the care recipient has a mental impairment, as the care recipient's legal representative;

the time limit in that paragraph is extended until the end of 7 days after:

(c) the appointment is made; or

(d) a decision is made not to make the appointment; or

(e) the process ends for some other reason;

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

or for such further period as the Secretary allows, having regard to any matters specified in the Aged Care (Transitional Provisions) Principles.

Subdivision 57A-B—Accommodation charge agreements

57A-3 Contents of accommodation charge agreements

(1) An agreement between an approved provider and a person proposing to *enter, or having entered, as a care recipient to a residential care service through which the approved provider provides care is an ***accommodation charge agreement*** if it sets out the following:

(a) the amount of the *accommodation charge that:

(i) will accrue for each day (including a day on which the care recipient is on *leave from the residential care service) if the care recipient enters the service; or

(ii) if the care recipient has already entered the residential care service—has accrued and will accrue for each day (including a day on which the care recipient is on *leave from the service);

(b) the care recipient's proposed date of entry, or date of entry, to the residential care service;

(c) how the accommodation charge is to be paid;

(d) the time or times when the accommodation charge is payable;

(e) whether agreeing to pay the accommodation charge entitles the care recipient to specific accommodation or additional services within the residential care service;

(f) any financial hardship provisions that apply to the care recipient;

(g) such other matters as are specified in the Aged Care (Transitional Provisions) Principles.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

(2) The Aged Care (Transitional Provisions) Principles may specify, but are not limited to, matters relating to the following:
   (a) the specific entitlements of care recipients arising from entering into an *accommodation charge agreement;
   (b) the provision of information to third parties about accommodation charges and related matters;
   (c) a care recipient's obligations;
   (d) alleviating financial hardship.

57A-4 Accommodation charge agreements may be incorporated into other agreements

For the purposes of this Division, a person is taken to have entered into an *accommodation charge agreement if the person has entered into an agreement that contains the provisions required by section 57A-3.

Example: These provisions may be included in a *resident agreement.

57A-5 Agreements cannot affect requirements of this Division

The requirements of this Division apply despite any provision of an *accommodation charge agreement, or any other agreement, to the contrary.

Subdivision 57A-C—Daily accrual amounts of accommodation charges

57A-6 Maximum daily accrual amount of accommodation charge

(1) Subject to subsection (2) and sections 57A-8A and 57A-9, the maximum daily amount at which an *accommodation charge accrues for the *entry of a person as a care recipient to a residential care service is whichever is the lowest of the following:
   (a) the amount of the daily accrual of the accommodation charge as specified in the *accommodation charge agreement;

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

(b) the amount (rounded down to the nearest cent) obtained by:
  (i) taking the amount that, when subtracted from an amount equal to the value of the care recipient's assets at the time of the care recipient's entry to the residential care service, leaves an amount at least equal to the care recipient's minimum permissible asset value as defined in subsection 57-12(3); and
  (ii) dividing the result by 2,080;
(c) such amount as is specified in, or worked out in accordance with, the Aged Care (Transitional Provisions) Principles.

Note: The operation of this section may be modified if, before entering into an accommodation charge agreement, the care recipient gives the approved provider a determination under section 44-8AB of the value of the care recipient's assets. See subsection (4).

(2) If:
(a) a care recipient proposes to *enter a residential care service conducted by an approved provider; and
(b) the care recipient does not, before entering into an *accommodation charge agreement, give the approved provider sufficient information about the care recipient's assets for the approved provider to be able to determine the amounts referred to in paragraph (1)(b);

the maximum daily amount at which an *accommodation charge accrues is the lesser of the amounts mentioned in paragraphs (1)(a) and (c).

(3) The value of a care recipient's assets is to be worked out in the same way as it would be worked out under section 44-10 for the purposes of section 44-5B, 44-7 or 44-8.

(4) However, subsections (1) and (2) are modified as described in the table, and subsection (3) does not apply, if, before entering into the *accommodation charge agreement, the care recipient gives the approved provider a copy of a determination that:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

(a) is a determination under section 44-8AB of the value of the care recipient's assets at a time (the ***valuation time***) that is before or at the time (the ***entry time***) the care recipient *enters the residential care service; and

(b) is in force at the entry time, if that is after the valuation time.

Modifications of subsections (1) and (2)

	If:	Subsections (1) and (2) have effect as if:
1	The valuation time is before the entry time	(a) the reference in paragraph (1)(b) to the time of the care recipient's *entry to the residential care service were a reference to the valuation time; and (b) the value of the care recipient's assets at the valuation time were the value specified in the determination; and (c) subsection 57-12(3) defined ***minimum permissible asset value*** by reference to the *basic age pension amount at the valuation time (instead of the entry time)
2	The valuation time is at the entry time	The value of the care recipient's assets at the entry time were the value specified in the determination

57A-7 Accommodation charge not to accrue after provision of care has ceased

(1) An *accommodation charge for *entry to a residential care service must not accrue for any day after the provision of care to the care recipient through that residential care service ceases.

57A-8A Maximum amount of accommodation charge if care recipient moves between aged care services

If:

(a) an *accommodation charge is payable by a care recipient for *entry to an *aged care service (the ***prior service***) that is a residential care service; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

(b) the care recipient ceases being provided with residential care through the prior service (other than because the care recipient is on *leave) on or after 20 March 2008; and

(c) the care recipient enters another aged care service that is a residential care service within 28 days after the day on which the care recipient ceased being provided with care by the prior service;

the maximum daily amount at which the accommodation charge accrues for the entry of the care recipient to the other service is the maximum daily amount of accommodation charge that accrued under section 57A-6 for entry of the care recipient to the prior service.

57A-9 Accommodation charge in cases of financial hardship

(1) The Secretary may determine, in accordance with the Aged Care (Transitional Provisions) Principles, that a person:

(a) must not be charged an *accommodation charge because payment of an accommodation charge would cause the person financial hardship; or

(b) must not be charged an accommodation charge of more than a specified maximum daily amount because payment of more than that amount would cause the person financial hardship.

Note: Refusals to make determinations are reviewable under Part 6.1.

(2) Without limiting the circumstances that constitute financial hardship for the purposes of this section, such circumstances include any circumstances specified in the Aged Care (Transitional Provisions) Principles.

(3) The determination ceases to be in force at the end of a specified period or on the occurrence of a specified event, if the determination so provides.

Note: Decisions to specify periods or events are reviewable under Part 6.1.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

(4) Application may be made to the Secretary, in the form approved by the Secretary, for a determination under subsection (1) that payment of an *accommodation charge, or an accommodation charge of more than a specified maximum daily amount, would cause the person financial hardship. The application may be made by:

(a) the person; or

(b) an approved provider to which the accommodation charge, or a larger accommodation charge, would otherwise be paid.

(5) If the Secretary needs further information to determine the application, the Secretary may give to the applicant a notice requiring the applicant to give the further information:

(a) within 28 days after receiving the notice; or

(b) within such other period as is specified in the notice.

The application is taken to have been withdrawn if the information is not given within whichever of those periods applies. The notice must contain a statement setting out the effect of this subsection.

Note: The period for giving the further information can be extended—see section 96-7.

(6) The Secretary must notify the person and the approved provider, in writing, of the Secretary's decision on whether to make the determination. The notice must be given:

(a) within 28 days after receiving the application; or

(b) if the Secretary has requested further information under subsection (5)—within 28 days after receiving the information.

(7) If the Secretary makes the determination, the notice must:

(a) set out any period at the end of which, or any event on the occurrence of which, the determination will cease to be in force; and

(b) if the determination is that a person must not be charged an *accommodation charge of more than a specified maximum

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

daily amount—specify the maximum daily amount of the accommodation charge.

57A-10 Revocation of determinations of financial hardship

(1) The Secretary may, in accordance with the Aged Care (Transitional Provisions) Principles, revoke a determination made under section 57A-9.

Note: Revocations of determinations are reviewable under Part 6.1.

(2) Before deciding to revoke the determination, the Secretary must notify the person, and an approved provider who is providing or is to provide residential care to the person, that revocation is being considered. The notice must be in writing and must:

(a) invite the person and the approved provider to make submissions, in writing, to the Secretary within 28 days after receiving the notice; and

(b) inform them that if no submissions are made within that period, the revocation takes effect on the day after the last day for making submissions.

(3) In making the decision whether to revoke the determination, the Secretary must consider any submissions received within the period for making submissions. The Secretary must make the decision within 28 days after the end of that period.

(4) The Secretary must notify, in writing, the person and the approved provider of the decision.

(5) The notice must be given to the person and the approved provider within 28 days after the end of the period for making submissions. If the notice is not given within that period, the Secretary is taken to have decided not to revoke the determination.

(6) A revocation has effect:

(a) if the person and the approved provider received notice under subsection (4) on the same day—the day after that day; or

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

(b) if they received the notice on different days—the day after the later of those days.

Subdivision 57A-D—Payment of accommodation charges

57A-11 Accommodation charge may be payable not more than one month in advance

(1) A care recipient may be required to pay an *accommodation charge at a time before the day for which the charge will accrue.

(2) However, the time must not be more than one month before the day for which the charge will accrue and, if the charge does not in fact accrue, the care recipient is entitled to a refund of the amount paid.

57A-12 Approved provider may charge interest

(1) If:

(a) a care recipient is required, under an *accommodation charge agreement, to pay an amount of *accommodation charge to an approved provider; and

(b) the care recipient does not pay the required amount before the end of one month after the day for which the charge accrues; and

(c) the agreement provides for interest to be charged on the balance outstanding at a specified rate;

the care recipient may be required to pay the approved provider interest on the balance outstanding for the period beginning at the end of the one month and continuing while the balance remains unpaid.

(2) However, the rate at which the interest is charged must not exceed the maximum specified in the Aged Care (Transitional Provisions) Principles.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

Division 58—What are the responsibilities relating to resident fees?

58-1 Responsibilities relating to resident fees

The responsibilities relating to resident fees charged for, or in connection with, the provision to a care recipient of care and services that it is the approved provider's responsibility under paragraph 54-1(1)(a) of the *Aged Care Act 1997* to provide, are as follows:

(a) subject to section 58-6, the resident fee in respect of any day must not exceed the sum of:
  (i) the maximum daily amount set under section 58-2; and
  (ii) such other amounts as are specified in, or worked out in accordance with, the Aged Care (Transitional Provisions) Principles;

(b) the care recipient must not be required to pay resident fees more than one month in advance;

(c) the care recipient must not be required to pay resident fees for any period prior to *entry to the residential care service, other than for a period in which the care recipient is, because of subsection 42-3(3), taken to be on *leave under section 42-2;

(d) if the care recipient dies or departs from the service—any fees paid in advance in respect of a period occurring after the care recipient dies or leaves must be refunded in accordance with the Aged Care (Transitional Provisions) Principles.

58-2 Maximum daily amount of resident fees

(1) The maximum daily amount of resident fees payable by the care recipient is the amount worked out as follows:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

Resident fee calculator

Step 1. Work out the *standard resident contribution for the care recipient using section 58-3, 58-3B or 58-3C (whichever is applicable).

Step 2. Add the compensation payment reduction (if any) applicable to the care recipient on the day in question (see section 44-20).

Step 3. Add the *daily income tested reduction (if any) applicable to the care recipient on that day (see sections 44-21 to 44-23).

Step 4. Subtract the amount of any hardship supplement (expressed as a daily amount) applicable to the care recipient on the day in question under section 44-30.

Step 5. Add any other amounts agreed between the care recipient and the approved provider in accordance with the Aged Care (Transitional Provisions) Principles.

Step 6. If, on the day in question, the *place in respect of which residential care is provided to the care recipient has *extra service status, add the extra service amount in respect of the place worked out under section 58-5.

The result is the ***maximum daily amount of resident fees*** for the care recipient.

(2) Steps 2 to 6 of the resident fee calculator in subsection (1) do not apply in relation to a day on which the care recipient is, because of subsection 42-3(3), taken to be on *leave under section 42-2.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

58-3 Standard resident contribution

General rule

(1) The ***standard resident contribution*** for a care recipient is the amount obtained by rounding down to the nearest cent an amount equal to 85% of the *basic age pension amount (worked out on a per day basis).

Exceptions

(2) However, the ***standard resident contribution*** for a care recipient who is:

(a) a *protected resident; or

(b) a care recipient to whom section 58-3C applies;

is the amount referred to in subsection 58-3B(3) or 58-3C(3) (as the case requires).

58-3A Meaning of *pre-September 2009 resident* and *post-September 2009 resident*

Pre-September 2009 resident

(1) A person is a ***pre-September 2009 resident*** if:

(a) the person is being provided with residential care through a residential care service; and

(b) either:

(i) the person *entered a residential care service before 20 September 2009; or

(ii) the person was on *pre-entry leave from a residential care service immediately before 20 September 2009 and the person entered the residential care service on or after 20 September 2009 at the end of that pre-entry leave; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

(c) the person has not had a break in residential care of more than 28 days between:

(i) the last residential care service through which residential care was provided, or taken to be provided, to the person before 20 September 2009 and the next residential care service through which residential care is provided, or taken to be provided, to the person; and

(ii) any residential care service through which residential care is provided, or taken to be provided, to the person on or after 20 September 2009 and the next residential care service through which residential care is provided, or taken to be provided, to the person.

Post-September 2009 resident

(2) A person is a ***post-September 2009 resident*** if:

(a) the person is being provided with residential care through a residential care service; and

(b) the person is not a *pre-September 2009 resident.

Break in residential care

(3) For the purposes of subsection (1), the period:

(a) beginning on the day on which a person ceases to be provided with residential care through a residential care service (other than because the person is on *leave from the residential care service); and

(b) ending on the day on which the person *enters, or begins *pre-entry leave, with the next residential care service through which residential care is provided, or taken to be provided, to the person;

is a ***break in residential care*** for the person.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

Person not provided with residential care while on respite leave

(4) For the purposes of subsections (1), (2) and (3), a person is not provided, or taken to be provided, with residential care during any period during which the person is being provided with *respite care.

58-3B Standard resident contribution—protected residents

Meaning of protected resident

(1) A care recipient is a ***protected resident*** if:
  (a) the care recipient is a *pre-September 2009 resident; and
  (b) the care recipient is not a *pre-2008 reform resident to whom section 58-3C applies; and
  (c) on 19 September 2009, the care recipient was not receiving an *income support payment.

(2) A care recipient is also a ***protected resident*** if:
  (a) the care recipient is a *pre-September 2009 resident; and
  (b) the care recipient is not a *pre-2008 reform resident to whom section 58-3C applies; and
  (c) on 19 September 2009, the care recipient was receiving an *income support payment; and
  (d) the amount determined under paragraph 44-24(2)(b), (3)(b) or (4)(b) (as the case requires), for the purposes of working out the care recipient's *total assessable income in respect of 20 September 2009, is equal to or more than the sum of:
    (i) the amount worked out by applying point 1064-E4 of Pension Rate Calculator A at the end of section 1064 of the *Social Security Act 1991*; and
    (ii) $5,668.00.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

Standard resident contribution

(3) The ***standard resident contribution*** for a care recipient who is a *protected resident is the amount obtained by rounding down to the nearest cent an amount equal to 77.5% of the *basic age pension amount (worked out on a per day basis).

58-3C Standard resident contribution—certain pre-2008 reform residents

Care recipients to whom this section applies

(1) This section applies to a care recipient if:
  (a) the care recipient is a *pre-2008 reform resident; and
  (b) on 19 September 2009, the care recipient did not have a dependent child; and
  (c) on 19 September 2009, one or more of the following requirements is met:
    (i) the care recipient was not receiving an *income support payment;
    (ii) for *entry to the residential care service in question, the care recipient had paid an *accommodation bond that was more than the amount obtained by rounding to the nearest $500.00 (rounding $250.00 upwards) an amount equal to 10 times the *basic age pension amount at the time of entry;
    (iii) the *daily income tested reduction in respect of the care recipient was an amount worked out under section 44-23; and
  (d) on 20 September 2009 and on each day since that day, the care recipient does not have a *dependent child; and
  (e) on 20 September 2009 and on each day since that day, one or more of the following requirements is met:
    (i) the care recipient is not receiving an *income support payment;

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

(ii) if the care recipient *entered the residential care service in question before 20 September 2009—the care recipient paid an *accommodation bond for the entry that was more than the amount obtained by rounding to the nearest $500.00 (rounding $250.00 upwards) an amount equal to 10 times the *basic age pension amount at the time of entry;

(iii) if the care recipient *entered the residential care service in question on or after 20 September 2009—the care recipient paid an *accommodation bond that was more than the amount obtained by rounding to the nearest $500.00 (rounding $250.00 upwards) an amount equal to 9 times the *basic age pension amount at the time of entry;

(iv) the *daily income tested reduction in respect of the care recipient was an amount worked out under section 44-23.

(2) For the purposes of subparagraphs (1)(c)(ii), (1)(e)(ii) and (1)(e)(iii), if the care recipient has elected under subsection 57-17(1) to pay an *accommodation bond by periodic payments, the amount of the accommodation bond is taken to be what would have been payable by the care recipient in accordance with Subdivision 57-E had the care recipient paid it as a lump sum.

Standard resident contribution

(3) The ***standard resident contribution*** for a care recipient to whom this section applies is the amount obtained by rounding down to the nearest cent an amount equal to 96.5% of the *basic age pension amount (worked out on a per day basis).

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

58-5 Extra service amount

The ***extra service amount*** in respect of the *place referred to in step 6 of the resident fee calculator in subsection 58-2(1) is the sum of:

(a) the extra service fee in force for the place on the day in question (see Division 35 of the *Aged Care Act 1997*); and

(b) an amount equal to 25% of that extra service fee.

58-6 Maximum daily amount of resident fees for reserving a place

If:

(a) a care recipient is absent from a residential care service on a particular day; and

(b) the care recipient is not on *leave from the residential care service on that day; and

(ba) the care recipient would have been on leave from the residential care service on that day under subsection 42-2(3) except that the care recipient had previously been on leave under that subsection, during the current financial year, for 52 days;

the maximum fee in respect of a day that can be charged for reserving a place in the residential care service for that day is the sum of the following amounts:

(c) the maximum daily amount under section 58-2 that would have been payable by the care recipient if the care recipient had been provided with residential care through the residential care service on that day;

(d) the amount that would have been the amount of *residential care subsidy under Division 44 for the care recipient in respect of that day, if the care recipient had been provided with residential care through the residential care service on that day.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

Division 60—What are the responsibilities relating to home care fees?

60-1 Responsibilities relating to home care fees

The responsibilities relating to home care fees charged, for the provision to a care recipient of care and services that it is the approved provider's responsibility under paragraph 54-1(1)(a) of the *Aged Care Act 1997* to provide, are as follows:

(a) the fee in respect of any day must not exceed the maximum daily amount under section 60-2;

(b) the care recipient must not be required to pay home care fees more than one month in advance;

(c) the care recipient must not be required to pay home care fees for any period prior to being provided with the home care;

(d) if the care recipient dies or provision of home care ceases—any fees paid in advance in respect of a period occurring after the care recipient's death, or the cessation of home care, must be refunded in accordance with the Aged Care (Transitional Provisions) Principles.

60-2 Maximum daily amount of home care fees

(1) The maximum daily amount of home care fees payable by the care recipient is the amount specified in, or determined in accordance with, the Aged Care (Transitional Provisions) Principles.

(2) The Aged Care (Transitional Provisions) Principles may specify different levels of maximum daily amounts of home care fees having regard to any or all of the following:

(a) the income of a care recipient;

(b) the nature and level of the care and services to which the home care fees relate;

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

Section 60-2

(c) reduced levels of home care fees for a care recipient who would suffer financial hardship if required to pay the amount of home care fees that would otherwise be payable.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

Chapter 6—Administration

Division 84—Introduction

84-1 What this Chapter is about

This Chapter deals with the reconsideration and administrative review of decisions (see Part 6.1).

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

Part 6.1—Reconsideration and review of decisions

Division 85—Reconsideration and review of decisions

85-1 Reviewable decisions

Each of the following decisions is a *****reviewable decision***:

Reviewable decisions		
Item	**Decision**	**Provision under which decision is made**
39AA	To extend the period within which a variation of a claim for residential care subsidy can be made	section 43-4A
39AB	To refuse to extend the period within which a variation of a claim for residential care subsidy can be made	section 43-4A
39A	To grant or refuse an application for a determination described in subsection 44-7(1A) or 44-8(1A) (which is relevant to a person's status as a *concessional resident or an *assisted resident)	subsection 44-8AA(1)
39B	To revoke a determination described in subsection 44-7(1A) or 44-8(1A)	subsection 44-8AA(6)
39C	To determine the value of a person's assets	subsection 44-8AB(1)
39D	To revoke a determination of the value of a person's assets	subsection 44-8AB(4)
40	To refuse to make a determination that a care recipient is eligible for an oxygen supplement	subsection 44-13(2)
41	To refuse to make a determination that a care recipient is eligible for an enteral feeding supplement	subsection 44-14(2)

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

Reviewable decisions		
Item	**Decision**	**Provision under which decision is made**
42	To determine that a judgment or settlement is to be treated as having taken into account the cost of providing residential care	subsection 44-20(5)
43	To determine that a part of the compensation under a settlement is to be treated as relating to the future costs of providing residential care	subsection 44-20(6)
44	To refuse to make a determination that the daily income tested reduction is zero	subsection 44-22(2)
45	To specify a period at the end of which a determination that the daily income tested reduction is zero ceases to be in force	subsection 44-22(3)
46	To make a determination for the purposes of working out a care recipient's total assessable income	subsection 44-24 (1) or paragraph 44-24(2)(b), (3)(b), (3A)(b) or (4)(b)
47	To refuse to make a determination about viability supplement	subsection 44-29(2)
48	To refuse to make a determination that a care recipient is eligible for a hardship supplement	subsection 44-31(1)
49	To specify a period or event at the end of which, or on the occurrence of which, a determination under section 44-31 will cease to be in force	subsection 44-31(3)
49A	To extend the period within which a variation of a claim for home care subsidy can be made	section 47-4A
49B	To refuse to extend the period within which a variation of a claim for home care subsidy can be made	section 47-4A
51	To refuse to make a determination that paying an accommodation bond would cause financial hardship	paragraph 57-14(1)(a)

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

Section 85-1

Reviewable decisions		
Item	**Decision**	**Provision under which decision is made**
51A	To refuse to make a determination that paying an accommodation bond of more than a specified maximum amount would cause financial hardship, or to specify a particular maximum amount under such a determination	paragraph 57-14(1)(b)
52	To specify a period or event at the end of which, or on the occurrence of which, a determination under subsection 57-14(1) ceases to be in force	subsection 57-14(3)
53	To revoke a determination that paying an accommodation bond would cause financial hardship	subsection 57-15(1)
53A	To refuse to make a determination that paying an accommodation charge would cause financial hardship	paragraph 57A-9(1)(a)
53AA	To refuse to make a determination that paying an accommodation charge of more than a specified maximum daily amount would cause financial hardship, or to specify a particular maximum daily amount under such a determination	paragraph 57A-9(1)(b)
53B	To specify a period or event at the end of which, or on the occurrence of which, a determination under subsection 57A-9(1) ceases to be in force	subsection 57A-9(3)
53C	To revoke a determination that paying an accommodation charge would cause financial hardship	subsection 57A-10(1)
54	A decision under the Aged Care (Transitional Provisions) Principles made under section 96-1 that is specified in the Principles to be a decision reviewable under this section	the provision specified in the Principles as the provision under which the decision is made

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

85-2 Deadlines for making reviewable decisions

If:

(a) this Act provides for a person to apply to the Secretary to make a *reviewable decision; and

(b) a period is specified under this Act for giving notice of the decision to the applicant; and

(c) the Secretary has not notified the applicant of the Secretary's decision within that period;

the Secretary is taken, for the purposes of this Act, to have made a decision to reject the application.

85-3 Secretary must give reasons for reviewable decisions

(1) If this Act requires the Secretary to notify a person of the making of a *reviewable decision, the notice must include reasons for the decision.

(2) Subsection (1) does not affect an obligation, imposed upon the Secretary by any other law, to give reasons for a decision.

85-4 Secretary may reconsider reviewable decisions

(1) The Secretary may reconsider a *reviewable decision if the Secretary is satisfied that there is sufficient reason to reconsider the decision.

(3) The Secretary may reconsider a decision even if:

(a) an application for reconsideration of the decision has been made under section 85-5; or

(b) if the decision has been confirmed, varied or set aside under section 85-5—an application has been made under section 85-8 for review of the decision.

(4) After reconsidering the decision, the Secretary must:

(a) confirm the decision; or

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

(b) vary the decision; or

(c) set the decision aside and substitute a new decision.

(5) The Secretary's decision (the ***decision on review***) to confirm, vary or set aside the decision takes effect:

(a) on the day specified in the decision on review; or

(b) if a day is not specified—on the day on which the decision on review was made.

(6) The Secretary must give written notice of the decision on review to the person to whom that decision relates.

Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires the person to be notified of the person's review rights.

85-5 Reconsideration of reviewable decisions

(1) A person whose interests are affected by a *reviewable decision may request the Secretary to reconsider the decision.

(3) The person's request must be made by written notice given to the Secretary:

(a) within 28 days, or such longer period as the Secretary allows, after the day on which the person first received notice of the decision; or

(b) if the decision is a decision under section 44-24 to make a determination under subsection 44-24(1) or paragraph 44-24(2)(b), (3)(b), (3A)(b) or (4)(b)—within 90 days, or such longer period as the Secretary allows, after the day on which the person first received notice of the decision.

(4) The notice must set out the reasons for making the request.

(5) After receiving the request, the Secretary must reconsider the decision and:

(a) confirm the decision; or

(b) vary the decision; or

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

(c) set the decision aside and substitute a new decision.

(6) The Secretary's decision (the ***decision on review***) to confirm, vary or set aside the decision takes effect:

(a) on the day specified in the decision on review; or

(b) if a day is not specified—on the day on which the decision on review was made.

(7) The Secretary is taken, for the purposes of this Part, to have confirmed the decision if the Secretary does not give notice of a decision to the person within 90 days after receiving the person's request.

Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires the person to be notified of the person's review rights.

(8) If a committee has been established under section 96-3 and a function of the committee is to provide advice to the Secretary in relation to the Secretary's reconsideration of a particular kind of *reviewable decision, the Secretary:

(a) may refer a reviewable decision of that kind to the committee for advice; and

(b) must, in reconsidering the decision, take account of any advice of the committee in relation to the decision.

85-8 AAT review of reviewable decisions

An application may be made to the Administrative Appeals Tribunal for the review of a *reviewable decision that has been confirmed, varied or set aside under section 85-4 or 85-5.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

Chapter 7—Miscellaneous

Division 96—Miscellaneous

96-1 Aged Care (Transitional Provisions) Principles

The Minister may, by legislative instrument, make Aged Care (Transitional Provisions) Principles providing for matters:

(a) required or permitted by this Act to be provided; or

(b) necessary or convenient to be provided in order to carry out or give effect to this Act.

96-2 Delegation of Secretary's powers and functions

Employees etc. of Agencies and Commonwealth authorities

(1) The Secretary may, in writing, delegate all or any of the powers and functions of the Secretary under this Act, the regulations or any Principles made under section 96-1 to a person engaged (whether as an employee or otherwise) by:

(a) an Agency (within the meaning of the *Public Service Act 1999*); or

(b) an authority of the Commonwealth.

Chief Executive Centrelink

(2) The Secretary may, in writing, delegate to the *Chief Executive Centrelink:

(a) the Secretary's powers and functions under section 44-8AA or 44-8AB; or

(b) the Secretary's powers and functions under section 44-24 relating to making a determination for the purposes of working out a care recipient's *total assessable income; or

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

(c) the Secretary's powers and functions under section 85-4 or 85-5 relating to reconsidering the following decisions:
  (i) a decision under section 44-8AA or 44-8AB;
  (ii) a determination under section 44-24 for the purposes of working out a care recipient's total assessable income.

(3) If, under subsection (2), the Secretary delegates a power or function to the *Chief Executive Centrelink, the Chief Executive Centrelink may, in writing, sub-delegate the power or function to a Departmental employee (within the meaning of the *Human Services (Centrelink) Act 1997*).

Chief Executive Medicare

(4) The Secretary may, in writing, delegate to the *Chief Executive Medicare:
  (a) the Secretary's powers and functions under section 44-8AA or 44-8AB; or
  (b) the Secretary's powers and functions under section 44-24 relating to making a determination for the purposes of working out a care recipient's *total assessable income; or
  (c) the Secretary's powers and functions under section 85-4 or 85-5 relating to reconsidering the following decisions:
    (i) a decision under section 44-8AA or 44-8AB;
    (ii) a determination under section 44-24 for the purposes of working out a care recipient's total assessable income.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

(5) If, under subsection (4), the Secretary delegates a power or function to the *Chief Executive Medicare, the Chief Executive Medicare may, in writing, sub-delegate the power or function to a Departmental employee (within the meaning of the *Human Services (Medicare) Act 1973*).

Veterans' Affairs Secretary

(6) The Secretary may, in writing, delegate to the Secretary of the Department administered by the Minister who administers the *Veterans' Entitlements Act 1986*:

(a) the Secretary's powers and functions under section 44-8AA or 44-8AB; or

(b) the Secretary's powers and functions under section 85-4 or 85-5 relating to reconsidering a decision under section 44-8AA or 44-8AB.

(7) If, under subsection (6), the Secretary delegates a power or function to the Secretary of the Department administered by the Minister who administers the *Veterans' Entitlements Act 1986*, the Secretary of that Department may, in writing, sub-delegate the power or function to an APS employee in that Department.

Repatriation Commission

(8) The Secretary may, in writing, delegate to the *Repatriation Commission:

(a) the Secretary's powers and functions under section 44-24 relating to making a determination for the purposes of working out a care recipient's *total assessable income; or

(b) the Secretary's powers and functions under section 85-4 or 85-5 relating to reconsidering a determination under section 44-24 for the purposes of working out a care recipient's total assessable income.

(9) If, under subsection (8), the Secretary delegates a power or function to the *Repatriation Commission, the Repatriation

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

Commission may, in writing, sub-delegate the power or function to any person to whom it may delegate powers under the *Veterans' Entitlements Act 1986* under section 213 of that Act.

Social Services Secretary

(10) The Secretary may, in writing, delegate to the Secretary of the Department administered by the Minister who administers the *Data-matching Program (Assistance and Tax) Act 1990*:

(a) the Secretary's powers and functions under section 44-24 relating to making a determination for the purposes of working out a care recipient's *total assessable income; or

(b) the Secretary's powers and functions under section 85-4 or 85-5 relating to reconsidering a determination under section 44-24 for the purposes of working out a care recipient's total assessable income.

(11) If, under subsection (10), the Secretary delegates a power or function to the Secretary of the Department administered by the Minister who administers the *Data-matching Program (Assistance and Tax) Act 1990*, the Secretary of that Department may, in writing, sub-delegate the power or function to an APS employee in that Department.

Sub-delegation

(12) Sections 34AA, 34AB and 34A of the *Acts Interpretation Act 1901* apply in relation to a sub-delegation in a corresponding way to the way in which they apply to a delegation.

96-4 Care provided on behalf of an approved provider

A reference in this Act to an approved provider providing care includes a reference to the provision of that care by another person, on the approved provider's behalf, under a contract or arrangement entered into between the approved provider and the other person.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

Note: The approved provider will still be subject to the responsibilities under Chapter 4 of this Act and Chapter 4 of the *Aged Care Act 1997* in respect of care provided by the other person.

96-5 Care recipients etc. lacking capacity to enter agreements

If:

(a) this Act provides for an approved provider and a care recipient, or a person proposing to enter an *aged care service, to enter into an agreement; and

(b) the care recipient or person is, because of any physical incapacity or mental impairment, unable to enter into the agreement;

another person (other than an approved provider) representing the care recipient or person may enter into the agreement on behalf of the care recipient or person.

Note: The agreements provided for in this Act are *accommodation bond agreements and accommodation charge agreements.

96-6 Applications etc. on behalf of care recipients

If this Act provides for a care recipient to make an application or give information, the application may be made or the information given by a person authorised to act on the care recipient's behalf.

96-7 Withdrawal of applications

(1) A person who has made an application to the Secretary under this Act may withdraw the application at any time before the Secretary makes a decision relating to the application.

(2) If:

(a) this Act provides that an application under this Act is taken to be withdrawn if the application does not give further information, within a particular period, as requested by the Secretary; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

(b) the Secretary, at the applicant's request, extends the period for giving the further information;

the application is not taken to be withdrawn unless the applicant does not give the further information within the period as extended.

96-13 Regulations

The Governor-General may make regulations prescribing matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

Schedule 1—Dictionary

Note: Section 1-3 describes how asterisks are used to identify terms that are defined in this Act.

1 Definitions

In this Act, unless the contrary intention appears:

accommodation bond has the same meaning as in the *Aged Care Act 1997*.

accommodation bond agreement has the meaning given in section 57-9.

accommodation bond balance has the same meaning as in the *Aged Care Act 1997*.

accommodation charge has the same meaning as in the *Aged Care Act 1997*.

accommodation charge agreement has the meaning given by section 57A-3.

accreditation requirement has the same meaning as in the *Aged Care Act 1997*.

adjusted subsidy place means a place included in a residential care service, or a part of a residential care service, that the Minister has determined under paragraph 44-19(1)(b) to be an adjusted subsidy residential care service.

aged care means care of one or more of the following types:

(a) residential care;
(b) home care;
(c) flexible care.

---

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

aged care service means an undertaking through which *aged care is provided.

approved provider has the same meaning as in the *Quality and Safety Commission Act.

assisted resident has the meaning given by section 44-8.

Australia, when used in a geographical sense, includes Norfolk Island, the Territory of Cocos (Keeling) Islands and the Territory of Christmas Island.

authority of a State or Territory means a body established for a public purpose by or under a law of a State or Territory.

basic age pension amount means the annual maximum basic rate under point 1064-B1 of the *Social Security Act 1991* that applies to a person who is not a member of a couple within the meaning of that section.

capital repayment deduction is an amount deducted, in accordance with section 43-6, from an amount of *residential care subsidy otherwise payable under Division 43.

care means services, or accommodation and services, provided to a person whose physical, mental or social functioning is affected to such a degree that the person cannot maintain himself or herself independently.

charge exempt resident has the meaning given by section 44-8B.

Chief Executive Centrelink has the same meaning as in the *Human Services (Centrelink) Act 1997*.

Chief Executive Medicare has the same meaning as in the *Human Services (Medicare) Act 1973*.

classification level has the same meaning as in the *Aged Care Act 1997*.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

close relation has the meaning given in section 44-11.

concessional resident has the meaning given by section 44-7.

continuing care recipient has the same meaning as in the *Aged Care Act 1997*.

daily income tested reduction has the meaning given in step 4 of the income tested reduction calculator in section 44-21. However, section 44-22 or 44-23 may affect the meaning of this term in certain cases.

dependent child has the meaning given in section 44-11.

distinct part has the same meaning as in the *Aged Care Act 1997*.

entry, in relation to a person and an *aged care service, means the commencement of the provision of care to the person through that aged care service.

entry contribution, relating to a care recipient, means any payment, made before 1 October 1997, of money or other valuable consideration required by an *operator to be given or loaned in return for, or in contemplation of, *entry of the care recipient to a hostel (within the meaning of the *Aged or Disabled Persons Care Act 1954*).

extended hospital leave, in relation to a care recipient provided with residential care, means:

(a) leave taken by the care recipient under subsection 42-2(2) for a continuous period of 30 days or more; and

(b) leave taken by the care recipient for a continuous period of 30 days or more, first under subsection 42-2(2) and later under subsection 42-2(3A).

extra service agreement has the same meaning as in the *Aged Care Act 1997*.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

extra service place has the same meaning as in the *Aged Care Act 1997*.

extra service status has the same meaning as in the *Aged Care Act 1997*.

flexible care has the meaning given by section 49-3.

flexible care service means an undertaking through which flexible care is provided.

flexible care subsidy means a subsidy payable under Part 3.3.

high level of residential care has the meaning given by the Aged Care (Transitional Provisions) Principles.

home care has the meaning given by section 45-3.

home care agreement has the same meaning as in the *Aged Care Act 1997*.

home care service means an undertaking through which home care is provided.

home care subsidy means a subsidy payable under Part 3.2.

homeowner has the meaning given in section 44-11.

income support payment means:

(a) an income support payment within the meaning of subsection 23(1) of the *Social Security Act 1991*; or

(c) a payment of farm household support, or a drought relief payment, under the *Farm Household Support Act 1992*.

income support supplement means an income support supplement under Part IIIA of the *Veterans' Entitlements Act 1986*.

leave, in relation to a care recipient provided with residential care, has the meaning given by section 42-2.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

local government authority means a body established for the purposes of local government by or under a law of a State or Territory.

lowest applicable classification level has the same meaning as in the *Aged Care Act 1997*.

low level of residential care has the meaning given by the Aged Care (Transitional Provisions) Principles.

member of a couple has the meaning given in section 44-11.

partner has the meaning given in section 44-11.

payment period:

(a) in relation to residential care: see section 43-2; and

(b) in relation to home care: see section 47-2.

pensioner supplement is the supplement referred to in section 44-28.

people with special needs has the same meaning as in the *Aged Care Act 1997*.

permitted has the same meaning as in the *Aged Care Act 1997*.

place means a capacity within an *aged care service for provision of residential care or flexible care to an individual.

post-2008 reform resident has the meaning given in section 44-5C.

post-September 2009 resident has the meaning given by section 58-3A.

pre-2008 reform resident has the meaning given in section 44-5D.

pre-entry leave has the meaning given in section 44-5E.

pre-September 2009 resident has the meaning given by section 58-3A.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

prioritised home care recipient has the same meaning as in the *Aged Care Act 1997*.

protected resident has the meaning given by section 58-3B.

provide, in relation to care, includes the meaning given by section 96-4.

provisional allocation has the same meaning as in the *Aged Care Act 1997*.

Quality and Safety Commission Act means the *Aged Care Quality and Safety Commission Act 2018*.

Repatriation Commission means the Repatriation Commission continued in existence by section 179 of the *Veterans' Entitlements Act 1986*.

resident agreement has the same meaning as in the *Aged Care Act 1997*.

residential care has the meaning given by section 41-3.

residential care service means an undertaking through which residential care is provided.

residential care subsidy means a subsidy payable under Part 3.1.

respite care means residential care or flexible care (as the case requires) provided as an alternative care arrangement with the primary purpose of giving a carer or a care recipient a short-term break from their usual care arrangement. However, it does not include residential care provided through a residential care service while the care recipient in question is on *leave under section 42-2 from another residential care service.

reviewable decision has the meaning given in section 85-1.

Secretary means the Secretary of the Department.

---

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

service pension has the same meaning as in subsection 5Q(1) of the *Veterans' Entitlements Act 1986.*

standard resident contribution means an amount referred to in section 58-3, 58-3B or 58-3C (whichever is applicable).

supported resident has the meaning given in section 44-5B.

total assessable income has the meaning given in section 44-24.

total assessable income free area has the meaning given in section 44-26.

unspent home care amount of a care recipient has the meaning given by the User Rights Principles.

veteran payment means a veteran payment made under an instrument made under section 45SB of the *Veterans' Entitlements Act 1986*.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Authorised Version C2021C00372 registered 24/09/2021

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 the amendment to be made. If, despite the misdescription, the amendment can

Authorised Version C2021C00372 registered 24/09/2021

be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation "(md)" added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation "(md not incorp)" is added to the details of the amendment included in the amendment history.

Authorised Version C2021C00372 registered 24/09/2021

Endnote 2—Abbreviation key

ad = added or inserted

am = amended

amdt = amendment

c = clause(s)

C[x] = Compilation No. x

Ch = Chapter(s)

def = definition(s)

Dict = Dictionary

disallowed = disallowed by Parliament

Div = Division(s)

ed = editorial change

exp = expires/expired or ceases/ceased to have effect

F = Federal Register of Legislation

gaz = gazette

LA = *Legislation Act 2003*

LIA = *Legislative Instruments Act 2003*

(md) = misdescribed amendment can be given effect

(md not incorp) = misdescribed amendment cannot be given effect

mod = modified/modification

No. = Number(s)

o = order(s)

Ord = Ordinance

orig = original

par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)

pres = present

prev = previous

(prev…) = previously

Pt = Part(s)

r = regulation(s)/rule(s)

reloc = relocated

renum = renumbered

rep = repealed

rs = repealed and substituted

s = section(s)/subsection(s)

Sch = Schedule(s)

Sdiv = Subdivision(s)

SLI = Select Legislative Instrument

SR = Statutory Rules

Sub-Ch = Sub-Chapter(s)

SubPt = Subpart(s)

underlining = whole or part not commenced or to be commenced

Authorised Version C2021C00372 registered 24/09/2021

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Aged Care (Transitional Provisions) Act 1997	223, 1997		1 July 2014 (s 1-2)	
Aged Care (Living Longer Living Better) Act 2013	76, 2013	28 June 2013	Sch 5: 1 July 2014 (s 2(1) items 7, 8)	Sch 5 (items 1, 215–217)
as amended by				
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 5): 5 Mar 2016 (s 2(1) item 2)	—
Social Services and Other Legislation Amendment (Seniors Health Card and Other Measures) Act 2014	98, 2014	11 Sept 2014	Sch 4 (items 1–14): 9 Oct 2014 (s 2(1) item 3)	Sch 4 (item 14)
Omnibus Repeal Day (Autumn 2014) Act 2014	109, 2014	16 Oct 2014	Sch 9 (items 34–47): 17 Oct 2014 (s 2(1) item 7)	—
Aged Care and Other Legislation Amendment Act 2014	126, 2014	4 Dec 2014	Sch 1 (items 12–24): 5 Dec 2014 (s 2(1) item 2)	—
Statute Law Revision Act (No. 1) 2015	5, 2015	25 Feb 2015	Sch 1 (item 1): 25 Mar 2015 (s 2(1) item 2)	—
Norfolk Island Legislation Amendment Act 2015	59, 2015	26 May 2015	Sch 2 (items 41–43): 1 July 2016 (s 2(1) item 5) Sch 2 (items 356–396): 18 June 2015 (s 2(1) item 6)	Sch 2 (items 356–396)

Authorised Version C2021C00372 registered 24/09/2021

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
as amended by				
Territories Legislation Amendment Act 2016	33, 2016	23 Mar 2016	Sch 2: 24 Mar 2016 (s 2(1) item 2)	—
Social Services Legislation Amendment (No. 2) Act 2015	128, 2015	16 Sept 2015	Sch 2 (items 6–12): 17 Sept 2015 (s 2(1) item 5)	Sch 2 (item 12)
Aged Care Legislation Amendment (Increasing Consumer Choice) Act 2016	19, 2016	18 Mar 2016	Sch 1 (items 60–67, 70–83): 27 Feb 2017 (s 2(1) items 2, 5)	Sch 1 (items 70–83)
Veterans' Affairs Legislation Amendment (Veteran-centric Reforms No. 1) Act 2018	17, 2018	28 Mar 2018	Sch 2 (items 14–23): 1 May 2018 (s 2(1) item 3)	—
Aged Care Quality and Safety Commission (Consequential Amendments and Transitional Provisions) Act 2018	150, 2018	10 Dec 2018	Sch 1 (item 23): 1 Jan 2019 (s 2(1) item 2)	—
Aged Care Legislation Amendment (New Commissioner Functions) Act 2019	116, 2019	11 Dec 2019	Sch 1 (items 65–71), Sch 2 (items 92–94) and Sch 4: 1 Jan 2020 (s 2(1) item 2)	Sch 4
Aged Care Legislation Amendment (Emergency Leave) Act 2020	41, 2020	15 May 2020	Sch 1 (items 6–10): 15 May 2020 (s 2(1) item 1)	Sch 1 (item 10)
Aged Care Legislation Amendment (Improved Home Care Payment Administration No. 1) Act 2020	124, 2020	15 Dec 2020	Sch 1 (items 5–9): 1 Feb 2021 (s 2(1) item 1)	Sch 1 (item 9)

Authorised Version C2021C00372 registered 24/09/2021

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Aged Care Legislation Amendment (Improved Home Care Payment Administration No. 2) Act 2021	2, 2021	16 Feb 2021	Sch 1 (items 12, 13, 15, 19–21, 23, 24): 1 Sept 2021 (s 2(1) items 2, 3)	Sch 1 (items 15, 21, 24)

Authorised Version C2021C00372 registered 24/09/2021

Endnote 4—Amendment history

Provision affected	How affected
Title	am No 76, 2013
Chapter 1	
Division 1	
s 1-1	am No 76, 2013
s 1-2	rs No 76, 2013
s 1-2A	ad No 76, 2013
Division 2	
s 2-1	am No 76, 2013
Division 3	
s 3-1	am No 76, 2013
s 3-2	am No 76, 2013; No 19, 2016; No 116, 2019
s 3-3	am No 76, 2013
s 3-4	am No 76, 2013; No 116, 2019
s 3-5	am No 76, 2013
Division 4	
s 4-1	am No 76, 2013; No 5, 2015; No 59, 2015
Chapter 2	rep No 76, 2013
s 5-1	rep No 76, 2013
s 5-2	rep No 76, 2013
s 6-1	rep No 76, 2013
s 6-2	rep No 76, 2013
s 7-1	rep No 76, 2013
s 7-2	rep No 76, 2013
s 8-1	rep No 76, 2013
s 8-2	rep No 76, 2013
s 8-3	rep No 76, 2013
s 8-3A	rep No 76, 2013
s 8-4	rep No 76, 2013

Authorised Version C2021C00372 registered 24/09/2021

Endnote 4—Amendment history

Provision affected	How affected
s 8-5	rep No 76, 2013
s 8-6	rep No 76, 2013
s 9-1	rep No 76, 2013
s 9-2	rep No 76, 2013
s 9-3	rep No 76, 2013
s 9-3A	rep No 76, 2013
s 9-3B	rep No 76, 2013
s 9-4	rep No 76, 2013
s 10-1	rep No 76, 2013
s 10-2	rep No 76, 2013
s 10-3	rep No 76, 2013
s 10A-1	rep No 76, 2013
s 10A-2	rep No 76, 2013
s 10A-3	rep No 76, 2013
s 11-1	rep No 76, 2013
s 11-2	rep No 76, 2013
s 11-3	rep No 76, 2013
s 11-4	rep No 76, 2013
s 12-1	rep No 76, 2013
s 12-2	rep No 76, 2013
s 12-3	rep No 76, 2013
s 12-4	rep No 76, 2013
s 12-5	rep No 76, 2013
s 12-6	rep No 76, 2013
s 12-7	rep No 76, 2013
s 13-1	rep No 76, 2013
s 13-2	rep No 76, 2013
s 13-3	rep No 76, 2013
s 13-4	rep No 76, 2013
s 14-1	rep No 76, 2013
s 14-2	rep No 76, 2013

Authorised Version C2021C00372 registered 24/09/2021

Provision affected	How affected
s 14-3	rep No 76, 2013
s 14-4	rep No 76, 2013
s 14-5	rep No 76, 2013
s 14-6	rep No 76, 2013
s 14-7	rep No 76, 2013
s 14-8	rep No 76, 2013
s 14-9	rep No 76, 2013
s 15-1	rep No 76, 2013
s 15-2	rep No 76, 2013
s 15-3	rep No 76, 2013
s 15-4	rep No 76, 2013
s 15-5	rep No 76, 2013
s 15-6	rep No 76, 2013
s 15-7	rep No 76, 2013
s 16-1A	rep No 76, 2013
s 16-1	rep No 76, 2013
s 16-2	rep No 76, 2013
s 16-3	rep No 76, 2013
s 16-4	rep No 76, 2013
s 16-5	rep No 76, 2013
s 16-6	rep No 76, 2013
s 16-7	rep No 76, 2013
s 16-8	rep No 76, 2013
s 16-9	rep No 76, 2013
s 16-10	rep No 76, 2013
s 16-11	rep No 76, 2013
s 16-12	rep No 76, 2013
s 16-13	rep No 76, 2013
s 16-14	rep No 76, 2013
s 16-15	rep No 76, 2013
s 16-16	rep No 76, 2013

Authorised Version C2021C00372 registered 24/09/2021

Endnote 4—Amendment history

Provision affected	How affected
s 16-17	rep No 76, 2013
s 16-18	rep No 76, 2013
s 16-19	rep No 76, 2013
s 16-20	rep No 76, 2013
s 16-21	rep No 76, 2013
s 17-1	rep No 76, 2013
s 17-2	rep No 76, 2013
s 17-3	rep No 76, 2013
s 17-4	rep No 76, 2013
s 17-5	rep No 76, 2013
s 17-6	rep No 76, 2013
s 17-7	rep No 76, 2013
s 17-8	rep No 76, 2013
s 18-1	rep No 76, 2013
s 18-2	rep No 76, 2013
s 18-3	rep No 76, 2013
s 18-4	rep No 76, 2013
s 18-5	rep No 76, 2013
s 19-1	rep No 76, 2013
s 19-2	rep No 76, 2013
s 20-1	rep No 76, 2013
s 20-2	rep No 76, 2013
s 21-1	rep No 76, 2013
s 21-2	rep No 76, 2013
s 21-3	rep No 76, 2013
s 21-4	rep No 76, 2013
s 22-1	rep No 76, 2013
s 22-2	rep No 76, 2013
s 22-3	rep No 76, 2013
s 22-4	rep No 76, 2013
s 22-5	rep No 76, 2013

Authorised Version C2021C00372 registered 24/09/2021

Endnote 4—Amendment history

Provision affected	How affected
s 22-6	rep No 76, 2013
s 23-1	rep No 76, 2013
s 23-2	rep No 76, 2013
s 23-3	rep No 76, 2013
s 23-4	rep No 76, 2013
s 24-1	rep No 76, 2013
s 24-2	rep No 76, 2013
s 25-1	rep No 76, 2013
s 25-2	rep No 76, 2013
s 25-3	rep No 76, 2013
s 25-4	rep No 76, 2013
s 25-4A	rep No 76, 2013
s 25-4B	rep No 76, 2013
s 25-4C	rep No 76, 2013
s 25-4D	rep No 76, 2013
s 25-4E	rep No 76, 2013
s 25-5	rep No 76, 2013
s 26-1	rep No 76, 2013
s 26-2	rep No 76, 2013
s 26-3	rep No 76, 2013
s 27-1	rep No 76, 2013
s 27-2	rep No 76, 2013
s 27-3	rep No 76, 2013
s 27-4	rep No 76, 2013
s 27-5	rep No 76, 2013
s 27-6	rep No 76, 2013
s 27-7	rep No 76, 2013
s 27-8	rep No 76, 2013
s 27-9	rep No 76, 2013
s 29-1	rep No 76, 2013
s 29-2	rep No 76, 2013

Authorised Version C2021C00372 registered 24/09/2021

Endnote 4—Amendment history

Provision affected	How affected
s 30-1	rep No 76, 2013
s 30-2	rep No 76, 2013
s 30-3	rep No 76, 2013
s 31-1	rep No 76, 2013
s 31-3	rep No 76, 2013
s 32-1	rep No 76, 2013
s 32-2	rep No 76, 2013
s 32-3	rep No 76, 2013
s 32-4	rep No 76, 2013
s 32-5	rep No 76, 2013
s 32-6	rep No 76, 2013
s 32-7	rep No 76, 2013
s 32-8	rep No 76, 2013
s 32-9	rep No 76, 2013
s 33-1	rep No 76, 2013
s 33-3	rep No 76, 2013
s 33-4	rep No 76, 2013
s 35-1	rep No 76, 2013
s 35-2	rep No 76, 2013
s 35-3	rep No 76, 2013
s 35-4	rep No 76, 2013
s 36-1	rep No 76, 2013
s 36-2	rep No 76, 2013
s 36-3	rep No 76, 2013
s 36-4	rep No 76, 2013
s 37-1	rep No 76, 2013
s 37-2	rep No 76, 2013
s 38-1	rep No 76, 2013
s 38-2	rep No 76, 2013
s 38-3	rep No 76, 2013
s 38-4	rep No 76, 2013

Authorised Version C2021C00372 registered 24/09/2021

Provision affected	How affected
s 38-5	rep No 76, 2013
s 38-6	rep No 76, 2013
s 38-7	rep No 76, 2013
s 39-1	rep No 76, 2013
s 39-2	rep No 76, 2013
s 39-3	rep No 76, 2013
s 39-3A	rep No 76, 2013
s 39-3B	rep No 76, 2013
s 39-4	rep No 76, 2013
s 39-5	rep No 76, 2013
Chapter 3	
Division 40	
s 40-1	am No 76, 2013; No 19, 2016
Part 3.1	
Division 41	
s 41-2	rs No 76, 2013
s 41-3	am No 76, 2013
Division 42	
s 42-1	am No 76, 2013; No 128, 2015
s 42-2	am No 76, 2013; No 128, 2015; No 116, 2019; No 41, 2020
s 42-3	am No 76, 2013; No 128, 2015
s 42-4	rep No 76, 2013
s 42-5	rep No 76, 2013
s 42-6	rep No 76, 2013
Division 43	
s 43-1	am No 76, 2013
s 43-2	am No 76, 2013
s 43-3	am No 76, 2013
s 43-6	am No 76, 2013
s 43-8	am No 76, 2013
s 43-9	am No 76, 2013

Authorised Version C2021C00372 registered 24/09/2021

Endnote 4—Amendment history

Provision affected	How affected
Division 44	
Subdivision 44-B	
s 44-3	am No 76, 2013
Subdivision 44-C	
s 44-5A	am No 76, 2013; No 109, 2014
s 44-5B	am No 76, 2013
s 44-6	am No 76, 2013; No 109, 2014
s 44-7	am No 76, 2013
s 44-8	am No 76, 2013
s 44-8A	am No 76, 2013; No 109, 2014
s 44-10	am No 76, 2013; No 17, 2018
s 44-11	am No 76, 2013
s 44-12	am No 76, 2013; No 109, 2014
s 44-13	am No 76, 2013
s 44-14	am No 76, 2013
s 44-16	am No 76, 2013
Subdivision 44-D	
s 44-18	am No 76, 2013
s 44-20	am No 76, 2013
Subdivision 44-E	
s 44-22	am No 76, 2013
s 44-24	am No 76, 2013; No 98, 2014; No 17, 2018
s 44-26	am No 126, 2014
Subdivision 44-F	
s 44-27	am No 76, 2013; No 126, 2014
s 44-28	am No 76, 2013
s 44-29	am No 76, 2013
s 44-30	am No 76, 2013
s 44-31	am No 76, 2013
s 44-32	rep No 126, 2014

Authorised Version C2021C00372 registered 24/09/2021

Endnote 4—Amendment history

Provision affected	How affected
Part 3.2	
Division 45	
s 45-1	am No 19, 2016
s 45-2	rs No 76, 2013
s 45-3	am No 76, 2013
Division 46	
s 46-1	am No 76, 2013
	rs No 19, 2016
	am No 116, 2019
s 46-2	am No 76, 2013
s 46-3	rep No 19, 2016
Division 47	
s 47-1	am No 124, 2020; No 2, 2021
s 47-2	am No 76, 2013
s 47-3	am No 76, 2013
	rep No 124, 2020
s 47-4	am No 124, 2020
s 47-4A	am No 2, 2021
s 47-5	am No 76, 2013
Division 48	
s 48-1	am No 2, 2021
Part 3.3	
Division 49	
s 49-2	rs No 76, 2013
Division 50	
s 50-1	am No 76, 2013
s 50-2	am No 76, 2013
Division 51	
s 51-1	am No 76, 2013
Chapter 4	
Division 53	rep No 76, 2013

Authorised Version C2021C00372 registered 24/09/2021

Endnote 4—Amendment history

Provision affected	How affected
s 53-1	rep No 76, 2013
s 53-2	rep No 76, 2013
Part 4.1	rep No 76, 2013
s 54-1	rep No 76, 2013
s 54-2	rep No 76, 2013
s 54-4	rep No 76, 2013
s 54-5	rep No 76, 2013
Part 4.2	
Division 55	rep No 76, 2013
s 55-1	rep No 76, 2013
s 55-2	rep No 76, 2013
Division 56	rep No 76, 2013
s 56-1	rep No 76, 2013
s 56-2	rep No 76, 2013
s 56-3	rep No 76, 2013
s 56-4	rep No 76, 2013
s 56-5	rep No 76, 2013
Division 57	
Division 57 heading	am No 76, 2013
s 57-1	am No 76, 2013
Subdivision 57-A	
s 57-2	am No 76, 2013; No 109, 2014; No 116, 2019
Subdivision 57-B	rep No 76, 2013
s 57-3	rep No 76, 2013
s 57-4	rep No 76, 2013
Subdivision 57-C	
s 57-9	am No 76, 2013
Subdivision 57-D	
s 57-12	am No 76, 2013
s 57-13	am No 76, 2013
s 57-14	am No 76, 2013

Authorised Version C2021C00372 registered 24/09/2021

Provision affected	How affected
s 57-15	am No 76, 2013
Subdivision 57-E	
s 57-16	am No 76, 2013; No 109, 2014
s 57-17	am No 76, 2013
Subdivision 57-EA	rep No 76, 2013
s 57-17A	rep No 76, 2013
s 57-17B	rep No 76, 2013
Subdivision 57-F	
s 57-18	am No 76, 2013; No 109, 2014
s 57-19	am No 76, 2013
s 57-20	am No 76, 2013; No 109, 2014
Subdivision 57-G	rep No 76, 2013
s 57-21	rep No 76, 2013
s 57-21AA	rep No 76, 2013
s 57-21A	rep No 76, 2013
s 57-21B	rep No 76, 2013
s 57-22	rep No 76, 2013
Subdivision 57-H	
s 57-23	am No 76, 2013
Division 57A	
Subdivision 57A-A	
s 57A-2	am No 76, 2013; No 109, 2014; No 116, 2019
Subdivision 57A-B	
s 57A-3	am No 76, 2013
Subdivision 57A-C	
s 57A-6	am No 76, 2013
s 57A-8	rep No 109, 2014
s 57A-9	am No 76, 2013
s 57A-10	am No 76, 2013
Subdivision 57A-D	
s 57A-12	am No 76, 2013

Authorised Version C2021C00372 registered 24/09/2021

Endnote 4—Amendment history

Provision affected	How affected
Division 58	
s 58-1	am No 76, 2013
s 58-2	am No 76, 2013; No 126, 2014; No 128, 2015
s 58-3	am No 126, 2014
s 58-4	rep No 126, 2014
s 58-5	am No 76, 2013; No 128, 2015
s 58-6	am No 41, 2020
Division 59	rep No 76, 2013
s 59-1	rep No 76, 2013
Division 60	
s 60-1	am No 76, 2013
s 60-2	am No 76, 2013
Division 61	rep No 76, 2013
s 61-1	rep No 76, 2013
Division 62	rep No 76, 2013
s 62-1	rep No 76, 2013
s 62-2	rep No 76, 2013
Part 4.3	rep No 76, 2013
s 63-1	rep No 76, 2013
s 63-1AA	rep No 76, 2013
s 63-1A	rep No 76, 2013
s 63-1B	rep No 76, 2013
s 63-1C	rep No 76, 2013
s 63-2	rep No 76, 2013
Part 4.4	rep No 76, 2013
s 64-1	rep No 76, 2013
s 64-2	rep No 76, 2013
s 65-1	rep No 76, 2013
s 65-1A	rep No 76, 2013
s 65-2	rep No 76, 2013
s 66-1	rep No 76, 2013

Authorised Version C2021C00372 registered 24/09/2021

Provision affected	How affected
s 66-2	rep No 76, 2013
s 66A-1	rep No 76, 2013
s 66A-2	rep No 76, 2013
s 66A-3	rep No 76, 2013
s 66A-4	rep No 76, 2013
s 67-1	rep No 76, 2013
s 67-2	rep No 76, 2013
s 67-3	rep No 76, 2013
s 67-4	rep No 76, 2013
s 67-5	rep No 76, 2013
s 67A-1	rep No 76, 2013
s 67A-2	rep No 76, 2013
s 67A-3	rep No 76, 2013
s 67A-4	rep No 76, 2013
s 67A-5	rep No 76, 2013
s 67A-6	rep No 76, 2013
s 68-1	rep No 76, 2013
s 68-2	rep No 76, 2013
s 68-3	rep No 76, 2013
s 68-4	rep No 76, 2013
s 68-5	rep No 76, 2013
s 68-6	rep No 76, 2013
Chapter 5	rep No 76, 2013
s 69-1	rep No 76, 2013
s 70-1	rep No 76, 2013
s 70-2	rep No 76, 2013
s 70-3	rep No 76, 2013
s 71-1	rep No 76, 2013
s 71-2	rep No 76, 2013
s 71-3	rep No 76, 2013
s 72-1	rep No 76, 2013

Authorised Version C2021C00372 registered 24/09/2021

Endnote 4—Amendment history

Provision affected	How affected
s 72-4	rep No 76, 2013
s 72-5	rep No 76, 2013
s 72-6	rep No 76, 2013
s 72-7	rep No 76, 2013
s 73-1	rep No 76, 2013
s 73-3	rep No 76, 2013
s 73-4	rep No 76, 2013
s 73-5	rep No 76, 2013
s 73-6	rep No 76, 2013
s 73-7	rep No 76, 2013
s 74-1	rep No 76, 2013
s 81-1	rep No 76, 2013
s 81-2	rep No 76, 2013
s 81-3	rep No 76, 2013
s 81-4	rep No 76, 2013
s 81-5	rep No 76, 2013
s 82-1	rep No 76, 2013
s 82-2	rep No 76, 2013
s 82-3	rep No 76, 2013
s 82-4	rep No 76, 2013
s 82-5	rep No 76, 2013
s 83-1	rep No 76, 2013
s 83-2	rep No 76, 2013
s 83-3	rep No 76, 2013
Chapter 6	
Division 84	
s 84-1	rs No 76, 2013
Part 6.1	
Division 85	
s 85-1	am No 76, 2013; No 17, 2018
s 85-4	am No 98, 2014

Authorised Version C2021C00372 registered 24/09/2021

Endnote 4—Amendment history

Provision affected	How affected
s 85-5	am No 98, 2014; No 17, 2018
s 85-6	rep No 98, 2014
s 85-7	rep No 98, 2014
Part 6.2	rep No 76, 2013
s 86-1	rep No 76, 2013
s 86-2	rep No 76, 2013
s 86-3	rep No 76, 2013
s 86-4	rep No 76, 2013
s 86-5	rep No 76, 2013
s 86-6	rep No 76, 2013
s 86-7	rep No 76, 2013
s 86-8	rep No 76, 2013
s 86-9	rep No 76, 2013
Part 6.3	rep No 76, 2013
s 87-1	rep No 76, 2013
s 87-2	rep No 76, 2013
s 87-3	rep No 76, 2013
s 88-1	rep No 76, 2013
s 88-2	rep No 76, 2013
s 88-3	rep No 76, 2013
s 89-1	rep No 76, 2013
Part 6.4	rep No 76, 2013
s 90-1	rep No 76, 2013
s 90-2	rep No 76, 2013
s 90-3	rep No 76, 2013
s 90-4	rep No 76, 2013
s 91-1	rep No 76, 2013
s 91-2	rep No 76, 2013
s 91-3	rep No 76, 2013
s 92-1	rep No 76, 2013
s 92-2	rep No 76, 2013

Authorised Version C2021C00372 registered 24/09/2021

Endnote 4—Amendment history

Provision affected	How affected
s 92-3	rep No 76, 2013
s 92-4	rep No 76, 2013
s 92-5	rep No 76, 2013
s 92-6	rep No 76, 2013
s 92-7	rep No 76, 2013
s 92-8	rep No 76, 2013
s 93-1	rep No 76, 2013
s 93-2	rep No 76, 2013
s 93-4	rep No 76, 2013
s 94-1	rep No 76, 2013
s 94-2	rep No 76, 2013
Part 6.4A	rep No 76, 2013
s 94A-1	rep No 76, 2013
Part 6.5	rep No 76, 2013
s 95-1	rep No 76, 2013
s 95-2	rep No 76, 2013
s 95-3	rep No 76, 2013
s 95-4	rep No 76, 2013
s 95-5	rep No 76, 2013
s 95-6	rep No 76, 2013
Part 6.6	rep No 76, 2013
s 95A-1	rep No 76, 2013
s 95A-2	rep No 76, 2013
s 95A-3	rep No 76, 2013
s 95A-4	rep No 76, 2013
s 95A-5	rep No 76, 2013
s 95A-6	rep No 76, 2013
s 95A-7	rep No 76, 2013
s 95A-8	rep No 76, 2013
s 95A-9	rep No 76, 2013
s 95A-10	rep No 76, 2013

Authorised Version C2021C00372 registered 24/09/2021

Provision affected	How affected
s 95A-11	rep No 76, 2013
s 95A-11A	rep No 76, 2013
s 95A-12	rep No 76, 2013
Part 6.7	rep No 76, 2013
s 95B-1	rep No 76, 2013
s 95B-2	rep No 76, 2013
s 95B-3	rep No 76, 2013
s 95B-4	rep No 76, 2013
s 95B-5	rep No 76, 2013
s 95B-6	rep No 76, 2013
s 95B-7	rep No 76, 2013
s 95B-8	rep No 76, 2013
s 95B-9	rep No 76, 2013
s 95B-10	rep No 76, 2013
s 95B-11	rep No 76, 2013
s 95B-12	rep No 76, 2013
Chapter 7	
Division 96	
s 96-1	rs No 76, 2013
s 96-2	am No 76, 2013
	rs No 98, 2014
	am No 19, 2016
s 96-3	rep No 76, 2013
s 96-4	am No 76, 2013
s 96-5	am No 76, 2013 (md)
s 96-8	rep No 76, 2013
s 96-9	rep No 76, 2013
s 96-10	rep No 76, 2013

Authorised Version C2021C00372 registered 24/09/2021

Endnote 4—Amendment history

Provision affected	How affected
Schedule 1	
Schedule 1.....	am No 76, 2013; No 109, 2014; No 126, 2014; No 59, 2015; No 19, 2016; No 17, 2018; No 150, 2018; No 116, 2019; No 2, 2021

Authorised Version C2021C00372 registered 24/09/2021