



# **Aged Care (Transitional Provisions) Principles 2014**

made under section 96-1 of the

*Aged Care (Transitional Provisions) Act 1997*

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## About this compilation

### This compilation

This is a compilation of the *Aged Care (Transitional Provisions) Principles 2014* that shows the text of the law as amended and in force on 20 September 2018 (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](http://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If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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# Chapter 1—Preliminary

## 1 Name of principles

These principles are the *Aged Care (Transitional Provisions) Principles 2014*.

## 3 Authority

These principles are made under section 96-1 of the *Aged Care (Transitional Provisions) Act 1997*.

## 3A Principles apply to continuing care recipients

These principles apply only to continuing care recipients.

## 4 Definitions

In these principles:

**ACAP code** has the meaning given by section 4 of the *Subsidy Principles 2014*.

**accepted mental health condition** means a mental health condition for which:

- (a) the Repatriation Commission has accepted liability to pay a pension under the Veterans' Entitlements Act; or
- (b) the Military Rehabilitation and Compensation Commission has accepted liability to pay compensation under the *Military Rehabilitation and Compensation Act 2004* or the *Safety, Rehabilitation and Compensation Act 1988*.

**accessible location** means a location that has an ARIA value of more than 1.84 but no more than 3.51.

**ACFI classification** means a classification, or a renewal of a classification, of a care recipient under the *Aged Care Act 1997* and:

- (a) the *Classification Principles 1997*, as in force on or after the commencement of Schedule 1 to the *Aged Care Amendment (Residential Care) Act 2007*; or
- (b) the *Classification Principles 2014*.

**agreed fee**, for a care recipient and an approved provider, means a fee, charge or other payment that is:

- (a) agreed between the care recipient and approved provider; and
- (b) not prohibited under the *Aged Care Act 1997* or the Transitional Provisions Act.

**ARIA value**, in relation to a location, means the value given to that location in accordance with the methodology set out in the document titled *Measuring*

Section 4

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*Remoteness: Accessibility/Remoteness Index of Australia (ARIA)*, Revised Edition, Occasional Papers: New Series Number 14, published by the Health Department in October 2001, as the document existed on 1 August 2013.

Note: In 2014, the *Measuring Remoteness: Accessibility/Remoteness Index of Australia (ARIA)* was accessible at <http://www.health.gov.au>.

**Australian accounting standards** means the accounting standards in force under section 334 of the *Corporations Act 2001*.

Note: In 2014, the Australian accounting standards were accessible at <http://www.aasb.gov.au>.

**bond** means:

- (a) an accommodation bond; or
- (b) an entry contribution.

**bond balance** means:

- (a) in relation to a bond that is an accommodation bond—an accommodation bond balance; or
- (b) in relation to a bond that is an entry contribution—an entry contribution balance.

**care day deficit**, for a residential care service for a quarter, means the number of days worked out for the service for the quarter under section 16.

**certified**, in relation to a residential care service, means certified under Part 2.6 of the *Aged Care Act 1997*, as in force before 17 October 2014.

**CPI number** means the All Groups Consumer Price Index number (that is, the weighted average of the 8 Australian capital cities) published by the Australian Statistician.

**due date**, in relation to an accommodation bond payable by a care recipient to an approved provider, has the meaning given by subsection 57-18(6) of the *Transitional Provisions Act*.

**earlier CPI number**, for a financial year, means:

- (a) the CPI number for the last March quarter before the beginning of the financial year; or
- (b) if the CPI number for the March quarter of an earlier financial year is higher than the most recent earlier CPI number—the higher CPI number.

**entry day**, for a person who is being provided with residential care through a residential care service or a flexible care service, means:

- (a) the day when the person starts to be provided with care through the service (other than respite care); or
- (b) if the person is transferred from respite care to permanent accommodation—the day of the transfer.

**financial hardship determination**, in relation to a person, means:

- (a) in Part 1 of Chapter 4—a determination made in relation to the person under subsection 57-14(1) of the Transitional Provisions Act; and
- (b) in Part 2 of Chapter 4—a determination made in relation to the person under subsection 57A-9(1) of the Transitional Provisions Act.

**Health Department** means the Department responsible for the administration of the *National Health Act 1953*.

**highly accessible location** means a location that has an ARIA value of no more than 1.84.

**homeowner**: see section 5.

**hostel place** means a hostel place within the meaning of the *Aged or Disabled Persons Care Act 1954*, as in force on 30 September 1997.

**indexable amount** means:

- (a) the amount X or Y referred to in subsection 97(3); or
- (b) if that amount has previously been increased under section 97—the amount as most recently increased.

**interest equivalent**, in relation to an accommodation bond balance, means the amount an approved provider could have been expected to have derived from investment of the accommodation bond balance.

**key personnel** has the same meaning as in section 8-3A of the *Aged Care Act 1997*.

**latest CPI number**, for a financial year, means the CPI number for the March quarter in the financial year.

**low-means care recipient**: see section 7.

**lump sum equivalent**, for a care recipient who has elected to pay an accommodation bond wholly or partly by periodic payments, means an amount equal to the amount of the lump sum that the care recipient would have paid if the care recipient had not elected to pay the accommodation bond by periodic payments.

**maximum permissible interest rate**, for a day, means the maximum permissible interest rate for that day worked out in accordance with the calculator in section 8.

**minimum permissible asset value** has the same meaning as in subsection 57-12(3) of the Transitional Provisions Act.

**moderately accessible location** means a location that has an ARIA value of more than 3.51 but no more than 5.8.

**multi-purpose service** has the meaning given by section 104 of the *Subsidy Principles 2014*.

## Section 4

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**net value**, of a person's property, means the gross value of the property less any debts, charges and encumbrances on the property.

**newly built residential care service** has the meaning given by section 50 of the *Aged Care (Subsidy, Fees and Payments) Determination 2014*.

**non-registered entity** means an entity that:

- (a) is not a registered entity; and
- (b) has incurred a liability to pay payroll tax to a registered entity in relation to residential care provided to care recipients through a residential care service.

Example: An approved provider will be more likely to be a non-registered entity if it is operated by a charitable, religious or government provider.

**NPI-NH test** means the test called the Neuropsychiatric Inventory—Nursing Home Version, as the test exists on 1 August 2013.

**nursing home bed** means a nursing home bed in a nursing home approved under section 40AA of the *National Health Act 1953*, as in force on 30 September 1997.

**Quality Agency** means the Australian Aged Care Quality Agency established by the *Australian Aged Care Quality Agency Act 2013*.

**RCS classification** means a classification, or renewal of a classification, of a care recipient under the *Aged Care Act 1997* and the *Classification Principles 1997* as in force immediately before the commencement of Schedule 1 to the *Aged Care Amendment (Residential Care) Act 2007*.

**registered entity** means an entity that is registered with a revenue office (however described) of a State or Territory for the purposes of paying payroll tax in accordance with the laws of that State or Territory.

Example: An approved provider will be more likely to be a registered entity if it is operated on a for profit basis.

**relevant resident** has the same meaning as in the *Subsidy Principles 2014*.

**remote area** has the meaning given by subsection 14(1) of the Social Security Act.

**remote location** means a location that has an ARIA value of more than 5.8 but no more than 9.08.

**significantly refurbished residential care service** has the same meaning as in the *Subsidy Principles 2014*.

**single-rate social security pension** means a pension under the Social Security Act that is payable in the circumstances:

- (a) referred to in column 2 of item 1 in table B in point 1064-B1 of that Act; or
  - (b) referred to in column 2 of item 1 in table B in point 1065-B12 of that Act;
- or

(c) to which the rate at point 1066-B1 of that Act is applicable.

***Social Security Act*** means the *Social Security Act 1991*.

***transfer***, of a care recipient from respite care to permanent accommodation in an aged care service, means the entry of the care recipient to the aged care service on a permanent basis after having received respite care.

***Transitional Provisions Act*** means the *Aged Care (Transitional Provisions) Act 1997*.

***transition care*** has the meaning given by section 106 of the *Subsidy Principles 2014*.

***unrealisable asset***, of a care recipient, has the meaning given by subsections 11(12) and (13) of the Social Security Act.

***very remote location*** means a location that has an ARIA score of more than 9.08 but no more than 12.

***veteran*** means a person:

- (a) who is taken to have rendered eligible war service under section 7 of the Veterans' Entitlements Act; or
- (b) in respect of whom a pension is payable under subsection 13(6) of that Act; or
- (c) who is:
  - (i) a member of the Forces within the meaning of subsection 68(1) of that Act; or
  - (ii) a member of a Peacekeeping Force within the meaning of that subsection; or
- (d) who is:
  - (i) a member within the meaning of the *Military Rehabilitation and Compensation Act 2004*; or
  - (ii) a former member within the meaning of that Act; or
- (e) who is an employee within the meaning of the *Safety, Rehabilitation and Compensation Act 1988*.

Note: The Acts referred to in paragraphs (d) and (e) provide that, in some cases:

- (a) a member of the Forces, or a member of a Peacekeeping Force, includes a person who is no longer serving; and
- (b) an employee includes a person who has ceased to be an employee.

***Veterans' Entitlements Act*** means the *Veterans' Entitlements Act 1986*.

Note: A number of expressions used in these principles are defined in the Transitional Provisions Act, including the following:

- (a) home care service;
- (b) flexible care service;
- (c) residential care service.

## Section 5

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### 5 Meaning of *homeowner*

For the definition of **homeowner** in subsection 44-11(1) of the Transitional Provisions Act:

- (a) a person is not a homeowner for the purposes of paragraph 44-7(1)(b) of the Transitional Provisions Act if the value of the person's interest in the person's home does not exceed:
  - (i) if a determination covered by subsection 44-7(1B) of the Transitional Provisions Act for the person specifies a time after 19 September 2009—2.25 times the basic age pension amount at that time; or
  - (ii) if the applicable time under subsection 44-7(2) of the Transitional Provisions Act for a determination covered by subsection 44-7(1C) of the Transitional Provisions Act for the person is after 19 September 2009—2.25 times the basic age pension amount at the applicable time; or
  - (iii) in any other case—2.5 times the basic age pension amount at the applicable time under subsection 44-7(2) of the Transitional Provisions Act; and
- (b) a person is not a homeowner for the purposes of paragraph 44-8(1)(b) of the Transitional Provisions Act if the value of the person's interest in the person's home does not exceed:
  - (i) if a determination covered by subsection 44-8(1B) of the Transitional Provisions Act for the person specifies a time after 19 September 2009—3.61 times the basic age pension at that time; or
  - (ii) if the applicable time under subsection 44-8(2) of the Transitional Provisions Act for a determination covered by subsection 44-8(1C) of the Transitional Provisions Act for the person is after 19 September 2009—3.61 times the basic age pension amount at the applicable time; or
  - (iii) in any other case—4 times the basic age pension amount at the applicable time under subsection 44-8(2) of the Transitional Provisions Act.

### 6 Meaning of *high level of residential care*

- (1) For the definition of **high level of residential care** in clause 1 of Schedule 1 to the Transitional Provisions Act, **high level of residential care** means residential care provided to a care recipient whose classification level includes one or more of the following domain categories:
  - (a) high ADL category;
  - (b) high CHC category;
  - (c) high behaviour category;
  - (d) a medium domain category in at least 2 domains.
- (2) For this section, **domain** and **domain category** have the same meanings as in the *Classification Principles 2014*.

## 7 Meaning of *low-means care recipient*

A care recipient is a *low-means care recipient* on a day if:

- (a) the care recipient is being provided with residential care through a residential care service on that day; and
- (b) either:
  - (i) the care recipient is eligible for accommodation supplement under section 44-28 of the *Aged Care Act 1997* for that day; or
  - (ii) on the day (the *entry day*) on which the care recipient entered the residential care service, the care recipient's means tested amount was less than the maximum accommodation supplement amount for the entry day.

Note: *Maximum accommodation supplement amount* has the meaning given by subsection 44-21(6) of the *Aged Care Act 1997*.

## 8 Meaning of *maximum permissible interest rate*

The *maximum permissible interest rate* for a day (the *relevant day*) is worked out as follows:

### Maximum permissible interest rate calculator

- Step 1. Work out the general interest charge rate for the relevant day under section 8AAD of the *Taxation Administration Act 1953*.
- Step 2. Multiply the rate worked out at step 1 by the number of days in the calendar year in which the relevant day falls.
- Step 3. Subtract 3 percentage points from the amount worked out at step 2.

The result is the *maximum permissible interest rate* for the relevant day.

## **Chapter 2—Residential care subsidy**

### **Part 1—Who is eligible for residential care subsidy?**

#### **Division 1—Purpose of this Part**

##### **9 Purpose of this Part**

For Division 42 of the Transitional Provisions Act, this Part specifies matters in relation to whether an approved provider of a residential care service is eligible for residential care subsidy for providing residential care to care recipients, including the requirements for when a care recipient is on leave from a residential care service (Division 2).



## **Division 2—Leave from residential care services**

### **10 Care recipient provided with transition care**

- (1) For paragraph 42-2(3A)(b) of the Transitional Provisions Act, this section specifies requirements that must be met for a care recipient (in respect of whom flexible leave subsidy is payable for a day) to be on leave under section 42-2 of the Transitional Provisions Act from a residential care service on that day.

Note: 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 of the Transitional Provisions Act).

- (2) The kind of care provided to the care recipient, for which the flexible care subsidy is payable, must be transition care.

Note: **Transition care** is defined in section 4.

## **Part 2—How is residential care subsidy paid?**

### **Division 1—Purpose of this Part**

#### **11 Purpose of this Part**

For Division 43 of the Transitional Provisions Act, this Part specifies matters in relation to the payment of residential care subsidy by the Commonwealth to an approved provider for providing residential care to care recipients, including the following:

- (a) the kinds of payments made in respect of the service that are capital payments and working out the proportion of the amounts equal to the capital payments that are to be deducted (Division 2);
- (b) the conditions that must be met for non-compliance deductions to not apply in respect of the residential care service and the circumstances in which a non-compliance deduction will not apply even if a condition has not been met (Division 3).

## Division 2—Capital repayment deductions

### 12 Kinds of payment that are capital payments

For paragraph (b) of the definition of *capital payment* in subsection 43-6(5) of the Transitional Provisions Act, each of the following kinds of payment is a capital payment:

- (a) financial assistance by way of a grant under Part II, or Division 3 of Part III, of the *Aged or Disabled Persons Care Act 1954*, as in force before it was repealed;
- (b) a grant of a Commonwealth benefit under Part VAB or VAC of the *National Health Act 1953*;
- (c) a grant under the *Aged or Disabled Persons Hostels Act 1972*, as in force before it was repealed;
- (d) a grant approved on or after 1 July 1989 under the Commonwealth program known as the Residential Aged Care Upgrading Program;
- (e) capital funding approved on or after 1 July 1989 under the Commonwealth program known as the Small Homes Capital Funding Initiative.

Note: A residential care grant is also a capital payment (see paragraph (a) of the definition of *capital payment* in subsection 43-6(5) of the Transitional Provisions Act).

### 13 Working out proportion of amounts to be deducted if distinct part of residential care service has extra service status

- (1) For subsection 43-6(3) of the Transitional Provisions Act, this section sets out how the proportion of the amounts equal to the capital payments made in respect of a residential care service (for which extra service status is granted only in respect of a distinct part of the service) is to be worked out.

Note: *Extra service status* is defined in the Dictionary to the Transitional Provisions Act.

- (2) The proportion is:

$$P \times \frac{ESP}{AP}$$

where:

*AP* (short for allocated places) is the number of places allocated by the Secretary to the approved provider under Part 2.2 of the *Aged Care Act 1997*, in respect of residential care subsidy, that are included in the residential care service.

*ESP* (short for extra service places) is the number of places included in the distinct part of the residential care service, for which extra service status is granted, that are extra service places.

Note: *Extra service place* is defined in the Dictionary to the Transitional Provisions Act.

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**P** (short for proportion) is:

- (a) for each capital payment for which the first capital repayment deduction is to be made within 5 years after approval of the capital payment—100%; or
- (b) for each capital payment for which the first capital repayment deduction is to be made more than 5 years after approval of the capital payment—100% reduced by 10% for each complete year over 5 years.

(3) For subsection (2):

- (a) a place can only be counted as an extra service place or an allocated place if the allocation of the place has taken effect under section 15-1 of the *Aged Care Act 1997*; and
- (b) a period of at least 6 months and less than 1 year is to be counted as a complete year.

Note: The allocation of a place that is a provisional allocation cannot be counted (see section 15-1 of the *Aged Care Act 1997*).

## **Division 3—Non-compliance deductions**

### **14 Circumstances in which non-compliance deductions do not apply**

- (1) For subsection 43-8(2) of the Transitional Provisions Act, this section specifies the circumstances in which non-compliance deductions do not apply in respect of a residential care service even if a condition specified in subsection 43-8(1) of the Transitional Provisions Act has not been met.
- (2) Non-compliance deductions do not apply in respect of the residential care service for a quarter if:
  - (a) fewer than 6 care recipients being provided with residential care through the service in the quarter entered the service after 30 September 1997; or
  - (b) for a service that has extra service status—fewer than 6 care recipients being provided with residential care through the service in the quarter (each receiving care on a permanent basis and not occupying extra service places) entered the service after 30 September 1997; or
  - (c) the care day deficit for the service for the quarter is less than 92.

Note: The care day deficit is worked out under section 16.

- (3) If:
  - (a) one or more allocated places (the **additional places**) are transferred to the residential care service (the **receiving service**) from another residential care service (the **other service**); and
  - (b) some or all of the additional places are occupied by care recipients from the other service; and
  - (c) the receiving service was not subject to a non-compliance deduction for the quarter before the transfer of the allocated places;then non-compliance deductions do not apply in respect of the receiving service for the number of quarters that is the lesser of:
  - (d) 4; and
  - (e) the number of additional places divided by 3 (rounded up to the nearest whole number).
- (4) Non-compliance deductions do not apply in respect of the residential care service for a quarter if:
  - (a) one or more allocated places are not occupied for the quarter; and
  - (b) the care day deficit for the service would have been less than 92 if the allocated place or places had been occupied by:
    - (i) an assisted resident; or
    - (ii) a concessional resident; or
    - (iii) a low-means care recipient; or
    - (iv) a supported resident.

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### 15 Working out amounts of non-compliance deductions

- (1) For subsection 43-8(4) of the Transitional Provisions Act, this section sets out how to work out the amount of a non-compliance deduction in respect of a residential care service for a quarter.
- (2) The non-compliance deduction, for a residential care service for a quarter, is:

$$\frac{A \times (B - C)}{D}$$

where:

**A** is the care day deficit for the residential care service for the quarter.

**B** is the total of the basic subsidy amounts, worked out under Subdivision 44-B of the Transitional Provisions Act and Subdivision 44-B of the *Aged Care Act 1997*, for each day of residential care provided through the residential care service in the quarter for each care recipient.

**C** is the total of the reductions, worked out by applying the income test under Subdivision 44-E of the Transitional Provisions Act and sections 44-21 to 44-23 of the *Aged Care Act 1997*, for each day of residential care provided through the residential care service in the quarter for each care recipient.

**D** is the total of the number of days of residential care provided through the residential care service in the quarter for each care recipient.

- (3) However, if **C** is greater than **B**, the non-compliance deduction is zero.

### 16 Working out the care day deficit

The **care day deficit** for a residential care service for a quarter is worked out as follows:

#### Care day deficit calculator

- Step 1. Count the number of care recipients being provided with residential care through the residential care service who:
- (a) entered the service after 30 September 1997; and
  - (b) during the quarter, are receiving care on a permanent basis and are not occupying a place that is an extra service place.
- Step 2. Multiply the number of care recipients counted under step 1 by the number of days in the quarter.

- Step 3. Count the number of care recipients referred to in step 1 who are:
- (a) assisted residents; and
  - (b) concessional residents; and
  - (c) low-means care recipients; and
  - (d) supported residents.
- Step 4. Multiply the number of care recipients counted under step 3 by the number of days in the quarter.
- Step 5. Subtract the number worked out under step 4 from the number worked out under step 2.
- The result is the *care day deficit* for the residential care service for the quarter.

## **Part 3—What is the amount of residential care subsidy?**

### **Division 1—Purpose of this Part**

#### **17 Purpose of this Part**

For Division 44 of the Transitional Provisions Act, this Part sets out matters in relation to the amount of residential care subsidy payable to an approved provider of a residential care service in respect of a care recipient who is being provided with residential care through the service, including:

- (a) other matters on which the Minister may base a determination of different amounts (including nil amounts) of the basic subsidy amount for the care recipient (Division 2); and
- (b) other matters relating to the following primary supplements (Division 3):
  - (i) the accommodation supplement;
  - (ii) the concessional resident supplement;
  - (iii) the charge exempt resident supplement;
  - (iv) the respite supplement;
  - (v) the oxygen supplement;
  - (vi) the enteral feeding supplement; and
- (c) the following additional primary supplements that may apply to the care recipient (Division 4):
  - (i) the transitional supplement;
  - (iii) the accommodation charge top-up supplement;
  - (iv) the transitional accommodation supplement;
  - (v) the basic daily fee supplement;
- (d) working out the value of the care recipient's assets (Division 5); and
- (e) matters relating to the following reductions in subsidy that may apply to the care recipient (Division 6):
  - (i) the compensation payment reduction;
  - (ii) the daily income tested reduction; and
- (f) matters relating to the income test for the care recipient (Division 7); and
- (g) other matters relating to the following other supplements that may apply to the care recipient (Division 8):
  - (i) the viability supplement;
  - (ii) the hardship supplement; and
- (h) the following other supplements that may apply to the care recipient (Division 8):
  - (i) the veterans' supplement;
  - (ii) the homeless supplement.



## **Division 2—Basic subsidy amount**

### **18 Determination by Minister of basic subsidy amount for care recipient—other matters**

For paragraph 44-3(3)(e) of the Transitional Provisions Act, other matters on which the Minister may base a determination of different amounts (including nil amounts) of the basic subsidy amount for a care recipient who is being provided with residential care through a residential care service are the following:

- (a) whether the service provides a greater or lesser proportion of care to recipients of respite care than that (if any) specified in the conditions attached to the allocation of places to the approved provider of the service;
- (b) whether, on a particular day, 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 occurs equals or exceeds the maximum number of days specified in section 25 for paragraph 44-12(2)(c) of the Transitional Provisions Act;
- (c) if an appraisal of the care recipient's care needs is received after the end of the period referred to in paragraph 26-1(a) or (b) of the *Aged Care Act 1997* (whichever is applicable)—the circumstances of the appraisal not being received in that period;
- (d) if a reappraisal of the care recipient's needs is received after the end of the applicable reappraisal period referred to in section 27-2 of the *Aged Care Act 1997*—the circumstances of the reappraisal not being received in that period.

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## Division 3—Primary supplements

### Subdivision A—Accommodation supplement

#### 19 Determination of accommodation supplement amount—other matters

- (1) For paragraph 44-5A(4)(b) of the Transitional Provisions Act, other matters on which the Minister may base a determination of different amounts (including nil amounts) of the accommodation supplement for a care recipient who is being provided with residential care (other than respite care or care provided on an extra service basis) through a residential care service are the following:
- (a) whether the service is:
    - (i) a newly built residential care service; or
    - (ii) a significantly refurbished residential care service;
  - (b) whether the service meets the building requirements specified in Schedule 1;
  - (c) whether more than 40% of care recipients to whom the service provides residential care, who are both post-2008 reform residents and relevant residents, are low-means care recipients or supported residents;
  - (d) whether more than 40% of relevant residents to whom the service provides residential care are assisted residents, concessional residents, low-means care recipients or supported residents.

Note: **Relevant resident** is defined in section 4.

- (3) For paragraph (1)(b), a service is taken not to meet the building requirements specified in Schedule 1 if a building forming part of the service does not meet the building requirements for a building of that kind.

### Subdivision B—Concessional resident supplement

#### 20 Determination of concessional resident supplement amount—other matters

For paragraph 44-6(5)(d) of the Transitional Provisions Act, other matters on which the Minister may base a determination of different amounts (including nil amounts) of the concessional resident supplement for a concessional resident or an assisted resident (the **care recipient**) who is being provided with residential care (other than respite care) through a residential care service are the following:

- (a) whether the service is:
  - (i) a newly built residential care service; or
  - (ii) a significantly refurbished residential care service;
- (b) if the care recipient entered the service before 17 October 2014—whether the service was certified at the time the care recipient entered the service;
- (c) whether more than 40% of relevant residents to whom the service provides residential care are assisted residents, concessional residents, low-means care recipients or supported residents.

Note: **Relevant resident** is defined in section 4.

## **Subdivision C—Charge exempt resident supplement**

### **21 Determination of charge exempt resident supplement amount—other matters**

For paragraph 44-8A(4)(c) of the Transitional Provisions Act, other matters on which the Minister may base a determination of different amounts (including nil amounts) of the charge exempt resident supplement for a care recipient who is being provided with residential care through a residential care service, and who is a pre-2008 reform resident, are the following:

- (a) the amount by which the maximum rate of concessional resident supplement is greater than \$12.17 for a day;
- (b) if the care recipient has paid an accommodation charge as an assisted resident—the amount of the difference between the charge exempt resident supplement for a day and the rate of concessional resident supplement paid to the relevant approved provider.

### **22 Circumstances in which charge exempt resident supplement is not payable to approved provider**

- (1) For subsection 44-8A(5) of the Transitional Provisions Act, the circumstances in which the Secretary may determine that an amount of charge exempt resident supplement otherwise payable for a particular care recipient is not payable to the approved provider concerned are the following:
  - (a) the approved provider, despite using its best endeavours, is unable to find the care recipient or, if the care recipient is deceased, the care recipient's legal representatives or a person specified in section 23;
  - (b) a sanction is imposed, under section 66-1 of the *Aged Care Act 1997*, on the approved provider;
  - (c) the Secretary has refunded, or will refund, the amount to an appropriate person, or to the care recipient's estate, in accordance with paragraph 44-8A(6)(b) of the Transitional Provisions Act.
- (2) If the Secretary makes a determination under subsection 44-8A(5) of the Transitional Provisions Act, the Secretary must give written notice of the determination to the approved provider.

### **23 Persons to whom charge exempt resident supplement may be paid**

For paragraph 44-8A(6)(a) of the Transitional Provisions Act, the following persons are specified in relation to a care recipient:

- (a) an executor of the care recipient's estate;
- (b) a person appointed by a State or Territory guardianship board (however described) to deal with the care recipient's estate;
- (c) an authorised nominee of the care recipient;
- (d) a person who holds an enduring power of attorney for the care recipient.

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**Subdivision D—Respite supplement**

**24 Eligibility for respite supplement—requirements**

For subparagraph 44-12(2)(a)(ii) of the Transitional Provisions Act, a requirement for a care recipient who is being provided with residential care through a residential care service to be eligible for the respite supplement on a day is that the care recipient is approved under Part 2.3 of the *Aged Care Act 1997* as a recipient of residential care provided as respite care.

Note: For the approval of care recipients, see also the *Approval of Care Recipients Principles 2014*.

**25 Maximum number of days of respite care**

- (1) For paragraph 44-12(2)(c) of the Transitional Provisions Act, the number of days is:
  - (a) 63; or
  - (b) if the Secretary has increased the number of days under subsection (2)—the number of days as so increased (or as most recently increased).
- (2) The Secretary may increase the number of days on which a care recipient can be provided with residential care as respite care during a financial year by up to 21 if the Secretary considers that an increase in the number of days is necessary because of any of the following:
  - (a) carer stress;
  - (b) severity of the care recipient's condition;
  - (c) absence of the care recipient's carer;
  - (d) any other relevant matter.
- (3) An increase under subsection (2) may be made more than once in a financial year.

**26 Determination of respite supplement amount—other matters**

For paragraph 44-12(4)(f) of the Transitional Provisions Act, other matters on which the Minister may base a determination of different amounts (including nil amounts) of the respite supplement for a care recipient who is being provided with residential care through a residential care service are the following:

- (a) whether the service provides a greater or lesser proportion of care to recipients of respite care than that (if any) specified in the conditions attached to the allocation of places to the approved provider of the service;
- (b) the time when the care recipient entered the service.

## **Subdivision E—Oxygen supplement**

### **27 Circumstances relating to provision of oxygen**

For paragraph 44-13(1)(c) of the Transitional Provisions Act, the circumstances for the provision of oxygen to a care recipient provided with residential care through a residential care service are as follows:

- (a) the materials and equipment used by the residential care service to provide the oxygen must be hired, temporarily obtained or owned by the residential care service;
- (b) the oxygen must not be provided:
  - (i) because of a medical emergency; or
  - (ii) on a short-term or episodic basis;
- (c) a medical practitioner must have certified, in writing, that the care recipient has a continual need for the provision of oxygen;
- (d) the oxygen must be provided in the most economical way available, taking into account the medical needs of the care recipient.

## **Subdivision F—Enteral feeding supplement**

### **28 Circumstances relating to provision of enteral feeding**

For paragraph 44-14(1)(c) of the Transitional Provisions Act, the circumstances for the provision of enteral feeding to a care recipient provided with residential care through a residential care service are as follows:

- (a) a medical practitioner must have certified, in writing, that the care recipient has a medical need for enteral feeding;
- (b) the care recipient must have been given a liquid dietary formula (not including food supplements or any supplementary feeding connected with the administration of the dietary formula) administered by a nasogastric, gastrostomy or jejunostomy feeding method;
- (c) a medical practitioner or dietician must have certified, in writing, that the dietary formula is a nutritionally complete formula;
- (d) the enteral feeding must not be intermittent or supplementary enteral feeding given in addition to oral feeding;
- (e) the enteral feeding must be provided in the most economical way available, taking into account the medical needs of the care recipient.

## Division 4—Additional primary supplements

### 29 Purpose of this Division

For subsections 44-16(1) and (2) of the Transitional Provisions Act, this Division provides for additional primary supplements and specifies, for each supplement, the circumstances in which the supplement will apply to a care recipient in respect of a payment period.

### Subdivision B—Transitional supplement

#### 32 Transitional supplement

The transitional supplement for a care recipient in respect of a payment period is the sum of all the transitional 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 transitional supplement.

#### 33 Eligibility for transitional supplement

- (1) A care recipient is eligible for a transitional supplement on a day if:
  - (a) on that day, the residential care provided through the residential care service to the care recipient was not respite care; and
  - (b) the care recipient is not a post-2008 reform resident; and
  - (c) for a care recipient who entered the service after 30 September 1997—the service was not certified on the day the care recipient entered the service; and
  - (d) for a care recipient who occupied a hostel place or a nursing home bed on 30 September 1997—the care recipient:
    - (i) continued to receive residential care from the service after 30 September 1997; and
    - (ii) has been classified under Part 2.4 of the *Aged Care Act 1997*.

Note: *Hostel place* and *nursing home bed* are defined in section 4.

- (2) However, the care recipient is not eligible for a transitional supplement on a day if the care recipient entered the residential care service in question after 17 October 2014.

### Subdivision C—Accommodation charge top-up supplement

#### 34 Accommodation charge top-up supplement

The accommodation charge top-up supplement for a care recipient in respect of a payment period is the sum of all the accommodation charge top-up 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 an accommodation charge top-up supplement.

### **35 Eligibility for accommodation charge top-up supplement**

A care recipient is eligible for an accommodation charge top-up supplement on a day if:

- (a) on that day, the care recipient:
  - (i) is a post-2008 reform resident; and
  - (ii) receives an income support payment; and
- (c) the care recipient was eligible to pay an accommodation charge on entry to the residential care service; and
- (d) the accommodation charge the care recipient was eligible to pay was less than the accommodation charge the care recipient would have been eligible to pay had the care recipient not been receiving an income support payment.

### **Subdivision D—Transitional accommodation supplement**

#### **36 Transitional accommodation supplement**

The transitional accommodation supplement for a care recipient in respect of a payment period is the sum of all the transitional accommodation 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 transitional accommodation supplement.

#### **37 Eligibility for transitional accommodation supplement**

- (1) A care recipient is eligible for a transitional accommodation supplement on a day if:
  - (a) on that day, the care recipient is a post-2008 reform resident; and
  - (b) the care recipient entered a residential care service after 19 March 2008 and before 20 September 2011; and
  - (c) the care recipient is eligible to pay an accommodation bond.
- (2) For paragraph (1)(b), a care recipient who first entered a residential care service before 20 September 2011 (the *relevant date*), is not taken to have entered a residential care service after the relevant date only because the person moved from one residential care service to another residential care service within 28 days after the relevant date.

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**Subdivision E—Basic daily fee supplement**

**38 Basic daily fee supplement**

The basic daily fee supplement for a care recipient in respect of a payment period is the sum of all the basic daily fee 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 basic daily fee supplement.

**39 Eligibility for basic daily fee supplement**

A care recipient is eligible for a basic daily fee supplement on a day if:

- (a) on that day, the residential care provided through the residential care service to the care recipient was not respite care; and
- (b) on 1 July 2012, the care recipient was not receiving either of the following clean energy qualifying payments referred to in subsection 914(4) of the Social Security Act:
  - (i) an age pension;
  - (ii) a seniors supplement; and
- (c) on 1 July 2012, the care recipient was not receiving either of the following clean energy underlying payments referred to in subsection 5Q(1) of the Veterans' Entitlements Act:
  - (i) a service pension;
  - (ii) a seniors supplement; and
- (d) on 1 July 2012, the care recipient was not the holder of a seniors health card; and
- (e) the approved provider of the residential care service has, in respect of the provision of residential care to the care recipient, received subsidy:
  - (i) under Chapter 3 of the *Aged Care Act 1997* on each day during the period beginning on 1 July 2012 and ending on 30 June 2014; and
  - (ii) under Chapter 3 of the Transitional Provisions Act on 1 July 2014 and on each day since that date; and
- (f) the approved provider charges the care recipient no more than the maximum daily amount of resident fees permitted under Division 58 of the Transitional Provisions Act less an amount obtained by rounding down to the nearest cent an amount equal to 1% of the basic age pension amount (worked out on a daily basis).



## Division 5—Value of assets

### 43 Supported residents—time for assessing assets

- (1) For paragraph 44-5B(1)(c) of the Transitional Provisions Act, the other time at which the value of the person's assets is to be determined by the Secretary is the following:
  - (a) the first time after 19 March 2008 that the person entered a residential care service without having had a break in residential care of more than 28 days;
  - (b) if the person entered another residential care service and a determination of the person's assets, made under section 44-8AB of the Transitional Provisions Act because of that entry, is less than the valuation of the person's assets at the time referred to in paragraph (a)—the time referred to in the determination.
- (2) For paragraph (1)(a), **break in residential care** has the same meaning as in subsection 44-5D(2) of the Transitional Provisions Act.

### 44 Working out the value of assets

- (1) For section 44-10 of the Transitional Provisions Act, and subject to subsections 44-10(2), (3) and (4) of the Transitional Provisions Act, the value of a person's assets is the net value of the person's property (including property outside Australia) reduced by any compensation payments received by the person under:
  - (a) the *Compensation (Japanese Internment) Act 2001*; or
  - (b) the *Veterans' Entitlements (Compensation—Japanese Internment) Regulations 2001*; or
  - (c) Part 2 of the *Veterans' Entitlements (Clarke Review) Act 2004*; or
  - (d) Schedule 5 to the *Social Security and Veterans' Affairs Legislation Amendment (One-off Payments and Other 2007 Budget Measures) Act 2007*.

Note: **Net value** is defined in section 4.

- (2) For subsection (1), a person's property includes the following:
  - (a) accounts, including interest-free accounts, with banks, building societies and credit unions;
  - (b) interest-bearing deposits;
  - (c) fixed deposits;
  - (d) bonds;
  - (e) debentures;
  - (f) shares;
  - (g) investments in property trusts, friendly societies, equity trusts, mortgage trusts and bond trusts;
  - (h) superannuation assets from which lump sum amounts can be withdrawn;
  - (i) real estate;

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- (j) businesses;
  - (k) farms;
  - (l) loans, including interest-free loans;
  - (m) motor vehicles, boats and caravans;
  - (n) the surrender value of life insurance policies;
  - (o) investment collections, including investment collections of coins or stamps;
  - (p) household contents and personal effects.
- (3) For paragraph (2)(p), if there is no evidence of the value of a person's household contents and personal effects, the value is taken to be \$5 000.

## **Division 6—Reductions in subsidy**

### **45 Compensation payment reduction—judgment or settlement does not, or does not adequately, take into account future costs of residential care**

- (1) For subsections 44-20(5) and (6) of the Transitional Provisions Act, in making a determination in respect of a judgment or settlement entitling a care recipient to compensation, the Secretary must take into account the following matters:
- (a) the amount of the judgment or settlement;
  - (b) for a judgment—the components stated in the judgment and the amount stated for each component;
  - (c) the proportion of liability apportioned to the care recipient;
  - (d) the amounts spent on residential care at the time of the judgment or settlement.

Note: For paragraph (1)(b), examples of the components of a judgment include the following:

- (a) loss of income;
  - (b) costs of future care.
- (2) The Secretary may also take into account any other matters the Secretary considers relevant, including the following:
- (a) the amounts that are likely to be paid to, or withheld by, other government agencies because of the judgment or settlement;
  - (b) the amounts spent on care (other than residential care) at the time of the judgment or settlement;
  - (c) the likely cost of residential care for the care recipient;
  - (d) other costs of care for which the care recipient is likely to be liable;
  - (e) the amount of the accommodation bond paid or payable by the care recipient;
  - (f) other reasonable amounts (not related to care) that the care recipient:
    - (i) had spent at the time of the judgment or settlement; or
    - (ii) is likely to be liable for.

## **Division 7—The income test**

### **Subdivision A—Daily income tested reduction—general**

#### **46 Classes of people for whom daily income tested reduction is taken to be zero**

- (1) For paragraph 44-22(1)(c) of the Transitional Provisions Act, the classes of people for whom the daily income tested reduction is taken to be zero are the following:
  - (a) care recipients who leave a residential care service (without entering another residential care service), or who die, before the approved provider of the service has been informed of the care recipient's daily income tested reduction (if any);
  - (b) care recipients who are not, within 6 months of entry to a residential care service, informed of the care recipient's daily income tested reduction (if any);
  - (c) care recipients who have one or more dependent children;
  - (d) care recipients who are described in paragraph 85(4)(b) of the *Veterans' Entitlements Act 1986* (which describes former prisoners of war);
  - (e) care recipients who:
    - (i) are provided with residential care at any time after 30 September 1997 and before 1 March 1998; or
    - (ii) are, before 1 March 1998, on leave, as described in subsection 42-3(3) of the Transitional Provisions Act;
  - (f) care recipients for whom the daily income tested reduction is worked out as less than \$1.
- (2) If a care recipient is included in the class of persons referred to in paragraph (1)(b), the care recipient is included in that class from the day the care recipient enters the residential care service until the day the care recipient is informed of the care recipient's daily income tested reduction.
- (3) This section does not apply to a care recipient at a time when the care recipient is being provided with respite care.

#### **47 Matters to which Secretary must have regard in deciding whether to determine if daily income tested reduction is to be taken to be zero**

- (1) For subsection 44-22(4) of the Transitional Provisions Act, in deciding whether to determine that the daily income tested reduction in respect of a care recipient is to be taken to be zero, the Secretary must have regard to the following matters:
  - (a) the care recipient's income;
  - (b) the care recipient's financial arrangements;
  - (c) the care recipient's entitlement to income support:
    - (i) under the Social Security Act; or
    - (ii) under the Veterans' Entitlements Act; or

- (iii) from any other source;
- (d) whether the care recipient has taken steps to obtain information about his or her entitlement to pension, benefit or other income support payments;
- (e) whether the care recipient has access to financial assistance:
  - (i) under section 1129 of the Social Security Act (relating to access to financial hardship rules for pensions); or
  - (ii) under the pension loans scheme under Division 4 of Part 3.12 of the Social Security Act; or
  - (iii) from any other source;
- (f) whether any income of the care recipient is income that the care recipient does not reasonably have access to;
- (g) whether there is a charge on the care recipient's income over which the payment of resident fees cannot practically take precedence;
- (h) whether the care recipient has significant assets;
- (i) if the care recipient has significant assets—whether any assets of the care recipient are unrealisable assets;
- (j) whether the care recipient is in Australia on a temporary basis.

Note: *Unrealisable asset* is defined in section 4.

- (2) The Secretary may have regard to any other matters the Secretary considers relevant.
- (3) To enable the Secretary to have regard to the matters referred to in paragraph (1)(c) or (d), the Secretary may:
  - (a) require the care recipient to seek information from the relevant Department about his or her entitlement to a benefit, income support payment or other assistance, and give the Secretary copies of written replies from the Department; or
  - (b) advise the care recipient to seek advice about his or her financial arrangements from the Financial Information Service established by Centrelink.

## **Subdivision B—Daily income test reduction—amounts excluded from total assessable income**

### **48 Amounts excluded from care recipient's total assessable income**

For subsection 44-24(5) of the Transitional Provisions Act, the amounts (in this Subdivision called *excluded amounts*) that are to be taken, in relation to the kinds of care recipients specified in sections 49 to 54, to be excluded from determinations by the Secretary under subsection 44-24(1) or paragraph 44-24(2)(b), (3)(b) or (4)(b) of the Transitional Provisions Act are the following:

- (a) disability pensions and permanent impairment compensation payments referred to in section 49;
- (b) gifts referred to in section 50;
- (c) rent receipts referred to in section 51;

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- (d) GST compensation referred to in section 52;
- (e) amounts referred to in section 53;
- (f) clean energy payments referred to in section 54.

### **49 Excluded amounts—disability pensions and permanent impairment compensation payments**

- (1) For a person who has qualifying service under section 7A of the Veterans' Entitlements Act, or the partner of such a person, the amount (if any) of disability pension (within the meaning of subsection 5Q(1) of the Veterans' Entitlements Act) paid to the person that is exempt under section 5H of that Act is an excluded amount.
- (2) For a person who is a member or former member (within the meaning of the *Military Rehabilitation and Compensation Act 2004*) or the partner of such a person, each of the following is an excluded amount:
  - (a) any amount of compensation for permanent impairment paid to the person under Part 2 of Chapter 4 of the *Military Rehabilitation and Compensation Act 2004*;
  - (b) any amount of Special Rate Disability Pension paid to the person under Part 6 of Chapter 4 of the *Military Rehabilitation and Compensation Act 2004*.

### **50 Excluded amounts—gifts**

- (1) For a person who, on or before 20 August 1996, disposed of ordinary income, the amount of ordinary income disposed of on or before 20 August 1996 that is included in the person's ordinary income under:
  - (a) sections 1106, 1107, 1108 and 1109 of the Social Security Act; or
  - (b) sections 48, 48A, 48B and 48C of the Veterans' Entitlements Act;is an excluded amount.

Note: Sections 1106, 1107, 1108 and 1109 of the Social Security Act, and sections 48, 48A, 48B and 48C of the Veterans' Entitlements Act, deal with disposal of ordinary income.

- (2) For a person who, on or before 20 August 1996, disposed of assets, the amount of ordinary income the person is taken to receive because assets disposed of on or before 20 August 1996 are assessed as financial assets under:
  - (a) section 1076, 1077 or 1078 of the Social Security Act; or
  - (b) sections 46D and 46E of the Veterans' Entitlements Act;is an excluded amount.

Note: Section 1076, 1077 or 1078 of the Social Security Act, and sections 46D and 46E of the Veterans' Entitlements Act, deal with deemed income on financial assets.

### **51 Excluded amounts—rent receipts**

- (1) For a care recipient for whom an accommodation charge is payable, the amount of any income received by the care recipient, or the care recipient's partner, from

rental of the care recipient's principal home to another person is an excluded amount.

(2) In this section:

**accommodation charge** means an amount of money that accrues daily and is paid or payable by the care recipient for the care recipient's entry to a residential care service through which care is, or is to be, provided by the approved provider of the service.

Note 1: Paragraph 8(8)(zn) of the Social Security Act and paragraph 5H(8)(nc) of the Veterans' Entitlements Act describe how, for the purposes of each Act, **income** is defined for a person who is accruing a liability to pay an accommodation charge.

Note 2: Subsection 5L(6A) of the Veterans' Entitlements Act describes how, for the purposes of that Act, **assets** are defined for a person who is accruing a liability to pay an accommodation charge.

Note 3: Section 16 of the Social Security Act and section 17A of the Veterans' Entitlements Act describe how, for the purposes of each Act, **income** is defined in relation to a person who first became a charge exempt resident before the commencement of Schedules 1, 2 and 3 to the *Aged Care Amendment (Omnibus) Act 1999*.

## 52 Excluded amounts—GST compensation

(1) This section applies in relation to:

- (a) a person receiving a pension under Part II or IV of the Veterans' Entitlements Act at a rate determined under or by reference to the following provisions of that Act:
  - (i) for a person receiving a disability pension payable at the general rate—section 22;
  - (ii) for a person receiving a disability pension payable at the general rate including an increased rate for a war-caused injury or disease—sections 22 and 27;
  - (iii) for a person receiving a disability pension payable at the intermediate rate—section 23;
  - (iv) for a person receiving a disability pension payable at the intermediate rate including an increased rate for a war-caused injury or disease—sections 23 and 27;
  - (v) for a person receiving a disability pension payable at the special rate—section 24;
  - (vi) for a person receiving a war widow or widower pension—subsection 30(1); and
- (b) a person receiving a pension under Part 6 of Chapter 4, or a weekly amount of compensation under Part 2 of Chapter 5, of the *Military Rehabilitation and Compensation Act 2004* at a rate determined under or by reference to the following provisions of that Act:
  - (i) for a person receiving a Special Rate Disability Pension—sections 198 and 204;
  - (ii) for a person receiving a weekly amount of compensation for the death of the person's partner—subsection 234(5).

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- (2) The amount that is equal to 4% of the amount of pension, or the weekly amount of compensation, payable to a person under a provision referred to in subsection (1), as applicable from time to time, is an excluded amount.

Note 1: Part II of the Veterans' Entitlements Act deals with pensions, other than service pensions, payable to veterans and their dependants.

Note 2: Part IV of the Veterans' Entitlements Act deals with pensions payable to members of the Defence Forces or a Peacekeeping Force and their dependants.

Note 3: Part 6 of Chapter 4 of the *Military Rehabilitation and Compensation Act 2004* gives former members who are entitled to compensation for incapacity for work a choice to receive a Special Rate Disability Pension instead of compensation.

Note 4: Part 2 of Chapter 5 of the *Military Rehabilitation and Compensation Act 2004* gives wholly dependent partners of deceased members an entitlement to compensation in respect of the death of the members. The compensation may be taken as a lump sum or as a weekly amount.

### 53 Excluded amounts—pre-2008 reform residents

- (1) This section applies in relation to a pre-2008 reform resident (the *person*).
- (2) If the person is entitled to a pension worked out under Module A of the Pension Rate Calculator B at the end of section 1065 of the Social Security Act, or Module A of the Rate Calculator in Part 2 of Schedule 6 to the Veterans' Entitlements Act, and

$$\left( I > \left( P + T \right) \right) \text{ and } \left( \left( I \leq 5.4 \times BP \right) + P + T \right)$$

the amount worked out in accordance with the following formula is an excluded amount:

$$0.4 \times \left( I - P - T \right)$$

- (3) If the person is entitled to a pension worked out under Module A of the Pension Rate Calculator B at the end of section 1065 of the Social Security Act, or Module A of the Rate Calculator in Part 2 of Schedule 6 to the Veterans' Entitlements Act, and

$$I > \left( 5.4 \times BP \right) + P + T$$

the amount worked out in accordance with the following formula is an excluded amount:

$$I - \left( 3.24 \times BP \right) - P - T$$

- (4) If neither subsection (2) nor subsection (3) applies to the person and:



$$\left( I > \left( 2 \times P \right) + T \right) \text{ and } \left( I \leq 5.4 \times BP \right) + T$$

the amount worked out in accordance with the following formula is an excluded amount:

$$\left( 0.4 \times I \right) - P - \left( 0.4 \times T \right)$$

- (5) If neither subsection (2) nor subsection (3) applies to the person and:

$$I > \left( 5.4 \times BP \right) + T$$

the amount worked out in accordance with the following formula is an excluded amount:

$$I - \left( 3.24 \times BP \right) - P - T$$

- (6) In this section:

**BP** (the *maximum basic pension*) means 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.

**I** means total assessable income.

**P** (the *maximum pension*) means the sum of:

- 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; and
- the amount worked out by applying point 1064-BA4 of Pension Rate Calculator A at the end of section 1064 of the Social Security Act.

**T** (the *social security income test free threshold*) means 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.

## 54 Excluded amounts—clean energy payments

For a care recipient who is being provided with residential care through a residential care service, each of the following is an excluded amount:

- any amount of clean energy advance, clean energy supplement or quarterly clean energy supplement paid to the care recipient under the Social Security Act;
- any amount of clean energy advance, clean energy supplement or quarterly clean energy supplement paid to the care recipient under the Veterans' Entitlements Act.

## Division 8—Other supplements

### Subdivision A—Viability supplement

#### 55 Determination of viability supplement for care recipient—other matters

For paragraph 44-29(2)(c) of the Transitional Provisions Act, another matter on which the Secretary may base a determination in respect of a residential care service is whether the service was, on the relevant day for the payment of a viability supplement for a care recipient provided with residential care through the service:

- (a) a 1997 scheme service (within the meaning of the *Subsidy Principles 2014*); or
- (b) a 2001 scheme service (within the meaning of those principles); or
- (c) a 2005 scheme service (within the meaning of those principles); or
- (d) a 2017 scheme service (within the meaning of those principles).

### Subdivision B—Hardship supplement

#### 56 Eligibility for hardship supplement—classes of care recipients

- (1) For paragraph 44-30(2)(a) of the Transitional Provisions Act, the classes of care recipients for whom paying the maximum daily amount of resident fees (worked out under section 58-2 of the Transitional Provisions Act) would cause financial hardship are the following:
  - (a) care recipients who:
    - (i) are pre-2008 reform residents; and
    - (ii) entered an aged care service after 30 September 1997; and
    - (iii) do not receive an income support payment; and
    - (iv) have an ordinary fortnightly income on a day that is more than the ordinary fortnightly income that, if received by the care recipient, has the effect that he or she is not entitled to an income support payment, and is less than \$1 774.42;
  - (b) care recipients who:
    - (i) on 30 September 1997, occupied an approved place in an aged care service and received an income support payment; and
    - (ii) on 1 October 1997—did not receive an income support payment;
  - (c) care recipients who:
    - (i) on 30 September 1997, occupied a place in a hostel approved under the *Aged or Disabled Persons Care Act 1954*, as in force at that date; and
    - (ii) have not entered an aged care service that was approved, before 1 October 1997, as a nursing home under the *National Health Act 1953*.

- (2) For paragraph (1)(a), a care recipient's ordinary fortnightly income on a day is the amount that would be his or her ordinary income on that day according to the ordinary income test in Pension Rate Calculator A in section 1064 of the Social Security Act.

### 57 Eligibility for hardship supplement—determination by Secretary

- (1) For subsection 44-31(2) of the Transitional Provisions Act, this section sets out the matters the Secretary must have regard to in deciding whether to determine that a care recipient is eligible for a hardship supplement.
- (2) The Secretary must not determine that a care recipient is eligible for a hardship supplement if:
- (a) the care recipient's means have not been assessed in accordance with the *Aged Care Act 1997*; or
  - (b) the value of the care recipient's assets (worked out under section 44-26A of the *Aged Care Act 1997* and section 47 of the *Subsidy Principles 2014*) is more than 1.5 times the sum of the annual amount of the following (worked out under the Social Security Act):
    - (i) the basic age pension amount;
    - (ii) the pension supplement amount;
    - (iii) the clean energy supplement amount; or
  - (c) the care recipient has gifted:
    - (i) more than \$10 000 in the previous 12 months; or
    - (ii) more than \$30 000 in the previous 5 years.

Note: **Basic age pension amount** is defined in clause 1 of Schedule 1 to the *Aged Care Act 1997*.

- (3) For paragraph (2)(b), in determining the value of the care recipient's assets for this section, unrealisable assets are not to be included.

Note: **Unrealisable asset** is defined in section 4.

- (4) In deciding whether to determine that a care recipient is eligible for a hardship supplement, the Secretary may have regard to the following matters:
- (a) the care recipient's total assessable income (worked out under section 44-24 of the *Aged Care Act 1997* and section 41 of the *Subsidy Principles 2014*);
  - (b) whether the amount of income available to the care recipient after expenditure on essential expenses is less than 15% of the basic age pension amount;
  - (c) the financial arrangements of the care recipient;
  - (d) the care recipient's entitlement to income support:
    - (i) under the Social Security Act; or
    - (ii) under the Veterans' Entitlements Act; or
    - (iii) from any other source;
  - (e) whether the care recipient has taken steps to obtain information about his or her entitlement to a pension, benefit or other income support payments;

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- (f) whether the care recipient has access to financial assistance:
  - (i) under section 1129 of the Social Security Act (relating to access to financial hardship rules for pensions); or
  - (ii) under the pension loans scheme under Division 4 of Part 3.12 of the Social Security Act; or
  - (iii) from any other source;
- (g) whether any income of the care recipient is income that he or she does not reasonably have access to;
- (h) whether there is a charge on the care recipient's income over which the payment of resident fees cannot practically take precedence;
- (i) whether the care recipient is in Australia on a temporary basis;
- (j) any other matters the Secretary considers relevant.

Note: *Unrealisable asset* is defined in section 4.

- (5) For paragraph (4)(b), *essential expenses*, has the same meaning as in section 61 of the *Subsidy Principles 2014*.

### 58 Circumstances in which Secretary may revoke financial hardship determination

For subsection 44-31(1) of the Transitional Provisions Act, the Secretary may revoke a determination that a care recipient is eligible for a hardship supplement if:

- (a) the circumstances of the care recipient have changed; and
- (b) the Secretary is satisfied that paying the maximum daily amount of resident fees worked out under section 58-2 of the Transitional Provisions Act would not cause the care recipient financial hardship.

Example: For paragraph (a), a person's circumstances may change if assets of the person that were unrealisable assets are no longer assets of that kind.

## Subdivision C—Veterans' supplement

### 59 Veterans' supplement

For paragraph 44-27(1)(e) of the Transitional Provisions Act, the veterans' supplement for a care recipient in respect of a payment period is the sum of all the veterans' 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 veterans' supplement.

### 60 Eligibility for veterans' supplement

A care recipient is eligible for a veterans' supplement on a particular day if:

- (a) on that day, the care recipient is a veteran with an accepted mental health condition; and

- (b) the care recipient has before, on or after that day, authorised either, or both, of the following to disclose to the approved provider that the care recipient is a veteran with an accepted mental health condition:
  - (i) the Secretary of the Department administered by the Minister administering the Veterans' Entitlements Act;
  - (ii) the Secretary of the Department administered by the Minister administering the *Human Services (Centrelink) Act 1997*.

Note: *Accepted mental health condition* and *veteran* are defined in section 4.

## **Subdivision D—Homeless supplement**

### **62 Homeless supplement**

For paragraph 44-27(1)(e) of the Transitional Provisions Act, the homeless supplement for a care recipient in respect of a payment period is the sum of all the homeless 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 met the requirements for eligibility under section 63.

### **63 Eligibility for homeless supplement**

A residential care service meets the requirements for eligibility for a homeless supplement on a particular day if:

- (a) on that day, more than 50% of care recipients provided with residential care (other than respite care) through the service have been appraised using appraisal tool A in subclause 2(1) of Schedule 2 of the *Subsidy Principles 2014* as demonstrating complex behavioural needs and social disadvantage associated with their background as a homeless person; and
- (b) either:
  - (i) the allocation of places to the approved provider in respect of the service is made (under section 14-5 of the *Aged Care Act 1997*) subject to conditions relating to care of people with a background as homeless persons; or
  - (ii) the approved provider or its key personnel have demonstrated experience in providing, or the capacity to provide, specialist services for such persons, including programs and interventions to manage complex behavioural needs, or programs to promote social engagement and participation.

## **Chapter 3—Home care subsidy**

### **Part 1—Who is eligible for home care subsidy?**

#### **65 Purpose of this Part**

For Division 46 of the Transitional Provisions Act, this Part specifies requirements relating to the suspension, on a temporary basis, of the provision of home care to a care recipient in accordance with a home care agreement.

#### **66 Suspension of home care**

- (1) For subsection 46-2(3) of the Transitional Provisions Act, this section specifies requirements relating to the suspension, on a temporary basis, of the provision of home care to a care recipient in accordance with a home care agreement.
- (2) The home care agreement, as in force on the date specified in the request by the care recipient to suspend the provision of home care (the *commencement day*), is taken to remain in force during the period for which the provision of home care is suspended (the *suspension period*).
- (3) The care recipient is taken to have been provided with home care, as required by the home care agreement, on each day of the suspension period.
- (4) The suspension period:
  - (a) includes the commencement day; but
  - (b) does not include the day on which the provision of home care to the care recipient recommences.

## **Part 2—Basis on which home care subsidy is paid?**

### **67 Purpose of this Part**

For Division 47 of the Transitional Provisions Act, this Part sets out, in relation to the basis on which home care subsidy is paid, how to work out the amounts of advances of home care subsidy that may be paid to an approved provider in respect of a payment period.

### **68 Working out amounts of advances of home care subsidy**

For subsection 47-3(4) of the Transitional Provisions Act, the amounts of advances of home care subsidy to be paid to an approved provider of a home care service must be worked out by taking into account only care recipients who are being provided with home care through the home care service in accordance with a home care agreement.

## Chapter 3A—Flexible care subsidy

### 68A Purpose of this Chapter

This Chapter makes provision:

- (a) for Division 50 of the Transitional Provisions Act—in relation to matters relating to who is eligible for flexible care subsidy; and
- (b) for Division 51 of the Transitional Provisions Act—in relation to the basis on which flexible care subsidy is paid.

### 68B Application of Chapter 4 of the *Subsidy Principles 2014*

- (1) The following provisions (the ***applied provisions***) apply:
  - (a) Chapter 4 of the *Subsidy Principles 2014*;
  - (b) any provisions of the *Subsidy Principles 2014* that relate to provisions of Chapter 4 of those principles.
- (2) The applied provisions apply as if:
  - (a) a reference to Division 50 of the Act, or a provision of that Division, were a reference to Division 50 of the Transitional Provisions Act or the corresponding provision of that Division; and
  - (b) a reference to Division 51 of the Act, or a provision of that Division, were a reference to Division 51 of the Transitional Provisions Act or the corresponding provision of that Division; and
  - (c) a reference to a provision of Division 52 of the Act were a reference to the corresponding provision of Division 52 of the Transitional Provisions Act; and
  - (d) a reference to a care recipient were a reference to a continuing flexible care recipient; and
  - (e) a reference to an expression that is used in the applied provisions and is defined in clause 1 of Schedule 1 to the Transitional Provisions Act were a reference to that expression as defined in that Schedule.



## **Chapter 4—Responsibilities of approved providers**

### **Part 1—Accommodation bonds**

#### **Division 1—Basic rules about accommodation bonds**

##### **Subdivision A—Information about accommodation bonds etc.**

###### **69 Purpose of this Subdivision**

This Subdivision specifies:

- (a) for paragraph 57-2(1)(d) of the Transitional Provisions Act—the information about the accommodation bond that an approved provider of a residential care service or a flexible care service must give a person before the person enters the service as a care recipient; and
- (b) for subsection 57-2(2) of the Transitional Provisions Act—matters that the Secretary must have regard to in considering whether to extend the period within which an accommodation bond agreement must be entered into.

###### **70 Information about accommodation bonds**

- (1) The approved provider must tell the care recipient whether the residential care service or flexible care service charges an accommodation bond if the care recipient is eligible to pay an accommodation bond.
- (2) If the service charges, or intends to charge, an accommodation bond and the person is eligible to pay an accommodation bond, the approved provider must give the care recipient the following information about the accommodation bond:
  - (a) the requirement, if the care recipient has given the provider enough information to decide the value of the care recipient's assets, for the care recipient to be left, after paying the accommodation bond, with assets having a value of at least the care recipient's minimum permissible asset value;
  - (b) details of the interest rate to be charged on amounts owed under the accommodation bond agreement, resident agreement or extra service agreement, and the capacity for amounts and accrued interest on them to be deducted from the balance of the bond before it is refunded;
  - (c) the amounts of bonds charged;
  - (d) the retention amount of the bond;
  - (e) the interest rate on the bond if there is a delay in payment of the lump sum or the bond is paid in whole or in part by periodic payments;
  - (f) the periods when the retention amount and interest are charged;
  - (g) payment options (that is, by lump sum, periodic payments, or a combination of lump sum and periodic payments);
  - (h) refund arrangements;

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- (i) the prudential arrangements applying to the accommodation bond balance;
- (j) when an accommodation bond is not required or, if paid, is refundable.

Note: Section 57-20 of the Transitional Provisions Act deals with retention amounts.

### **71 Extension of time for entering into accommodation bond agreement**

For subsection 57-2(2) of the Transitional Provisions Act, in considering the period by which the time referred to in paragraph 57-2(1)(e) of the Transitional Provisions Act for entering into an accommodation bond agreement is to be extended, the Secretary may have regard to any matter that the Secretary considers relevant.

## **Subdivision B—Other rules about accommodation bonds**

### **72 Purpose of this Subdivision**

For paragraph 57-2(1)(p) of the Transitional Provisions Act, this Subdivision specifies other rules relating to charging an accommodation bond for the entry of a person to a residential care service or a flexible care service as a care recipient.

Note: Section 57-2 of the Transitional Provisions Act sets out the basic rules about accommodation bonds. In particular, paragraphs 57-2(a) and (h) deal with the circumstances when an accommodation bond is not required or, if paid, is refundable.

### **73 Accommodation bond agreement required even if financial hardship determination is sought**

- (1) This section applies if:
  - (a) the care recipient is not a concessional resident; and
  - (b) the approved provider or care recipient has applied to the Secretary for a financial hardship determination in relation to the care recipient.
- (2) An accommodation bond agreement must still be made if:
  - (a) the application has not been decided; and
  - (b) the approved provider intends to charge an accommodation bond if the application is refused.
- (3) The agreement must state that the accommodation bond is payable if:
  - (a) the Secretary refuses to make the determination; or
  - (b) the determination is made but later ceases to be in force.

### **74 Payment if agreed accommodation bond not paid**

- (1) This section applies if the care recipient:
  - (a) has agreed to pay the accommodation bond in whole or in part as a lump sum; and
  - (b) leaves the residential care service or flexible care service after being provided with care for more than 2 months; and
  - (c) does not pay the accommodation bond before leaving the service.

- (2) The care recipient may be required to pay the interest equivalent, in relation to the care recipient's accommodation bond balance, to the approved provider.
- (3) The interest equivalent is the amount worked out in accordance with the following formula:

$$\frac{I \times LS \times D}{365}$$

where:

**D** is the number of days in the period:

- (a) beginning on the first day of the month in which the lump sum was to be paid; and
- (b) ending on the last day of the month in which the care recipient leaves the service.

**I** is the lower of:

- (a) the interest rate stated in the care recipient's accommodation bond agreement; and
- (b) the maximum permissible interest rate for the care recipient's entry day.

**LS** is the amount of the accommodation bond agreed to be paid as a lump sum.

## **75 Payment of accommodation bond before refund of pre-allocation lump sum**

- (1) If the Secretary imposes a condition, under section 14-5 of the *Aged Care Act 1997*, on an allocation to a person of places within a residential care service (the effect of which is that the person must refund any pre-allocation lump sums within a time specified in the condition) and a care recipient has paid a pre-allocation lump sum for care within that residential care service, an accommodation bond must not be charged until:
  - (a) the pre-allocation lump sum has been refunded to the care recipient; and
  - (b) the approved provider has complied with the rules in section 57-2 of the Transitional Provisions Act.
- (2) If an approved provider first complies with the rules in section 57-2 of the Transitional Provisions Act after the time specified in the condition for the refund of the pre-allocation lump sum, the care recipient must not be required to pay an accommodation bond earlier than 21 days after the approved provider first complied with those rules.

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## **Division 2—Contents of accommodation bond agreements**

### **76 Purpose of this Division**

For paragraph 57-9(1)(l) of the Transitional Provisions Act, this Division specifies other matters that must be set out in an agreement between the approved provider of a residential care service, or a flexible care service, and a care recipient for the agreement to be an accommodation bond agreement.

### **77 Amount of accommodation bond—no financial hardship**

- (1) This section applies if an accommodation bond is not paid, or a lower amount of accommodation bond is proposed to be paid, because the approved provider or the care recipient has applied to the Secretary for a financial hardship determination in relation to the care recipient.
- (2) The accommodation bond agreement must state the amount of accommodation bond payable by the care recipient if:
  - (a) the Secretary refuses to make the determination; or
  - (b) the determination is made but later ceases to be in force.

### **78 Retention amounts and interest, or interest equivalent, charges**

- (1) The accommodation bond agreement must state, in dollar terms, the amount of each retention amount that will be deducted from the accommodation bond balance.

Note: For retention amounts, see s 57-20 of the Transitional Provisions Act, and for maximum retention amounts, see section 97 of these principles.
- (2) The accommodation bond agreement must also state:
  - (a) the rate of interest or interest equivalent payable if the accommodation bond:
    - (i) is paid in whole or in part as a lump sum after the due date; or
    - (ii) is paid by periodic payments; or
    - (iii) is not paid when it is due to be paid; and
  - (b) the way interest, or interest equivalent, charges are calculated; and
  - (c) the total amount of interest, or interest equivalent, charges payable under the agreement:
    - (i) if they can be calculated when the agreement is made; and
    - (ii) assuming that the care recipient will make all payments when they are due; and
  - (d) the retention amounts payable if the care recipient is provided with care for 2 months or less; and
  - (e) the frequency at which interest, or interest equivalent, charges will be debited.

## 79 Periodic payments

- (1) This section applies if the care recipient elects to pay the accommodation bond in whole or in part by periodic payments.
- (2) The accommodation bond agreement must state:
  - (a) the amount of the lump sum equivalent; and
  - (b) the amount and frequency of the periodic payments; and
  - (c) the components of each periodic payment representing:
    - (i) retention; and
    - (ii) interest; and
  - (d) that the care recipient may, at any time, pay as a lump sum the whole or a part of the lump sum equivalent.

## 80 Providing information to third parties

- (1) This section applies in relation to an accommodation bond agreement between the approved provider of a residential care service and a care recipient.
- (2) The accommodation bond agreement must state that, if the care recipient wishes to move from the residential care service (the **original service**) to another residential care service (the **new service**), the approved provider of the original service may ask the care recipient for permission to provide the following information to the approved provider of the new service:
  - (a) whether the care recipient has agreed to pay an accommodation bond;
  - (b) if so, the amount agreed and, if the care recipient has agreed to pay the amount in whole or in part by periodic payments, the lump sum equivalent;
  - (c) the period remaining during which, under section 57-20 of the Transitional Provisions Act, retention amounts may be deducted from the care recipient's accommodation bond balance;
  - (d) amounts that may be deducted from the accommodation bond balance.

## Division 3—Financial hardship determinations

### 81 Purpose of this Division

This Division specifies:

- (a) for section 57-14 of the Transitional Provisions Act—matters to which the Secretary must have regard in deciding whether to make a financial hardship determination in relation to a person; and
- (b) for section 57-15 of the Transitional Provisions Act—circumstances in which the Secretary may revoke a financial hardship determination.

### 82 Matters to which Secretary must have regard in deciding whether to make financial hardship determination

- (1) For section 57-14 of the Transitional Provisions Act, this section sets out matters to which the Secretary must have regard in deciding whether to make a financial hardship determination in relation to a person.
- (2) The Secretary must not make a financial hardship determination in relation to a person if:
  - (a) the person's means have not been assessed in accordance with the *Aged Care Act 1997*; or
  - (b) the value of the person's assets (worked out under section 44-26A of the *Aged Care Act 1997* and section 47 of the *Subsidy Principles 2014*) is more than 1.5 times the sum of the annual amount of the following (worked out under the Social Security Act):
    - (i) the basic age pension amount;
    - (ii) the pension supplement amount;
    - (iii) the clean energy supplement; or
  - (c) the person has gifted:
    - (i) more than \$10 000 in the previous 12 months; or
    - (ii) more than \$30 000 in the previous 5 years.

Note: **Basic age pension amount** is defined in clause 1 of Schedule 1 to the *Aged Care Act 1997*.

- (3) In determining the value of a person's assets for paragraph (2)(b), unrealisable assets are not to be included.

Note: **Unrealisable asset** is defined in section 4.

- (4) In deciding whether to make a financial hardship determination in relation to a person, the Secretary may have regard to the following matters:
  - (a) the person's total assessable income (worked out under section 44-24 of the *Aged Care Act 1997* and section 41 of the *Subsidy Principles 2014*);
  - (b) whether the amount of income available to the person after expenditure on essential expenses is less than 15% of the basic age pension amount;
  - (c) the person's financial arrangements;

- (d) the person's entitlement to income support:
    - (i) under the Social Security Act; or
    - (ii) under the Veterans' Entitlements Act; or
    - (iii) from any other source;
  - (e) whether the person has taken steps to obtain information about his or her entitlement to a pension, benefit or other income support payment;
  - (f) whether the person has access to financial assistance:
    - (i) under section 1129 of the Social Security Act (relating to access to financial hardship rules for pensions); or
    - (ii) under the pension loans scheme under Division 4 of Part 3.12 of the Social Security Act; or
    - (iii) from any other source;
  - (g) whether any income of the person is income that he or she does not reasonably have access to;
  - (h) whether there is a charge on the person's income over which the payment of an accommodation bond cannot practically take precedence;
  - (i) whether the person is in Australia on a temporary basis;
  - (j) any other matters the Secretary considers relevant.
- (5) A financial hardship determination may be expressed to take effect from a date before it is made.
- (6) For paragraph (4)(b), **essential expenses**, has the same meaning as in section 39 of the *Fees and Payments Principles 2014* (No. 2).

### **83 Circumstances in which Secretary may revoke financial hardship determination**

For subsection 57-15(1) of the Transitional Provisions Act, the Secretary may revoke a financial hardship determination in relation to a person if:

- (a) the circumstances of the person have changed; and
- (b) the Secretary is satisfied that:
  - (i) paying an accommodation bond would not cause the person financial hardship; or
  - (ii) paying an accommodation bond of more than the maximum amount specified in the determination would not cause the person financial hardship.

Example: For paragraph (a), a person's circumstances may change if assets of the person that were unrealisable assets are no longer assets of that kind.

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## Division 4—Paying accommodation bond by periodic payments

### 84 Purpose of this Division

For section 57-17 of the Transitional Provisions Act, this Division specifies matters in relation to the payment by a care recipient of an accommodation bond, in whole or in part, by periodic payments.

### 85 Frequency of periodic payments

If a care recipient elects to pay an accommodation bond, in whole or in part, by periodic payments, the approved provider of the residential care service or flexible care service through which the care recipient is being provided with care must agree with the care recipient on the frequency of the periodic payments.

### 86 Agreement on periodic payments

The amount of a periodic payment, worked out in accordance with section 87, must be agreed between the care recipient and approved provider.

### 87 Method for working out amounts of periodic payments

- (1) The amount of a periodic payment to be paid by a care recipient must be the amount worked out in accordance with the following formula:

$$\frac{(LSE \times IR) + RC}{NPP}$$

where:

**IR** is the lower of:

- (a) the interest rate stated in the care recipient's accommodation bond agreement; and
- (b) the maximum permissible interest rate for the care recipient's entry day.

**LSE** is the amount of the care recipient's lump sum equivalent.

**NPP** is the number of periodic payments payable by the care recipient in the relevant year.

**RC** is the amount of the retention component worked out:

- (a) if no part of the accommodation bond is paid as a lump sum—in accordance with subsection (2); or
- (b) if part of the accommodation bond is paid as a lump sum—in accordance with subsections (3) and (4) and, if applicable, (5).

Note: See also section 57-20 of the Transitional Provisions Act and Subdivision E of Division 5 of this Part.



- (2) The amount of the retention component must not exceed the maximum retention amount that may be deducted under section 97, during the year beginning on the entry day, from the amount that would have been the accommodation bond balance if the care recipient had paid the whole of the accommodation bond as a lump sum.
- (3) If part of the accommodation bond is paid as a lump sum, the amount of the retention component of the periodic payments is reduced, on a proportionate basis, in accordance with the ratio of the lump sum equivalent to the amount of the accommodation bond.
- (4) However, if the lump sum is sufficient to cover the total of the retention amounts for the period of 5 years for the whole of the bond, including the lump sum equivalent, and the care recipient elects:
  - (a) the amount of the retention component is nil; and
  - (b) the total of the retention amounts, including the retention component that would otherwise be payable on the lump sum equivalent, may be deducted from the amount paid as a lump sum.
- (5) For subsection (4):
  - (a) the period of 5 years begins on the care recipient's entry day; and
  - (b) the care recipient's election must be made in writing and given to the approved provider.

## **88 Respite care periods to be disregarded**

Periodic payments are not payable for any period when the care recipient is in respite care.

## **89 Minimum amount of periodic payments**

- (1) The minimum amount of periodic payments payable by the care recipient is the amount representing the periodic payments that would have been payable for 3 calendar months.
- (2) If the care recipient leaves the residential care service or flexible care service through which the care recipient is being provided with care, the approved provider of the service may charge the care recipient the full amount of a periodic payment that is payable for the month in which the care recipient leaves the service.

## Division 5—Rights of approved providers

### Subdivision A—Retention of income derived from investment of accommodation bond balance

#### 90 Purpose of this Subdivision

For section 57-18 of the Transitional Provisions Act, this Subdivision:

- (a) specifies a method for working out, in certain circumstances, the interest equivalent in relation to a care recipient's accommodation bond balance; and
- (b) provides that, in specified circumstances, an approved provider must not retain income derived, from the investment of an accommodation bond balance, in respect of a specified period.

#### 91 Working out amounts

- (1) If a care recipient pays the accommodation bond in whole or in part as a lump sum after the due date, the interest equivalent, in relation to the care recipient's accommodation bond balance, is the amount worked out in accordance with the following formula:

$$\frac{IR \times LS \times ND}{365}$$

where:

**IR** is the lower of:

- (a) the interest rate stated in the care recipient's accommodation bond agreement; and
- (b) the maximum permissible interest rate for the care recipient's entry day.

**LS** is the amount of the lump sum.

**ND** is the number of days in the period:

- (a) beginning on the due date; and
- (b) ending on the day when the accommodation bond was paid in whole or in part as a lump sum.

- (2) If:

- (a) a care recipient is provided with care for 2 months or less; and
- (b) the care recipient pays the accommodation bond in whole or in part as a lump sum; and
- (c) the amount paid as a lump sum is refunded to the care recipient within 3 months after the entry day;

the interest equivalent, in relation to the care recipient's accommodation bond balance, is the amount worked out in accordance with the following formula:

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$$\frac{IR \times LS \times ND}{365}$$

where:

**IR** is the lower of:

- (a) the interest rate stated in the care recipient's accommodation bond agreement; and
- (b) the maximum permissible interest rate for the care recipient's entry day.

**LS** is the amount of the lump sum.

**ND** is the number of days in the period:

- (a) beginning on the day when the lump sum was refunded; and
- (b) ending 3 months after the entry day.

- (3) If a care recipient who is being provided with care through a residential care service:

- (a) leaves the service within 2 months after entering the service; and
- (b) has agreed to pay the accommodation bond in whole or in part as a lump sum; and
- (c) does not pay the lump sum before leaving the service;

the interest equivalent, in relation to the care recipient's accommodation bond balance, is the amount worked out in accordance with the following formula:

$$\frac{IR \times LS \times ND}{365}$$

where:

**IR** is the lower of:

- (a) the interest rate stated in the care recipient's accommodation bond agreement; and
- (b) the maximum permissible interest rate for the care recipient's entry day.

**LS** is the amount of the lump sum.

**ND** is the number of days in 3 calendar months from the day the care recipient entered the residential care service.

- (4) If subsections (1) and (2) both apply, the interest equivalent, in relation to the care recipient's accommodation bond balance, is the total of the amounts worked out in accordance with those subsections.
- (5) The approved provider may require payment of an amount less than the interest equivalent in relation to the care recipient's accommodation bond balance.

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**92 Respite care periods to be disregarded**

If a care recipient is transferred from respite care to permanent accommodation, the approved provider must not retain income derived, from investment of the care recipient's accommodation bond balance, in respect of the period when the care recipient was in respite care.

**93 Financial hardship—period to be disregarded**

If a financial hardship determination under paragraph 57-14(1)(a) of the Transitional Provisions Act is in force in relation to a care recipient, an approved provider must not retain income derived, from the investment of the care recipient's accommodation bond balance, in respect of the period beginning on the date of effect of the determination and ending on the day when the determination ceases to be in force under subsection 57-14(3) of the Transitional Provisions Act.

**Subdivision B—Deduction from accommodation bond balance of interest on amounts owed**

**94 Purpose of this Subdivision**

For paragraph 57-19(1)(c) of the Transitional Provisions Act, this Subdivision provides for the working out of amounts, representing interest on amounts owed to the approved provider of a residential care service by a care recipient under an accommodation bond agreement, resident agreement or extra service agreement, that the approved provider may deduct from the care recipient's accommodation bond balance.

**95 Interest on amounts owed**

- (1) The maximum rate of interest that the approved provider may charge must not be more than the maximum permissible interest rate for the care recipient's entry day.
- (2) Interest may only be charged for the period that:
  - (a) begins on the day after the day 1 month after the day when the amount becomes payable under the accommodation bond agreement, resident agreement or extra service agreement; and
  - (b) ends on the day when the amount owed to the approved provider is paid or the residential care service ceases to provide care to the care recipient (whichever is earlier).

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**Subdivision C—Deduction of retention amounts in respect of accommodation bond****96 Purpose of this Subdivision**

For subsection 57-20(1) of the Transitional Provisions Act, this Subdivision specifies the method of working out the maximum retention amount that the approved provider of a residential care service or a flexible care service may deduct from a care recipient's accommodation bond balance.

**97 Maximum retention amount**

- (1) The maximum retention amount that may be deducted, from the care recipient's accommodation bond balance, during a year (the *first year*) beginning on the day, or a year (a *later year*) beginning on the anniversary of the day, when the care recipient enters the residential care service or flexible care service is:
  - (a) if the accommodation bond is not more than X—10% of X; or
  - (b) if the accommodation bond is more than X but not more than Y—10% of the accommodation bond; or
  - (c) if the accommodation bond is more than Y—10% of Y.
- (2) However, despite subsections (3) and (4), the maximum retention amount for the care recipient for a later year is the same as the maximum retention amount for the first year.
- (3) In subsection (1):

*X* is:

  - (a) for a year beginning in the financial year beginning on 1 July 1997—\$13 500; or
  - (b) for a year beginning in a later financial year—the amount published under subsection (4) for the financial year.

*Y* is:

  - (a) for a year beginning in the financial year beginning on 1 July 1997—\$26 000; or
  - (b) for a year beginning in a later financial year—the amount published under subsection (4) for the financial year.
- (4) Before, or as soon as practicable after, the beginning of each later financial year, the Secretary must publish on the Department's website the amounts of X and Y for the financial year, worked out in accordance with section 98.
- (5) The maximum monthly retention amount is the amount worked out in accordance with subsection (1) divided by 12.

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### 98 Indexation of maximum retention amounts

- (1) If, for a financial year beginning on or after 1 July 2014, the latest CPI number is more than the earlier CPI number, each indexable amount is increased on 1 July of the next financial year, in accordance with the following formula:

$$\frac{\text{Indexable amount} \times \text{Latest CPI number}}{\text{Earlier CPI number}}$$

Note 1: *CPI number, earlier CPI number, indexable amount and latest CPI number* are defined in section 4.

Note 2: The first increase of each indexable amount is on 1 July 2015.

- (2) If, apart from this subsection, an indexable amount increased under this section would not be a multiple of \$60, the amount is rounded to the nearest multiple of \$60 (rounding \$30 upwards).
- (3) If, at any time (whether before or after the commencement of these principles), the Australian Statistician publishes a CPI number in substitution for a CPI number previously published, the publication of the later CPI number is to be disregarded for this section.
- (4) However, if, at any time (whether before or after the commencement of these principles) the Australian Statistician changes the index reference period for the Consumer Price Index, then, in applying this section after the change is made, regard is to be had only to numbers published in terms of the new index reference period.

### Subdivision D—Restriction on deduction of amounts

#### 99 Purpose of this Subdivision

For subsection 57-20(2) of the Transitional Provisions Act, this Subdivision specifies circumstances in which an approved provider of a residential care service must not deduct any amounts from a care recipient's accommodation bond balance in respect of specified periods.

#### 101 Financial hardship—period to be disregarded

If a financial hardship determination is in force in relation to the care recipient, the approved provider must not deduct any retention amounts from the care recipient's accommodation bond balance, in respect of the period beginning on the date of effect of the determination and ending on the day when the determination ceases to be in force under subsection 57-14(3) of the Transitional Provisions Act.

## **Subdivision E—Period for deduction of retention amounts**

### **102 Purpose of this Subdivision**

For subsection 57-20(4) of the Transitional Provisions Act, this Subdivision specifies:

- (a) another period during which the approved provider of a residential care service may deduct retention amounts from a care recipient's accommodation bond balance; and
- (b) the method of working out another starting day for the period during which retention amounts may be deducted.

### **104 Entry date if care recipient is transferred from respite care to permanent accommodation**

- (1) This section applies if the care recipient is transferred from respite care to permanent accommodation.
- (2) For paragraph 57-20(4)(d) of the Transitional Provisions Act, the day of the transfer is the starting day of the period during which retention amounts may be deducted from the care recipient's accommodation bond balance.

## **Part 2—Accommodation charges**

### **Division 1—Basic rules about accommodation charges**

#### **105 Purpose of this Division**

For section 57A-2 of the Transitional Provisions Act, this Division specifies:

- (a) the information about the accommodation charge that an approved provider of a residential care service must give a person before the person enters the service as a care recipient; and
- (b) other rules relating to charging an accommodation charge for the entry of a person to a residential care service as a care recipient; and
- (c) matters that the Secretary must have regard to in considering whether to extend the period within which an accommodation charge agreement must be entered into; and
- (d) periods when the approved provider must not:
  - (i) charge the daily accommodation charge; or
  - (ii) charge the daily accommodation charge at more than a specified maximum daily amount.

**Note:** Section 57A-2 of the Transitional Provisions Act sets out the basic rules about accommodation charges. In particular, paragraphs 57A-2(h) and (i) deal with the circumstances when an accommodation charge is not required, will not be charged at more than a specified maximum daily amount or, if paid, is refundable.

#### **106 Information about accommodation charges**

- (1) The approved provider must tell the care recipient whether the residential care service charges an accommodation charge if the care recipient is eligible to pay an accommodation charge.
- (2) If the residential care service charges an accommodation charge and the care recipient is eligible to pay an accommodation charge, the approved provider must give the care recipient the following information about the accommodation charge:
  - (a) the requirement, if the care recipient has given the provider enough information to decide the value of the care recipient's assets, for the care recipient to be left, after paying the accommodation charge, with assets having a value of at least the care recipient's minimum permissible asset value;
  - (b) details of the interest rate to be charged on amounts owed under the accommodation charge agreement or resident agreement;
  - (c) the amount of the accommodation charge;
  - (d) when an accommodation charge:
    - (i) is not required; or
    - (ii) must not be charged at more than a specified maximum daily amount because a financial hardship determination is in force in relation to the



- care recipient under paragraph 57A-9(1)(b) of the Transitional Provisions Act; or
- (iii) if paid—is refundable.

### **107 Accommodation charge agreement required even if financial hardship determination is sought**

- (1) This section applies if:
- (a) the care recipient is not a concessional resident or a charge exempt resident; and
  - (b) the approved provider or care recipient has applied to the Secretary for a financial hardship determination in relation to the care recipient.
- (2) An accommodation charge agreement must still be made if:
- (a) the application has not been decided; and
  - (b) the approved provider intends to charge an accommodation charge if the application is refused.
- (3) The agreement must state that the accommodation charge is payable if:
- (a) the Secretary refuses to make the determination; or
  - (b) the determination is made but later ceases to be in force.

### **108 Extension of time for entering into accommodation charge agreement**

For subsection 57A-2(2) of the Transitional Provisions Act, in considering the period by which the time referred to in paragraph 57A-2(1)(e) of the Transitional Provisions Act for entering into an accommodation charge agreement is to be extended, the Secretary may have regard to any matter that the Secretary considers relevant.

### **109 Period of respite care**

If the care recipient is transferred from respite care to permanent accommodation, the approved provider must not charge the daily accommodation charge for the period when the care recipient was in respite care.

### **111 Period of prohibition on charging accommodation charge**

If charging an accommodation charge for a residential care service conducted by an approved provider is prohibited under paragraph 66-1(j) of the *Aged Care Act 1997*, the approved provider must not charge the daily accommodation charge for the period when the prohibition is in force.

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### **112 Period of financial hardship**

If a financial hardship determination is in force in relation to a care recipient, an approved provider must not, for the period beginning on the date of effect of the determination and ending on the day when the determination ceases to be in force under subsection 57A-9(7) of the Transitional Provisions Act:

- (a) charge an accommodation charge; or
- (b) charge an accommodation charge of more than a specified maximum daily amount.

## **Division 2—Contents of accommodation charge agreements**

### **113 Purpose of this Division**

For paragraph 57A-3(1)(g) of the Transitional Provisions Act, this Division specifies other matters that must be set out in an agreement between the approved provider of a residential care service and a care recipient for the agreement to be an accommodation charge agreement.

### **114 Amount of accommodation charge—no financial hardship**

- (1) This section applies if an accommodation charge is not paid because the approved provider or care recipient has applied to the Secretary for a financial hardship determination in relation to the care recipient.
- (2) The accommodation charge agreement must state the amount of accommodation charge payable by the care recipient if:
  - (a) the Secretary refuses to make the determination; or
  - (b) the determination is made but later ceases to be in force.

### **115 Providing information to third parties**

The accommodation charge agreement must state that, if the care recipient wishes to move from one residential care service (the *original service*) to another residential care service (the *new service*), the approved provider of the original service may ask the care recipient for permission to provide the following information to the approved provider of the new service:

- (a) whether the care recipient has agreed to pay an accommodation charge;
- (b) if so, the amount agreed;
- (c) the number of days for which the charge accrued under section 57A-7 of the Transitional Provisions Act.

## **Division 3—Maximum daily accrual amount of accommodation charge**

### **116 Purpose of this Division**

For section 57A-6 of the Transitional Provisions Act, this Division specifies different amounts as the maximum daily amount at which accommodation charge accrues for the entry of particular kinds of persons as care recipients to a residential care service.

### **117 Specified amounts for maximum daily accommodation charge—pre-2008 reform residents**

*First entry to residential care service before 1 July 2004*

- (1) For paragraph 57A-6(1)(c) of the Transitional Provisions Act, the following amounts are specified for a pre-2008 reform resident who first entered a residential care service for the provision of residential care (other than respite care) before 1 July 2004:

- (a) for an assisted resident—X;
- (b) for any other care resident—Y.

Note: The specified amount applies only if paragraph 57A-6(1)(a) or (b) of the Transitional Provisions Act does not apply.

- (2) In subsection (1):

*X* is:

- (a) for the financial year starting on 1 July 1999—\$6; or
- (b) for a later financial year—the amount worked out under section 119 for the financial year.

*Y* is:

- (a) for the financial year starting on 1 July 1999—\$12; or
- (b) for a later financial year—the amount worked out under section 119 for the financial year.

*First entry to residential care service on or after 1 July 2004*

- (3) For paragraph 57A-6(1)(c) of the Transitional Provisions Act, the following amounts are specified for a pre-2008 reform resident who first entered a residential care service for the provision of residential care (other than respite care) on or after 1 July 2004 but before 20 March 2008:

- (a) for an assisted resident—A;
- (b) for any other care resident—B.

Note: The specified amount applies only if paragraph 57A-6(1)(a) or (b) of the Transitional Provisions Act does not apply.

(4) In subsection (3):

*A* is:

- (a) for the financial year starting on 1 July 2004—\$9.30; or
- (b) for a later financial year—the amount worked out under section 119 for the financial year.

*B* is:

- (a) for the financial year starting on 1 July 2004—\$16.25; or
- (b) for a later financial year—the amount worked out under section 119 for the financial year.

### **118 Specified amounts for maximum daily accommodation charge—post-2008 reform residents**

*First entry to residential care service before 1 July 2004*

- (1) For paragraph 57A-6(1)(c) of the Transitional Provisions Act, the amount for a post-2008 reform resident who:
- (a) first entered a residential care service for the provision of residential care (other than respite care) before 1 July 2004; and
  - (b) re-entered care during a period specified in the following table;
- is the amount specified in the table for that period.

<b>Post-2008 reform residents who first enter residential care before 1 July 2004 and re-enter care</b>		
<b>Item</b>	<b>If the person re-entered care ...</b>	<b>the amount is ...</b>
1	after 19 March 2008 and before 20 September 2008	\$15.76
2	on or after 20 September 2008 and before 20 March 2009	\$16.20
3	on or after 20 March 2009 and before 20 September 2009	\$16.35
4	on or after 20 September 2009 and before 20 March 2010	\$16.48
5	on or after 20 March 2010 and before 20 September 2010	\$16.73
6	on or after 20 September 2010 and before 20 March 2011	\$16.99
7	on or after 20 March 2011 and before 20 September 2011	\$17.18
8	on or after 20 September 2011 and before 20 March 2012	\$17.60
9	on or after 20 March 2012 and before 20 September 2012	\$17.71
10	on or after 20 September 2012 and before 20 March 2013	\$17.81
11	on or after 20 March 2013 and before 20 September 2013	\$18.10
12	on or after 20 September 2013 and before 20 March 2014	\$18.24
13	on or after 20 March 2014 and before 20 September 2014	\$18.59
14	on or after 20 September 2014 and before 20 March 2015	\$18.79
15	on or after 20 March 2015 and before 20 September 2015	\$18.91
16	on or after 20 September 2015 and before 20 March 2016	\$19.07
17	on or after 20 March 2016 and before 20 September 2016	\$19.23
18	on or after 20 September 2016 and before 20 March 2017	\$19.27

**Chapter 4** Responsibilities of approved providers**Part 2** Accommodation charges**Division 3** Maximum daily accrual amount of accommodation charge

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<b>Post-2008 reform residents who first enter residential care before 1 July 2004 and re-enter care</b>		
<b>Item</b>	<b>If the person re-entered care ...</b>	<b>the amount is ...</b>
19	on or after 20 March 2017 and before 20 September 2017	\$19.52
20	on or after 20 September 2017 and before 20 March 2018	\$19.64
21	on or after 20 March 2018 and before 20 September 2018	\$19.89
22	on or after 20 September 2018 and before 20 March 2019	\$20.05

*First entry to residential care service on or after 1 July 2004*

- (2) For paragraph 57A-6(1)(c) of the Transitional Provisions Act, the amount for a post-2008 reform resident who:
- (a) first entered a residential care service for the provision of residential care (other than respite care) on or after 1 July 2004; and
  - (b) receives an income support payment; and
  - (c) entered care during a period specified in the following table;
- is the amount specified in the table for that period.

<b>Post-2008 reform residents who first enter residential care on or after 1 July 2004 and receive income support payment</b>		
<b>Item</b>	<b>If the person entered care ...</b>	<b>the amount is ...</b>
1	after 19 March 2008 and before 20 September 2008	\$19.56
2	on or after 20 September 2008 and before 20 March 2009	\$21.39
3	on or after 20 March 2009 and before 20 September 2009	\$23.22
4	on or after 20 September 2009 and before 20 March 2010	\$23.05
5	on or after 20 March 2010 and before 20 September 2010	\$26.88
6	on or after 20 September 2010 and before 20 March 2011	\$28.72
7	on or after 20 March 2011 and before 20 September 2011	\$30.55
8	on or after 20 September 2011 and before 20 March 2012	\$32.38
9	on or after 20 March 2012 and before 20 September 2012	\$32.58
10	on or after 20 September 2012 and before 20 March 2013	\$32.76
11	on or after 20 March 2013 and before 20 September 2013	\$33.29
12	on or after 20 September 2013 and before 20 March 2014	\$33.55
13	on or after 20 March 2014 and before 20 September 2014	\$34.20
14	on or after 20 September 2014 and before 20 March 2015	\$34.56
15	on or after 20 March 2015 and before 20 September 2015	\$34.79
16	on or after 20 September 2015 and before 20 March 2016	\$35.08
17	on or after 20 March 2016 and before 20 September 2016	\$35.37
18	on or after 20 September 2016 and before 20 March 2017	\$35.44
19	on or after 20 March 2017 and before 20 September 2017	\$35.90
20	on or after 20 September 2017 and before 20 March 2018	\$36.13
21	on or after 20 March 2018 and before 20 September 2018	\$36.59

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**Post-2008 reform residents who first enter residential care on or after 1 July 2004 and receive income support payment**

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<b>Item</b>	<b>If the person entered care ...</b>	<b>the amount is ...</b>
22	on or after 20 September 2018 and before 20 March 2019	\$36.88

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- (3) For paragraph 57A-6(1)(c) of the Transitional Provisions Act, the amount for a post-2008 reform resident who:
- (a) first entered a residential care service for the provision of residential care (other than respite care) on or after 1 July 2004; and
  - (b) does not receive an income support payment; and
  - (c) is receiving care through a service that meets the building requirements referred to in Schedule 1 to these principles; and
  - (d) entered care during a period specified in the following table;
- is the amount specified in the table for that period.

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**Post-2008 reform residents who first enter residential care on or after 1 July 2004 and do not receive income support payment and service meets building requirements**

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<b>Item</b>	<b>If the person entered care ...</b>	<b>the amount is ...</b>
1	after 19 March 2008 and before 20 September 2010	\$26.88
2	on or after 20 September 2010 and before 20 March 2011	\$28.72
3	on or after 20 March 2011 and before 20 September 2011	\$30.55
4	on or after 20 September 2011 and before 20 March 2012	\$32.38
5	on or after 20 March 2012 and before 20 September 2012	\$32.58
6	on or after 20 September 2012 and before 20 March 2013	\$32.76
7	on or after 20 March 2013 and before 20 September 2013	\$33.29
8	on or after 20 September 2013 and before 20 March 2014	\$33.55
9	on or after 20 March 2014 and before 20 September 2014	\$34.20
10	on or after 20 September 2014 and before 20 March 2015	\$34.56
11	on or after 20 March 2015 and before 20 September 2015	\$34.79
12	on or after 20 September 2015 and before 20 March 2016	\$35.08
13	on or after 20 March 2016 and before 20 September 2016	\$35.37
14	on or after 20 September 2016 and before 20 March 2017	\$35.44
15	on or after 20 March 2017 and before 20 September 2017	\$35.90
16	on or after 20 September 2017 and before 20 March 2018	\$36.13
17	on or after 20 March 2018 and before 20 September 2018	\$36.59
18	on or after 20 September 2018 and before 20 March 2019	\$36.88

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- (4) For paragraph 57A-6(1)(c) of the Transitional Provisions Act, the amount for a post-2008 reform resident who:
- (a) first entered a residential care service for the provision of residential care (other than respite care) on or after 1 July 2004; and
  - (b) does not receive an income support payment; and

## Chapter 4 Responsibilities of approved providers

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#### Division 3 Maximum daily accrual amount of accommodation charge

##### Section 119

- (c) is receiving care through a service that does not meet the building requirements referred to in Schedule 1 to these principles; and
- (d) entered care during a period specified in the following table;
- is the amount specified in the table for that period.

Post-2008 reform residents who first enter residential care on or after 1 July 2004 and do not receive income support payment and service does not meet building requirements		
Item	If the person entered care ...	the amount is ...
1	after 19 March 2008 and before 20 September 2008	\$24.37
2	on or after 20 September 2008 and before 20 March 2009	\$25.06
3	on or after 20 March 2009 and before 20 September 2009	\$25.28
4	on or after 20 September 2009 and before 20 March 2010	\$25.49
5	on or after 20 March 2010 and before 20 September 2010	\$25.87
6	on or after 20 September 2010 and before 20 March 2011	\$26.27
7	on or after 20 March 2011 and before 20 September 2011	\$26.56
8	on or after 20 September 2011 and before 20 March 2012	\$27.22
9	on or after 20 March 2012 and before 20 September 2012	\$27.39
10	on or after 20 September 2012 and before 20 March 2013	\$27.54
11	on or after 20 March 2013 and before 20 September 2013	\$27.98
12	on or after 20 September 2013 and before 20 March 2014	\$28.20
13	on or after 20 March 2014 and before 20 September 2014	\$28.75
14	on or after 20 September 2014 and before 20 March 2015	\$29.05
15	on or after 20 March 2015 and before 20 September 2015	\$29.24
16	on or after 20 September 2015 and before 20 March 2016	\$29.49
17	on or after 20 March 2016 and before 20 September 2016	\$29.74
18	on or after 20 September 2016 and before 20 March 2017	\$29.79
19	on or after 20 March 2017 and before 20 September 2017	\$30.17
20	on or after 20 September 2017 and before 20 March 2018	\$30.36
21	on or after 20 March 2018 and before 20 September 2018	\$30.74
22	on or after 20 September 2018 and before 20 March 2019	\$30.99

Note: An amount specified in a table in this section applies only if paragraph 57A-6(1)(a) or (b) of the Transitional Provisions Act does not apply.

### 119 Indexation of maximum daily accommodation charge

- (1) In this section:

**earlier CPI number**, for a financial year, means:

- (a) for the purpose of working out an amount under subsection 117(2):
- (i) the CPI number for the last March quarter before the beginning of the financial year (the **most recent earlier CPI number**); or



- (ii) if the CPI number for the March quarter of an earlier financial year that started on or after 1 July 1998 is higher than the most recent earlier CPI number—the higher CPI number; and
- (b) for the purpose of working out an amount under subsection 117(4):
  - (i) the CPI number for the last March quarter before the beginning of the financial year (the ***most recent earlier CPI number***); or
  - (ii) if the CPI number for the March quarter of an earlier financial year that started on or after 1 July 2003 is higher than the most recent earlier CPI number—the higher CPI number.

***indexed element*** means:

- (a) for the purpose of working out an amount under subsection 117(2)—the element X or Y referred to in that subsection; or
- (b) for the purpose of working out an amount under subsection 117(4)—the element A or B referred to in that subsection.

***latest CPI number***, for a financial year, means the CPI number for the March quarter in the financial year.

***relevant amount***, in a financial year, means the amount of the indexed element for the financial year.

Note: ***CPI number*** is defined in section 4.

- (2) For the purpose of working out an amount under subsection 117(2) for a financial year, if the latest CPI number is more than the earlier CPI number, the amount of each indexed element is increased on 1 July of the next financial year.
- (3) For the purpose of working out an amount under subsection 117(4) for a financial year, if the latest CPI number is more than the earlier CPI number, the amount of each indexed element is increased on 1 July of the next financial year.
- (4) The amount of the increased indexed element is the amount worked out in accordance with the formula:

$$\frac{\text{Relevant amount} \times \text{Latest CPI number}}{\text{Earlier CPI number}}$$

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## Division 4—Financial hardship determinations

### 120 Purpose of this Division

This Division specifies:

- (a) for section 57A-9 of the Transitional Provisions Act—matters to which the Secretary must have regard in deciding whether to make a financial hardship determination in relation to a person; and
- (b) for section 57A-10 of the Transitional Provisions Act—circumstances in which the Secretary may revoke a financial hardship determination.

### 121 Matters to which Secretary must have regard in deciding whether to make financial hardship determination

- (1) For section 57A-9 of the Transitional Provisions Act, this section sets out matters to which the Secretary must have regard in deciding whether to make a financial hardship determination in relation to a person.
- (2) The Secretary must not make a financial hardship determination in relation to a person if:
  - (a) the person's means have not been assessed in accordance with the *Aged Care Act 1997*; or
  - (b) the value of the person's assets (worked out under section 44-26A of the *Aged Care Act 1997* and section 47 of the *Subsidy Principles 2014*) is more than 1.5 times the sum of the annual amount of the following (worked out under the Social Security Act):
    - (i) the basic age pension amount;
    - (ii) the pension supplement amount;
    - (iii) the clean energy supplement; or
  - (c) the person has gifted:
    - (i) more than \$10 000 in the previous 12 months; or
    - (ii) more than \$30 000 in the previous 5 years.

Note: **Basic age pension amount** is defined in clause 1 of Schedule 1 to the *Aged Care Act 1997*.

- (3) In determining the value of a person's assets for paragraph (2)(b), unrealisable assets are not to be included.

Note: **Unrealisable asset** is defined in section 4.

- (4) In deciding whether to make a financial hardship determination in relation to a person, the Secretary may have regard to the following matters:
  - (a) the person's total assessable income (worked out under section 44-24 of the *Aged Care Act 1997* and section 41 of the *Subsidy Principles 2014*);
  - (b) whether the amount of income available to the person after expenditure on essential expenses is less than 15% of the basic age pension amount;
  - (c) the person's financial arrangements;

- (d) the person's entitlement to income support:
    - (i) under the Social Security Act; or
    - (ii) under the Veterans' Entitlements Act; or
    - (iii) from any other source;
  - (e) whether the person has taken steps to obtain information about his or her entitlement to a pension, benefit or other income support payment;
  - (f) whether the person has access to financial assistance:
    - (i) under section 1129 of the Social Security Act (relating to access to financial hardship rules for pensions); or
    - (ii) under the pension loans scheme under Division 4 of Part 3.12 of the Social Security Act; or
    - (iii) from any other source;
  - (g) whether any income of the person is income that he or she does not reasonably have access to;
  - (h) whether there is a charge on the person's income over which the payment of an accommodation charge cannot practically take precedence;
  - (i) whether the person is in Australia on a temporary basis;
  - (j) any other matters the Secretary considers relevant.
- (5) A financial hardship determination may be expressed to take effect from a date before it is made.
- (6) For paragraph (4)(b), **essential expenses**, has the same meaning as in section 39 of the *Fees and Payments Principles 2014* (No. 2).

## **122 Circumstances in which Secretary may revoke financial hardship determination**

For subsection 57A-10(1) of the Transitional Provisions Act, the Secretary may revoke a financial hardship determination in relation to a person if:

- (a) the circumstances of the person have changed; and
- (b) the Secretary is satisfied that:
  - (i) paying an accommodation charge would not cause the person financial hardship; or
  - (ii) paying an accommodation charge of more than the maximum daily amount specified in the determination would not cause the person financial hardship.

Example: For paragraph (a), a person's circumstances may change if assets of the person that were unrealisable assets are no longer assets of that kind.

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**Division 5—Interest on accommodation charge**

**123 Purpose of this Division**

For subsection 57A-12(2) of the Transitional Provisions Act, this Division specifies the maximum rate at which interest may be charged under an accommodation charge agreement on the outstanding balance of an accommodation charge.

**124 Rate of interest on outstanding accommodation charge**

The maximum rate at which interest may be charged on the outstanding balance of an accommodation charge is a rate that is not more than twice the below threshold rate determined by the Minister under subsection 1082(1) of the Social Security Act.

## Part 3—Resident fees

### 125 Purpose of this Part

For Division 58 of the Transitional Provisions Act, this Division specifies:

- (a) an additional amount that may be added to the maximum daily amount of resident fees; and
- (b) the circumstances in which an amount agreed between a care recipient and an approved provider may be included in working out the maximum daily amount of resident fees for the care recipient.

### 126 Additional amount for residential care service in remote area

- (1) For subparagraph 58-1(a)(ii) of the Transitional Provisions Act, this section specifies an amount that may be added to the maximum daily amount of resident fees for residential care provided through a residential care service that is located in a remote area.
- (2) The additional amount is the amount worked out in accordance with the following formula:

$$\frac{\text{Remote area amount} - 0.70}{14} \times \frac{85}{100}$$

where:

**remote area amount** means the amount referred to in column 4 (basic allowance per fortnight) of table item 1 (person whose family situation is not a member of a couple) of Table H—Remote area allowance set out in section 1064-H2 of the Social Security Act.

Note 1: **Remote area** is defined in section 4.

Note 2: The amount worked out using the formula is an amount equal to 85% of the daily equivalent of the fortnightly amount of remote area allowance at the rate in force immediately before the commencement of the *A New Tax System (Compensation Measures Legislation Amendment) Act 1999*.

### 127 Additional amounts may be agreed by care recipient in unfunded place

- (1) This section specifies the circumstances in which an amount (an **additional amount**), agreed between a care recipient and the approved provider of the residential care service through which the care recipient is being provided with residential care, may be included at step 5 of the resident fee calculator set out in section 58-2 of the Transitional Provisions Act in working out the maximum daily amount of resident fees for the care recipient.
- (2) The maximum daily amount of resident fees (the **maximum daily fee**) payable by the care recipient for a day (the **relevant day**) may include an additional amount agreed between the care recipient and the approved provider if:

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- (a) before entering into the agreement with the care recipient, the approved provider has informed the care recipient, in writing, that the proposed maximum daily fee is more than the maximum daily amount that would have been payable if the care recipient's place were funded; and
  - (b) the care recipient agrees to pay the amount before it is incurred; and
  - (c) on the relevant day:
    - (i) the care recipient is approved under Part 2.3 of the *Aged Care Act 1997* as a recipient of residential care; and
    - (ii) the care recipient's place in the service is unfunded.
- (3) For this section:
- (a) a care recipient's place in a residential care service is ***funded*** if residential care subsidy is payable under Chapter 3 of the Transitional Provisions Act for the provision of care to the care recipient through the service; and
  - (b) a care recipient's place in a residential care service is ***unfunded*** if residential care subsidy otherwise payable under Chapter 3 of the Transitional Provisions Act for the provision of care to the care recipient through the service is not payable because of paragraph 42-1(2)(a) of that Act.

Note: Under paragraph 42-1(2)(a) of the Transitional Provisions Act, an approved provider is not eligible for residential care subsidy in respect of a care recipient if residential care provided to the care recipient is excluded (see section 42-7 of the Transitional Provisions Act because the approved provider exceeds the approved provider's allocation of places for residential care subsidy.

## **Part 4—Home care fees**

### **128 Purpose of this Part**

For Division 60 of the Transitional Provisions Act, this Part:

- (a) makes provision in relation to the refund of home care fees if a care recipient dies or provision of home care ceases; and
- (b) specifies matters for determining the maximum daily amount of home care fees payable by a care recipient if the approved provider requires the care recipient to pay ongoing home care fees.

### **129 Refund of home care fees**

For paragraph 60-1(d) of the Transitional Provisions Act, any refundable fee must be paid as soon as practicable to:

- (a) the care recipient; or
- (b) a person authorised to receive the refund for the care recipient's estate.

Examples for paragraph (b):

The care recipient's executor or legal personal representative.

### **130 Determination of levels of maximum daily amounts of home care fees**

- (1) For section 60-2 of the Transitional Provisions Act, this section specifies matters for determining the maximum daily amount of home care fees payable by a care recipient if the approved provider requires the care recipient to pay home care fees.
- (2) If the care recipient's income does not exceed the amount of the maximum basic rate of pension payable from time to time under Part 2.2 of the Social Security Act to persons classed as "Not a member of a couple", the fees must be determined so that they do not exceed 17.5% of that maximum basic rate of pension, unless subsection (4) applies.
- (3) If the care recipient's income exceeds the amount of maximum basic rate of pension, the fees must be determined so that they do not exceed an amount equal to the amount of fees permitted under subsection (2) plus 50% of the amount by which the care recipient's income exceeds the amount of maximum basic rate of pension, unless subsection (4) applies.
- (4) If:
  - (a) the care recipient receives a pension under the Social Security Act and the care recipient's family situation under Part 2.2 of that Act is classified as "Partnered (partner getting pension or benefit)"; or

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- (b) the care recipient receives an equivalent pension under the Veterans' Entitlements Act;

the fees must be determined so that they do not exceed an amount equal to the amount of fees permitted under subsection (2) plus 50% of the amount by which the care recipient's income exceeds the amount of maximum basic rate of pension payable to the care recipient.

- (5) The care recipient must not be charged a home care fee for any period during which:
  - (a) the provision of home care to the care recipient is suspended under section 46-2 of the Transitional Provisions Act; and
  - (b) the care recipient is receiving:
    - (i) transition care; or
    - (ii) residential care provided as respite care.
- (6) For this section:

***income:***

- (a) means income after income tax and medicare levy; and
- (b) does not include:
  - (i) pharmaceutical allowance, rent assistance or telephone allowance payable under the Social Security Act or the Veterans' Entitlements Act; or
  - (ii) a pension supplement payable under the Social Security Act or the Veterans' Entitlements Act; or
  - (iii) in relation to a pension payable under the Veterans' Entitlements Act (except a service pension), an amount equal to 4% of the amount of the pension.



## Chapter 5—Miscellaneous

### 131 Expiry of certain provisions

#### *Payroll tax supplement*

- (1) The following provisions of these principles expire on 1 April 2015 as if they had been repealed by another legislative instrument:
  - (a) subparagraph 17(c)(i);
  - (b) Subdivision A of Division 4 of Part 3 of Chapter 2.

#### *Dementia and severe behaviours supplement*

- (2) The following provisions of these principles expire on 1 November 2014 as if they had been repealed by another legislative instrument:
  - (a) subparagraph 17(c)(vi);
  - (b) Subdivision F of Division 4 of Part 3 of Chapter 2.

## Schedule 1—Building requirements

Note: See paragraph 19(1)(b).

### 1 Definitions

In this Schedule:

**building** means a building forming part of a residential care service.

**post-end-July 1999 building** means a building, or part of a building, for which plans were submitted after July 1999 to a body (including a local government body) responsible for building or development approval in the area where the building is located or proposed, for approval to construct or alter the building, or part of the building.

**pre-end-July 1999 building** means a building, or a part of a building, that is not a post-end-July 1999 building.

### 3 Privacy and space requirements—pre-end-July 1999 buildings

- (1) A pre-end-July 1999 building is taken to meet the privacy and space requirements if the building has:
  - (a) an average of no more than 4 residents per room; and
  - (b) no more than 6 residents per toilet; and
  - (c) no more than 7 residents per shower or bath; and
  - (d) toilets, showers and baths distributed across the building to ensure equitable and ready access for all residents.

Example: If a building has more than one wing, toilets and bathing facilities must not be restricted to one wing, or at a point in a wing where it would be difficult for residents to access them.
- (2) However, paragraph (1)(a) does not apply to a room or rooms usually occupied by particular residents if the approved provider, when requested by the Secretary, is able to demonstrate that it is not, having regard to the culture of those residents, appropriate for that paragraph to apply.
- (3) For working out the number of residents per toilet for paragraph (1)(b):
  - (a) toilets off common areas are to be included; and
  - (b) toilets primarily for the use of staff are to be excluded.
- (4) For working out the number of residents per shower or bath for paragraph (1)(c):
  - (a) showers and baths off common areas are to be included; and
  - (b) showers and baths primarily for the use of staff are to be excluded.

**4 Privacy and space requirements—post-end-July 1999 buildings**

- (1) A post-end-July 1999 building is taken to meet the privacy and space requirements if the building has:
- (a) an average of no more than 1.5 residents per room; and
  - (b) no room that may accommodate more than 2 residents; and
  - (c) no more than 3 residents per toilet; and
  - (d) no more than 4 residents per shower or bath; and
  - (e) toilets, showers and baths distributed across the building to ensure equitable and ready access for all residents.

Example: If a building has more than one wing, toilets and bathing facilities must not be restricted to one wing, or at a point in a wing where it would be difficult for residents to access them.

- (2) However, paragraphs(1)(a) and (b) do not apply to a room or rooms usually occupied by particular residents if the approved provider, when requested by the Secretary, is able to demonstrate that it is not, having regard to the culture of those residents, appropriate for those paragraphs to apply.
- (3) For working out the number of residents per toilet for paragraph (1)(c):
- (a) toilets off common areas are to be included; and
  - (b) toilets primarily for the use of staff are to be excluded.
- (4) For working out the number of residents per shower or bath for paragraph (1)(d):
- (a) showers and baths off common areas are to be included; and
  - (b) showers and baths primarily for the use of staff are to be excluded.

## Endnotes

### Endnote 1—About the endnotes

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## 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 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.

**Endnote 2—Abbreviation key**

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s)
C[x] = Compilation No. x	/sub-subparagraph(s)
Ch = Chapter(s)	pres = present
def = definition(s)	prev = previous
Dict = Dictionary	(prev...) = previously
disallowed = disallowed by Parliament	Pt = Part(s)
Div = Division(s)	r = regulation(s)/rule(s)
ed = editorial change	reloc = relocated
exp = expires/expired or ceases/ceased to have effect	renum = renumbered
F = Federal Register of Legislation	rep = repealed
gaz = gazette	rs = repealed and substituted
LA = <i>Legislation Act 2003</i>	s = section(s)/subsection(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sch = Schedule(s)
(md) = misdescribed amendment can be given effect	Sdiv = Subdivision(s)
(md not incorp) = misdescribed amendment cannot be given effect	SLI = Select Legislative Instrument
mod = modified/modification	SR = Statutory Rules
No. = Number(s)	Sub-Ch = Sub-Chapter(s)
	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

## Endnotes

### Endnote 3—Legislation history

### Endnote 3—Legislation history

Name	Registration	Commencement	Application, saving and transitional provisions
Aged Care (Transitional Provisions) Principles 2014	28 June 2014 (F2014L00870)	1 July 2014 (s 2)	
Aged Care (Transitional Provisions) Amendment (September 2014 Indexation) Principles 2014	18 Sept 2014 (F2014L01238)	20 Sept 2014 (s 2)	—
Aged Care (Transitional Provisions) Amendment (March 2015 Indexation) Principles 2015	18 Mar 2015 (F2015L00317)	20 Mar 2015 (s 2)	—
Aged Care (Transitional Provisions) Amendment (Removal of Certification and Other Measures) Principles 2015	30 June 2015 (F2015L01013)	1 July 2015 (s 2)	—
Aged Care (Transitional Provisions) Amendment (September 2015 Indexation) Principles 2015	18 Sept 2015 (F2015L01457)	20 Sept 2015 (s 2)	—
Aged Care (Transitional Provisions) Amendment (March 2016 Indexation) Principles 2016	18 Mar 2016 (F2016L00350)	20 Mar 2016 (s 2)	—
Aged Care (Transitional Provisions) Amendment (September 2016 Indexation) Principles 2016	19 Sept 2016 (F2016L01457)	20 Sept 2016 (s 2)	—
Aged Care (Transitional Provisions) Amendment (Viability Supplement) Principles 2016	19 Dec 2016 (F2016L01993)	1 Jan 2017 (s 2(1) item 1)	—
Aged Care (Transitional Provisions) Amendment (March 2017 Indexation) Principles 2017	17 Mar 2017 (F2017L00247)	20 Mar 2017 (s 2)	—
Aged Care (Transitional Provisions) Amendment (September 2017 Indexation) Principles 2017	14 Sept 2017 (F2017L01190)	20 Sept 2017 (s 2)	—
Aged Care (Transitional Provisions) Amendment (March 2018 Indexation) Principles 2018	16 Mar 2018 (F2018L00281)	20 Mar 2018 (s 2)	—
Aged Care (Transitional Provisions) Amendment (September 2018 Indexation) Principles 2018	17 Sept 2018 (F2018L01299)	20 Sept 2018 (s 2)	—

## Endnote 4—Amendment history

## Endnote 4—Amendment history

Provision affected	How affected
<b>Chapter 1</b>	
s 2 .....	rep LIA s 48D
s 4 .....	am F2015L01013
<b>Chapter 2</b>	
<b>Part 3</b>	
<b>Division 1</b>	
s 17 .....	(c)(i) rep 1 Apr 2015 (s 131(1)(a))
	(c)(vi) rep 1 Nov 2014 (s 131(2)(a))
<b>Division 3</b>	
<b>Subdivision A</b>	
s 19 .....	am F2015L01013
<b>Subdivision B</b>	
s 20 .....	rs F2015L01013
<b>Division 4</b>	
s 29 .....	am F2015L01013
Subdivision A .....	rep 1 Apr 2015 (s 131(1)(b))
s 30 .....	rep 1 Apr 2015 (s 131(1)(b))
s 31 .....	rep 1 Apr 2015 (s 131(1)(b))
<b>Subdivision B</b>	
s 33 .....	am F2015L01013
<b>Subdivision C</b>	
s 35 .....	am F2015L01013
Subdivision F .....	rep 1 Nov 2014 (s 131(2)(b))
s 40 .....	rep 1 Nov 2014 (s 131(2)(b))
s 41 .....	rep 1 Nov 2014 (s 131(2)(b))
s 42 .....	rep 1 Nov 2014 (s 131(2)(b))
<b>Division 8</b>	
<b>Subdivision A</b>	
s 55 .....	am F2016L01993
<b>Subdivision C</b>	
s 59 .....	am F2015L01013
s 61 .....	rep F2015L01013
<b>Subdivision D</b>	
s 62 .....	am F2015L01013
s 64 .....	rep F2015L01013
<b>Chapter 4</b>	
<b>Part 1</b>	

## Endnotes

### Endnote 4—Amendment history

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Provision affected	How affected
<b>Division 5</b>	
<b>Subdivision D</b>	
s 100 .....	rep F2015L01013
<b>Subdivision E</b>	
s 103 .....	rep F2015L01013
<b>Part 2</b>	
<b>Division 1</b>	
s 110 .....	rep F2015L01013
<b>Division 3</b>	
s 118 .....	am F2014L01238; F2015L00317; F2015L01457; F2016L00350; F2016L01457; F2017L00247; F2017L01190; F2018L00281; F2018L01299
<b>Schedule 1</b>	
c 1 .....	am F2015L01013
c 2 .....	am F2015L01013