



Aged Care (Consequential Provisions) Act 1997

No. 114, 1997

An Act to enact transitional provisions, and make consequential amendments, in connection with the enactment of the *Aged Care Act 1997*, and for other purposes

Arrangement of this Act

This Act has been arranged to reflect the arrangement of the *Aged Care Act 1997*. Both Acts are divided into Chapters which are further divided into Parts. Each Chapter (except for Chapter 1) and Part of this Act contains transitional provisions arising from the corresponding Chapter and Part of the *Aged Care Act 1997*. If there are no transitional provisions for a particular Chapter or Part, a note to this effect is set out below the Chapter or Part heading.

Some Parts in this Act are further divided into Divisions. These Divisions do not correspond to the Divisions in the *Aged Care Act 1997*.

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Aged Care (Consequential Provisions) Act 1997

No. 114, 1997

An Act to enact transitional provisions, and make consequential amendments, in connection with the enactment of the *Aged Care Act 1997*, and for other purposes

[Assented to 7 July 1997]

The Parliament of Australia enacts:

Chapter 1—Preliminary

1 Short title

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

2 Commencement

- (1) Subject to this section, this Act commences immediately after the commencement of the *Aged Care Act 1997* (other than Division 1 of that Act).
- (2) Items 58 and 59 of Part 2 of Schedule 3 commence immediately after the commencement of Part 1 of that Schedule.
- (3) Item 68 of Part 2 of Schedule 3 commences immediately after the commencement of Part 3 of that Schedule.
- (4) Items 78 to 87 (inclusive) of Part 2 of Schedule 4 commence immediately after the commencement of Part 1 of that Schedule.
- (5) Schedule 6 commences on 1 July 1998.

3 Definitions

- (1) In this Act, unless the contrary intention appears:

approved nursing home has the same meaning as in the *National Health Act 1953*.

commencement day means the day on which the *Aged Care Act 1997* (other than Division 1 of that Act) commences.

hostel has the same meaning as in the *Aged or Disabled Persons Care Act 1954*.

new Act means the *Aged Care Act 1997*.

organisation means a person or group of individuals.

Secretary means the Secretary to the Department of Health and Family Services.

1953 Act means the *National Health Act 1953*.

1954 Act means the *Aged or Disabled Persons Care Act 1954*.

- (2) Terms used in this Act have the same meaning as in the *Aged Care Act 1997* unless the contrary intention appears.

4 Identifying terms used in the new Act

- (1) Many of the terms in this Act are defined in the Dictionary in Schedule 1 to the new Act.
- (2) Most of these terms are identified by an asterisk appearing at the start of the term: as in “*approved provider”. The footnote that goes with the asterisk contains a signpost to the Dictionary.
- (3) An asterisk usually identifies the first occurrence of a term in a section, subsection, note or definition. Later occurrences of the term in the same subsection, note or definition are not asterisked.
- (4) Terms are not asterisked in headings, tables or diagrams.

5 Schedule(s)

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Chapter 2—Transitional provisions relating to Chapter 2 of the Aged Care Act 1997

Part 2.1—Approved providers

Division 1—Nursing homes

6 Applications to be an approved operator

If:

- (a) a person had, before the commencement day, applied under section 39BA of the 1953 Act for approval as an approved operator; and
- (b) as at the commencement day, the Minister had not yet made a decision on the application;

the application is taken, for the purposes of the new Act, to be an application made by the person, on the commencement day, under section 8-2 of the new Act, for approval as a provider of aged care.

7 Approved operators and proprietors

- (1) A person who was an approved operator (within the meaning of Part V of the 1953 Act), or the proprietor (within the meaning of the 1953 Act) of an approved nursing home, immediately before the commencement day is taken, for the purposes of the new Act, to be an *approved provider if either of the following applies:
 - (a) a Commonwealth benefit (within the meaning of Part V of the 1953 Act) is or was payable to the person in respect of an approved nursing home patient, within the meaning of section 4 of the 1953 Act, for nursing home care received by the patient on the day before the commencement day;

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- (b) the person had been granted a certificate under section 39A of the 1953 Act, and the certificate was in force immediately before the commencement day.

Note: A person who does not satisfy either paragraph (1)(a) or (b) will need to apply under section 8-2 of the new Act in order to be approved as a *provider of *aged care under that Act.

- (2) If a person is taken to be an *approved provider under subsection (1):
 - (a) the approval is taken, for the purposes of the new Act, to be limited under paragraph 8-1(2)(c) of the new Act:
 - (i) to *residential care provided through *aged care services that the person was conducting on the day before the commencement day; or
 - (ii) if paragraph (1)(b) applies—to residential care provided through aged care services proposed to be conducted at premises specified in the certificate granted to the person under section 39A of the 1953 Act; and
 - (b) the information provided in the application under section 39BA of the 1953 Act is taken, for the purposes of section 9-1 of the new Act, to have been provided in an application under section 8-2 of the new Act; and
 - (c) if the person is not a *corporation on the commencement day—paragraph 10-3(1)(a) of the new Act does not apply to the approval.

8 Continuation of notice under section 39BB

- (1) If:
 - (a) before the commencement day, the Minister had given a notice (the *original notice*) to the person under subsection 39BB(1) of the 1953 Act; and
 - (b) as at the commencement day, the Minister had not made a decision whether to revoke the person's approval as an approved operator (within the meaning of the 1953 Act);

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the original notice is taken to be a notice under subsection 10-3(3) of the new Act.

(2) If the person had, as at the commencement day, made a submission under subsection 39BB(2) of the 1953 Act:

- (a) the submission is taken to be a submission given to the Secretary within the period referred to in paragraph 10-3(3)(b) of the new Act; and
- (b) the notice required by subsection 10-3(5) of the new Act must be given to the approved provider within 28 days after the commencement day.

(3) If:

- (a) the person had not, as at the commencement day, made a submission under subsection 39BB(2) of the 1953 Act; and
- (b) the commencement day occurred more than 14 days after the original notice was given;

then:

- (c) the person is taken not to have given a submission to the Secretary within the period referred to in paragraph 10-3(3)(b) of the new Act; and
- (d) the Secretary must give the notice required by subsection 10-3(5) of the new Act to the person within 28 days of the commencement day.

(4) If:

- (a) the person had not, as at the commencement day, made a submission under subsection 39BB(2) of the 1953 Act; and
- (b) the commencement day occurred not more than 14 days after the original notice was given;

the person is taken to have been invited under paragraph 10-3(3)(b) of the new Act to make the submission referred to in that paragraph within 28 days of the commencement day.

Division 2—Hostels

9 Applications to be an approved operator

If:

- (a) an organisation had, before the commencement day, applied under section 10AB of the 1954 Act for approval as an approved operator; and
- (b) as at the commencement day, the Minister had not yet made a decision on the application;

the application is taken, for the purposes of the new Act, to be an application made by the organisation, on the commencement day, under section 8-2 of the new Act, for approval as a provider of aged care.

10 Approved operators

- (1) An organisation that was an approved operator (within the meaning of section 10AB of the 1954 Act) immediately before the commencement day is taken, for the purposes of the new Act, to be an *approved provider if either of the following applies:
 - (a) financial assistance by way of recurrent subsidy is or was payable to the organisation in respect of the provision by the organisation, on the day before the commencement day, of hostel care services (within the meaning of the 1954 Act) or personal care services (within the meaning of the 1954 Act);
 - (b) the organisation was, immediately before the commencement day, the holder of a certificate under section 9AB of the 1954 Act for financial assistance by way of recurrent subsidy in respect of a hostel (within the meaning of the 1954 Act).

Note: An organisation that does not satisfy either paragraph (1)(a) or (b) will need to apply under section 8-2 of the new Act in order to be approved as a *provider of *aged care under that Act.

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- (2) If an organisation is taken to be an *approved provider under subsection (1):
- (a) the approval is taken, for the purposes of the new Act, to be limited under paragraph 8-1(2)(c) of the new Act:
 - (i) to *residential care provided through *aged care services that the organisation was conducting, or proposed to conduct, on the day before the commencement day; or
 - (ii) if paragraph (1)(b) applies—to residential care provided through aged care services proposed to be conducted at the hostel specified in the certificate granted to the organisation under section 9AB of the 1954 Act; and
 - (b) the information provided in the application under section 10AB of the 1954 Act is taken, for the purposes of section 9-1 of the new Act, to have been provided in an application under section 8-2 of the new Act; and
 - (c) if the organisation is not a *corporation on the commencement day—paragraph 10-3(1)(a) of the new Act does not apply to the approval.
- (3) A reference in this section to a certificate under section 9AB of the 1954 Act includes a reference to such a certificate issued by virtue of subsection 9AC(1) of the 1954 Act in connection with an application under that subsection.

11 Continuation of notice under section 10AC

- (1) If:
- (a) before the commencement day, the Minister had given a notice (the *original notice*) to the person under subsection 10AC(1) of the 1954 Act; and
 - (b) as at the commencement day, the Minister had not made a decision whether to revoke the person's approval as an approved operator (within the meaning of the 1954 Act);
- the original notice is taken to be a notice under subsection 10-3(3) of the new Act.

Section 11

- (2) If the person had, as at the commencement day, made a submission under subsection 10AC(2) of the 1954 Act:
- (a) the submission is taken to be a submission given to the Secretary within the period referred to in paragraph 10-3(3)(b) of the new Act; and
 - (b) the notice required by subsection 10-3(5) of the new Act must be given to the approved provider within 28 days after the commencement day.
- (3) If:
- (a) the person had not, as at the commencement day, made a submission under subsection 10AC(2) of the 1954 Act; and
 - (b) the commencement day occurred more than 14 days after the original notice was given;
- then:
- (c) the person is taken not to have given a submission to the Secretary within the period referred to in paragraph 10-3(3)(b) of the new Act; and
 - (d) the Secretary must give the notice required by subsection 10-3(5) of the new Act to the person within 28 days of the commencement day.
- (4) If:
- (a) the person had not, as at the commencement day, made a submission under subsection 10AC(2) of the 1954 Act; and
 - (b) the commencement day occurred not more than 14 days after the original notice was given;
- the person is taken to have been invited under paragraph 10-3(3)(b) of the new Act to make the submission referred to in that paragraph within 28 days of the commencement day.

Section 12

Division 3—Community aged care services

12 Applications to be an approved provider of community aged care services

If:

- (a) an organisation had, before the commencement day, applied for approval under section 10GC of the 1954 Act; and
- (b) as at the commencement day, the Minister had not yet made a decision on the application;

the application is taken, for the purposes of the new Act, to be an application made by the organisation, on the commencement day, under section 8-2 of the new Act, for approval as a provider of aged care.

13 Approved providers of community aged care services

(1) If:

- (a) an approval was in force under section 10GC of the 1954 Act in relation to an organisation immediately before the commencement day; and
- (b) financial assistance by way of recurrent subsidy is or was payable to the organisation in respect of the provision by the organisation, on the day before the commencement day, of community aged care services packages (within the meaning of the 1954 Act);

the organisation is taken, for the purposes of the new Act, to be an *approved provider.

Note: An organisation that does not satisfy either paragraph (1)(a) or (b) will need to apply under section 8-2 of the new Act in order to be approved as a provider of *aged care under that Act.

(2) If a person is taken to be an *approved provider under subsection (1):

- (a) the approval is taken, for the purposes of the new Act, to be limited under paragraph 8-1(2)(c) of the new Act to community care provided through *aged care services that the person was conducting, or proposed to conduct, on the day before the commencement day; and
- (b) the information provided in the application under section 10GC of the 1954 Act is taken, for the purposes of section 9-1 of the new Act, to have been provided in an application under section 8-2 of the new Act; and
- (c) if the organisation is not a *corporation on the commencement day—paragraph 10-3(1)(a) of the new Act does not apply to the approval.

14 Continuation of notice under section 10GD

- (1) If:
 - (a) before the commencement day, the Minister had given a notice (the *original notice*) to an organisation under subsection 10GD(1) of the 1954 Act; and
 - (b) as at the commencement day, the Minister had not made a decision whether to revoke the organisation's approval as an approved operator (within the meaning of the 1954 Act);the original notice is taken to be a notice under subsection 10-3(3) of the new Act.
- (2) If the organisation had, as at the commencement day, made a submission under subsection 10GD(2) of the 1954 Act:
 - (a) the submission is taken to be a submission given to the Secretary within the period referred to in paragraph 10-3(3)(b) of the new Act; and
 - (b) the notice required by subsection 10-3(5) of the new Act must be given to the organisation within 28 days after the commencement day.
- (3) If:

Section 14

- (a) the organisation had not, as at the commencement day, made a submission under subsection 10GD(2) of the 1954 Act; and
- (b) the commencement day occurred more than 14 days after the original notice was given;

then:

- (c) the organisation is taken not to have given a submission to the Secretary within the period referred to in paragraph 10-3(3)(b) of the new Act; and
- (d) the Secretary must give the notice required by subsection 10-3(5) of the new Act to the organisation within 28 days of the commencement day.

(4) If:

- (a) the organisation had not, as at the commencement day, made a submission under subsection 10GD(2) of the 1954 Act; and
- (b) the commencement day occurred not more than 14 days after the original notice was given;

the organisation is taken to have been invited under paragraph 10-3(3)(b) of the new Act to make the submission referred to in that paragraph within 28 days of the commencement day.

Part 2.2—Allocation of places

Division 1—Nursing homes

15 Applications for approval in principle of nursing homes

- (1) If:
 - (a) a person had, before the commencement day, applied under subsection 39A(2) or (3) of the 1953 Act for a certificate under that section in relation to premises; and
 - (b) as at the commencement day, the Minister had not yet made a decision on the application;the application is taken, for the purposes of the new Act, to be an application made, on the commencement day, under section 13-1 of the new Act for an allocation of *places in respect of *residential care subsidy.
- (2) For the purposes of the new Act, the application is taken to be a valid application that meets all the requirements of section 13-1 of the new Act.

16 Approvals in principle of nursing homes

- (1) Subject to subsection (5), if a certificate under section 39A of the 1953 Act was in force in relation to premises immediately before the commencement day, for the purposes of the new Act:
 - (a) the Secretary is taken, on that day, to have allocated under section 14-1 of the new Act, to the holder of the certificate, a number of *places equal to the number of beds to which the certificate related immediately before that day; and
 - (b) the specifications, and any other conditions, set out in the certificate are taken, on that day, to be conditions:
 - (i) to which the allocation is subject under section 14-5 of the new Act; and

Section 17

- (ii) that the Secretary has specified, under subsection 14-5(2) of the new Act, to be conditions that must be met before a determination can be made under section 15-1 of the new Act; and
 - (c) the allocation is taken to be a *provisional allocation; and
 - (d) the *provisional allocation period is a period equal to the amount of time that, immediately before that day, remained of the period for which the certificate was in force.
- (2) The allocation of places referred to in paragraph (1)(a) is taken to be in respect of *residential care subsidy.
- (3) For the purposes of paragraph (1)(a), the holder of the certificate is the person who was, immediately before that day, the holder of the certificate.
- (4) For the purposes of this section, a certificate under section 39A of the 1953 Act is taken not to be in force in relation to premises immediately before the commencement day if:
- (a) in a case where the certificate was granted under subsection 39A(3) of the 1953 Act—the Minister has exercised his or her powers under subsection 40AD(1) of the 1953 Act, in respect of matters dealt with in the certificate, in relation to the conditions applicable to the nursing home on those premises; or
 - (b) in any other case—an approval of the premises was in force under section 40AA of the 1953 Act immediately before that day.
- (5) This section does not apply in relation to a certificate under subsection 39A(3A) of the 1953 Act.

17 Applications to vary or revoke approvals in principle of nursing homes

- (1) Subject to subsection (2), if:

Section 17

- (a) a person had, before the commencement day, applied under subsection 39A(4) of the 1953 Act for a variation of a certificate under section 39A of the 1953 Act; and
- (b) immediately before the commencement day, the certificate was still in force; and
- (c) as at the commencement day, the Minister had not yet made a decision on the application;

the application is taken, for the purposes of the new Act, to be an application made, on the commencement day, under section 15-5 of the new Act for a variation of the *provisional allocation that, under section 16 of this Act, is taken to have been made in respect of the certificate.

(2) If:

- (a) a person had, before the commencement day, applied under subsection 39A(4) of the 1953 Act for a variation of a certificate under section 39A of the 1953 Act; and
- (b) the application sought the deletion of the number of beds specified in the certificate and the substitution of a higher number of beds; and
- (c) immediately before the commencement day, the certificate was still in force; and
- (d) as at the commencement day, the Minister had not yet made a decision on the application;

the application is taken, for the purposes of the new Act, to be an application made, on the commencement day, under section 13-1 of the new Act for an allocation of *places, of a number equal to the increase in the number of beds that was sought, in respect of *residential care subsidy.

(3) For the purposes of the new Act, the application referred to in subsection (2) is taken to be a valid application that meets all the requirements of section 13-1 of the new Act.

(4) If:

Section 18

- (a) a person had, before the commencement day, applied under subsection 39A(11) of the 1953 Act for revocation of a certificate under section 39A of the 1953 Act; and
- (b) immediately before the commencement day, the certificate was still in force; and
- (c) as at the commencement day, the Minister had not revoked the certificate;

the application is taken, for the purposes of the new Act, to be a notice in writing under section 15-6 of the new Act, given to the Secretary on the commencement day, surrendering the *provisional allocation that, under section 16 of this Act, is taken to have been made in respect of the certificate.

18 Applications for approval of nursing homes without section 39A or 39B certificates

(1) If:

- (a) a person had, before the commencement day, applied under section 40AA of the 1953 Act for the approval of premises as an approved nursing home; and
- (b) immediately before the commencement day, the premises were not the subject of a certificate under section 39A or 39B of the 1953 Act; and
- (c) as at the commencement day, the Minister had not yet made a decision on the application;

the application is taken, for the purposes of the new Act, to be an application made, on the commencement day, under section 13-1 of the new Act for an allocation of *places in respect of *residential care subsidy.

(2) For the purposes of the new Act, the application is taken to be a valid application that meets all of the requirements of section 13-1 of the new Act.

19 Applications for approval of nursing homes with section 39A certificates

- (1) If:
 - (a) immediately before the commencement day, a certificate under section 39A of the 1953 Act was in force in relation to the premises; and
 - (b) the person had, before the commencement day, made an application, relating to the certificate:
 - (i) under section 40AA of the 1953 Act for approval of the premises as an approved nursing home; or
 - (ii) under subsection 40AD(1) of the 1953 Act for the alteration of the conditions applicable to the nursing home in question; and
 - (c) as at the commencement day, the Minister had not yet made a decision on the application;

the application is taken, for the purposes of the new Act, to be an application made, on the commencement day, under section 15-1 of the new Act for a determination by the Secretary in respect of the *places referred to in paragraph 16(1)(a) of this Act in relation to that certificate.
- (2) The Secretary may specify, in a determination under section 15-1 of the new Act in respect of those *places, conditions to which the allocation of those places is to be subject.
- (3) For the purposes of the new Act, any conditions specified under subsection (2) of this section are taken to be conditions to which the allocation of those *places is subject under section 14-5 of the new Act.
- (4) The Secretary must not refuse an application that, under subsection (1) of this section, is taken to be an application made under section 15-1 of the new Act unless the Secretary is not satisfied that the specifications set out in the certificate in question have been complied with.

Section 20

20 Approvals of nursing homes

- (1) Subject to subsection (5), if an approval of premises as an approved nursing home under section 40AA of the 1953 Act was in force immediately before the commencement day, for the purposes of the new Act:
 - (a) the Secretary is taken, on that day, to have allocated under section 14-1 of the new Act, to the proprietor (within the meaning of the 1953 Act) of the nursing home, a number of *places equal to the number of beds to which the approval related immediately before that day; and
 - (b) subject to subsection (4), the conditions to which the approval was, immediately before that day, subject under subsections 40AA(5A) and (6) of the 1953 Act are taken, on that day, to be conditions to which the allocation is subject under section 14-5 of the new Act; and
 - (c) the allocation is taken to be subject to a further condition under section 14-5 of the new Act that:
 - (i) the places are allocated in respect of the location at which the premises are situated; and
 - (ii) any *care provided, in respect of the places, must be provided at that location; and
 - (d) the Secretary is taken, on that day, to have determined under section 15-1 of the new Act that the proprietor is in a position to provide care, in respect of those places, for which subsidy under Chapter 3 of the new Act may be paid.
- (2) The allocation of places referred to in paragraph (1)(a) is taken to be in respect of *residential care subsidy.
- (3) The reference in paragraph (1)(b) to the conditions to which the approval was subject under subsections 40AA(5A) and (6) of the 1953 Act includes a reference to:
 - (a) any determination made, in relation to the approval, under subsection 40AA(6AAB) of the 1953 Act; and

- (b) any modifications made to those conditions under section 40AAA of the 1953 Act; and
 - (c) any alterations made to those conditions under section 40AD of the 1953 Act.
- (4) Paragraph (1)(b) of this section does not apply to the conditions referred to in paragraphs 40AA(6)(ab), (b), (bc), (bd), (cd), (cf), (cg), (cj), (ck) and (cl) of the 1953 Act.
- (5) This section does not apply to an approved nursing home that is a Government nursing home within the meaning of the 1953 Act.

21 Applications for approval in principle of transfers

- (1) Subject to subsection (5), if:
- (a) a person had, before the commencement day, applied under section 39B of the 1953 Act for a certificate under that section in relation to premises; and
 - (b) as at the commencement day, the Minister had not yet made a decision on the application; and
 - (c) on the commencement day, an allocation of *places is taken, under section 16 of this Act, to have been made in respect of a certificate under section 39A of the 1953 Act relating to those premises;
- the application is taken, for the purposes of the new Act, to be an application made, on the commencement day, under section 15-5 of the new Act for a variation of the conditions to which the allocation of places is subject.
- (2) Subject to subsection (5), if:
- (a) a person had, before the commencement day, applied under section 39B of the 1953 Act for a certificate under that section in relation to premises; and
 - (b) as at the commencement day, the Minister had not yet made a decision on the application; and

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- (c) on the commencement day, an allocation of *places is taken, under section 20 of this Act, to have been made in respect of an approval under section 40AA of the 1953 Act relating to those premises;
- the application is taken, for the purposes of the new Act, to be an application made, on the commencement day, under section 17-2 of the new Act for a variation of the conditions to which the allocation of places is subject.
- (3) The variation that, under subsection (1) or (2) of this section, is taken to have been applied for is a variation to the effect that the location in respect of which the *places are allocated is the location of the different premises specified in the application under section 39B of the 1953 Act.
- (4) For the purposes of the new Act:
- (a) an application to which subsection (1) of this section applies is taken to meet all the requirements of subsection 15-5(3) of the new Act; and
- (b) an application to which subsection (2) of this section applies is taken to meet all the requirements of section 17-2 of the new Act.
- (5) This section does not apply if, immediately before the commencement day, some or all of the beds in the approved nursing home located on the premises were occupied.

22 Approvals in principle of transfers

- (1) If:
- (a) a certificate under section 39B of the 1953 Act was in force in relation to premises immediately before the commencement day; and
- (b) on the commencement day, an allocation of *places is taken to have been made, under section 16 of this Act, in respect of a certificate under section 39A of the 1953 Act relating to those premises;
-

the Secretary is taken, on the commencement day, to have approved a variation, under section 15-5 of the new Act, to the conditions to which the allocation of places is subject.

(2) If:

- (a) a certificate under section 39B of the 1953 Act was in force in relation to premises immediately before the commencement day; and
- (b) on the commencement day, an allocation of *places is taken to have been made, under section 20 of this Act, in respect of an approval under section 40AA of the 1953 Act relating to those premises;

the Secretary is taken, on the commencement day, to have approved a variation, under section 17-1 of the new Act, to the conditions to which the allocation of places is subject.

(3) The variation that, under this section, is taken to have been approved is a variation to the effect that the location in respect of which the *places are allocated is the location of the different premises specified in the certificate under section 39B of the 1953 Act.

23 Applications to alter conditions of approval of nursing homes

(1) Subject to subsection (4), if:

- (a) a person had, before the commencement day, applied under subsection 40AD(1) of the 1953 Act for the alteration of the conditions applicable to an approved nursing home; and
- (b) the alteration sought was a reduction in the number of beds determined in relation to the nursing home for the purposes of paragraph 40AA(6)(a) of the 1953 Act; and
- (c) immediately before the commencement day, the nursing home was still such an approved nursing home; and
- (d) as at the commencement day, the Minister had not yet made a decision on the application;

the application is taken, for the purposes of the new Act, to be:

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- (e) if the application is made in connection with an application under section 39A of the 1953 Act by another person—an application made on the commencement day, under section 16-2 of the new Act, for the transfer to that other person of *places of a number equal to the reduction in the number of beds referred to in paragraph (b); or
 - (f) in any other case—a notice in writing under section 18-2 of the new Act, given to the Secretary on the commencement day, *relinquishing *places of a number equal to the reduction in the number of beds referred to in paragraph (b).
- (2) If paragraph (1)(e) applies, in considering the application under Division 16 of the new Act, the Secretary is subject to the same requirements that would have applied, under subsection 40AD(1CA) or (1CB) of the 1953 Act, to the Minister if the application were being considered under subsection 40AD(1) of the 1953 Act.
 - (3) If paragraph (1)(f) applies, subsections 18-2(2), (3) and (4) and sections 18-3 and 18-4 of the new Act do not apply to the notice or the *relinquishment.
 - (4) This section does not apply if, immediately before the commencement day, some or all of the beds in the nursing home that correspond to the *places that are the subject of the application referred to in paragraph (1)(e) or (f) are occupied.

Division 2—Hostels

24 Applications for approval in principle of hostels

- (1) If:
 - (a) an organisation had, before the commencement day, applied under subsection 9AB(1), (4), (7) or (9) of the 1954 Act for financial assistance by way of recurrent subsidy in respect of a hostel; and
 - (b) as at the commencement day, the Minister had not yet made a decision on the application;the application is taken, for the purposes of the new Act, to be an application made, on the commencement day, under section 13-1 of the new Act for an allocation of *places in respect of *residential care subsidy.
- (2) For the purposes of the new Act, the application is taken to be a valid application that meets all the requirements of section 13-1 of the new Act.

25 Approvals in principle of hostels

- (1) If, immediately before the commencement day, a certificate under subsection 9AB(1), (4), (7) or (9) of the 1954 Act was in force for financial assistance by way of recurrent subsidy in respect of a hostel:
 - (a) the Secretary is taken, on that day, to have allocated under section 14-1 of the new Act, to the holder of the certificate, a number of *places equal to the number of hostel places (within the meaning of the 1954 Act) to which the certificate related immediately before that day; and
 - (b) the terms in the certificate are taken, on that day, to be conditions:
 - (i) to which the allocation is subject under section 14-5 of the new Act; and

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- (ii) that the Secretary has specified, under subsection 14-5(3) of the new Act, to be conditions that must be met before a determination can be made under section 15-1 of the new Act; and
 - (c) the allocation is taken to be a *provisional allocation; and
 - (d) the *provisional allocation period is a period equal to the amount of time that, immediately before that day, remained of the period for which the certificate was in force.
- (2) The allocation of places referred to in paragraph (1)(a) is taken to be in respect of *residential care subsidy.
 - (3) For the purposes of paragraph (1)(a), the holder of the certificate is the organisation that was, immediately before that day, the holder of the certificate.
 - (4) For the purposes of this section, a certificate under section 9AB of the 1954 Act, for financial assistance by way of recurrent subsidy in respect of a hostel, is taken not to be in force immediately before that day if an approval of the hostel was in force under section 10B of the 1954 Act immediately before that day.
 - (5) A reference in this section to a certificate under section 9AB of the 1954 Act includes a reference to such a certificate issued by virtue of subsection 9AC(1) of the 1954 Act in connection with an application under that subsection.

26 Applications to vary or revoke approvals in principle of hostels

- (1) Subject to subsection (2), if:
 - (a) an organisation had, before the commencement day, applied under subsection 9AB(11) or 9AC(1) of the 1954 Act for a variation of a certificate under section 9AB of the 1954 Act; and
 - (b) immediately before the commencement day, the certificate was still in force; and

(c) as at the commencement day, the Minister had not yet made a decision on the application;

the application is taken, for the purposes of the new Act, to be an application made, on the commencement day, under section 15-5 of the new Act for a variation of the *provisional allocation that, under section 25 of this Act, is taken to have been made in respect of the certificate.

(2) If:

(a) an organisation had, before the commencement day, applied under subsection 9AB(11) of the 1954 Act for a variation of a certificate under section 9AB of the 1954 Act; and

(b) the application sought the deletion of the number of hostel places (within the meaning of the 1954 Act) or respite care places (within the meaning of the 1954 Act) specified in the certificate and the substitution of a higher number of hostel places or respite care places; and

(c) immediately before the commencement day, the certificate was still in force; and

(d) as at the commencement day, the Minister had not yet made a decision on the application;

the application is taken, for the purposes of the new Act, to be an application made, on the commencement day, under section 13-1 of the new Act for an allocation of *places, of a number equal to the increase in the number of hostel places or respite care places that was sought, in respect of *residential care subsidy.

(3) For the purposes of the new Act, the application referred to in subsection (2) is taken to be a valid application that meets all the requirements of section 13-1 of the new Act.

(4) If:

(a) an organisation had, before the commencement day, applied under subsection 9AB(16) or 9AC(1) of the 1954 Act for revocation of a certificate under section 9AB of the 1954 Act; and

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(b) immediately before the commencement day, the certificate was still in force; and

(c) as at the commencement day, the Minister had not revoked the certificate;

the application is taken, for the purposes of the new Act, to be a notice in writing under section 15-6 of the new Act, given to the Secretary on the commencement day, surrendering the *provisional allocation that, under section 25 of this Act, is taken to have been made in respect of the certificate.

(5) A reference in this section to a certificate under section 9AB of the 1954 Act includes a reference to such a certificate issued by virtue of subsection 9AC(1) of the 1954 Act in connection with an application under that subsection.

27 Applications for approval of hostels without section 9AB certificates

(1) If:

(a) an organisation had, before the commencement day, applied under section 10B of the 1954 Act for the approval of a hostel for financial assistance by way of recurrent subsidy; and

(b) immediately before the commencement day, the hostel was not the subject of a certificate under section 9AB of the 1954 Act for financial assistance by way of recurrent subsidy; and

(c) as at the commencement day, the Minister had not yet made a decision on the application;

the application is taken, for the purposes of the new Act, to be an application made, on the commencement day, under section 13-1 of the new Act for an allocation of *places in respect of *residential care subsidy.

(2) Subject to paragraph 13-1(d) of the new Act, the application is taken to be a valid application for the purposes of the new Act.

- (3) A reference in this section to a certificate under section 9AB of the 1954 Act includes a reference to such a certificate issued by virtue of subsection 9AC(1) of the 1954 Act in connection with an application under that subsection.

28 Applications for approval of hostels with section 9AB certificates

- (1) If:
- (a) an organisation had, before the commencement day, applied under section 10B of the 1954 Act for the approval of a hostel for financial assistance by way of recurrent subsidy; and
 - (b) immediately before the commencement day, a certificate under section 9AB of the 1954 Act was in force for financial assistance by way of recurrent subsidy in respect of the hostel; and
 - (c) as at the commencement day, the Minister had not yet made a decision on the application;
- the application is taken, for the purposes of the new Act, to be an application made, on the commencement day, under section 15-1 of the new Act, for a determination by the Secretary in respect of the *places referred to in paragraph 25(1)(a) of this Act in relation to that certificate.
- (2) The Secretary may specify, in a determination under section 15-1 of the new Act in respect of those *places, conditions to which the allocation of those places is to be subject.
- (3) For the purposes of the new Act, any conditions specified under subsection (2) of this section are taken to be conditions to which the allocation of those *places is subject under section 14-5 of the new Act.
- (4) A reference in this section to a certificate under section 9AB of the 1954 Act includes a reference to such a certificate issued by virtue of subsection 9AC(1) of the 1954 Act in connection with an application under that subsection.

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- (5) The Secretary must not refuse an application that, under subsection (1) of this section, is taken to be an application made under section 15-1 of the new Act unless the Secretary is not satisfied that the conditions set out in the certificate in question have been complied with.

29 Approvals of hostels

- (1) If, immediately before the commencement day, an approval of a hostel for financial assistance by way of recurrent subsidy was in force under section 10B of the 1954 Act, for the purposes of the new Act:
- (a) the Secretary is taken, on that day, to have allocated under section 14-1 of the new Act, to the holder of the approval, a number of *places equal to the number of hostel places (within the meaning of the 1954 Act) to which the approval related immediately before that day; and
 - (b) the General Conditions formulated under section 10F of the 1954 Act, as in force immediately before that day, are taken, on that day, to be conditions to which the allocation is subject under section 14-5 of the new Act; and
 - (c) the allocation is taken to be subject to a further condition under section 14-5 of the new Act that:
 - (i) the places are allocated in respect of the location at which the hostel is situated; and
 - (ii) any *care provided, in respect of the places, must be provided at that location; and
 - (d) the Secretary is taken, on that day, to have determined under section 15-1 of the new Act that the holder of the approval is in a position to provide care, in respect of those places, for which subsidy under Chapter 3 of the new Act may be paid.
- (2) Subject to subsection (3), the allocation of *places referred to in paragraph (1)(a) is taken to be in respect of *residential care subsidy.

- (3) If, on the commencement day, *community care is being *provided in respect of the *places, the allocation of places referred to in paragraph (1)(a) is taken to be in respect of *community care subsidy.
- (4) For the purposes of subsection (1), the holder of the approval is the organisation that applied under section 10B of the 1954 Act for approval of the premises.

30 Applications for approval in principle of transfers

- (1) Subject to subsection (5), if:
 - (a) an organisation had, before the commencement day, made a request under subsection 9AC(1) of the 1954 Act in relation to premises; and
 - (b) as at the commencement day, the Minister had not yet made a decision on the request; and
 - (c) on the commencement day, an allocation of *places is taken, under section 25 of this Act, to have been made in respect of a certificate under section 9AB of the 1954 Act relating to those premises;

the application is taken, for the purposes of the new Act, to be an application made, on the commencement day, under section 15-5 of the new Act for a variation of the conditions to which the allocation of places is subject.

- (2) Subject to subsection (5), if:
 - (a) an organisation had, before the commencement day, made a request under subsection 9AC(2) of the 1954 Act for a certificate under that section in relation to premises; and
 - (b) as at the commencement day, the Minister had not yet made a decision on the request; and
 - (c) on the commencement day, an allocation of *places is taken, under section 29 of this Act, to have been made in respect of an approval under section 10B of the 1954 Act relating to those premises;

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the application is taken, for the purposes of the new Act, to be an application made, on the commencement day, under section 17-2 of the new Act for a variation of the conditions to which the allocation of places is subject.

- (3) The variation that, under subsection (1) or (2) of this section, is taken to have been applied for is a variation to the effect that the location in respect of which the *places are allocated is the location of the different premises specified in the application under section 9AC of the 1954 Act.
- (4) For the purposes of the new Act:
 - (a) an application to which subsection (1) of this section applies is taken to meet all the requirements of subsection 15-5(3) of the new Act; and
 - (b) an application to which subsection (2) of this section applies is taken to meet all the requirements of section 17-2 of the new Act.
- (5) This section does not apply if, immediately before the commencement day, some or all of the hostel places (within the meaning of the 1954 Act) in the hostel located on the premises were occupied.

31 Applications for revocation of approvals of hostels

- (1) Subject to subsection (3), if:
 - (a) an application had, before the commencement day, been made under subsection 10FAA(3) of the 1954 Act for revocation of the approval of a hostel granted under section 10B of the 1954 Act; and
 - (b) immediately before the commencement day, approval of the hostel was still in force; and
 - (c) as at the commencement day, the Minister had not yet made a determination under subsection 10FAA(3) of the 1954 Act or notified the applicant that such a determination would not be made;

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the application is taken, for the purposes of the new Act, to be:

- (d) if the application is made in connection with an application under section 9AB of the 1954 Act by another person—an application made on the commencement day, under section 16-2 of the new Act, for the transfer to that other person of *places of a number equal to the number of hostel places (within the meaning of the 1954 Act) in the hostel; or
 - (e) in any other case—a notice in writing under section 18-2 of the new Act, given to the Secretary on the commencement day, *relinquishing *places of a number equal to that number of hostel places.
- (2) If paragraph (1)(e) applies, subsections 18-2(2), (3) and (4) and sections 18-3 and 18-4 of the new Act do not apply to the notice or the *relinquishment.
- (3) This section does not apply if, immediately before the commencement day, some or all of the hostel places (within the meaning of the 1954 Act) in the hostel were occupied.

Division 3—Community aged care services

32 Applications for financial assistance for community aged care services packages

(1) If:

(a) an organisation had, before the commencement day, applied under section 10GF of the 1954 Act for financial assistance for community aged care services packages (within the meaning of the 1954 Act); and

(b) as at the commencement day, the Minister had not yet made a decision on the application;

the application is taken, for the purposes of the new Act, to be an application made, on the commencement day, under section 13-1 of the new Act for an allocation of *places in respect of *community care subsidy.

(2) For the purposes of the new Act, the application is taken to be a valid application that meets all the requirements of section 13-1 of the new Act.

33 Approvals of financial assistance for community aged care services packages

(1) If, immediately before the commencement day, an approval for financial assistance for community aged care services packages (within the meaning of the 1954 Act) was in force under section 10GF of the 1954 Act, for the purposes of the new Act:

(a) the Secretary is taken, on that day, to have allocated under section 14-1 of the new Act, to the approved provider, a number of *places equal to the number of community aged care services packages (within the meaning of the 1954 Act) to which the approval related immediately before that day; and

(b) both:

- (i) the general conditions for the provision of financial assistance under Part IIIA of the 1954 Act, formulated under section 10GI of the 1954 Act and as in force immediately before that day; and
 - (ii) any other conditions of a kind referred to in paragraph 10GG(1)(e) of the 1954 Act that, under an agreement entered into by the approved provider under section 10GG of the 1954 Act, are in force immediately before that day;
- are taken on that day, to be conditions to which the allocation is subject under section 14-5 of the new Act; and
- (c) the allocation is taken to be subject to a further condition under section 14-5 of the new Act that:
 - (i) the places are allocated in respect of specified locations within regions in which the community aged care services packages are, immediately before that day, provided; and
 - (ii) any *care provided, in respect of the places, must be provided at those locations; and
 - (d) the Secretary is taken, on that day, to have determined under section 15-1 of the new Act that the approved provider is in a position to provide care, in respect of those places, for which subsidy under Chapter 3 of the new Act may be paid.
- (2) The allocation of places referred to in paragraph (1)(a) is taken to be in respect of *community care subsidy.
 - (3) For the purposes of subsection (1), the approved provider is the organisation that was the approved provider (within the meaning of section 10GC of the 1954 Act) that, immediately before the commencement day, was providing, or proposing to provide, the community aged care services packages in question.

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34 Applications to revoke approvals of financial assistance for community aged care services packages

(1) If:

- (a) an organisation had, before the commencement day, applied under section 10GL of the 1954 Act for revocation of an approval for financial assistance for community aged care services packages (within the meaning of the 1954 Act); and
- (b) immediately before the commencement day, the approval was still in force; and
- (c) as at the commencement day, the Minister had not revoked the approval;

the application is taken, for the purposes of the new Act, to be a notice in writing under section 18-2 of the new Act, given to the Secretary on the commencement day, *relinquishing the allocation that, under section 33 of this Act, is taken to have been made in respect of the approval.

(2) Subsections 18-2(2), (3) and (4) and sections 18-3 and 18-4 of the new Act do not apply to the notice or the *relinquishment.

Part 2.3—Approval of care recipients

Division 1—Nursing homes

35 Applications for approval for admission to a nursing home

If:

- (a) a person had, before the commencement day, applied, on the person's behalf or on behalf of another person, under subsection 40AA(8) or section 40AB of the 1953 Act, for approval for the admission of the person, or of the other person, to an approved nursing home; and
- (b) as at the commencement day, the Minister had not yet made a decision on the application;

the application is taken, for the purposes of the new Act, to be an application made, on the commencement day, under section 22-3 of the new Act for approval of the person, or the other person, as a recipient of *residential care.

36 Approvals for admission to a nursing home

- (1) A person is taken, for the purposes of the new Act, to be approved under Part 2.3 of the new Act as a recipient of *residential care if, immediately before the commencement day, an approval was in force under subsection 40AA(8) or section 40AB of the 1953 Act in respect of the person.
- (2) For the purposes of the new Act, if, under subsection (1), a person is taken to be so approved:
 - (a) the approval lapses if the person is not, or has not been, provided with *residential care within the period specified in the instrument of approval relating to the person's approval under subsection 40AA(8) or section 40AB of the 1953 Act; and

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- (b) the reference in paragraph 23-1(b) of the new Act to section 23-3 of the new Act is taken, in relation to the person, to be a reference to paragraph (a) of this subsection; and
 - (c) section 23-3 of the new Act does not apply in relation to the person.
- (3) The Approval of Care Recipient Principles made for the purposes of Part 2.3 of the new Act may specify a *classification level that applies to each approval referred to in subsection (1).
- Note: The approval of Care Recipients are made by the Minister under section 96-1 of the new Act.
- (4) If those Principles specify a *classification level, each of the approvals is taken to be limited, under subsection 22-2(3) of the new Act, to a level of care corresponding to that classification level.
- (5) If the approval in force under subsection 40AA(8) or section 40AB of the 1953 Act in respect of the person contained a limitation that the Secretary could have imposed under subsection 22-2(1) of the new Act, the approval is taken, for the purposes of the new Act, to be so limited.

37 Admission to a nursing home prior to approval

If:

- (a) before the commencement day, a person is admitted to an approved nursing home without the admission being approved under subsection 40AA(8) or section 40AB of the 1953 Act; and
- (b) on or after the commencement day, the person is approved under Part 2.3 of the new Act as a recipient of *residential care; and
- (c) under subsection 22-5(2) of the new Act, the approval is taken to have had effect from the day on which the residential care started;

the person is to be taken, for the purposes of the 1953 Act, to have been approved under subsection 40AA(8) or section 40AB of the 1953 Act on the day the person was admitted to the nursing home.

Division 2—Hostels

38 Eligible persons

- (1) A person is taken, for the purposes of the new Act, to be approved under Part 2.3 of the new Act as a recipient of *residential care if, immediately before the commencement day, the person is a person to whom paragraph (a) or (c) of the definition of *eligible person* in subsection 2(1) of the 1954 Act applies.
- (2) For the purposes of the new Act, if:
 - (a) the person is a person to whom subparagraph (c)(i) of that definition applies; and
 - (b) immediately before the commencement day, the person is being *provided with *respite care through a *residential care service;
the person's approval is taken to have been limited by the Secretary under paragraph 22-2(1)(c). For the purposes of that paragraph, the period, on and after the commencement day, for which that respite care is provided is taken to be the period specified in the limitation.
- (3) For the purposes of the new Act, if, under subsection (1), a person is taken to be so approved:
 - (a) the approval lapses if the person is not, or has not been, provided with *residential care within the period specified in the instrument of approval relating to the person's approval made under the General Conditions under section 10F of the 1954 Act; and
 - (b) the reference in paragraph 23-1(b) of the new Act to section 23-3 of the new Act is taken, in relation to the person, to be a reference to paragraph (a) of this subsection; and
 - (c) section 23-3 of the new Act does not apply in relation to the person.

- (4) The Approval of Care Recipient Principles made for the purposes of Part 2.3 of the new Act may specify a *classification level that applies to each approval referred to in subsection (1).

Note: The approval of Care Recipients are made by the Minister under section 96-1 of the new Act.

- (5) If those Principles specify a *classification level, each of the approvals is taken to be limited, under subsection 22-2(3) of the new Act, to a level of care corresponding to that classification level.
- (6) If the approval in force under the 1954 Act in respect of the person contained a limitation that the Secretary could have imposed under subsection 22-2(1) of the new Act, the approval is taken, for the purposes of the new Act, to be so limited.

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Division 3—Community aged care services

39 Eligible persons

- (1) A person is taken, for the purposes of the new Act, to be approved under Part 2.3 of the new Act as a recipient of *community care if, immediately before the commencement day, the person is a person to whom paragraph (d) of the definition of *eligible person* in subsection 2(1) of the 1954 Act applies.
- (2) For the purposes of the new Act, if, under subsection (1), a person is taken to be so approved:
 - (a) the approval lapses if the person is not, or has not been, provided with *community care within the period specified in the instrument of approval relating to the person's approval made under the General Conditions under section 10GI of the 1954 Act; and
 - (b) the reference in paragraph 23-1(b) of the new Act to section 23-3 of the new Act is taken, in relation to the person, to be a reference to paragraph (a) of this subsection; and
 - (c) section 23-3 of the new Act does not apply in relation to the person.
- (3) If the approval in force under the 1954 Act in respect of the person contained a limitation that the Secretary could have imposed under subsection 22-2(1) of the new Act, the approval is taken, for the purposes of the new Act, to be so limited.

Part 2.4—Classification of care recipients

Division 1—Nursing homes

40 Continuation of classifications under 1953 Act

If, immediately before the commencement day, a determination under subsection 40AFA(5) of the 1953 Act giving a classification (the *original classification*) to a particular person was in force:

- (a) the determination continues in force as if section 40AFA of the 1953 Act had not been repealed; and
- (b) section 40AFA of the 1953 Act (including any instruments in force under that section as at the commencement day) continues to apply in respect of the classification as if it had not been repealed.

41 Person admitted to nursing home before commencement day but no classification in force on that day

- (1) Subject to this section and to section 42, if:
 - (a) a person was admitted to an approved nursing home before the commencement day; and
 - (b) immediately before the commencement day, section 40AFA of the 1953 Act applied to the person; and
 - (c) immediately before the commencement day, no determination under subsection 40AFA(5) of the 1953 Act was in force in relation to the person;then:
 - (d) sections 40AFA, 40AFD and 40AFDA of the 1953 Act (including any determinations under subsection 40AFA(3)) continue to apply in relation to the person as if they had not been repealed; and

Section 42

- (e) any determination made after the commencement day under subsection 40AFA(5) in respect of the person continues in force as if section 40AFA of the 1953 Act had not been repealed.
- (2) If the proprietor (within the meaning of the 1953 Act) of the approved nursing home to which the person was admitted had not, as at the commencement day:
 - (a) made an application under subsection 40AFC(1) of the 1953 Act in respect of the person; or
 - (b) made an application under subsection 40AFD(1) or (2) of the 1953 Act in respect of the person;the proprietor may, within 3 months of the commencement day, make an application under subsection 40AFD(1) of the 1953 Act in respect of the person.
- (3) If the proprietor does not make the application within that period, the Secretary is taken to have made a determination under subsection 40AFA(5) of the 1953 Act giving the person the lowest classification.

42 Undecided section 40AFD applications—classification to expire after commencement day

If:

- (a) before the commencement day, an application was made under subsection 40AFD(2) of the 1953 Act for a further classification in respect of a person; and
 - (b) as at the commencement day, the application had not been decided; and
 - (c) if section 40AFA of the 1953 Act had not been repealed, the person's classification under the 1953 Act would have expired on or after the day before the commencement day;
- the application is taken, for the purposes of the new Act, to be an appraisal in respect of the person under section 25-3 of the new

Act. It is taken to have been received by the Secretary on the commencement day.

43 Review by Secretary

- (1) Despite the repeal of section 40AFE of the 1953 Act, that section continues to apply, after the commencement day, in relation to a classification under subsection 40AFA(5) of the 1953 Act, as if that section had not been repealed.
- (2) However, if, after the commencement day:
 - (a) the Secretary revokes a classification under paragraph 40AFE(2)(b) of the 1953 Act; and
 - (b) substitutes another classification (the *substituted classification*);the substituted classification is taken to cease to have effect on the day on which the original classification would have ceased to have had effect if it had not been revoked.

44 Appeals to Minister

- (1) Despite the repeal of section 40AFF of the 1953 Act, that section continues to apply, after the commencement day, to a decision under section 40AFE of the 1953 Act, as if that section had not been repealed.
- (2) However, if, after the commencement day:
 - (a) the Minister makes a decision under paragraph 40AFF(3)(b); and
 - (b) the decision has the effect that a classification is revoked and another classification is substituted (the *substituted classification*);the substituted classification is taken to cease to have effect on the day on which the original classification would have ceased to have effect if it had not been revoked.

Section 45

45 Certain suspension conditions taken to be satisfied

If reviews (within the meaning of subsection 40AFG(1) of the 1953 Act) have, in a substantial number of cases, resulted in:

- (a) classifications (within the meaning of the 1953 Act) being revoked on the ground that they were based on inaccurate information given by a particular proprietor (within the meaning of the 1953 Act); and
- (b) lower classifications being substituted for them;

paragraphs 25-4(1)(a) and (b) of the new Act are taken to be satisfied in respect of the approved provider who was, immediately before the commencement of the new Act, the proprietor referred to in paragraph (a) of this section.

46 Suspensions under 1953 Act from making classifications to continue under new Act

- (1) If, immediately before the commencement day, a determination under subsection 40AFG(2) of the 1953 Act is in force that:

- (a) specifies that section 40AFD of the 1953 Act does not apply in relation to a particular proprietor (within the meaning of the 1953 Act); and
- (b) nominates the person or body who is to make applications for the purposes of that section in the place of that nursing home proprietor;

the Secretary is to be taken:

- (c) to have suspended the proprietor under section 25-4 of the new Act from making assessments; and
- (d) to have authorised the nominated person or body under section 25-5 of the new Act to make assessments of care recipients to whom care is provided by the approved provider who was, immediately before the commencement of the new Act, the proprietor referred to in paragraph (a).

- (2) For the purposes of the new Act, the suspension is taken:

- (a) to have had effect from the commencement day; and
-

- (b) to cease to have effect:
 - (i) at the end of the period specified in the determination under section 40AFG(2) of the 1953 Act; or
 - (ii) if the determination is set aside by the Minister under section 40AFH of the 1953 Act, on the day from which the determination is, or is taken to be, set aside.
- (3) A reference in this section to a determination under subsection 40AFG(2) of the 1953 Act includes a reference to a determination substituted for such a determination under paragraph 40AFH(2)(c) of the 1953 Act.

47 Review of determinations

Despite the repeal of section 40AFH of the 1953 Act, that section continues to apply, in relation to a determination under subsection 40AFG(2) of the 1953 Act, as if that section had not been repealed.

48 Effect of certain determinations

Despite the repeal of section 40AFJ of the 1953 Act, that section continues to apply in respect of persons admitted to a nursing home (within the meaning of the 1953 Act) before the commencement day, as if the section had not been repealed.

Division 2—Hostels

49 Classifications under 1954 Act that were in force immediately before commencement day

(1) If:

- (a) immediately before the commencement day, a classification for the purposes of Division 4 of Part III of the 1954 Act was in force in respect of a particular person; or
- (b) after the commencement day, a classification for the purposes of Division 4 of Part III of the 1954 Act is made, or taken to have been made, in respect of a particular person;

then, subject to subsection (2):

- (c) the classification continues in force as if section 10F of the 1954 Act had not been repealed; and
- (d) section 10F of the 1954 Act (including any instruments in force under that section as at the commencement day), continues to apply in respect of the classification as if it had not been repealed.

(2) The classification ceases to have effect on a day (if any) determined by the Secretary by writing.

50 Person admitted to hostel before commencement day but no classification in force on that day

(1) Subject to this section, if:

- (a) a person began occupying a hostel place (within the meaning of the 1954 Act) before the commencement day; and
- (b) immediately before the commencement day, a classification was not in force in respect of the person for the purposes of Division 4 of Part III of the 1954 Act;

for the purposes of such a classification, section 10F of the 1954 Act (including any instruments in force under section 10F

immediately before the commencement day) continues to apply as if it had not been repealed.

- (2) A classification for the purposes of Division 4 of Part III of the 1954 Act is taken to have been made in respect of the person if:
- (a) the General Conditions under subsection 10F(1) of the 1954 Act require the organisation which provides hostel care services (within the meaning of the 1954 Act) in respect of the hostel place to take certain steps in order for the person to be classified for the purposes of Division 4 of Part III of the 1954 Act; and
 - (b) the organisation had not, as at the commencement day, taken all those steps; and
 - (c) the organisation takes those steps in respect of the person within 3 months of the commencement day.

Section 51

Part 2.5—Extra service places

51 Applications for exempt bed status

- (1) If:
 - (a) a person had, before the commencement day, applied under section 39AB of the 1953 Act to have all the beds included or proposed to be included in an approved nursing home granted status as exempt beds; and
 - (b) as at the commencement day, the Minister had not yet made a decision on the application;
the application is taken, for the purposes of the new Act:
 - (c) to be an application made, on that day, under section 32-3 of the new Act for *extra service status in respect of the *residential care service corresponding to that nursing home; and
 - (d) to be an application made, on that day, under section 35-1 of the new Act for extra service fees to be approved for the *places corresponding to the beds included in the nursing home.
- (2) For the purposes of the new Act, the amounts specified under paragraph 39AB(3)(a) of the 1953 Act in the application under section 39AB of the 1953 Act are taken to be the extra service fees proposed in the application under section 35-1 of the new Act.
- (3) Any particulars that were included in the application under paragraph 39AB(3)(b) of the 1953 Act are, for the purposes of the new Act, to be disregarded.

52 Exempt bed status

- (1) If a certificate under section 39AB of the 1953 Act stating that the beds included in an approved nursing home are exempt beds was in

Section 52

force immediately before the commencement day, for the purposes of the new Act:

- (a) the Secretary is taken, on that day, to have granted under section 32-1 of the new Act *extra service status in respect of the *residential care service corresponding to that nursing home; and
 - (b) the conditions to which the extra service status is subject under subsection 32-8(1) of the new Act are:
 - (i) any conditions set out in the new Act; and
 - (ii) any conditions specified in the Extra Service Principles made for the purposes of Part 2.5 of the new Act; and
 - (iii) any conditions to which the grant of exempt bed status in respect of the beds was subject, under subsection 39AB(9A) of the 1953 Act, immediately before that day, to the extent that those conditions are capable of application under the new Act; and
 - (c) these terms and conditions are taken to have been set out in a notice given in accordance with subsection 32-9(1) of the new Act.
- (2) Despite subsection 33-2(2) of the new Act, if, under subsection (1), *extra service status is taken to have been so granted, its *expiry date is taken, for the purposes of the new Act, to be the day occurring after the end of the exempt status period.

Note: See also section 56 of this Act in relation to additional exempt bed fees, section 64 of this Act in relation to the effect on extra service reductions under the new Act and section 68 of this Act in relation to the effect on extra service amounts under the new Act.

- (3) In subsection (2):

exempt status period means the period, starting on the commencement day, equal to:

- (a) if the certificate referred to in subsection (1) specified only one period as the period for which beds included, or proposed to be included, in the nursing home were to be

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- exempt beds—the amount of time that, immediately before that day, remained of that period; or
- (b) subject to subsection (4), if the certificate specified more than one such period—the amount of time that, immediately before that day, remained of whichever of those periods would have expired first.
- (4) If:
- (a) the certificate specified more than one such period; and
- (b) the *approved provider concerned has entered into an agreement with the Secretary under this subsection in relation to the *places corresponding to the beds in the nursing home to which one of those periods (other than the period that would have expired first) relates;
- the *exempt status period* in relation to those places is the period, starting on the commencement day, equal to the amount of time that, immediately before that day, remained of the period specified in the certificate under subsection (1) in respect of the beds in question.
- (5) Despite section 30-3 of the new Act, the *places referred to in subsection (4) are taken, for the purposes of the new Act, to form a *distinct part of the *residential care service.
- (6) A reference in subsection (1) to a certificate under section 39AB of the 1953 Act being in force immediately before the commencement day includes a reference to a certificate that, as at that day:
- (a) had been granted under that section for a period or periods that had not yet commenced; and
- (b) had not lapsed or been revoked.

53 Applications to revoke exempt bed status

- (1) If:
- (a) a person had, before the commencement day, applied under subsection 39AB(10) of the 1953 Act for revocation of a

certificate granted under subsection 39AB(8) of the 1953 Act; and

- (b) immediately before the commencement day, the certificate was still in force; and
- (c) as at the commencement day, the Minister had not yet revoked the certificate;

the application is taken, for the purposes of the new Act, to be a written request under section 33-4 of the new Act, given to the Secretary on the commencement day, for the revocation of the *extra service status that, under section 52 of this Act, is taken to have been granted in respect of the certificate.

- (2) Subsection 33-4(3) of the new Act applies in relation to the revocation as if the reference in that subsection to the day on which the request was received by the Secretary were a reference to the day on which the application made under subsection 39AB(10) of the 1953 Act was received by the Minister.

54 Applications to extend exempt bed status

If:

- (a) a person had, before the commencement day, made a written request to the Minister for a grant of exempt bed status under subsection 39AD(4) of the 1953 Act, in connection with the expiry of a certificate granted under section 39AB of the 1953 Act; and
- (b) as at the commencement day, the Minister had not yet granted the exempt bed status;

the request is taken, for the purposes of the new Act, to be an application under section 31-2 of the new Act for determinations under that section in respect of each *place that corresponds to a bed in the approved nursing home to which the certificate related. The application is taken to have been received on the commencement day.

Section 55

55 Extensions of exempt bed status

If a grant of exempt status under subsection 39AD(4) of the 1953 Act in respect of a bed in an approved nursing home was in force immediately before the commencement day, the Secretary is taken to have determined, under subsection 31-2(1), that the *place corresponding to that bed is an extra service place during the period:

- (a) starting on the commencement day; and
- (b) finishing at the end of the last day on which the person, who was occupying that bed immediately before the commencement day, is provided with *residential care in respect of the place.

56 Additional exempt bed fees

- (1) If a certificate under section 39AB of the 1953 Act stating that the beds included in an approved nursing home are exempt beds was in force immediately before the commencement day, for the purposes of the new Act, the Secretary is taken, on that day, to have approved under section 35-1 of the new Act extra service fees for the *places corresponding to those beds.

Note: See also section 52 of this Act in relation to exempt bed status, section 64 of this Act in relation to the effect on extra service reductions under the new Act and section 70 of this Act in relation to the effect on extra service amounts under the new Act.

- (2) The amounts of the extra service fees are taken, for the purposes of the new Act, to be equal to the amount of the additional exempt bed fees (within the meaning of the 1953 Act) relating to those beds immediately before that day.
- (3) If:
 - (a) an application is subsequently made under section 35-1 of the new Act for approval of extra service fees for any of those *places; and

- (b) apart from subsection (1) of this section, the Secretary has not previously approved under section 35-1 of the new Act extra service fees for any of the places that are the subject of the application;

the reference in paragraph 35-3(3)(c) of the new Act to the last approval is a reference to:

- (c) the last day on which a change in the additional exempt bed fees relating to those beds took effect under section 39AB or 40AD of the 1953 Act; or
- (d) if there has never been a change in those fees relating to those beds—the day on which the grant of exempt bed status, referred to in the certificate under section 39AB of the 1953 Act, took effect in relation to those beds.

57 Requests for approval of redeterminations of additional exempt bed fees

- (1) If:

- (a) a person had, before the commencement day, requested under subsection 40AD(1BC) of the 1953 Act that the Secretary approve the redetermination of an additional exempt bed fee (within the meaning of Part V of the 1953 Act); and
- (b) as at the commencement day, the Secretary had not yet made a decision on the request;

the application is taken, for the purposes of the new Act, to be an application made, on that day, under section 35-1 of the new Act, for the approval of an extra service fee for the *places corresponding to the beds to which the request related.

- (2) For the purposes of the new Act, the proposed redetermination of the fee specified in the request under subsection 40AD(1BC) of the 1953 Act is taken to be the extra service fee proposed in the application under section 35-1 of the new Act.

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58 Patients occupying exempt beds

- (1) Subject to subsection (2), paragraph 36-1(1)(b) of the new Act does not apply in relation to *residential care that is *provided in respect of a *place included in a *residential care facility if:
- (a) the place corresponds to a bed in a nursing home (within the meaning of the 1953 Act) that was, immediately before the commencement day, an exempt bed (within the meaning of Part V of the 1953 Act); and
 - (b) the person to whom the residential care is provided has been continuously provided with residential care in respect of that place since the commencement day.
- (2) However, if *residential care is *provided to a person in respect of a *place included in a *residential care facility, and:
- (a) the place corresponds to a bed in a nursing home (within the meaning of the 1953 Act) that was, immediately before the commencement day, an exempt bed (within the meaning of Part V of the 1953 Act); and
 - (b) the person had, before the commencement day, made an election under section 40ADB of the 1953 Act; and
 - (c) as at the commencement day, the person was not an exempt patient within the meaning of section 39AD of the 1953 Act; and
 - (d) the person to whom the residential care is provided has been continuously provided with residential care in respect of that place since the commencement day;
- then:
- (e) the person is taken to have been an exempt patient (within the meaning of section 39AD of the 1954 Act) immediately before the commencement day; and
 - (f) paragraph 36-1(1)(b) of the new Act applies to *residential care that is *provided to the person in respect of the *place.

Note: The effect of paragraph 36-1(1)(b) of the new Act applying is that an extra service agreement between the approved provider concerned and the person is necessary in order for residential care to be provided on

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an extra service basis. A person cannot be forced to enter such an agreement and, under section 36-4 of the new Act, an agreement with a person taken to be an exempt patient under paragraph 58(2)(e) will have to provide that the person can terminate the agreement within 3 months of the date of effect of the agreement.

- (3) This section does not affect any agreement between the person and the proprietor (within the meaning of the 1953 Act) of the nursing home, relating to exempt bed status in respect of the bed.

Section

Part 2.6—Certification of residential care services

Note: There are no transitional provisions relating to Part 2.6 of the *Aged Care Act 1997*.

Chapter 3—Transitional provisions relating to Chapter 3 of the Aged Care Act 1997

Part 3.1—Residential care subsidy

59 Eligibility for residential care subsidy for the day provision of residential care stops

For the purposes of the new Act, paragraph 42-1(2)(b) of the new Act does not apply in relation to a care recipient in respect of *residential care that is *provided to the care recipient through a *residential care service if:

- (a) the care recipient has been provided with residential care through that residential care service on a continuous basis since immediately before the commencement day; and
- (b) a Commonwealth benefit is or was payable in respect of the care recipient, as an approved nursing home patient within the meaning of the 1953 Act, for nursing home care (within the meaning of the 1953 Act) received by the care recipient on the day before the commencement day; and
- (c) that nursing home care was provided in an approved nursing home that corresponds to the residential care service.

60 Additional amounts in respect of staffing and related costs

- (1) The Minister may, by instrument in writing, specify circumstances in which additional amounts are payable in respect of *residential care services in respect of which *residential care subsidy is payable under section 43-1 of the new Act.
- (2) The additional amounts are to be:
 - (a) specified in the instrument; or

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- (b) worked out in accordance with a method specified in the instrument.
- (3) The instrument may specify different amounts (including nil amounts) based on any matters specified in the instrument.
- (4) The periods in respect of which the additional amounts are payable are the periods specified in the instrument.
- (5) Any additional amount payable in respect of a *residential care service is to be included in a payment of *residential care subsidy under section 43-1 in respect of the service.
- (6) Additional amounts payable under this section are payable out of the Consolidated Revenue Fund, which is appropriated accordingly.

61 Overpayments and underpayments of Commonwealth benefit

- (1) Adjustment made to an amount of an advance paid under subsection 43-3(3) of the new Act in respect of a *residential care service may take account of:
 - (a) the amount of any likely overpayment or underpayment of Commonwealth benefit determined under section 46E of the 1953 Act in respect of an approved nursing home that corresponds to the residential care service; and
 - (b) any overpayments of Commonwealth benefit in respect of an approved nursing home that corresponds to the residential care service; and
 - (c) any underpayments of Commonwealth benefit in respect of an approved nursing home that corresponds to the residential care service.
- (2) Subsection (1) does not affect the operation of section 51C of the 1953 Act.
- (3) In this section:

approved nursing home has the same meaning as in the 1953 Act.

Commonwealth benefit has the same meaning as in Part VA of the 1953 Act.

overpayment, in relation to a Commonwealth benefit, has the same meaning as in section 46B of the 1953 Act.

underpayment, in relation to a Commonwealth benefit, means the amount, if any, by which the sum of the advances of Commonwealth benefit paid in respect of the approved nursing home in question for a particular period is less than the amount of Commonwealth benefit payable in respect of the approved nursing home for that period.

62 Nasogastric feeding

If, immediately before the commencement day:

- (a) a person is a patient in an approved nursing home (within the meaning of the 1953 Act); and
- (b) the proprietor (within the meaning of the 1953 Act) of the nursing home was eligible for the payment of Commonwealth benefits under section 48D of the 1953 Act in respect of the person;

for the purposes of the new Act, a determination is taken to be in force under subsection 44-14(2) of that Act that the person is eligible for an enteral feeding supplement.

63 Eligible oxygen treatment

If, immediately before the commencement day:

- (a) a person is a patient in an approved nursing home (within the meaning of the 1953 Act); and
- (b) the proprietor (within the meaning of the 1953 Act) of the nursing home was eligible for the payment of Commonwealth benefits under section 48E of the 1953 Act in respect of the person;

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for the purposes of the new Act, a determination is taken to be in force under subsection 44-13(2) of that Act that the person is eligible for an oxygen supplement.

64 Extra service reductions for exempt residents

- (1) For the purposes of the new Act, if:
 - (a) a person:
 - (i) was an exempt patient in an approved nursing home immediately before the commencement day (disregarding the effect of paragraph 58(2)(e)); or
 - (ii) is taken to be such a patient under paragraph 58(2)(e); and
 - (b) on the commencement day, or on a day occurring after the commencement day, the person is *provided with *residential care through a *residential care service corresponding to that nursing home; and
 - (c) under section 44-18 of the new Act, there is an extra service reduction for the day on which that residential care is provided;
the amount of the extra service reduction for that day is:
 - (d) for a person referred to in subparagraph (1)(a)(i)—an amount equal to the proportion of the additional exempt bed fee (within the meaning of Part V of the 1953 Act) that was, immediately before the commencement day, being taken into account in reduction of the Commonwealth benefit payable in respect of the bed occupied by the person; or
 - (e) for a person referred to in subparagraph (1)(a)(ii)—the notional amount (see subsection (3)) in respect of the person.
- (2) If, after the commencement day:
 - (a) the person ceases to be *provided with *residential care through the *residential care service (other than because the person is on *leave); or

(b) the person is provided with residential care through the residential care service, but not on an extra service basis within the meaning of Division 36 of the new Act; this section does not apply in respect of any subsequent day on which the person is provided with residential care through that residential care service.

Note: Under section 52 of this Act, the exempt bed status of nursing homes can be taken to be *extra service status for the purposes of the new Act. See also section 68 of this Act relating to extra service amounts for exempt residents.

(3) In this section:

exempt patient means an exempt patient within the meaning of section 39AD of the 1953 Act.

notional amount, in respect of a person, means an amount equal to the proportion of the additional exempt bed fee (within the meaning of Part V of the 1953 Act) that would, immediately before the commencement day, have been taken into account in reduction of the Commonwealth benefit payable in respect of the bed occupied by the person if the person had been an exempt patient immediately before that day.

65 Compensation payable to nursing home patient

- (1) If, immediately before the commencement day, a determination under subsection 59(1) of the 1953 Act was in force in respect of a qualified nursing home patient (within the meaning of the 1953 Act), for the purposes of the new Act, paragraphs 44-20(2)(a) and (b) of that Act are taken to be satisfied in respect of a day if:
 - (a) on that day the patient is provided with *residential care; and
 - (b) that *residential care corresponds to the nursing home care to which the determination relates.
- (2) If there are or have been reductions, under subsection 59(2) or (3) of the 1953 Act, in Commonwealth benefit (within the meaning of

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Part VC of the 1953 Act) as a result of the determination, those reductions in benefit are taken, for the purposes of the new Act:

- (a) to be compensation payment reductions of the kind referred to in paragraph 44-20(2)(c) of the new Act; and
- (b) to have resulted in reductions in subsidy, as referred to in that paragraph, of an amount equal to the sum of those reductions in benefit.

66 Daily income tested reduction for exempt residents taken to be zero

- (1) For the purposes of the new Act, if:
 - (a) a person was, or is taken under paragraph 58(2)(e) to be, an exempt patient (within the meaning of section 39AD of the 1953 Act) in an approved nursing home immediately before the commencement day; and
 - (b) on the commencement day, or on a day occurring after the commencement day, the person is *provided with *residential care through a *residential care service corresponding to that nursing home;the *daily income tested reduction in respect of the person for the day on which the residential care is provided is taken to be zero.
- (2) If, after the commencement day:
 - (a) the person ceases to be *provided with *residential care through the *residential care service (other than because the person is on *leave); or
 - (b) the person is provided with residential care through the residential care service, but not on an extra service basis within the meaning of Division 36 of the new Act;this section does not apply in respect of any subsequent day on which the person is provided with residential care through that residential care service.

67 Determinations under section 5 of the *Aged Care Income Testing Act 1997*

If, immediately before the commencement day, a determination under section 5 of the *Aged Care Income Testing Act 1997* was in force, for the purposes of the new Act, the determination has effect as if it were a determination made on that day under section 44-24 of that Act.

Section

Part 3.2—Community care subsidy

Note: There are no transitional provisions in relation to Part 3.2 of the *Aged Care Act 1997*.

Part 3.3—Flexible care subsidy

Note: There are no transitional provisions in relation to Part 3.3 of the *Aged Care Act 1997*.

Chapter 4—Transitional provisions relating to Chapter 4 of the Aged Care Act 1997

Part 4.1—Quality of care

Note: There are no transitional provisions in relation to Part 4.1 of the *Aged Care Act 1997*.

Part 4.2—User rights

Division 1—Nursing homes

68 Extra service amounts for exempt residents

(1) For the purposes of the new Act, if:

(a) a person:

- (i) was an exempt patient in an approved nursing home immediately before the commencement day (disregarding the effect of paragraph 58(2)(e)); or
- (ii) is taken to be such a patient under paragraph 58(2)(e); and

(b) on the commencement day, or on a day occurring after the commencement day, the person is *provided with *residential care through a *residential care service corresponding to that nursing home;

section 58-5 of the new Act has effect, in relation to the day on which the residential care is provided, as if:

(c) the reference in paragraph 58-5(b) of the new Act to 25% of the extra service fee referred to in paragraph (a) of that section were omitted; and

(d) in its place there were substituted a reference to:

- (i) for a person referred to in subparagraph (1)(a)(i)—the proportion of the additional exempt bed fee (within the meaning of Part V of the 1953 Act) that was, immediately before the commencement day, being taken into account in reduction of the Commonwealth benefit payable in respect of the bed occupied by the person; or
- (ii) for a person referred to in subparagraph (1)(a)(ii)—the notional amount (see subsection (3)) in respect of the person.

(2) If, after the commencement day:

- (a) the person ceases to be *provided with *residential care through the *residential care service (other than because the person is on *leave); or
- (b) the person is provided with residential care through the residential care service, but not on an extra service basis within the meaning of Division 36 of the new Act;

this section does not apply in respect of any subsequent day on which the person is provided with residential care through that residential care service.

Note: Under section 52 of this Act, the exempt bed status of nursing homes can be taken to be *extra service status for the purposes of the new Act. See also section 68 of this Act relating to extra service amounts for exempt residents.

(3) In this section:

exempt patient means an exempt patient within the meaning of section 39AD of the 1953 Act.

notional amount, in respect of a person, means an amount equal to the proportion of the additional exempt bed fee (within the meaning of Part V of the 1953 Act) that would, immediately before the commencement day, have been taken into account in reduction of the Commonwealth benefit payable in respect of the bed occupied by the person if the person had been an exempt patient immediately before that day.

69 Agreements between nursing home proprietors and residents

If:

- (a) immediately before the commencement day, an agreement substantially in the form determined under section 40ABB of the 1953 Act was in force; and
- (b) the agreement was entered into between a person in relation to whom an approval under subsection 40AB(3) of the 1953

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- Act had been given and the proprietor (within the meaning of that Act) of an approved nursing home;
- for the purposes of paragraph 56-1(g) of the new Act, the agreement is taken to be a *resident agreement that:
- (c) the *approved provider conducting the *residential care service that corresponds to the nursing home had, on the commencement day, offered to enter into with the person to whom the approval was given; and
 - (d) the approved provider and that person had entered into on the commencement day.

Division 2—Hostels

70 Variable hostel fees

- (1) If:
- (a) a person was, immediately before the commencement day, occupying a hostel place (within the meaning of the 1954 Act) in a hostel; and
 - (b) on a day (the *day in question*) that is:
 - (i) the commencement day; or
 - (ii) a day occurring after the commencement day;the person is *provided with *residential care through a *residential care service corresponding to that hostel; and
 - (c) the person's interim hostel fee (see subsection (2)) exceeds the maximum daily amount of resident fees payable by the care recipient, as worked out under section 58-2 of the new Act, in respect of the day in question; and
 - (d) if the day in question is not the commencement day—in respect of the commencement day, and any other day after the commencement day but before the day in question, paragraphs (b) and (c) had applied;
- paragraph 58(1)(a) of the new Act has effect as if the reference in subparagraph 58(1)(a)(i) of the new Act to the maximum daily amount set under section 58-2 of the new Act were a reference to the interim hostel fee set under subsection (2) of this section.
- (2) The person's *interim hostel fee* is whichever is the lesser of the following:
- (a) the fee that was payable, in accordance with the General Conditions formulated under section 10F of the 1954 Act, for the provision, on the day before the commencement day, of:
 - (i) any hostel care services (within the meaning of the 1954 Act); and

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- (ii) any personal care services (within the meaning of the 1954 Act);
in respect of the hostel place that the person occupied, minus any residential care allowance amount for the person;
 - (b) if the person's income on the day in question, as reviewed at the person's request by the *approved provider conducting the *residential care service, is less than the person's income on the day before the commencement day (minus any residential care allowance amount for the person)—the amount of the fee referred to in paragraph (a), reduced by the difference between the 2 amounts of income.
- (3) For the purposes of subsection (2), if, on the day before the commencement of Part 1 of Schedule 3 to this Act:
 - (a) the person is receiving an *income support payment; and
 - (b) an amount of residential care allowance, worked out under Part 3.12B of the *Social Security Act 1991*, is included in the person's rate of payment;
the **residential care allowance amount** for the person is the amount of residential care allowance (worked out on a per day basis) to be so included in respect of the day before that commencement.
- (4) In working out the person's income for the purposes of paragraph (2)(b), amounts of income tax or medicare levy payable by the person in respect of the income are to be deducted.

71 Formal agreements between hostel operators and residents

- (1) Subject to this section, if:
 - (a) immediately before the commencement day, a Formal Agreement (within the meaning of the General Conditions formulated under section 10F of the 1954 Act) was in force; and

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(b) the Formal Agreement was entered into between an eligible person (within the meaning of the 1954 Act) and an approved operator (within the meaning of the 1954 Act) of a hostel;

for the purposes of paragraph 56-1(g) of the new Act, the Formal Agreement is taken to be a *resident agreement that:

(c) the *approved provider conducting the *residential care service that corresponds to the hostel had, on the commencement day, offered to enter into with the eligible person; and

(d) the approved provider and the eligible person had entered into on the commencement day.

(2) If:

(a) ongoing fees are payable under the Formal Agreement by the person for the provision of accommodation and care; and

(b) the amount of ongoing fees payable in respect of the commencement day or a subsequent day would exceed the amount of the resident fee that may be charged under paragraph 58-1(a) of the new Act in respect of that day;

the amount of the resident fee that may be charged under that paragraph in respect of that day is an amount not exceeding the amount of ongoing fees payable in respect of that day.

(3) If:

(a) before the commencement day, the person had, under the Formal Agreement, paid, or agreed to pay, an entry contribution (within the meaning of the General Conditions formulated under section 10F of the 1954 Act) to the approved operator; and

(b) immediately before the commencement day, the person was an existing resident (within the meaning of section 10F of the 1954 Act), or a new resident (within the meaning of that section), of the hostel;

on and after the commencement day:

(c) paragraph 56-1(a) of the new Act applies as if the requirements referred to in that paragraph were the

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requirements of the General Conditions formulated under section 10F of the 1954 Act, as they relate to entry contributions; and

- (d) Division 57 of the new Act does not apply in relation to the entry contribution.

(4) If:

- (a) before the commencement day, the person had, under the Formal Agreement, paid, or agreed to pay, an entry contribution (within the meaning of the General Conditions formulated under section 10F of the 1954 Act) to the approved operator; and
- (b) on or after the commencement day, the person ceases being provided with *residential care through the *residential care service (the *original service*) that corresponds to the hostel (other than because the care recipient is on *leave); and
- (c) the person enters another residential care service within 28 days after the day on which the person ceased being provided with care by the original service;

for the purposes of the new Act:

- (d) the amount of the entry contribution that is refundable to the person under the Formal Agreement is taken to be the maximum amount of the *accommodation bond for the entry of the person to the other service; and
- (e) the amount of the entry contribution that is so refundable is to be refunded to the person in accordance with subsection 57-21(3) as if that amount were an *accommodation bond balance.

(5) For the purposes of subsection 57-20(5) of the new Act, if:

- (a) before the commencement day, the person had, under the Formal Agreement, paid, or agreed to pay, an entry contribution (within the meaning of the General Conditions formulated under section 10F of the 1954 Act) to the approved operator; and

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(b) before, on or after the commencement day, the approved operator has retained an amount from the entry contribution in respect of a period;
each month included in that period is taken to be a month in respect of which a retention amount was deducted from an *accommodation bond balance in respect of an *accommodation bond previously paid by the person.

Division 3—Community aged care services

72 Formal agreements between hostel operators and residents

(1) Subject to this section, if:

- (a) immediately before the commencement day, a formal agreement (within the meaning of the Community Aged Care Services General Conditions formulated under section 10GI of the 1954 Act) was in force; and
- (b) the formal agreement was entered into between an eligible person (within the meaning of the 1954 Act) and an approved provider (within the meaning of the 1954 Act) of a community aged care service;

for the purposes of paragraph 56-2(e) of the new Act, the formal agreement is taken to be a *community care agreement that:

- (c) the *approved provider conducting the *community care service that corresponds to the community aged care service had, on the commencement day, offered to enter into with the eligible person; and
- (d) the *approved provider and the eligible person had entered into on the commencement day.

(2) If:

- (a) ongoing fees are payable under the formal agreement by the person for the provision of care; and
- (b) the amount of ongoing fees payable in respect of the commencement day or a subsequent day would exceed the amount of the community care fee that may be charged under paragraph 60-1(a) of the new Act in respect of that day;

the amount of the community care fee that may be charged under that paragraph in respect of that day is an amount not exceeding the amount of ongoing fees payable in respect of that day.

Part 4.3—Accountability

73 Direction to appoint nursing home advisor

- (1) Despite the repeal of section 45EB of the 1953 Act, if:
 - (a) immediately before the commencement day, a direction under that section was in force; and
 - (b) the direction was to the proprietor (within the meaning of the 1953 Act) of an approved nursing home to appoint a nursing home adviser in respect of the home;for the purposes of the new Act, the direction continues to apply as if the direction were a direction to the *approved provider conducting the *residential care service that corresponds to the nursing home to appoint an adviser in respect of that service.
- (2) For the purposes of the new Act, the responsibilities of an approved provider under section 63-1 of the new Act are taken to include complying with a direction referred to in subsection (1).

Part 4.4—Consequences of non-compliance

Division 1—Nursing homes

74 Declarations of non-compliance with standards

If:

- (a) immediately before the commencement day, a declaration under subsection 45E(1) of the 1953 Act was in force; and
- (b) the declaration was a declaration to the proprietor (within the meaning of the 1953 Act) of an approved nursing home that the home did not satisfy the standards determined under section 45D of the 1953 Act;

for the purposes of the new Act:

- (c) the declaration is taken to be a notice of non-compliance under section 67-2 of the new Act given to the *approved provider conducting the *residential care service that corresponds to the nursing home; and
- (d) the approved provider is taken not to have made any submissions in response to the notice of non-compliance.

75 Determinations that Commonwealth benefit payable is not payable

(1) If:

- (a) immediately before the commencement day, a determination under subsection 45E(2) of the 1953 Act was in force; and
- (b) the determination was a determination to the proprietor (within the meaning of the 1953 Act) of an approved nursing home that Commonwealth benefit is not payable to the proprietor in respect of a patient admitted to the nursing home after the making of the determination;

for the purposes of the new Act, the determination is taken to be a sanction that:

- (c) is imposed under subparagraph 66-1(c)(ii) of the new Act, on the commencement day, on the *approved provider conducting the *residential care service that corresponds to the nursing home; and
 - (d) restricts that approved provider's approval as a provider of *aged care services to care recipients to whom the approved provider *provided care before the making of the determination.
- (2) The sanction period for that sanction under section 68-2 of the new Act:
- (a) begins on the commencement day; and
 - (b) ends on the day the Secretary lifts the sanction under section 68-3 of the new Act.

76 Suspensions of exempt bed status

- (1) If:
- (a) immediately before the commencement day, a suspension under paragraph 45E(4A)(a) of the 1953 Act was in force; and
 - (b) the suspension was a suspension of exempt bed status in respect of beds in an approved nursing home;
- for the purposes of the new Act, the suspension is taken to be a sanction that:
- (c) is imposed, under paragraph 66-1(g) of the new Act, on the commencement day; and
 - (d) constitutes a suspension:
 - (i) if the suspension was a suspension of exempt bed status in respect of all of the beds in the nursing home—of the *extra service status of the *residential care service that corresponds to the nursing home; or

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- (ii) if the suspension was a suspension of exempt bed status in respect of some only of the beds in the nursing home—of the extra service status of a *distinct part of the residential care service that includes the *places corresponding to those beds.
- (2) The sanction period for that sanction under section 68-2 of the new Act:
- (a) begins on the commencement day; and
 - (b) ends on the day the Secretary lifts the sanction under section 68-3 of the new Act.

77 Declarations of non-compliance with conditions

If:

- (a) immediately before the commencement day, a declaration under subsection 45EA(1) of the 1953 Act was in force; and
- (b) the declaration was a declaration to the proprietor (within the meaning of the 1953 Act) of an approved nursing home that the home did not satisfy one or more conditions applicable to the nursing home under that Act;

for the purposes of the new Act:

- (c) the declaration is taken to be a notice of non-compliance under section 67-2 of the new Act given to the *approved provider conducting the *residential care service that corresponds to the nursing home; and
- (d) the approved provider is taken not to have made any submissions in response to the notice of non-compliance.

78 Determinations that Commonwealth benefit is not payable

(1) If:

- (a) immediately before the commencement day, a determination under subsection 45EA(2) of the 1953 Act was in force; and
- (b) the determination was a determination to the proprietor (within the meaning of the 1953 Act) of an approved nursing

home that Commonwealth benefit is not payable to the proprietor in respect of a patient admitted to the nursing home after the making of the determination;

for the purposes of the new Act, the determination is taken to be a sanction that:

- (c) is imposed, under subparagraph 66-1(c)(ii) of the new Act, on the commencement day, on the *approved provider conducting the *residential care service that corresponds to the nursing home; and
 - (d) restricts that approved provider's approval as a provider of *aged care services to care recipients to whom the approved provider *provided care before the making of the determination.
- (2) The sanction period for that sanction under section 68-2 of the new Act:
- (a) begins on the commencement day; and
 - (b) ends on the day the Secretary lifts the sanction under section 68-3 of the new Act.

Division 2—Hostels

79 Declarations of failure to meet standards

If:

- (a) immediately before the commencement day, a declaration under section 10FI of the 1954 Act was in force; and
- (b) the declaration was a declaration that an approved operator (within the meaning of the 1954 Act) was not meeting standards in respect of the provision of care services (within the meaning of that Act) in a hostel;

for the purposes of the new Act:

- (c) the declaration is taken to be a notice of non-compliance under section 67-2 of the new Act given to the *approved provider conducting the *residential care service that corresponds to the hostel; and
- (d) the approved provider is taken not to have made any submissions in response to the notice of non-compliance.

80 Suspensions of approvals of financial assistance

(1) If:

- (a) immediately before the commencement day, a determination was in force under section 10FAA of the 1954 Act; and
- (b) the determination was a determination suspending approval of a hostel for financial assistance by way of recurrent subsidy;

for the purposes of the new Act, the determination is taken to be a sanction that:

- (c) is imposed, under paragraph 66-1(d) of the new Act, on the commencement day, on the *approved provider conducting the *residential care service that corresponds to the hostel; and

- (d) suspends the allocation of the *places taken, under section 29 of this Act, to have been allocated under section 14-1 of the new Act to the approved provider in respect of the hostel.
- (2) The sanction period for that sanction under section 68-2 of the new Act:
 - (a) begins on the commencement day; and
 - (b) ends on the day the Secretary lifts the sanction under section 68-3 of the new Act.

81 Variations of agreements

- (1) If:
 - (a) immediately before the commencement day, a determination was in force under section 10FAA of the 1954 Act; and
 - (b) the determination was a determination varying an agreement entered into under section 10FA of the 1954 Act in respect of a hostel;for the purposes of the new Act, the determination is taken to be a sanction imposed, under paragraph 66-1(e) of the new Act, on the commencement day, on the *approved provider conducting the *residential care service that corresponds to the hostel.
- (2) For the purposes of subsection (1), if the variation of the agreement reduced the number of approved hostel places specified in the agreement, the number of *places taken, under section 29 of this Act, to have been allocated to the *approved provider under section 14-1 of the new Act is taken to be reduced by the same number.
- (3) For the purposes of subsection (1), if the variation of the agreement reduced the number of approved respite care places specified in the agreement, the proportion of *care to be *provided by the *approved provider as *respite care is taken to be reduced by a corresponding amount.
- (4) For the purposes of subsection (1), if:

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- (a) there was a variation of the classes of eligible persons (within the meaning of the 1954 Act) specified in the agreement to be accommodated in approved places—a corresponding variation is taken to have been made to the conditions to which the *approved provider's allocation of *places is taken to be subject under section 14-5 of the new Act; or
 - (b) there was a variation to the proportion or number of places specified in relation to each such class—a variation corresponding to that variation is taken to have been made to the conditions to which the approved provider's allocation of *places is taken to be subject under section 14-5 of the new Act.
- (5) In this section:

approved hostel places has the same meaning as in subparagraph 10FAA(2)(b)(i) of the 1954 Act.

approved places has the same meaning as in subparagraph 10FAA(2)(b)(iii) of the 1954 Act.

approved respite places has the same meaning as in subparagraph 10FAA(2)(b)(ii) of the 1954 Act.

Chapter 5—Transitional provisions relating to Chapter 5 of the Aged Care Act 1997

Part 5.1—Residential care grants

82 Applications for capital grants

- (1) If:
 - (a) a person, had, before the commencement day, applied under section 6, 9AB or 9A of the 1954 Act for financial assistance by way of a grant in respect of a nursing home (within the meaning of the 1954 Act) or a hostel, as the case requires; and
 - (b) as at the commencement day, the Minister had not yet made a decision on the application;the application is taken, for the purposes of the new Act, to be a valid application made, on the commencement day, under section 71-1 of the new Act for the allocation of a *residential care grant.
- (2) The Secretary is taken to have waived under section 72-5 of the new Act the requirements referred to in paragraph (b) of that section so far as they relate to that application and any allocation of a *residential care grant made in connection with that application.
- (3) If:
 - (a) the application had been made under section 9A of the 1954 Act in respect of a hostel; and
 - (b) at the time of the application, a certificate was in force under section 9AB of the 1954 Act for financial assistance by way of a grant in respect of that hostel;the Secretary must allocate a *residential care grant in connection with the application if the Secretary is satisfied:

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- (c) the applicant has met the conditions, and provided the information and documents, referred to in subparagraph 9AB(3)(a)(i) as in force immediately before the commencement of the *Aged Care Act 1997* (other than Division 1 of that Act), in relation to that certificate; and
- (d) the applicant has so met the conditions and provided the information and documents within:
 - (i) the period of 12 months after the certificate was issued; or
 - (ii) if that period of 12 months has been varied in accordance with a determination under subsection 9AB(11)—that period as so varied.

83 Variation of certificates (approvals in principle)

Despite the repeal of section 9AB of the 1954 Act by this Act, subsections 9AB(11) and (12) of the 1954 Act continue to apply in relation to a certificate, issued under that section, that was in force immediately before the commencement day as if:

- (a) the repeal of section 9AB of the 1954 Act had not happened; and
- (b) the principles formulated under section 9AB(13) of the 1954 Act that were in force immediately before the commencement day continued in force.

Part 5.2—Community care grants

Note: There are no transitional provisions in relation to Part 5.2 of the *Aged Care Act 1997*.

Part 5.3—Assessment grants

Note: There are no transitional provisions in relation to Part 5.3 of the *Aged Care Act 1997*.

Part 5.4—Accreditation grants

Note: There are no transitional provisions in relation to Part 5.4 of the *Aged Care Act 1997*.

Part 5.5—Advocacy grants

Note: There are no transitional provisions in relation to Part 5.5 of the *Aged Care Act 1997*.

Part 5.6—Community visitors grants

Note: There are no transitional provisions in relation to Part 5.6 of the *Aged Care Act 1997*.

Part 5.7—Other grants

Note: There are no transitional provisions in relation to Part 5.7 of the *Aged Care Act 1997*.

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Chapter 6—Transitional provisions relating to Chapter 6 of the Aged Care Act 1997

Part 6.1—Review of decisions

84 Reconsiderations of determinations under section 5 of the *Aged Care Income Testing Act 1997*

If:

- (a) before the commencement day, the Secretary was, under section 10 of the *Aged Care Income Testing Act 1997*, reconsidering a determination made under section 5 of that Act; and
- (b) as at the commencement day, the Secretary had not yet:
 - (i) confirmed the determination; or
 - (ii) varied the determination; or
 - (iii) set the determination aside and substituted a new determination;

the reconsideration of the determination has effect, on and after the commencement day, as if it were a reconsideration by the Secretary, under section 85-4 of the new Act, of a determination made under section 44-24 of the new Act.

85 Applications under section 11 of the *Aged Care Income Testing Act 1997* for reconsideration of determinations under section 5 of that Act

If:

- (a) before the commencement day, a person had, under section 11 of the *Aged Care Income Testing Act 1997*, requested the

Secretary to reconsider a determination made under section 5 of that Act; and

- (b) as at the commencement day, the Secretary had not yet:
 - (i) confirmed the determination; or
 - (ii) varied the determination; or
 - (iii) set the determination aside and substituted a new determination;

the request to reconsider the determination has effect, on and after the commencement day, as if it were a request made on that day, under section 85-5 of the new Act, to reconsider a determination under section 44-24 of the new Act.

86 AAT review of decisions relating to determinations under section 5 of the *Aged Care Income Testing Act 1997*

If:

- (a) before the commencement day, a person had, under section 14 of the *Aged Care Income Testing Act 1997*, applied to the Administrative Appeals Tribunal for review of a decision; and
- (b) the decision related to a determination under section 5 of the *Aged Care Income Testing Act 1997*; and
- (c) as at the commencement day, the Administrative Appeals Tribunal had not yet made a decision on review;

the application for review has effect, on and after the commencement day, as if it were an application for review of a decision relating to a determination made under section 44-24 of the new Act.

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Part 6.2—Protection of information

87 Protected information

If:

- (a) immediately before the commencement day, information was protected information within the meaning of section 15 of the *Aged Care Income Testing Act 1997*; and
- (b) the information was acquired by a person in the course of exercising powers or functions or performing duties under that Act;

for the purposes of the new Act:

- (c) the information is taken to be protected information within the meaning of section 86-1 of the new Act; and
- (d) the information is taken to have been acquired by the person in the course of exercising powers or functions or performing duties under the new Act.

Part 6.3—Record keeping

Note: There are no transitional provisions in relation to Part 6.3 of the *Aged Care Act 1997*.

Part 6.4—Powers of officers

Note: There are no transitional provisions in relation to Part 6.4 of the *Aged Care Act 1997*.

Part 6.5—Recovery of overpayments

Note: There are no transitional provisions in relation to Part 6.5 of the *Aged Care Act 1997*.

Chapter 7—Miscellaneous

Note: There are no transitional provisions in relation to Chapter 7 of the *Aged Care Act 1997*.

Schedule 1—Amendment of the National Health Act 1953

1 Subsection 4(1) (definition of *approved*)

Omit “means approved, or deemed to be approved, under Part V”, substitute “has the meaning given in subsection (1AAA) of this section”.

2 After subsection 4(1A)

Insert:

(1AAA) A reference in this Act to a nursing home being approved is a reference to an approval having been in force, or having been deemed to be in force, under Part V, in respect of the nursing home, immediately before the commencement of the *Aged Care Act 1997* (other than Division 1 of that Act).

3 Section 4AAAA

Repeal the section.

4 Section 39 (definition of *approved operator*)

Omit “is in force”, substitute “was, immediately before the commencement of the *Aged Care Act 1997* (other than Division 1 of that Act), in force”.

5 Section 39 (definition of *Charter*)

Repeal the definition.

6 Sections 39AAA to 39BB

Repeal the sections.

7 Subsections 40AA(1) to (5)

Repeal the subsections, substitute:

(1) On and after the commencement of the *Aged Care Act 1997* (other than Division 1 of that Act), this section applies only to an approved nursing home that is a Government nursing home.

Note: The heading to section 40AA is replaced by the heading “**Government nursing homes**”.

8 Paragraph 40AA(6)(a)

Omit all the words from and including “and that no alteration” to and including “alterations or additions”.

9 Paragraphs 40AA(6)(ab), (bc), (bd), (c), (ca), (ch) and (cl)

Repeal the paragraphs.

10 Subsections 40AA(6A) and (6C)

Repeal the subsections.

11 Paragraph 40AA(7)(a)

Repeal the paragraph.

12 Section 40AAA

Repeal the section.

13 Subsections 40AB(1) and (3)

Omit “an approved nursing home”, substitute “a Government nursing home”.

14 Subsection 40AB(3B)

Omit “nursing” (wherever occurring), substitute “Government nursing”.

15 Subsection 40AB(4AA)

Omit “nursing” (first occurring), substitute “Government nursing”.

16 Subsections 40AB(4A), (5) and (5A)

Omit “an approved nursing home”, substitute “a Government nursing home”.

17 Section 40ABB

Repeal the section.

18 Subsection 40AC(1)

Omit “approved nursing home” (second occurring), substitute “Government nursing home”.

19 Sections 40AD and 40ADB

Repeal the sections.

20 After subsection 40AE(1)

Insert:

- (1A) If the Secretary makes a determination under subsection 46E(1) relating to an approved nursing home, the proprietor of the nursing home may request the Minister to review the Secretary's decision.

21 At the end of section 40AE

Add:

- (7) Without prejudice to the effect of the repeal of section 40AD on a decision of the Secretary of a kind referred to in subsection (2) of this section, that repeal does not affect the conduct of a review of that decision under this section.

22 Section 40AEA

Omit "40AE(1) or (2)", substitute "40AE(1), (1A) or (2)".

23 Paragraph 40AEB(1)(a)

Omit "40AE(1) or (2)", substitute "40AE(1), (1A) or (2)".

24 Subsection 40AEC(1)

Omit "40AE(1) or (2)", substitute "40AE(1), (1A) or (2)".

25 Paragraph 40AEG(1)(a)

Omit "40AE(1) or (2)", substitute "40AE(1), (1A) or (2)".

26 Paragraph 40AEH(3)(a)

Omit "40AE(1) or (2)", substitute "40AE(1), (1A) or (2)".

27 Sections 40AFA to 40AFJ

Repeal the sections.

28 At the end of section 40AG

Add:

- (10) The Secretary must not make a determination under subsection (2) in relation to a financial year that commences on or after the day

on which the *Aged Care Act 1997* (other than Division 1 of that Act) commences.

29 At the end of section 40AGA

Add:

- (8) The Secretary must not make a determination under subsection (2) in relation to a financial year that commences on or after the day on which the *Aged Care Act 1997* (other than Division 1 of that Act) commences.

30 At the end of section 40AH

Add:

- (4) The Minister must not make a determination under subsection (1) or (2) that relates to a day that occurs on or after the day on which the *Aged Care Act 1997* (other than Division 1 of that Act) commences.

31 Section 44A

Repeal the section.

32 At the end of section 45DA

Add:

- (7) The Minister must not publish a statement that contains information that relates to a day on or after the day on which the *Aged Care Act 1997* (other than Division 1 of that Act) commences.

33 At the end of section 45DC

Add:

- (9) The Minister must not publish a statement that contains information that relates to a day on or after the day on which the *Aged Care Act 1997* (other than Division 1 of that Act) commences.

34 Sections 45E, 45EA, 45EB and 45F

Repeal the sections.

35 At the end of section 46C

Add:

- (13) The Secretary must not:
- (a) determine an accounting period that would end on or after the day on which the *Aged Care Act 1997* (other than Division 1 of that Act) commences; or
 - (b) vary an accounting period so that it would end on or after the day on which the *Aged Care Act 1997* (other than Division 1 of that Act) commences.

36 At the end of section 47A

Add:

- (4) This section does not apply in respect of a day on or after the day on which the *Aged Care Act 1997* (other than Division 1 of that Act) commences.

37 At the end of section 48A

Add:

- (5) This section does not apply in respect of a day on or after the day on which the *Aged Care Act 1997* (other than Division 1 of that Act) commences.

38 At the end of section 48AB

Add:

- (2) This section does not apply in respect of a day on or after the day on which the *Aged Care Act 1997* (other than Division 1 of that Act) commences.

39 At the end of section 48B

Add:

- (4) This section does not apply in respect of a day on or after the day on which the *Aged Care Act 1997* (other than Division 1 of that Act) commences.

40 At the end of section 48C

Add:

- (4) This section does not apply in respect of a day on or after the day on which the *Aged Care Act 1997* (other than Division 1 of that Act) commences.

41 At the end of section 48D

Add:

- (4) This section does not apply in respect of a day on or after the day on which the *Aged Care Act 1997* (other than Division 1 of that Act) commences.

42 At the end of section 48E

Add:

- (4) This section does not apply in respect of a day on or after the day on which the *Aged Care Act 1997* (other than Division 1 of that Act) commences.

43 At the end of section 49AA

Add:

- (6) Regulations made for the purposes of subsection (1) must not be made in respect of the provision of respite care in approved nursing homes on or after the day on which the *Aged Care Act 1997* (other than Division 1 of that Act) commences.

44 Section 52 (definition of AIP)

After “granted”, insert “, before the commencement of the *Aged Care Act 1997* (other than Division 1 of that Act),”.

45 Sections 52A, 52B and 52C

Repeal the sections.

46 At the end of section 56

Add:

- (2) The Commonwealth benefit ceases to be payable if:
- (a) immediately before the commencement day, a Commonwealth benefit was payable to the proprietor; and
 - (b) on or after the commencement day, the residential care service that corresponds to the eligible premises:

- (i) is granted extra service status under Division 32 of the *Aged Care Act 1997*; or
- (ii) is certified under Division 38 of that Act.

(3) If:

- (a) immediately before the commencement day, a Commonwealth benefit was payable to the proprietor; and
- (b) on or after the commencement day, a distinct part of the residential care service that corresponds to the eligible premises is granted extra service status under Division 32 of the *Aged Care Act 1997*;

the amount of the Commonwealth benefit that would, apart from this section, be payable to the proprietor is to be reduced in accordance with subsection (4).

(4) The amount of the Commonwealth benefit is to be reduced by an amount worked out using the formula:

$$\text{Amount of the Commonwealth benefit} \times \frac{\text{Number of places in the distinct part}}{\text{Total number of places in the service}}$$

Example: Assume the amount of the Commonwealth benefit is \$10,000 per month, and that the distinct part of the residential care service that is granted extra service status contains 20 places and the total number of places in the service is 40. The amount of the Commonwealth benefit is to be reduced by:

$$\$200,000 \times \frac{20}{40} = \$100,000$$

(5) In this section:

commencement day means the day on which the *Aged Care Act 1997* (other than Division 1 of that Act) commences.

distinct part has the same meaning as in the *Aged Care Act 1997*.

residential care service has the same meaning as in the *Aged Care Act 1997*.

47 Subsections 57(1) and (2)

Repeal the subsections.

48 Section 58 (definition of AIP)

After “granted”, insert “, before the commencement of the *Aged Care Act 1997* (other than Division 1 of that Act),”.

49 Sections 58B, 58C and 58CA

Repeal the sections.

50 Subsection 58CE(2)

After “subparagraph 58CA(2)(c)(ii)”, insert “, as in force immediately before the commencement of the *Aged Care Act 1997* (other than Division 1 of that Act),”.

51 At the end of section 58CF

Add:

- (2) The Commonwealth benefit ceases to be payable if:
- (a) immediately before the commencement day, a Commonwealth benefit was payable to the proprietor; and
 - (b) on or after the commencement day, the residential care service that corresponds to the eligible nursing home:
 - (i) is granted extra service status under Division 32 of the *Aged Care Act 1997*; or
 - (ii) is certified under Division 38 of that Act.
- (3) If:
- (a) immediately before the commencement day, a Commonwealth benefit was payable to the proprietor; and
 - (b) on or after the commencement day, a distinct part of the residential care service that corresponds to the eligible nursing home is granted extra service status under Division 32 of the *Aged Care Act 1997*;
- the amount of the Commonwealth benefit that would, apart from this section, be payable to the proprietor is to be reduced in accordance with subsection (4).
- (4) The amount of the Commonwealth benefit is to be reduced by an amount worked out using the formula:
- $$\text{Amount of the Commonwealth benefit} \times \frac{\text{Number of places in the distinct part}}{\text{Total number of places in the service}}$$

Example: Assume the amount of the Commonwealth benefit is \$10,000 per month, and that the distinct part of the residential care service that is granted extra service status contains 20 places and the total number of places in the service is 40. The amount of the Commonwealth benefit is to be reduced by:

$$\$10,000 \times \frac{20}{40} = \$5,000 \text{ per month}$$

(5) In this section:

commencement day means the day on which the *Aged Care Act 1997* (other than Division 1 of that Act) commences.

distinct part has the same meaning as in the *Aged Care Act 1997*.

residential care service has the same meaning as in the *Aged Care Act 1997*.

52 Subsections 58CG(1) and (2)

Repeal the subsections.

53 Paragraph 58E(3)(a)

Omit “an approved nursing home”, substitute “a Government nursing home”.

54 Section 60A

Repeal the section.

55 After subsection 64(2)

Insert:

- (2A) This Part does not apply if the contract of sale of an approved nursing home was entered into:
- (a) if the Secretary has determined a notional scale of fees in relation to the final accounting period in respect of the home—after the Secretary has determined notional scale of fees in relation to:
 - (i) that final accounting period; and
 - (ii) each accounting period if any, in respect of the home, occurring before that final accounting period;

and after any overpayments outstanding in respect of the nursing home have been paid to or recovered by the Commonwealth, or deducted from amounts payable or to be paid under Part VA; or

- (b) in any other case—after the end of the period of 3 years during which the Secretary could determine a notional scale of fees in relation to the final accounting period in respect of the home.

(2B) In subsection (2A):

accounting period has the meaning given in Part VA.

final accounting period means the last accounting period, in relation to the home, that ended before the commencement of the *Aged Care Act 1997* (other than Division 1 of that Act).

notional scale of fees means a notional scale of fees determined in respect of the home under section 46D.

56 Subsection 65(1)

Insert:

investigation period means the first investigation period, or the second investigation period, in relation to an approved nursing home that is being sold.

57 Subsection 65C(1)

Omit “If”, substitute “Subject to section 65GAA, if”.

58 Subsection 65F(1)

Omit “If”, substitute “Subject to section 65GAA, if”.

59 Subsection 65G(3)

Omit “The Secretary”, substitute “Subject to section 65GAA, the Secretary”.

60 After section 65G

Insert:

**65GAA Effect on investigation periods of commencement of the
*Aged Care Act 1997***

- (1) If, apart from this section, an investigation period would end after the commencement of the *Aged Care Act 1997* (other than Division 1 of that Act), the investigation period is taken, for the purposes of this Part, to end immediately before that commencement.
- (2) The Secretary must not order an investigation to be carried out in respect of an approved nursing home in respect of a period that begins on or after the commencement of the *Aged Care Act 1997* (other than Division 1 of that Act).
- (3) If, on or after the day on which the *Aged Care Act 1997* (other than Division 1 of that Act) commences, the Secretary under subsection 65C(1), orders an investigation to be carried out:
 - (a) paragraph 65C(1)(c) applies in relation to such an investigation as if the reference to the 30 June last past were a reference to 30 June 1996; and
 - (b) paragraph 65C(1)(d) applies in relation to such an investigation as if the reference to the 1 July last past were a reference to 1 July 1996.

61 At the end of section 105AAB

Add:

- (9) Without prejudice to the effect of the repeal of section 39AC, 39BA, 39BB, 40AD, 44A, 45E or 45EA, or subsection 40AA(8), on a decision of the Minister, or a delegate of the Minister, of a kind referred to in subsection (1) of this section, that repeal does not affect:
 - (a) a reconsideration of that decision under this section; or
 - (b) any review by the Administrative Appeals Tribunal following an application under subsection (7) of this section.

62 Schedules 2 and 3

Repeal the Schedules.

Schedule 2—Amendment of the Aged or Disabled Persons Care Act 1954

1 Subsection 2(1) (definition of *approved*)

Omit “means approved, or deemed to be approved, under section 10B”, substitute “has the meaning given in subsection (1AA) of this section”.

2 Subsection 2(1) (definition of *approved operator*)

Omit “is in force”, substitute “was, immediately before the commencement of the *Aged Care Act 1997* (other than Division 1 of that Act), in force”.

3 Subsection 2(1) (definition of *approved provider*)

Omit “is in force”, substitute “was, immediately before the commencement of the *Aged Care Act 1997* (other than Division 1 of that Act), in force”.

4 Subsection 2(1) (definition of *Charter*)

Repeal the definition.

5 Subsection 2(1) (at the end of the definition of *General Conditions*)

Add “that were in force immediately before the commencement of the *Aged Care Act 1997* (other than Division 1 of that Act)”.

6 Subsection 2(1) (definition of *hostel care services*)

Omit “is in force”, substitute “was, immediately before the commencement of the *Aged Care Act 1997* (other than Division 1 of that Act), in force”.

7 Subsection 2(1) (definition of *personal care services*)

Omit “is in force”, substitute “was, immediately before the commencement of the *Aged Care Act 1997* (other than Division 1 of that Act), in force”.

8 After subsection 2(1)

Insert:

(1AA) A reference in this Act to a hostel being approved is a reference to an approval having been in force, or having been deemed to be in force, under section 10B, in respect of the hostel, immediately before the commencement of the *Aged Care Act 1997* (other than Division 1 of that Act).

9 Subsection 2(1A)

Omit “from time to time”.

10 Subsection 2(1A)

After “section 10FA”, insert “, being an agreement that was, immediately before the commencement of the *Aged Care Act 1997* (other than Division 1 of that Act), in force,”.

11 Section 6

Repeal the section.

12 At the end of section 8

Add:

(4) If:

- (a) immediately before the commencement day, a grant of financial assistance in respect of a nursing home was payable under section 7; and
- (b) on or after the commencement day, the residential care service that corresponds to the nursing home is granted extra service status under Division 32 of the *Aged Care Act 1997*; the financial assistance ceases to be payable.

(5) If:

- (a) immediately before the commencement day, a grant of financial assistance in respect of a nursing home was payable under section 7; and
- (b) on or after the commencement day, a distinct part of the residential care service that corresponds to the nursing home is granted extra service status under Division 32 of the *Aged Care Act 1997*; and
- (c) when the distinct part was granted extra service status, some or all of the financial assistance (the *remaining amount*) had not been paid;

the remaining amount is to be reduced in accordance with subsection (6).

- (6) The remaining amount is to be reduced by an amount worked out using the formula:

$$\text{Remaining amount} \times \frac{\text{Number of places in the distinct part}}{\text{Total number of places in the service}}$$

Example: Assume the amount of the grant is \$500,000, and the remaining amount is \$200,000. Assume the distinct part of the residential care service that is granted extra service status contains 20 places, and the total number of places in the service is 40. The remaining amount is to be reduced by:

$$\$200,000 \times \frac{20}{40} = \$100,000$$

- (7) In this section:

commencement day means the day on which the *Aged Care Act 1997* (other than Division 1 of that Act) commences.

distinct part has the same meaning as in the *Aged Care Act 1997*.

residential care service has the same meaning as in the *Aged Care Act 1997*.

13 Divisions 1 and 2 of Part III

Repeal the Divisions.

14 At the end of section 9A

Add:

- (6) If:
- (a) immediately before the commencement day, a grant of financial assistance in respect of a hostel was payable in accordance with an approval under subsection (1); and
 - (b) on or after the commencement day, the residential care service that corresponds to the hostel is granted extra service status under Division 32 of the *Aged Care Act 1997*;
- the financial assistance ceases to be payable.

- (7) If:
-

- (a) immediately before the commencement day, a grant of financial assistance in respect of a hostel was payable in accordance with an approval under subsection (1); and
 - (b) on or after the commencement day, a distinct part of the residential care service that corresponds to the hostel is granted extra service status under Division 32 of the *Aged Care Act 1997*; and
 - (c) when the distinct part was granted extra service status, some or all of the financial assistance (the *remaining amount*) had not been paid;
- the remaining amount is to be reduced in accordance with subsection (8).
- (8) The remaining amount is to be reduced by an amount worked out using the formula:

$$\text{Remaining amount} \times \frac{\text{Number of places in the distinct part}}{\text{Total number of places in the service}}$$

Example: Assume the amount of the grant is \$500,000, and the remaining amount is \$200,000. Assume the distinct part of the residential care service that is granted extra service status contains 20 places, and the total number of places in the service is 40. The remaining amount is to be reduced by:

$$\$200,000 \times \frac{20}{40} = \$100,000$$

- (9) In this section:

commencement day means the day on which the *Aged Care Act 1997* (other than Division 1 of that Act) commences.

distinct part has the same meaning as in the *Aged Care Act 1997*.

residential care service has the same meaning as in the *Aged Care Act 1997*.

15 Sections 10A to 10B

Repeal the sections.

16 Subsection 10C(1)

Omit “Where the Minister, under section 10B, approves a hostel”, substitute “If an approved hostel was, immediately before the commencement of the *Aged Care Act 1997* (other than Division 1 of that Act), approved”.

17 Paragraph 10C(1)(b)

Omit “as in force from time to time”.

18 At the end of paragraph 10C(1)(c)

Add “, being an agreement that was, immediately before the commencement of the *Aged Care Act 1997* (other than Division 1 of that Act), in force”.

19 At the end of section 10D

Add:

- (16) Financial assistance is not payable in respect of a day that occurs on or after the day on which the *Aged Care Act 1997* (other than Division 1 of that Act) commences.

20 Sections 10DA to 10FA

Repeal the sections.

21 At the end of section 10FB

Add:

- (7) The Minister must not publish a statement that contains information that relates to a day on or after the day on which the *Aged Care Act 1997* (other than Division 1 of that Act) commences.

22 Section 10FAA

Repeal the section.

23 Section 10FK

Omit “Despite the operation of section 10FB, if”, substitute “If”.

24 Section 10G

Repeal the section.

25 Sections 10GB to 10GG

Repeal the sections.

26 Paragraphs 10GH(1)(a) and (b)

Repeal the paragraphs, substitute:

- (a) an approval of a grant of financial assistance to the organisation under section 10GF was, immediately before the commencement of the *Aged Care Act 1997* (other than Division 1 of that Act), in force; and
- (b) an agreement under section 10GG between the Minister and the organisation was in force immediately before that commencement.

27 Subsection 10GH(5)

Repeal the subsection, substitute:

- (5) Financial assistance is not payable in respect of a day that occurs on or after the day on which the *Aged Care Act 1997* (other than Division 1 of that Act) commences.

28 Section 10GI

Repeal the section.

29 Division 3 of Part IIIA

Repeal the Division.

30 At the end of section 10H

Add:

- (8) Without prejudice to the effect of the repeal of section 10AB, 10AC, 10FAA, 10GC, 10GD, 10GK or 10GM on a decision of the Minister of a kind referred to in subsection (1) of this section, that repeal does not affect:
 - (a) a reconsideration of that decision under this section; or
 - (b) any review by the Administrative Appeals Tribunal following an application under subsection (7) of this section.

31 Section 10HA

Repeal the section.

32 Schedule 1

Repeal the Schedule.

Schedule 3—Amendment of the Social Security Act 1991

Part 1—Abolition of residential care allowance

1 Section 3 (index of definitions)

Repeal:

excluded home owner	13A(1)
nursing home	23(1)
residential care charge	13A(2)
residential care charge paid or payable	13A(4)

2 Section 3 (index of definitions, entry relating to *in residential care*)

Omit “13A(5)”, substitute “23(4CA)”.

3 Subsection 11(7) (note)

Omit “13A(5)”, substitute “23(4CA)”.

4 Section 13A

Repeal the section.

5 After subsection 23(4C):

Insert:

(4CA) For the purposes of this Act, a person is *in residential care* if the person is being provided with residential care through an aged care service conducted by an approved provider.

(4CB) In subsection (4CA), the following terms have the same meanings as in the *Aged Care Act 1997*:

aged care service
approved provider
provide
residential care

6 Paragraph 664A(4)(b)

Omit “or residential care allowance”.

7 Paragraph 664C(4)(b)

Omit “or residential care allowance”.

8 Paragraph 664E(4)(b)

Omit “or residential care allowance”.

9 Paragraph 664G(4)(b)

Omit “or residential care allowance”.

10 Paragraph 664HA(4)(b)

Omit “or residential care allowance”.

11 Point 796-C1 (note)

Omit “or residential care allowance”.

12 Point 1064-A1 (method statement, step 3)

Omit all the words after “(if any)”, substitute “for rent assistance (using MODULE D)”.

13 Point 1064-A1 (note 2)

Omit “or residential care allowance”.

14 Paragraph 1064-D1(b)

Repeal the paragraph.

15 Point 1066-A1 (method statement, step 3)

Omit all the words after “(if any)”, substitute “for rent assistance (using MODULE D)”.

16 Point 1066-A1 (note 2)

Omit “or residential care allowance”.

17 Paragraph 1066-D1(aa)

Repeal the paragraph.

18 Point 1066A-A1 (method statement, step 4)

Omit all the words after “(if any)”, substitute “for rent assistance (using MODULE EA if the person is under 18, or MODULE EB if the person is at least 18)”.

19 Point 1066A-A1 (note 2)

Omit “or residential care allowance”.

20 Subparagraph 1066A-EA2(h)(ii)

Omit “; and”.

21 Paragraph 1066A-EA2(i)

Repeal the paragraph.

22 Paragraph 1066A-EB2(i)

Omit “; and”.

23 Paragraph 1066A-EB2(j)

Repeal the paragraph.

24 Point 1067-A1 (method statement, step 3)

Omit all the words after “(if any)”, substitute “for rent assistance (using MODULE F)”.

25 Paragraph 1067-F1(ea)

Repeal the paragraph.

26 Point 1067E-A1 (method statement, step 3)

Omit all the words after “(if any)”, substitute “for rent assistance (using MODULE D)”.

27 Paragraph 1067E-D1(ca)

Repeal the paragraph.

28 Point 1068-A1 (method statement, step 3)

Omit all the words after “(if any)”, substitute “for rent assistance (using MODULE F)”.

29 Point 1068-F1 (ca)

Repeal the paragraph.

30 Point 1068-A1 (note 1)

Omit “or residential care allowance”.

31 Point 1068A-A3 (method statement, step 4, paragraph (b))

Omit “or residential care allowance (see Part 3.12B)”.

32 Point 1068A-A3 (note)

Omit “or residential care allowance”.

33 Paragraph 1068A-F1(da)

Repeal the paragraph.

34 Point 1069-A1 (method statement, step 1A)

Omit all the words after “(if any)”, substitute “for rent assistance (using MODULE E) and add the amount to the total from Step 1. The result is the person’s *gross family payment rate*”.

35 Paragraph 1069-E2(1)(ca)

Repeal the paragraph.

36 Paragraph 1069-K3(e)

Omit “or residential care allowance”.

37 Subsection 1147(2)

Omit “or residential care charge”.

38 Part 3.12B

Repeal the Part.

39 Section 1190 (table items 19B, 19C, 19D, 19E, 19F, 19G, 19H and 19I)

Repeal the items.

40 Subsection 1191(1) (table items 13B, 13C, 13D, 13E, 13F, 13G, 13H and 13I)

Repeal the items.

41 Paragraph 1207(1)(a)

Omit “, the rent assistance Module of a rate calculator or Part 3.12B (which deals with residential care allowance)”, substitute “or the rent assistance Module of a Rate Calculator”.

42 Paragraphs 1207(1)(c) and (d)

Omit “, the rent assistance Module or Part 3.12B (residential care allowance)”, substitute “or the rent assistance Module”.

43 Point 1210-A1 (note 2)

Omit “or residential care allowance”.

44 Subclause 28(4) of Schedule 1A

Omit “or residential care allowance” (wherever occurring).

Note: The heading to clause 28 of Schedule 1A is altered by omitting “**and residential care allowance**”.

45 Subclause 28(5) of Schedule 1A

Repeal the subclause, substitute:

- (5) Subclause (4) does not apply if:
 - (a) the person is entitled to rent assistance because of subclause (1) or (2); and
 - (b) the amount of rent assistance payable is worked out under clause 63.

46 Subclause 28(6) of Schedule 1A

Omit “or residential care allowance”.

47 Subclause 36(3) of Schedule 1A

Omit “or residential care allowance”.

48 Clause 63A of Schedule 1A

Repeal the clause.

Part 2—Rent assistance and related matters

49 Section 3 (index of definitions)

Insert the following entries in their appropriate alphabetical positions (determined on a letter-by-letter basis):

aged care resident	13(8A)
in residential care on a long-term basis	997(2)

50 Subsection 13(4)

Repeal the subsection.

51 After subsection 13(8)

Insert:

- (8A) Subject to subsections (8B) and (8C), a person is an ***aged care resident*** for the purposes of this Act if:
- (a) the person is in residential care; and
 - (b) an approval for residential care or flexible care under Part 2.3 of the *Aged Care Act 1997* is in force in respect of the person.
- (8B) Without limiting subsection (8A), a person is taken not to be an aged care resident if:
- (a) the person is in approved respite care, and has been in approved respite care for a continuous period of 52 days or less; and
 - (b) immediately before the person became a person in approved respite care, the person was receiving rent assistance.
- (8C) The Secretary may determine, for the purposes of subsection (8A), that a person is taken not to be an aged care resident on a day that occurs:
- (a) after the person in fact became an aged care resident; and
 - (b) before the day occurring 15 days after the person in fact became an aged care resident;
- if the Secretary is satisfied that, immediately before the day, the person was liable to pay rent.

(8D) In this section, *rent assistance* means an amount paid or payable under this Act to help cover the cost of rent.

52 Subsection 23(1) (definition of *nursing home*)

Repeal the definition.

53 Subparagraph 993(2)(c)(iii)

Omit “a nursing home patient”, substitute “in residential care”.

54 Subsection 993(2) (note 4)

Repeal the note, substitute:

Note 4: For *mental hospital patient on a long-term basis*, see subsection 997(1).

Note 4A: For *in residential care on a long-term basis*, see subsection 997(2).

55 Subparagraph 994(c)(vi)

Omit “a nursing home patient”, substitute “in residential care”.

56 Section 994 (note 5)

Repeal the note, substitute:

Note 5: For *mental hospital patient on a long-term basis*, see subsection 997(1).

Note 5A: For *in residential care on a long-term basis*, see subsection 997(2).

57 Subsection 997(2):

Repeal the subsection, substitute:

- (2) For the purposes of this Division, a person is *in residential care on a long-term basis* if:
- (a) the person is in residential care; and
 - (b) the Secretary is satisfied that the person will be in residential care for an indefinite period.

58 After paragraph 1064-D1(a)

Insert:

- (b) the person is not an aged care resident; and

59 After paragraph 1066-D1(a)

Insert:

(aa) the person is not an aged care resident; and

60 After paragraph 1066A-EA2(d)

Insert:

(da) the person is not, or is taken not to be, an aged care resident;
and

61 After paragraph 1066A-EB2(e)

Insert:

(ea) the person is not an aged care resident; and

62 After paragraph 1067-F1(c)

Insert:

(ca) the person is not an aged care resident; and

63 Paragraph 1067B(6)(c)

Omit “living in a nursing home and likely to remain there”, substitute
“in residential care, and likely to remain in residential care”.

64 After paragraph 1067E-D1(a)

Insert:

(aa) the person is not an aged care resident; and

65 After paragraph 1068-F1(aa)

Insert:

(ab) the person is not an aged care resident; and

66 After paragraph 1068A-F1(b)

Insert:

(ba) the person is not an aged care resident; and

67 After paragraph 1069-E2(1)(a)

Insert:

(aa) the person is not an aged care resident; and

68 After clause 102D of Schedule 1A

Insert:

102E Application provision—abolition of residential care allowance and amendments relating to rent assistance

- (1) The amendments to this Act made by Parts 1, 2 and 4 of Schedule 3 to the *Aged Care (Consequential Provisions) Act 1997* apply:
 - (a) to an instalment of social security benefit payable in respect of a period starting on or after the day on which the *Aged Care Act 1997* commences; and
 - (b) to a payment of social security pension in respect of a pension period starting after that day.

Part 3—Review provisions

69 Paragraph 1239(1)(e)

Repeal the paragraph, substitute:

- (e) a decision under section 44-24 of the *Aged Care Act 1997* by the Secretary, or by a person to whom the Secretary has sub-delegated power under subsection 96-2(7) of that Act;

70 Paragraph 1240(1)(e)

Repeal the paragraph, substitute:

- (e) a decision under section 44-24 of the *Aged Care Act 1997* by the Secretary, or by a person to whom the Secretary has sub-delegated power under subsection 96-2(7) of that Act;

71 Paragraph 1245(1)(d)

Repeal the paragraph, substitute:

- (d) all decisions under section 44-24 of the *Aged Care Act 1997* by the Secretary, or by a person to whom the Secretary has sub-delegated power under subsection 96-2(7) of that Act.

72 Paragraph 1282(1)(b)

Repeal the paragraph, substitute:

- (b) all decisions under section 44-24 of the *Aged Care Act 1997* by the Secretary, or by a person to whom the Secretary has sub-delegated power under subsection 96-2(7) of that Act.

73 After clause 102A of Schedule 1A

Insert:

102AA Review of decisions under section 5 of the *Aged Care Income Testing Act 1997*

(1) If:

- (a) before the commencement day, the Secretary was, under section 1239 of this Act, reviewing a decision made under section 5 of the *Aged Care Income Testing Act 1997*; and
- (b) as at the commencement day, the Secretary had not yet:

(i) affirmed the decision; or
(ii) varied the decision; or
(iii) set the decision aside and substituted a new decision;
the review of the decision has effect, on and after the commencement day, as if it were a review by the Secretary of a decision made under section 44-24 of the *Aged Care Act 1997*.

(2) In this clause:

commencement day means the day on which the *Aged Care Act 1997* (other than Division 1 of that Act) commences.

102B Applications for review of decisions made under section 5 of the *Aged Care Income Testing Act 1997*

(1) If:

(a) before the commencement day, a person had, under section 1240 of this Act, applied to the Secretary for review of a decision made under section 5 of the *Aged Care Income Testing Act 1997*; and
(b) as at the commencement day, the Secretary had not yet:
(i) affirmed the decision; or
(ii) varied the decision; or
(iii) set the decision aside and substituted a new decision;
the application for review of the decision has effect, on and after the commencement day, as if it were an application made on that day for review of a decision made under section 44-24 of the *Aged Care Act 1997*.

(2) In this clause:

commencement day means the day on which the *Aged Care Act 1997* (other than Division 1 of that Act) commences.

102C Review by SSAT of decisions relating to determinations under section 5 of the *Aged Care Income Testing Act 1997*

(1) If:

(a) before the commencement day, a person had, under section 1247 of this Act, applied to the SSAT for review of a decision; and

(b) the decision related to a determination under section 5 of the *Aged Care Income Testing Act 1997*; and

(c) as at the commencement day, the SSAT had not yet made a decision on the review;

the application for review has effect, on and after the commencement day, as if it were an application for review of a decision relating to a determination made under section 44-24 of the *Aged Care Act 1997*.

(2) In this clause:

commencement day means the day on which the *Aged Care Act 1997* (other than Division 1 of that Act) commences.

102D Review by AAT of decisions relating to determinations under section 5 of the *Aged Care Income Testing Act 1997*

(1) If:

(a) before the commencement day, a person had, under section 1282 of this Act, applied to the AAT for review of a decision; and

(b) the decision related to a determination under section 5 of the *Aged Care Income Testing Act 1997*; and

(c) as at the commencement day, the AAT had not yet made a decision on the review;

the application for review has effect, on and after the commencement day, as if it were an application for review of a decision relating to a determination made under section 44-24 of the *Aged Care Act 1997*.

(2) In this clause:

commencement day means the day on which the *Aged Care Act 1997* (other than Division 1 of that Act) commences.

Part 4—Other amendments

74 Section 3 (index of definitions)

Insert the following entries in their appropriate alphabetical positions (determined on a letter-by-letter basis):

accommodation bond	11(1)
accommodation bond balance	11(1)

75 Subsection 4(9)

Repeal the subsection, substitute:

- (9) For the purpose of this Act, a person is in *approved respite care* on a particular day if the person is eligible for a respite care supplement in respect of that day under section 44-12 of the *Aged Care Act 1997*.

76 After subsection 9(1C)

Insert:

- (1D) To avoid doubt, neither an accommodation bond nor an accommodation bond balance is a financial investment for the purposes of this Act.

77 Subsection 11(1)

Insert:

accommodation bond has the same meaning as in the *Aged Care Act 1997*.

78 Subsection 11(1)

Insert:

accommodation bond balance has the same meaning as in the *Aged Care Act 1997*.

79 After subsection 11(3A)

Insert:

- (3B) For the purposes of this Act, an accommodation bond balance in respect of an accommodation bond paid by a person is taken to be an asset of the person.

Schedule 4—Amendment of the Veterans' Entitlements Act 1986

Part 1—Abolition of residential care allowance

1 Paragraph 5H(8)(e) (note)

Omit “or residential care allowance”.

2 Paragraph 5H(8)(e) (note)

Omit “or Residential Care Allowance Module”.

3 Subsection 5NB(1) (paragraph (a) of the definition of *dependent child component*)

Omit “or residential care allowance”.

4 Subsection 5NB(1) (note 1 to the definition of *dependent child component*)

Omit “or residential care allowance”.

5 Subsection 40(1) (note 1)

Omit “, residential care allowance”.

6 Paragraph 40C(1)(a)

Omit “, the residential care allowance Module of a Rate Calculator”.

7 Paragraph 40C(1)(c)

Omit “, the residential care allowance Module”.

8 Paragraph 40C(1)(d)

Omit “or the residential care allowance Module”.

9 Paragraph 40C(1A)(a)

Omit “, the residential care allowance Module of a Rate Calculator”.

10 Paragraph 40C(1A)(c)

Omit “, the residential care allowance Module”.

11 Paragraph 40C(1A)(d)

Omit "or the residential care allowance Module".

12 Subsection 40C(2) (Relevant Modules Table, column 3A)

Repeal the column.

13 Point 41-A1 (method statement, step 2)

Omit "or the amount per year (if any) for residential care allowance using MODULE CAA below".

14 Point 41-A1 (note 2)

Omit "or residential care allowance".

15 Paragraph 41-C2(aa)

Repeal the paragraph.

16 Point 41-C2 (note 1A)

Repeal the note.

17 Section 41 (Module CAA)

Repeal the Module.

18 Point 42-A1 (method statement, step 3)

Omit "or the amount per year (if any) for residential care allowance using MODULE DAAA below".

19 Point 42-A1 (note 2)

Omit ", or residential care allowance".

20 Paragraph 42-D2(aa)

Repeal the paragraph.

21 Point 42-D2 (note 1A)

Repeal the note.

22 Section 42 (Module DAAA)

Repeal the Module.

23 Point 42-DAA12

Omit "or residential care allowance".

24 Point 42-DAA12 (note)

Omit "For *residential care allowance* see Module DAAA".

25 Paragraph 43(4)(d) (formula)

Omit "RA/RCA", substitute "RA".

26 Subsection 43(4) (definition of RA/RCA)

Repeal the definition, substitute:

RA means the amount for rent added to the person's maximum basic rate under Step 3 of Method statement A in point 43-A1.

27 Point 43-A1 (method statement A, step 3)

Omit all the words after "MODULE D below".

28 Paragraph 43-D2(aa)

Repeal the paragraph.

29 Point 43-D2 (note 1A)

Repeal the note.

30 Section 43 (Module DAA)

Repeal the Module.

31 Point 45-B4 (note)

Omit the last sentence.

32 Paragraphs 45V(1)(b), (d) and (f)

Omit "or the residential care allowance Module".

33 Paragraphs 45V(2)(b), (d) and (e)

Omit "or the residential care allowance Module".

34 Paragraph 45V(3)(b)

Repeal the paragraph, substitute:

- (b) the person would be eligible to have rent assistance added to his or her maximum basic rate under point 45X-D2 if the person were not blind (that is, if the rate of the person's income support supplement were calculated using the Method statement set out in point 45X-B1, instead of that set out in point 45X-B2);

35 Subsection 45V(3)

Omit all the words after "Module D of the Rate Calculator".

36 Point 45X-B1 (method statement, step 2)

Omit all the words after "MODULE D below".

37 Point 45X-B1 (note 3)

Omit "or residential care allowance".

38 Point 45X-B2 (method statement, step 3)

Omit all the words after "MODULE D below".

39 Paragraph 45X-D2(aa)

Repeal the paragraph.

40 Point 45X-D2 (note 1A)

Repeal the note.

41 Section 45X (Module DA)

Repeal the Module.

42 Point 45Y-B1 (method statement, step 11)

Omit all the words after "MODULE F below".

43 Point 45Y-B2 (method statement, step 3)

Omit all the words after "MODULE F below".

44 Paragraph 45Y-F2(aa)

Repeal the paragraph.

45 Point 45Y-F2 (note 1A)

Repeal the note.

46 Section 45-Y (Module FA)

Repeal the Module.

47 Point 45Y-H5 (definition of *DC add-ons*)

Omit "or residential care allowance".

48 Section 59A (Indexed and Adjusted Amounts Table, rows 6B, 6C and 7AAAA)

Repeal the rows.

49 Section 59B (CPI Indexation Table, rows 3B and 3C)

Repeal the rows.

50 Section 59GAA

Repeal the section.

51 Application

The amendments to the *Veterans' Entitlements Act 1986* made by this Part apply to instalments of pension paid after the day on which this Part commences.

Part 2—Rent assistance and related matters

52 Section 5 (index of definitions)

Insert the following entries in their appropriate alphabetical positions (determined on a letter-by-letter basis):

aged care resident	5NC(5)
in a care situation	5NC(2)
in respite care	5NC(8)
personally providing community-based care	5NC(4)
receiving community-based care	5NC(3)
residential care charge	5N(1)

53 Section 5 (index of definitions)

Repeal:

approved respite care	5R(8)
excluded property owner	5NAA(1)
in a care situation	5N(9)
in residential care	5NAA(2)
personally providing community-based care	5N(9)
receiving community-based care	5N(9)
residential care charge	5NAA(3)
residing in a nursing home	5N(8)
respite period	5Q(1)

54 Paragraph 5L(7)(b)

Omit “in a relevant care situation” (first occurring), substitute “in a care situation or is an aged care resident”.

55 Paragraph 5L(7)(b)

Omit “in a relevant care situation” (second occurring), substitute “either in a care situation or an aged care resident”.

56 Subparagraphs 5L(7)(c)(i)

Omit “in a relevant care situation”, substitute “in a care situation or is an aged care resident”.

57 Subparagraphs 5L(7)(d)(i)

Omit "in a relevant care situation", substitute "in a care situation or is an aged care resident".

58 Subparagraph 5L(7)(d)(ii)

Omit "in a relevant care situation", substitute "either in a care situation or while an aged care resident".

59 Subparagraph 5L(7)(d)(iii)

Omit "in a relevant care situation", substitute "either in a care situation or an aged care resident".

60 Paragraph 5L(7)(d)

Omit "in a residential care situation" (last occurring), substitute "either in a care situation or an aged care resident".

61 Subparagraphs 5L(7)(e)(i)

Omit "in a relevant care situation", substitute "in a care situation or is an aged care resident".

62 Subparagraph 5L(7)(e)(ii)

Omit "in a relevant care situation", substitute "in a care situation or while an aged care resident".

63 Subsection 5L(7) (notes 1 and 2)

Repeal the notes, substitute:

Note 1: For *in a care situation* see subsection 5NC(2).

Note 2: For *aged care resident* see subsection 5NC(5).

64 Subsection 5L(7A)

Repeal the subsection.

65 Subsection 5N(1)

Insert:

residential care charge means an amount paid by, or on behalf of, a person to an approved provider (within the meaning of the *Aged Care Act 1997*) for the provision of care to the person, but does not include an accommodation bond within the meaning of that Act.

66 Subsection 5N(1) (note to the definition of *ineligible property owner*)

Repeal the note, substitute:

Note: For *retirement village* see subsections 5M(3) and (4), for *property owner* see subsection 5L(4), for *principal home* see subsections 5L(5), (6) and (7), for *personally providing community-based care*, see subsection 5NC(4), for *in a care situation* see subsection 5NC(2).

Note: The heading to subsection 5N(7) is replaced by the heading "*People in care situations*".

67 Subsection 5N(1) (definition of *residing in a nursing home*)

Repeal the definition.

68 Subsection 5N(8)

Repeal the subsection.

69 Subsection 5N(9)

Repeal the subsection.

70 Section 5NAA

Repeal the section.

71 After section 5NB

Insert:

5NC *In care definitions*

(1) In this Act:

aged care resident has the meaning given by subsection (5).

in a care situation has the meaning given by subsection (2).

in respite care has the meaning given by subsection (8).

personally providing community-based care has the meaning given by subsection (4).

receiving community-based care has the meaning given by subsection (3).

(2) A person is *in a care situation* if:

- (a) the person is residing in premises at which accommodation is provided exclusively or principally for people who have a mental disability; or
 - (b) the person is a nursing-home type patient, within the meaning of the *Health Insurance Act 1973*, of a hospital; or
 - (c) the person is in respite care; or
 - (d) the person is receiving community-based care.
- (3) A person is ***receiving community-based care*** if, in the Commission's opinion, the person needs, and has been receiving or is likely to receive, a substantial level of care in a private residence for at least 14 consecutive days.
- (4) A person is ***personally providing community-based care*** for another person if, in the Commission's opinion:
- (a) the first-mentioned person is personally providing for the other person, in a private residence, a substantial level of care needed by the other person; and
 - (b) has personally provided, or is likely to personally provide, that level of care for at least 14 consecutive days.
- (5) Subject to subsections (6) and (7), a person is an ***aged care resident*** for the purposes of this Act if:
- (a) the person:
 - (i) is being provided with residential care through an aged care service conducted by an approved provider; and
 - (ii) has been provided, or in the Commission's opinion is likely to be provided, with residential care for at least 14 consecutive days; and
 - (b) an approval for residential care or flexible care under Part 2.3 of the *Aged Care Act 1997* is in force in respect of the person.
- (6) A person is taken not to be an aged care resident if the person is in respite care.
- (7) The Commission may determine, for the purposes of subsection (5), that a person is taken not to be an aged care resident on a day that occurs:
- (a) after the person in fact became an aged care resident; and

- (b) before the day occurring 15 days after the person in fact became an aged care resident;
if the Commission is satisfied that, immediately before the day, the person was liable to pay rent.
- (8) A person is *in respite care* on a particular day if the person is eligible for a respite care supplement in respect of that day under section 44-12 of the *Aged Care Act 1997*.
- (9) In this section, the following terms have the same meanings as in the *Aged Care Act 1997*:
- aged care service*
 - approved provider*
 - flexible care*
 - provide*
 - residential care*

72 Subsection 5Q(1) (definition of *respite period*)

Repeal the definition.

73 After subsection 5R(6)

Insert:

Note: For *in respite care*, see subsection 5NC(8).

74 Paragraph 5R(6)(b)

Omit “has entered approved respite care”, substitute “is in respite care”.

75 Paragraph 5R(6)(c)

Omit “has entered approved respite care”, substitute “is in respite care”.

76 Subsection 5R(7)

Omit “has entered approved respite care”, substitute “is in respite care”.

77 Subsection 5R(8)

Repeal the subsection.

78 After paragraph 41-C2(a)

Insert:

(aa) the person is not an aged care resident; and

79 Point 41-C2 (before note 1)

Insert:

Note 1A: For *aged care resident*, see subsection 5NC(5).

80 After paragraph 42-D2(a)

Insert:

(aa) the person is not an aged care resident; and

81 Point 42-D2 (before note 1)

Insert:

Note 1A: For *aged care resident*, see subsection 5NC(5).

82 After paragraph 43-D2(a)

Insert:

(aa) the person is not an aged care resident; and

83 Point 43-D2 (before note 1)

Insert:

Note 1A: For *aged care resident*, see subsection 5NC(5).

84 After paragraph 45X-D2(a)

Insert:

(aa) the person is not an aged care resident; and

85 Point 45X-D2 (before note 1)

Insert:

Note 1A: For *aged care resident*, see subsection 5NC(5).

86 After paragraph 45Y-F2(a)

Insert:

(aa) the person is not an aged care resident; and

87 Point 45Y-F2 (before note 1)

Insert:

Note 1A: For *aged care resident*, see subsection 5NC(5).

88 After subsection 52M(2)

Insert:

Note: For *residential care charge*, see subsection 5N(1).

89 Application

The amendments of the *Veterans' Entitlements Act 1986* made by this Part apply to instalments of pension paid after the day on which this Part commences.

Part 3—Other amendments

90 Subsection 5H(8)

After “income” (first occurring), insert “in relation to a person”.

91 After paragraph 5H(8)(n)

Insert:

- (na) a payment of subsidy under Part 3.1 of the *Aged Care Act 1997* made to an approved provider (within the meaning of that Act) in respect of care provided to the person;
- (nb) an accommodation bond balance (within the meaning of the *Aged Care Act 1997*) refunded to the person under that Act;

92 After subsection 5J(2B)

Insert:

- (2C) To avoid doubt, neither an accommodation bond (within the meaning of the *Aged Care Act 1997*) nor an accommodation bond balance (within the meaning of that Act) is a financial investment for the purposes of this Act.

93 After subsection 5L(3A)

Insert:

- (3B) For the purposes of this Act, an accommodation bond balance (within the meaning of the *Aged Care Act 1997*) in respect of an accommodation bond (within the meaning of that Act) paid by a person is taken to be an asset of the person.

94 Application

The amendments of the *Veterans' Entitlements Act 1986* made by this Part apply in relation to an instalment of pension paid after the day on which the *Aged Care Act 1997* commences.

Schedule 5—Amendment and repeal of other Acts

Aboriginal and Torres Strait Islander Commission Act 1989

1 At the end of paragraph 200(6)(b)

Add “, or a residential care service within the meaning of the *Aged Care Act 1997*”.

Aged Care Income Testing Act 1997

2 The whole of the Act

Repeal the Act.

Freedom of Information Act 1982

3 Schedule 3

Insert in the appropriate alphabetical position:

Aged Care Act 1997, subsection 86-2(1) and sections 86-5, 86-6 and 86-7.

Health and Other Services (Compensation) Act 1995

4 Subsection 3(1) (at the end of the definition of *eligible benefit*)

Add:

; or (c) a residential care subsidy.

5 Subsection 3(1)

Insert:

residential care has the same meaning as in the *Aged Care Act 1997*.

6 Subsection 3(1)

Insert:

residential care subsidy has the same meaning as in the *Aged Care Act 1997*.

7 Paragraph 4(2)(d)

After “care”, insert “or residential care”.

8 Division 2 of Part 2 (heading)

Repeal the heading, substitute:

Division 2—Nursing home benefit and residential care subsidy

9 Paragraph 9(1)(b)

After “care”, insert “or residential care”.

Note: The heading to section 9 is altered by adding at the end “**or residential care**”.

10 After subsection 9(2)

Insert:

- (2A) Despite Part 3.1 of the *Aged Care Act 1997*, residential care subsidy is not payable in respect of residential care if, under the reimbursement arrangement, the whole or any part of the amount payable for residential care has already been reimbursed before a claim for residential care subsidy in respect of the residential care has been submitted.

11 Paragraph 9(3)(a)

Repeal the paragraph, substitute:

- (a) nursing home care or residential care has been provided to the person; and
- (aa) nursing home benefit or residential care subsidy has been paid in respect of the nursing home care or residential care; and

12 At the end of paragraph 9(3)(b)

Add “or residential care”.

13 At the end of subsection 9(3)

Add “or residential care subsidy”.

14 Paragraph 10(1)(b)

Repeal the paragraph, substitute:

(b) nursing home care or residential care has been provided to that person in the course of treatment of, or as a result of, the injury; and

(ba) nursing home benefit or a residential care subsidy has already been paid in respect of that nursing home care or residential care; and

Note: The heading to section 10 is altered by inserting “**or residential care subsidy**” after “**benefit**”.

15 At the end of paragraph 10(1)(c)

Add “or residential care subsidy”.

16 At the end of subsection 10(1)

Add “or residential care subsidy”.

17 Paragraph 10(3)(a)

Omit “*nursing home*”.

18 Paragraph 10(3)(a)

After “expenses”, insert “or residential care expenses”.

19 Paragraph 10(3)(b)

Omit “nursing home”.

20 Subsection 10(3)

Omit “nursing home”.

21 Paragraph 17(1)(b)

After “care”, insert “or residential care”.

22 Subparagraph 21(7)(b)(ii)

After “care”, insert “or residential care”.

23 Paragraph 23(5)(b)

After “care”, insert “or residential care”.

24 Paragraph 23(7)(b)

Omit “or nursing home care needs”, substitute “needs, nursing home care needs or residential care needs”.

25 Paragraph 23(7)(c)

Omit “or nursing home care needs”, substitute “needs, nursing home care needs or residential care needs”.

26 Subparagraph 24(9)(b)(ii)

After “care”, insert “or residential care”.

27 Subsection 33E(6)

After “care”, insert “or residential care”.

28 At the end of subsection 42(1)

Add:

; or (f) whether the Secretary should make a determination under subsection 44-16(5) of the *Aged Care Act 1997*.

Home and Community Care Act 1985

29 Subclause 4(1) of the Schedule (definition of *long term residential care*)

Omit “hostel, hospital, nursing home or other institution”, substitute “hospital or other institution, or through a residential care service within the meaning of the *Aged Care Act 1997*”.

Income Tax Assessment Act 1936

30 Subsection 24ABA(1) (table)

Omit:

“(aa) the amount included in the payment because residential care charge was paid or payable to the taxpayer;” (wherever occurring).

31 Paragraph 24ACA(1)(aa)

Repeal the paragraph.

Student and Youth Assistance Act 1973

32 Paragraph 2(6)(c) of Schedule 1

Repeal the paragraph, substitute:

- (c) being provided with residential care within the meaning of the *Aged Care Act 1997* through an aged care service within the meaning of that Act conducted by an approved provider within the meaning of that Act and are likely to continue to be provided with that care for an indefinite period; or

Schedule 6—Amendment of the National Health Act 1953 relating to domiciliary nursing care benefit

1 Paragraph 58G(1)(b)

Omit “42 such days”, substitute “63 such days”.

*[Minister’s second reading speech made in—
House of Representatives on 15 May 1997
Senate on 16 June 1997]*

I HEREBY CERTIFY that the above is a fair print of the Aged Care
(Consequential Provisions) Bill 1997 which originated in the House of
Representatives and has been finally passed by the Senate and the House of
Representatives.

Clerk of the House of Representatives

IN THE NAME OF HER MAJESTY, I assent to this Act.

Governor-General
1997

(63/97)

