



Aged Care Amendment (Transition Care and Assets Testing) Act 2005

No. 22, 2005

**An Act to amend the *Aged Care Act 1997*, and for
related purposes**

Note: An electronic version of this Act is available in SCALEplus
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An Act to amend the *Aged Care Act 1997*, and for related purposes

[Assented to 21 March 2005]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Aged Care Amendment (Transition Care and Assets Testing) Act 2005*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information | | |
|---|---|--|
| Column 1 | Column 2 | Column 3 |
| Provision(s) | Commencement | Date/Details |
| 1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table | The day on which this Act receives the Royal Assent. | 21 March 2005 |
| 2. Schedule 1 | The day on which this Act receives the Royal Assent. | 21 March 2005 |
| 3. Schedule 2 | The later of: (a) the day on which this Act receives the Royal Assent; and (b) 1 July 2005. | 1 July 2005 (paragraph (b) applies) |

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Leave from residential care for flexible care

Aged Care Act 1997

1 After subsection 42-2(3)

Insert:

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

- (a) *flexible care subsidy is payable in respect of the care recipient and the day; and
- (b) the requirements specified in the Residential Care Subsidy Principles for the purposes of this paragraph are met.

Note: A lower classification level for working out the amount of the residential care subsidy may apply to the care recipient if he or she is on leave for at least 30 days continuously under subsections (2) and (3A). See section 44-4.

2 Subsection 42-2(4)

Omit “and (3)”, substitute “, (3) and (3A)”.

3 Paragraph 44-4(1)(a)

Repeal the paragraph, substitute:

- (a) the care recipient either:
 - (i) is on *extended hospital leave; or
 - (ii) is on *leave from a residential care service under subsection 42-2(3A) and has been on leave continuously for at least 30 days (including that day) first under subsection 42-2(2) and later under subsection 42-2(3A); and

4 Application

Subparagraph 44-4(1)(a)(ii) of the *Aged Care Act 1997* applies whether the period described in the subparagraph started before, on or after the commencement of the subparagraph.

5 At the end of subsection 44-4(1)

Schedule 1 Leave from residential care for flexible care

Add:

Note: Subsection 42-2(3A) is about leave from a residential care service for flexible care. Subsection 42-2(2) is about leave from such a service for attending a hospital for hospital treatment.

6 Subsection 44-6(3)

After “hospital”, insert “or in hospital and *flexible care”.

Schedule 2—Assets testing

Aged Care Act 1997

1 Subsection 44-7(1)

Omit “and, at the applicable time under subsection (2)”, substitute “, the applicable time under subsection (2) is before 1 July 2005 and, at the applicable time”.

Note: The following heading to subsection 44-7(1) is inserted “*If the applicable time is before 1 July 2005*”.

2 After subsection 44-7(1)

Insert:

If the applicable time is on or after 1 July 2005

- (1A) A person is also a **concessional resident** if the person is being provided with residential care (other than *respite care) through a residential care service, the applicable time under subsection (2) is on or after 1 July 2005 and there is in force a determination covered by subsection (1B) or (1C).
- (1B) This subsection covers a determination, made under section 44-8AA before the person *entered the residential care service, that the conditions in paragraphs (1)(a), (b) and (c) would have been met for the person at the time specified in the determination if the references in subparagraphs (1)(b)(ii) and (iii) to the entry time had been references to the time specified in the determination.
- (1C) This subsection covers a determination, made under section 44-8AA when or after the person *entered the residential care service, that the conditions in paragraphs (1)(a), (b) and (c) were met at the applicable time under subsection (2).

3 Subsection 44-7(2)

Omit “for the purposes of subsection (1)”.

Note 1: The following heading to subsection 44-7(2) is inserted “*What is the applicable time?*”.

Note 2: The following heading to subsection 44-7(3) is inserted “*If there is financial hardship (whatever the applicable time)*”.

4 Subsection 44-8(1)

Omit “and, at the applicable time under subsection (2)”, substitute “, the applicable time under subsection (2) is before 1 July 2005 and, at the applicable time”.

Note: The following heading to subsection 44-8(1) is inserted “*If the applicable time is before 1 July 2005*”.

5 After subsection 44-8(1)

Insert:

If the applicable time is on or after 1 July 2005

- (1A) A person is also an *assisted resident* if the person is being provided with residential care (other than *respite care) through a residential care service, the applicable time under subsection (2) is on or after 1 July 2005 and there is in force a determination covered by subsection (1B) or (1C).
- (1B) This subsection covers a determination, made under section 44-8AA before the person *entered the residential care service, that the conditions in paragraphs (1)(a), (b) and (c) would have been met for the person at the time specified in the determination if the references in subparagraphs (1)(b)(ii) and (iii) to the entry time had been references to the time specified in the determination.
- (1C) This subsection covers a determination, made under section 44-8AA when or after the person *entered the residential care service, that the conditions in paragraphs (1)(a), (b) and (c) were met at the applicable time under subsection (2).

6 Subsection 44-8(2)

Omit “for the purposes of subsection (1)”.

Note: The following heading to subsection 44-8(2) is inserted “*What is the applicable time?*”.

7 After section 44-8

Insert:

44-8AA Determinations for sections 44-7 and 44-8*Making determinations*

- (1) The Secretary may make a determination (the ***resident status determination***) described in section 44-7 or 44-8 if:
 - (a) the person mentioned in that section has applied, in a form approved by the Secretary, for the resident status determination; and
 - (b) the Secretary has made a determination (the ***asset value determination***) under section 44-8AB of the value of the person's assets at the time that is specified in the resident status determination; and
 - (c) the Secretary is satisfied of the matters relating to the person that are to be set out in the resident status determination.

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

Giving notice of decision on resident status determination

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

When the resident status determination comes into force

- (3) The resident status determination comes into force on the day it is made or an earlier day stated in the determination to be the day on which the determination comes into force.
- (4) However, if the determination is made after the person *enters the residential care service mentioned in subsection 44-7(1A) or 44-8(1A), the day stated must not be before the day the determination is made, unless the Secretary is satisfied that exceptional circumstances justify the determination coming into force on the day stated.

When the resident status determination ceases to be in force

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

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

- (6) The Secretary may by written instrument revoke the resident status determination if he or she ceases to be satisfied of any of the matters relating to the person that are set out in the determination. The determination ceases to be in force on a day specified in the instrument (which may be before the instrument is made).
- (7) Within 14 days after revoking the resident status determination, the Secretary must give written notice of the revocation and the day on which the determination ceases being in force to:
- (a) the person; and
 - (b) each approved provider (if any) who has provided the person with residential care (other than *respite care) through a residential care service since the determination ceased to be in force.

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

Making determinations

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

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

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

Giving notice of the determination

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

When the determination is in force

- (3) The determination is in force for the period specified in, or worked out under, the determination.
- (4) However, the Secretary may by written instrument revoke the determination if he or she is satisfied that it is incorrect. The determination ceases to be in force on a day specified in the instrument (which may be before the instrument is made).
- (5) Within 14 days after revoking the determination, the Secretary must give written notice of the revocation and the day the determination ceases being in force to:
- (a) the person; and
 - (b) if the Secretary is aware that the person has given an approved provider a copy of the determination—the approved provider.

8 Section 44-9

Omit “concessional resident or an assisted resident”, substitute “concessional resident under subsection 44-7(1) or an assisted resident under subsection 44-8(1)”.

9 At the end of section 44-9

Add:

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

10 Subsection 44-10(1)

Omit “or 44-8”, substitute “, 44-8 or 44-8AB”.

11 Subsection 44-10(2)

Omit “If the care recipient is a *homeowner, the value of the home owned by the care recipient is to be disregarded in working out the value of the care recipient’s assets if, at the time of the care recipient’s *entry to the residential care service, the home”, substitute “In working out the value at a particular time of the assets of a person who is or was a *homeowner then, disregard the value of a home that, at the time,”.

12 Paragraph 44-10(2)(a)

Omit “care recipient”, substitute “person”.

13 Subparagraphs 44-10(2)(b)(ii) and (c)(ii)

Omit “of the care recipient’s entry to the residential care service”.

14 Paragraph 57-2(1)(e)

Omit “7 days”, substitute “21 days”.

15 Subsection 57-2(2)

Omit “7 days” (first occurring), substitute “21 days”.

16 At the end of subsection 57-12(1)

Add:

Note: The operation of this section may be modified if, before entering an accommodation bond agreement, the care recipient gives the approved provider a determination under section 44-8AB of the value of the care recipient’s assets. See subsection (5).

17 At the end of section 57-12

Add:

- (5) However, subsections (1), (2) and (3) are modified as described in the table, and subsection (4) does not apply, if, before entering the *accommodation bond agreement, the care recipient gives the approved provider a copy of a determination that:
- (a) is a determination under section 44-8AB of the value of the care recipient’s assets at a time (the *valuation time*) that is before or at the time (the *entry time*) the care recipient *enters the residential care service; and
 - (b) is in force at the entry time, if that is after the valuation time.

Modifications of subsections (1), (2) and (3)

| If: | Subsections (1), (2) and (3) have effect as if: |
|---|--|
| 1 The valuation time is before the entry time | (a) the references in paragraphs (1)(b) and (3)(a) to the time of the care recipient's *entry to the residential care service were references to the valuation time; and (b) the value of the care recipient's assets at the valuation time were the value specified in the determination |
| 2 The valuation time is at the entry time | The value of the care recipient's assets at the entry time were the value specified in the determination |

18 Subsection 57-16(2) (note 2)

Omit "7 days", substitute "21 days".

19 Paragraph 57A-2(1)(e)

Omit "7 days", substitute "21 days".

20 Subsection 57A-2(2)

Omit "7 days" (first occurring), substitute "21 days".

21 At the end of subsection 57A-6(1)

Add:

Note: The operation of this section may be modified if, before entering into an accommodation charge agreement, the care recipient gives the approved provider a determination under section 44-8AB of the value of the care recipient's assets. See subsection (4).

22 At the end of section 57A-6

Add:

- (4) However, subsections (1) and (2) are modified as described in the table, and subsection (3) does not apply, if, before entering into the *accommodation charge agreement, the care recipient gives the approved provider a copy of a determination that:
- (a) is a determination under section 44-8AB of the value of the care recipient's assets at a time (the *valuation time*) that is before or at the time (the *entry time*) the care recipient *enters the residential care service; and
 - (b) is in force at the entry time, if that is after the valuation time.

Modifications of subsections (1) and (2)

| If: | Subsections (1) and (2) have effect as if: |
|---|---|
| 1 The valuation time is before the entry time | (a) the reference in paragraph (1)(b) to the time of the care recipient's *entry to the residential care service were a reference to the valuation time; and (b) the value of the care recipient's assets at the valuation time were the value specified in the determination; and (c) subsection 57-12(3) defined <i>minimum permissible asset value</i> by reference to the *basic age pension amount at the valuation time (instead of the entry time) |
| 2 The valuation time is at the entry time | The value of the care recipient's assets at the entry time were the value specified in the determination |

23 Section 85-1 (after table item 39)

Insert:

| | |
|--|----------------------|
| 39A To grant or refuse an application for a determination described in subsection 44-7(1A) or 44-8(1A) (which is relevant to a person's status as a *concessional resident or an *assisted resident) | subsection 44-8AA(1) |
| 39B To revoke a determination described in subsection 44-7(1A) or 44-8(1A) | subsection 44-8AA(6) |
| 39C To determine the value of a person's assets | subsection 44-8AB(1) |
| 39D To revoke a determination of the value of a person's assets | subsection 44-8AB(4) |

24 After subsection 96-2(2)

Insert:

- (2A) The Secretary may, in writing, delegate the Secretary's powers under section 44-8AA and 44-8AB to any or all of the following:
- (a) the *CEO;
 - (b) the Secretary of the Department administering the *Veterans' Entitlements Act 1986*.

Note: The Secretary's powers under section 44-8AA relate to determinations affecting whether persons are concessional residents or assisted residents. The Secretary's powers under section 44-8AB relate to determinations of the value of persons' assets.

25 After subsection 96-2(3)

Insert:

(3A) The Secretary may, in writing, delegate to either or both of the following:

- (a) the *CEO;
- (b) the Secretary of the Department administering the *Veterans' Entitlements Act 1986*;

the Secretary's powers under section 85-4 or 85-5 relating to a decision:

- (c) to grant or refuse an application for a determination described in subsection 44-7(1A) or 44-8(1A); or
- (d) to revoke a determination made under subsection 44-8AA(1); or
- (e) to determine under section 44-8AB the value of a person's assets; or
- (f) to revoke a determination under that section of the value of a person's assets.

26 After subsection 96-2(6)

Insert:

(6A) If, under subsection (2A) or (3A), the Secretary delegates a power mentioned in that subsection to the *CEO, the CEO may, by writing, sub-delegate the power to an *employee of the *Services Delivery Agency.

(6B) If, under subsection (2A) or (3A), the Secretary delegates a power mentioned in that subsection to the Secretary of the Department administering the *Veterans' Entitlements Act 1986*, the Secretary of that Department may, by writing, sub-delegate the power to an APS employee in that Department.

27 Application of amendments

Entry and approval on or after 1 July 2005

- (1) The amendments made by this Schedule apply in relation to the entry of a person into a residential care service (whether for the first time or not) if:
- (a) the entry occurs on or after 1 July 2005; and

- (b) the person is approved under section 22-1 of the *Aged Care Act 1997* on or after 1 July 2005 as a recipient of residential care.

Entry on or after 1 July 2005, approval before 1 July 2005

- (2) The amendments also apply in relation to the entry of a person into a residential care service (whether for the first time or not) if:
 - (a) the entry occurs on or after 1 July 2005; and
 - (b) the person was approved under section 22-1 of the *Aged Care Act 1997* before 1 July 2005 as a recipient of residential care; and
 - (c) the approval had not expired, lapsed or been revoked under Division 23 of that Act by the time of the entry; and
 - (d) the person chooses that the amendments apply.
- (3) The person is taken to have made such a choice if he or she has applied in the approved form for the Secretary to determine the value of the person's assets at a time that is before or at the time of entry. This does not limit the ways in which the person may make such a choice.

Exception to application—re-entry into care within 28 days

- (4) Despite subitems (1) and (2), the amendments do not apply in relation to the person entering the residential care service (the *new service*) if:
 - (a) the entry occurs within 28 days after the person was last provided with residential care (other than respite care) through a residential care service (the *earlier service*) and the person had paid an accommodation bond for entry to the earlier service; and
 - (b) the amendments did not apply in relation to the person's most recent earlier entry into the earlier service; and
 - (c) it is not the case that:
 - (i) the person was provided with a low level of residential care through the earlier service; and
 - (ii) the person is provided with a high level of residential care through the new service.

Note: If the amendments do not apply, then the *Aged Care Act 1997* as in force without the amendments applies to the person.

*[Minister's second reading speech made in—
House of Representatives on 10 February 2005
Senate on 7 March 2005]*

(11/05)