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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

**HOUSE OF REPRESENTATIVES**

**AGED CARE LEGISLATION AMENDMENT (IMPROVED HOME CARE  
PAYMENT ADMINISTRATION NO. 1) BILL 2020**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Aged Care and Senior Australians,  
Senator the Hon Richard Colbeck)



## **AGED CARE LEGISLATION AMENDMENT (IMPROVED HOME CARE PAYMENT ADMINISTRATION NO. 1) BILL 2020**

### **OUTLINE**

The purpose of the Aged Care Legislation Amendment (Improved Home Care Payment Administration No. 1) Bill 2020 (the Bill) is to change the payment of home care subsidy to approved providers from being paid in advance to being paid in arrears.

Paying home care subsidy in arrears will introduce a more contemporary business practice into home care subsidy payment arrangements and bring these arrangements into alignment with other Government programs.

The Bill will not affect the eligibility of consumers to home care subsidy or the amount of home care subsidy payable for eligible home care consumers.

The Bill amends both the *Aged Care Act 1997* (the Act) and the *Aged Care (Transitional Provisions) Act 1997* (the TP Act).

The Bill gives effect to the first stage of reforms to improve payment administration arrangements for home care packages announced by the Government in the 2019-20 Budget.

A Bill implementing the second stage of the reforms will be introduced at a later date to give effect to the remainder of the home care payment administration reforms announced by the Government in the 2019-20 Budget.

The reforms improve payment administration arrangements for home care packages and will improve financial integrity in home care.

Under the current payment system, the Government is wholly reliant on an approved provider for accurate reporting and the reconciliation of funds. This is because currently the subsidy associated with a home care package is paid to the approved provider in advance. The approved provider uses an online claiming system to report relevant information after the payment period including periods of leave a consumer has taken, or the consumer ceasing to receive home care, and the amount of Commonwealth unspent funds when a consumer ceases home care.

These reforms will improve financial accountability and allow for better transparency over the actual use of funds for home care service delivery.

### **Financial Impact Statement**

The amendments in Schedule 1 of the Bill are required to implement the first stage of the home care payment administration reforms announced by the Government in the 2019-20 Budget. Government allocated \$7.1 million to implement this measure. There is no other impact on Government expenditure from this measure.

### **Regulation Impact Statement**

Consistent with the Government's Regulation Impact Statement (RIS) requirements, the Department certified that the attached excerpts from the Aged

Care Financing Authority's review *Consideration of the Financial Impact on Home Care Providers as a Result of Changes in Payment Arrangements* represent a similar process and analysis to that required for a RIS.

# **Relevant excerpts from The Aged Care Financing Authority (ACFA) review: Consideration of the financial impact on home care providers as a result of changes in payment arrangements**

## **Introduction**

The Aged Care Financing Authority (ACFA) is a statutory committee whose role is to provide independent, transparent advice to the Australian Government on financing and funding issues in the aged care industry.

## **The project and terms of reference**

On 2 October 2019, the Minister for Aged Care and Senior Australians, Senator the Hon Richard Colbeck, asked ACFA to examine the potential financial impact on home care providers of the Australian Government's 2019-20 Budget measure to improve the way home care providers are paid Government subsidy on behalf of home care package holders, and to bring these arrangements in line with contemporary business practice.

Home care providers are currently paid a consumer's full entitlement to Government subsidy for each month, less any income-tested care fee, regardless of the services actually provided to the consumer. The subsidy is paid in advance at the start of the month. Any amount that is not spent providing care and services to a consumer in a month is held by the provider as unspent funds to be drawn upon by the consumer in the future.

The Budget measure involves a change in timing of the Government subsidy from payment in advance to payment in arrears for services actually provided. The difference between the full Government subsidy for the claim period and the cost to the consumer for the services actually provided (i.e. the unspent funds) will be held by the Government to be drawn upon by the consumer in future, through the provider. This change does not impact the amount that is available overall to the consumer.

When announcing the measure in the 2019-20 Budget, the Government said the change in payment arrangements would address stakeholder concerns regarding unspent funds and align home care payment arrangements with other Government programs – most notably the *National Disability Insurance Scheme* (NDIS).

The Minister for Aged Care and Senior Australians sought ACFA's advice on how the new payment arrangements would impact on providers' finances and whether the transition to the new arrangements is likely to present any significant challenges to providers in providing services to consumers and their ongoing financial arrangements. ACFA was also asked to advise on possible measures the Government could take to limit potential impacts and risk.

## **The review process**

ACFA considered the potential financial impact on home care providers and implications for consumers through a public request for written submissions, face-to-face consultations with stakeholders, discussions with the Department of Health

(Health) and DHS, software vendors and data analysis. ACFA engaged StewartBrown to analyse the financial accounts of home care providers and provide an assessment of their current capacity to absorb the change in payment arrangements.

ACFA received 43 submissions from home care providers, aged care peak bodies, carers, carer advocacy groups, concerned individuals and payment management companies.

Face-to-face consultations were held with 79 home care providers attending forums in Brisbane, Adelaide, Perth, Melbourne and Sydney. This included a cross section of providers including small home care only providers, medium and large providers, providers that also engage in other aged care and non-aged care business, remote providers, providers servicing culturally and linguistically diverse (CALD) communities, for profit, not-for-profit and faith-based providers.

Health provided ACFA with a broad outline of the implementation arrangements the Government was considering, and this was the basis of ACFA's consultations (see Section 4). The arrangements were included in the Consultation Paper ACFA released when inviting submissions.

During the course of the consultations, providers raised a number of questions regarding how the new funding arrangements would operate that were not covered in the implementation outline ACFA received from Health. Some of the details providers were seeking to clarify could have a bearing on the financial impact of the change in payment arrangements, as well as implications for the provision of services to consumers. During the course of ACFA's consultations, Health was conducting a separate consultation process on the implementation arrangements for the Budget measure. ACFA has advised Health about the points of detail around the operation of the new arrangements that providers are seeking to clarify.

In ACFA's consultations, providers also raised comments on the merits of the Budget measure and the broader operation of the home care program. ACFA noted that it had not been asked to advise on the merits of the change in payment arrangements or broader reforms to home care.

### **The home care sector**

Home care services were provided to 116,843 consumers in 2017-18, compared with 97,516 in 2016-17. The total Government expenditure on home care in 2017-18 was \$2 billion dollars, an increase of \$400 million from 2016-17. Consumer contributions in home care in 2017-18 were \$122 million.

As at 30 July 2018, there were 873 home care providers. Over half of all providers were not-for-profit. The balance of providers was for-profit (35 per cent) and Government (12 per cent). Home care providers mainly serviced metropolitan locations (55 per cent), with 36 per cent operating regionally and 9 per cent operating in both metropolitan and regional locations.

Sixty-two per cent of home care providers also provide residential care and/or services under the Commonwealth Home Support Program (CHSP). Many home care

providers also provide other services including retirement living, wellbeing and disability services, outreach community health and housing support services.

The home care sector has experienced significant growth in recent times, both in terms of Government expenditure, the number of consumers serviced and an increase in the number of providers servicing the sector.

Home care providers are still in the process of adjusting to the introduction of packages following consumers (portability of the package) rather than being allocated to providers. This reform allows consumers to direct their care package to the provider of their choice as well as to change providers. The changes have resulted in a large increase in the number of approved providers and, in turn, greater competition which has resulted in a decline in profit margins for individual providers. As noted in ACFA's 2019 Annual Report, in 2017-18 the Earnings Before Interest, Tax, Depreciation and Amortisation (EBITDA) for home care providers fell by over 60 per cent. The preliminary results from the StewartBrown survey for 2018-19 suggests a further small decline in the financial performance of home care providers. The large falls in the previous two years appear to have been arrested.

#### **Current payment arrangements in home care**

Home consumers are allocated a level 1, 2, 3 or 4 home care package depending on their assessed needs, with level 1 having the lowest dollar value and level 4 the highest. Once a package becomes available, consumers enter an agreement with a home care provider to receive care and services under their package.

Government subsidy levels (current to 19 March 2020) are:

Subsidy rate per day by package level	
Level	Per day
1	\$24.07
2	\$42.35
3	\$92.16
4	\$139.70

Providers may also receive supplementary funding in respect of certain services and consumers, for example, a viability supplement for more remote services and dementia and cognition supplements.

Home care providers are currently paid a consumer's full entitlement to Government subsidy for each month (i.e. their package level for each day in care less the subsidy reduction which is known as an income-tested care fee), regardless of the services actually provided to the consumer. This is paid in two stages. Using the month of June as an example, the provider receives an advance payment at the start of June equivalent to the amount received for the month two months earlier, being April. Then, at the start of the subsequent month, July, the provider lodges a claim specifying the actual subsidy due for June, at which time a reconciliation takes place.

Providers also collect an income-tested care fee from consumers who have sufficient assessable income and, by agreement with the consumer, can also charge a basic daily fee, currently up to approximately \$11 per day. These amounts are added to the consumer's subsidy to form their package budget and can be drawn upon to pay for

care and services. The Government subsidy on average represents 96% of home care providers' income.

Any amount that is not spent providing care and services to a consumer in a month is held by the provider as available funds to be drawn upon by the consumer in future. Available funds are commonly referred to as unspent funds, noting these only become unspent funds when a person exits care.

### **Unspent funds**

Based on the most recent data, the current pool of unspent funds is around \$750 million. This is an increase of approximately \$200 million in the last 12 months. The average unspent funds per client is approximately \$7,000.<sup>1</sup>

Unspent package funds are currently held by providers but should not be recognised as income by the provider until the funds have been spent or committed for the consumer's care. Some providers treat unspent funds as part of their working capital (which reduces the need to access other sources of working capital such as through borrowing), but these funds should then be recognised in the providers' accounts as a liability. It appears some providers quarantine unspent funds in an account separate from the operating account and use the funds only to pay for care and services to consumers, although they may use the interest earned on those funds for various purposes. Some providers have this money held by a third party, effectively holding it in trust for the consumers.

The average subsidy utilisation rate is 90 per cent, meaning that on average 10 per cent of Government subsidy payments are accruing as unspent funds. While the growth of an individual's unspent funds balance will largely be related to how long they are in care, providers reported that their unspent funds were concentrated on a small number of consumers with very large balances.

A range of factors are behind the growth in unspent funds, as discussed in ACFA's 2019 annual report.<sup>2</sup> The change in payment arrangements, which was the basis of the consultations, will not address the underlying issues causing unspent funds to accumulate, but will address who holds the funds— provider or Government.

During ACFA's consultations, a number of providers said that the focus should be on addressing the reasons for the build-up in unspent funds rather than changing who holds such funds. A number of suggestions were offered on how to reduce the growth in unspent funds, predominantly involving changes to the assessment process to avoid over assessment and to enable downgrading of package levels if a consumer's needs reduce.

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<sup>1</sup> StewartBrown, Home care Funding Analysis (November 2019), p.9.

<sup>2</sup> ACFA's 2019 Annual Report noted that unspent funds accumulate for a variety of reasons including that consumers wish to save a proportion of their budget for future events, misconceptions that money not spent under the package belongs to the consumer, or because the consumer does not require all the funds allocated to them.



## **Issues raised in consultations**

### **Current arrangements**

Providers are currently paid the Government subsidy in advance based on a consumer's days in care and their package level. Providers retain unspent funds for future drawdown by the consumer.

Receiving the Government subsidy in advance has reduced the need for many providers to access other means to obtain working capital. Providers noted that they still need to finance the services provided to new consumers pending receipt of their Government subsidy.

Providers also advised that there can be significant reconciliation issues when they do not receive what they consider to be the correct subsidy payments for consumers. Providers said the current payment system is slow to respond to requests for payment adjustments and the reconciliation process can involve significant administrative effort and cost to providers. It was observed that gaps in the information flow between providers and DHS can be caused by such factors as providers not receiving package upgrade notifications, the absence of a mechanism to confirm the subsidy package that consumers are receiving when they transfer between providers, and no mechanism for providers to access how many days of leave remain before a package recipients subsidy is reduced. One provider reported that 40 of their consumers had 'dropped off' the DHS system, resulting in unpaid subsidies of \$120,000.

It was claimed that payment adjustments can take up to six weeks to reach providers' bank accounts. Providers noted they faced the challenge of continuing to fund care and services whilst payment issues are being worked through; essentially they had to continue to deliver services for some consumers without receiving the Government subsidy payment. It was observed that under current arrangements, the impact of such financing pressures is somewhat cushioned by the subsidy payments being made in advance and providers holding the consumers' unspent package funds.

It appears that providers are concerned that the reconciliation issues and resulting administrative costs currently being experienced could be exacerbated by introducing further complexity to the payment system. Moreover, problems with the existing system contributed to providers' scepticism as to whether a change in payment arrangements would be smoothly implemented.

### **Phase 1 – moving from advance to arrears payments**

Phase 1 (from June 2020) will change payments from being made in advance to being made in arrears. In practical terms, providers will not receive an advance payment and as a result will receive the entire subsidy for a consumer when they lodge their claim after the end of the month. During Phase 1 payments will continue to be made based on the number of days consumers are in care and providers will hold unspent funds.

Providers advised that the ability to manage the transition from advance payments to payments in arrears is contingent on having access to liquid assets or other funding arrangements so that payments to employees and suppliers can continue.

The short-term cash flow shortfalls from the transition from payment in advance to payment in arrears could be covered by the drawdown of cash and liquid assets,

including unspent funds, within the home care business of the provider as well as drawing on the liquid assets of other businesses operated by the provider. Alternatively, other financing arrangements could be utilised, such as loans or equity injections.

Provider comments in submissions about the cash flow impacts of the move from payment in advance to payment in arrears in Phase 1 were mixed. Some said they would experience little to no difficulty in handling the cash flow impacts, others suggested moderate concern, and a few suggested significant impacts.

One peak body reported in its submission that of 51 providers surveyed, 37 per cent felt that the change to payment in arrears would be very challenging and 2 per cent felt that it would be unachievable from a cash flow perspective.

Many submissions did not raise cash flow concerns through Phase 1 as a specific issue for themselves but did express concern about the ability for smaller providers, especially those operating in thin markets, to remain viable. This was also raised in the consultations.

It was also noted in the consultations that home care providers who are currently losing money or operating at a minimum margin, would likely face significant difficulties in dealing with the change in payment arrangements.

One large provider suggested the cash flow impact of the change in payment arrangements would represent 20 per cent of total cash reserves, equating to approximately \$6.5 million. Another submission suggested that a four-fold increase in working capital would be required to remain solvent through the transition.

Providers were asked during the consultation arrangements whether Phase 1 would require any changes to their payment system and IT arrangements. The overwhelming majority indicated that they would not have to make changes to their payment systems to accommodate Phase 1.

### **Possible impact on viability of some providers**

Some of the submissions suggested that the new payment arrangements would be a risk to the viability of some providers. One submission noted that a loss of liquidity for providers may result in insolvency or pose difficulties for providers to fund significant drawdowns from available funds. Some submissions suggested that smaller providers may no longer be able to operate due to an inability to pay staff or suppliers before the funds are reimbursed.

One submission provided details about the anticipated impacts on a group of providers operating in thin markets. This submission advised that *Moving to a post-paid individualised finance model will impact cash flows for remote and very remote service providers in the short and long term and this could be worsened by providers who may be relying on the availability of unspent funds to provide services that otherwise are not financially viable.*

Many submissions referenced small providers and those operating in rural and remote locations, suggesting that the risks to the ongoing viability of these providers would

be heightened as a result of the change in payment arrangements. Submissions from smaller providers asked that they be given special consideration and receive support to ameliorate the costs to them of the change in payment arrangements.

In addition to the individual impacts, providers noted that the cumulative effect of this change needs careful consideration in the context of previous and ongoing reforms to home care.

### **Possible impact on consumers**

A number of concerns were raised regarding the possible impact of the new payment arrangements on the delivery of goods and services to consumers. It was noted that should the new arrangements result in some providers leaving the industry, this would reduce consumer choice. The extent to which the new arrangements adversely impact on the viability of providers operating in very thin markets in rural and remote locations may have a significant impact on consumers if there are no other providers operating in those markets.

Some providers said that as a result of the cash flow pressures arising from the changes, they may be reluctant to take on new consumers during the transition period. Others observed that if this was the case, they saw an opportunity to increase market share. A related concern raised by a number of smaller providers was that larger providers would have greater capacity to absorb the costs associated with the changes, and this would distort the competitive market.

Many providers suggested that with unspent package funds being held by DHS, there would be significant delays before consumers could access these funds to finance the provision of large capital items. It was noted that larger providers may have the capacity to finance such purchases before getting reimbursement from DHS, but smaller providers would not have the same capacity to finance such outlays. This was seen as another consequence impeding the competitiveness of smaller providers.

It was also noted in the consultations that, to the extent that the new payment arrangements increase administrative costs for providers, these costs would be passed on to consumers which in turn would reduce the level of goods and services available to a consumer under a package.

It was also highlighted that consumers would be adversely impacted if the arrangements involving DHS paying the subsidy for actual services delivered in the past month reduced the flexibility under current arrangements whereby a provider could overspend on a consumer in one month, and recoup from subsidy payments in subsequent months.

### **Data analysis**

The accounting firm StewartBrown was engaged to provide an assessment of the likely financial impact of the proposed changes based on an examination of the financial accounts of home care providers. In undertaking this analysis, StewartBrown used the information available from the 2018-19 Aged Care Financial Reports (ACFR) submitted by providers, data from the most recent StewartBrown Aged Care Financial Performance Survey, and other relevant financial data.

StewartBrown's report is attached. The key findings from the report are:

### **Financial impact on providers**

The overall financial performance of approved providers, other than the potential additional interest expense and possible foregone interest revenue on unspent funds, will not be materially impacted by the cash flow impact of the proposed changes to funding arrangements.

On average, and across the cohort of approved providers examined by StewartBrown, there are sufficient liquid assets held by at least 89 per cent (477 in number) of approved providers. They have sufficient cash flows to meet normal operating expenses for one month while the arrangements transition from payment in advance to payment in arrears.

The potential financial impacts to approved providers are likely to be amplified for smaller providers who do not have other major sources of revenue other than that generated from the delivery of home care packages.

### **Significant risk**

StewartBrown noted that if the Government, through DHS, required approved providers to submit each claim at the individual consumer level, this would result in additional administrative effort for providers, not only in making claims but also in reconciling the reimbursed funding receipt to the claim on a consumer by consumer basis.

### **Assessment of issues raised**

#### **Phase 1**

The key issue associated with Phase 1 is the capacity of providers to manage the cash flow impact of receiving subsidy payments in arrears.

Cash flow concerns were not a major issue for providers attending the consultation meetings, although it was noted that some smaller providers may struggle with the new payment arrangements. In contrast, written submissions (notably from the provider peak bodies) suggested the cash flow impacts were a significant concern for a number of providers.

The StewartBrown data analysis suggests that the vast majority of providers have access to cash holdings that should accommodate one month without subsidy payments.

ACFA's assessment is that most providers should be able to accommodate the cash flow impact of the change in payment arrangements associated with Phase 1. Nevertheless, it is possible that a number of smaller providers operating in very thin markets in rural and remote areas, who are already under financial pressure, may struggle as a result of the changes. Quantifying these concerns, one submission noted that 67 per cent of providers operating in rural and remote areas were operating at a loss, and an increasing number are already seeking to leave the industry, with NDIS providers in rural and remote areas also in financial difficulty.

ACFA considers that the viability risk for small providers in thin markets is significant and these providers will likely need support in transitioning to the new arrangements, not only in Phase 1 but also in Phases 2 and 3.

### **Conclusions and Recommendations**

With some exceptions, there is general acceptance and support amongst providers and peak bodies that there is merit in the Government's decision to pay home care subsidies in arrears and for DHS to retain unspent funds.

Notwithstanding this general acceptance and support, ACFA's consultation raised a range of concerns around the implications of the new funding arrangements. A few providers advocated for the maintenance of current funding arrangements. While some providers supported the intent of the changes in payment arrangements, they argued that no changes should be made until the Royal Commission into Aged Care Quality and Safety has delivered its final report.

Acknowledging the range of themes raised during the consultation, ACFA makes the following conclusions and recommendations. The recommendations are framed within the three proposed implementation phases.

#### **Phase 1**

Based on the face-to-face consultations, the majority of providers indicated that they would be able to cope with Phase 1 changes in terms of liquidity management. ACFA notes, however, that the consultations involved a relatively small sample of the total number of home care providers. These providers, whilst a reasonable cross section of the aged care sector, may not necessarily represent the view of all providers, and concern was expressed about whether some smaller providers could deal with the change.

Submissions received from the peak bodies described a larger potential impact under Phase 1 compared with the views expressed in the face-to-face consultations.

There was a significant divergence of opinions expressed in the written submissions about Phase 1 cash-flow concerns. On balance, however, and taking into account the data analysis provided by StewartBrown, ACFA concludes that the majority of providers should be able to cope with Phase 1 changes from a liquidity management perspective, noting that some providers may need access to assistance whether it is through advice, temporary financial assistance, or both.

Prior to Phase 1 commencing, providers need to be well informed about the operational changes required and advised of the services available to assist them in the lead up to the commencement of Phase 1.

In this regard, the Business Advisory Service is a free service provided by PricewaterhouseCoopers (PwC) on behalf of the Australian Government for aged care providers, and its availability should be promoted as a tool that home care providers can access to assist them in preparing for the new payment arrangements.

The Business Advisory Service is a program that provides residential and home care providers with access to independent accounting and business advisory services to

help review and assess their operations and provide advice on financial strategies to support their business. This could include strategies to transition to and operate under the new payment arrangements. Services under the Business Advisory Service are currently available until 30 June 2021.

Transitional financial assistance in the form of short-term grants or loans may be required for providers operating in very thin or difficult markets, such as in rural and remote areas, or providers who represent a significant public benefit by providing a necessary service which would not be available if they left the industry (for example, they may be the only provider of home care services within a specific area). Such providers may already be under financial pressure and may have difficulties in accommodating the cash flow consequences of Phase 1. However, as previously addressed, any provider seeking transitional financial assistance should first be required to access the Business Advisory Service.

### **Phase 1 recommendations**

**Recommendation 1:** Providers who consider they would be financially vulnerable as a result of the change in payment arrangements should be encouraged to apply to the Business Advisory Service.

**Recommendation 2:** Transitional financial support should be available for providers in thin and difficult markets, such as regional and remote areas, or those providing specialised services to vulnerable consumers. Providers seeking transitional financial support should first utilise the Business Advisory Service.

**Recommendation 3:** All phases should commence at the start of a financial year for consistent reporting within a financial year and to minimise impacts on providers' end of year financial reporting requirements.

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

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

### **AGED CARE LEGISLATION AMENDMENT (IMPROVED HOME CARE PAYMENT ADMINISTRATION NO. 1) BILL 2020**

The Aged Care Legislation Amendment (Improved Home Care Payment Administration No. 1) Bill 2020 (the Bill) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Bill**

The Bill amends both the *Aged Care Act 1997* and the *Aged Care (Transitional Provisions) Act 1997*.

The Schedules in the Bill make amendments to change home care subsidy from being paid to an approved provider in advance of the home care services being delivered to a consumer, to a payment made in arrears after the services have been delivered.

In the 2019-20 Budget, the Government announced reforms to improve payment administration for home care packages to address concerns regarding unspent funds and align home care arrangements with other Government programs.

These reforms improve financial accountability and allow for better transparency over the actual use of funds for home care service delivery.

Under the current payment system, the Government is wholly reliant on an approved provider for accurate reporting and the reconciliation of funds. This is because currently the subsidy associated with a home care package is paid to the approved provider in advance. The approved provider uses an online claiming system to report relevant information after the payment period including periods of leave a consumer has taken, or the consumer ceasing to receive home care, and the amount of Commonwealth unspent funds when a consumer ceases home care.

The reforms will be implemented in two stages to provide time for the smooth and orderly implementation of the changes. This Bill gives effect to the first stage. In the first stage, the home care subsidy paid to an approved provider will change from being a payment made in advance of the home care services being delivered to a consumer, to a payment made in arrears after the services have been delivered to a home care consumer. The home care subsidy will continue to be paid at the full rate.

Paying the subsidy in arrears will introduce a more contemporary business practice into home care subsidy payment arrangements and will bring these arrangements into alignment with other Government programs.

In the second stage of the reforms, the Government intends to continue to pay home care subsidy in arrears, however the payments will be based on actual services delivered. This will allow unspent home care subsidy to accumulate with the

Commonwealth on behalf of the home care consumer instead of with an approved provider and will provide better transparency over the actual use of funds for home care service delivery.

### **Human rights implications**

The Bill engages the following human rights as contained in Articles 11 and 12 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) and Articles 3, 5, 25 and 28 of *Convention of the Rights of Persons with Disabilities* (CRPD):

- the right to an adequate standard of living;
- the right to the enjoyment of the highest attainable standard of physical and mental health;
- the rights of equality and non-discrimination; and
- the right to choice for persons with disabilities.

The Government recognises that older people want to remain living in their own home for as long as possible and may need to receive care to do so. As such the Government subsidises home care packages to provide comprehensive home-based care that can improve older Australians quality of life and help them remain active and connected to their communities.

The home care packages ensure access to care that is affordable by, and appropriate to the needs of, people who require it. As facilitated by the Bill, the payment of the home care subsidy to approved providers will be paid in arrears after the service has been delivered to the consumer. This involves the payment of subsidy to approved providers for the provision of care and services to people with a condition of frailty or disability who require assistance to achieve and maintain the highest attainable standard of physical and mental health. In doing so, the Bill positively engages the rights set out in Articles 11 and 12 of the ICESCR and Articles 25 and 28 of the CRPD by promoting the right to an adequate standard of living and the right to the enjoyment of the highest attainable standard of physical and mental health.

The Bill promotes the rights of equality and non-discrimination by improving the financial accountability of, and allowing for better transparency over the actual use of the subsidies paid to provide home care services by those who need them, regardless of race, culture, language, gender, economic circumstances or geographic location.

The home care package program positively engages the rights for persons with disabilities set out in Articles 25 and 28 of the CRPD by providing genuine consumer direction of care. Improving home care payment administration arrangements by introducing more contemporary business practices engages this right.

The Bill is the first stage of reforms to improve payment administration arrangements for home care packages and by this, strengthen the integrity of the home care package program. As facilitated by this Bill, strengthening the home care package program leads to an improvement in the lives of older Australians, including those with disabilities.

The Bill will not affect the eligibility of home care consumers for home care subsidy or the amount of home care subsidy payable for eligible home care consumers.



**Conclusion**

The Bill promotes human rights to the highest attainable standard of physical and mental health and is compatible with the human rights and freedoms recognized and declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Senator the Hon Richard Colbeck, Minister for Aged Care and Senior  
Australians**

**AGED CARE LEGISLATION AMENDMENT (IMPROVED HOME CARE  
PAYMENT ADMINISTRATION NO. 1) BILL 2020**

**NOTES ON CLAUSES**

**Clause 1 – Short Title**

This clause provides that the Bill, once enacted, may be cited as the *Aged Care Legislation Amendment (Improved Home Care Payment Administration No. 1) Act 2020*.

**Clause 2 – Commencement**

This clause sets out when the Bill commences. It provides that it commences on a day to be fixed by Proclamation, but if it does not commence within 6 months after Royal Assent, it commences on the day after the end of that period.

**Clause 3 – Schedule(s)**

This clause provides that each Act that is specified in a Schedule to this Bill is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item has effect according to its terms. This is a technical provision which gives operational effect to the amendments contained in the Schedules.

Schedule 1 amends the *Aged Care Act 1997* (the Act) and the *Aged Care (Transitional Provisions) Act 1997* (the TP Act) in relation to the payment of home care subsidy.

**SCHEDULE 1 — AMENDMENTS**

***Aged Care Act 1997***

**Item 1 – Subsection 47-1(1)**

This item repeals subsection 47-1(1) and substitutes in its place two new subsections 47-1(1) and 47-1(1A) that set out that home care subsidy is payable by the Commonwealth to an approved provider for each payment period that the approved provider is eligible. Subsection 47-1(1A) provides that home care subsidy is not payable in respect of any days during a payment period on which the approved provider is not eligible or in respect of a payment period if the approved provider has not given to the Secretary a claim in respect of that payment period.

**Item 2 – Section 47-3**

Item 2 repeals section 47-3 relating to advance payments of home care subsidy. This is because the Bill will change the administration of home care subsidy payments so that subsidy is paid in arrears.

**Item 3 – Subsection 47-4(1)**

This item omits the subsection (1) from subsection 47-4(1) as a consequence of the repealing of the remaining subsections in section 47-4 by item 4 of this Schedule.

**Item 4 – Subsections 47-4(2) and (3)**

This item repeals subsections 47-4(2) and (3) as these subsections relate to the method of determining advance payments of home care subsidy and this Bill will change the

administration of home care subsidy payments to a system of payment of subsidy in arrears.

***Aged Care (Transitional Provisions) Act 1997***

**Item 5 – Subsection 47-1(1)**

This item repeals subsection 47-1(1) and substitutes in its place two new subsections 47-1(1) and 47-1(1A) that set out that home care subsidy is payable by the Commonwealth to an approved provider for each payment period that the approved provider is eligible. Subsection 47-1(1A) provides that home care subsidy is not payable in respect of any days during a payment period on which the approved provider is not eligible or in respect of a payment period if the approved provider has not given to the Secretary a claim in respect of that payment period.

**Item 6 – Section 47-3**

This item repeals section 47-3 relating to advance payments of home care subsidy. This is because the Bill will change the administration of home care subsidy payments so that subsidy is paid in arrears.

**Item 7 – Subsection 47-4(1)**

This item omits subsection (1) from subsection 47-4(1) as a consequence of the repeal of the remaining subsections in section 47-4 by item 8 of this Schedule.

**Item 8 – Subsections 47-4(2) and (3)**

This item repeals subsections 47-4(2) and (3) as these relate to the method of determining advance payments of home care subsidy and the Bill will change the administration of home care subsidy payments to a system of payment of subsidy in arrears.

**Item 9 – Application of amendments**

This item sets out that the amendments made by this Part apply in relation to home care subsidy payable in respect of payment periods beginning on or after commencement. The amendments will not apply to home care subsidy payable in respect of payment periods before commencement.

In effect, the pre-commencement law will apply in relation to any claims lodged for home care subsidy payable for pre-commencement payment periods, even if those claims are lodged after the commencement.