



# **Aged Care Amendment (Residential Care) Act 2007**

**No. 109, 2007**

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

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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# **Aged Care Amendment (Residential Care) Act 2007**

**No. 109, 2007**

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

[Assented to 28 June 2007]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Aged Care Amendment (Residential Care) Act 2007*.

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## 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.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
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.	28 June 2007
2. Schedule 1	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 12 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	20 March 2008 (see F2008L00205)

Note: This table relates only to the provisions of this Act as originally passed by both Houses of 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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Residential care**

### **Part 1—Amendment of the Aged Care Act 1997**

#### **1 Subsection 22-2(3)**

Repeal the subsection (including the note), substitute:

- (3) If an approval is for residential care, the Secretary may limit the approval to a \*low level of residential care.

Note: Limitations of approvals to a low level of residential care are reviewable under Part 6.1.

#### **2 Paragraph 22-6(2)(c)**

Omit “specified level of care”, substitute “\*low level of residential care”.

#### **3 At the end of subsection 25-1(2)**

Add “The Classification Principles may specify methods or procedures that the Secretary must follow in determining the appropriate classification level for the care recipient.”.

#### **4 Paragraph 25-1(3)(b)**

Repeal the paragraph.

#### **5 Paragraph 25-3(1)(b)**

Repeal the paragraph, substitute:

- (b) if a person has been authorised under section 25-5 to make those appraisals—that person.

#### **6 Subsection 25-3(2)**

Repeal the subsection, substitute:

- (2) The appraisal:
- (a) must not be made during the period of 7 days starting on the day on which the approved provider began providing care to the care recipient; and
  - (b) must not be given to the Secretary during the period of 28 days starting on the day on which the approved provider began providing care to the care recipient.

- (2A) However, if the Classification Principles specify:
- (a) circumstances in which subsection (2) does not apply in relation to an appraisal; and
  - (b) an alternative period during which the appraisal may be made in those circumstances;
- the times when the appraisal may be made and given to the Secretary are to be determined in accordance with the Classification Principles.

**7 After subsection 25-3(3)**

Insert:

- (3A) The Secretary may approve forms which must be used in the course of making an appraisal.

**8 Subsection 25-4(1)**

After “appraisals under section 25-3”, insert “and reappraisals under section 27-4”.

Note: The heading to section 25-4 is altered by adding at the end “**and reappraisals**”.

**9 Paragraph 25-4(1)(a)**

After “appraisals”, insert “or reappraisals connected with classifications”.

**10 Paragraphs 25-4(1)(b) and (c)**

After “appraisals”, insert “or reappraisals”.

**11 Subsection 25-4(2)**

After “appraisals”, insert “or reappraisals”.

**12 Subsection 25-4(3)**

After “appraisals”, insert “and reappraisals”.

**13 Subsection 25-4(5)**

Repeal the subsection, substitute:

- (5) The Secretary must notify the approved provider, in writing, of the decision:
- (a) not to suspend the approved provider from making appraisals and reappraisals; or



- (b) to suspend the approved provider from making appraisals and reappraisals for the period specified in the notice.

#### **14 After subsection 25-4(6)**

Insert:

- (6A) The Secretary may specify in the notice that the suspension will not take effect if, within the period specified in the notice, the approved provider enters into an agreement with the Secretary (see section 25-4A).
- (6B) If the Secretary does so:
- (a) the suspension does not take effect if the approved provider enters into the agreement within the period specified in the notice (unless the Secretary later decides under subsection 25-4B(1) that it is to take effect); and
  - (b) the suspension takes effect on the day after the last day of the period specified in the notice, if the approved provider does not enter into the agreement within that period.

#### **15 Subsection 25-4(7)**

Omit “A suspension”, substitute “If the Secretary does not do so, the suspension”.

#### **16 After section 25-4**

Insert:

#### **25-4A Stay of suspension agreements**

- (1) An agreement entered into for the purposes of subsection 25-4(6A) may require the approved provider to do either or both of the following:
- (a) provide, at its expense, such training as is specified in the agreement for its officers, employees and agents within the period specified in the agreement;
  - (b) appoint an adviser, approved by the Secretary, to assist the approved provider to conduct, in a proper manner, appraisals and reappraisals of the care needs of care recipients.

- (2) If the agreement requires the approved provider to appoint an adviser, the approved provider must, within the period specified in the agreement:
  - (a) nominate, in writing, a proposed adviser to the Secretary; and
  - (b) give the Secretary written information about the proposed adviser, to allow the Secretary to decide whether the proposed adviser is suitable.
- (3) The approved provider must appoint the adviser within 3 days after the approved provider is informed of the Secretary's approval.

#### **25-4B Stayed suspension may take effect**

- (1) The Secretary may decide that the suspension is to take effect, if the Secretary is satisfied that:
  - (a) if the agreement requires the approved provider to appoint an adviser—the approved provider has not complied with subsection 25-4A(2) or (3); or
  - (b) the approved provider has not complied with the agreement; or
  - (c) despite having complied with the agreement, the approved provider has continued not to conduct in a proper manner appraisals and reappraisals of the care needs of care recipients provided with care through the aged care service.
- (2) If the Secretary decides that the suspension is to take effect, the Secretary must notify the approved provider, in writing, of the decision.
- (3) The suspension takes effect 7 days after the day on which that notice is given and has effect from that day for the whole of the suspension period specified in the notice under subsection 25-4(5).
- (4) The Secretary must not give an approved provider a notice under subsection (2) after the last day on which the suspension would have had effect had the approved provider not entered into the agreement.

### **25-4C Applications for lifting of suspension**

- (1) The Secretary may lift the suspension of an approved provider from making appraisals and reappraisals if the approved provider applies, in writing, to the Secretary to do so.
- (2) Subsection (1) applies whether or not the suspension has taken effect.
- (3) The application must:
  - (a) be in a form approved by the Secretary; and
  - (b) meet any requirements specified in the Classification Principles.
- (4) In deciding whether it is appropriate for the suspension to be lifted, the Secretary must have regard to any matters specified in the Classification Principles.

### **25-4D Requests for further information**

- (1) If the Secretary needs further information to decide the application, the Secretary may give the applicant a written notice requiring the applicant to give the further information within 14 days after receiving the notice, or within such shorter period as is specified in the notice.
- (2) The application is taken to be withdrawn if the applicant does not give the further information within the 14 days, or within the shorter period. However, this does not stop the applicant from reapplying.

Note: The period for giving the further information can be extended—see section 96-7.
- (3) The notice must contain a statement setting out the effect of subsection (2).

### **25-4E Notification of Secretary's decision**

- (1) The Secretary must notify the approved provider, in writing, of the Secretary's decision whether to lift the suspension. The notice must be given:
  - (a) within 28 days after receiving the application; or

(b) if the Secretary has requested further information under section 25-4D—within 28 days after receiving the information.

(2) If the Secretary decides that the suspension is to be lifted, the notice must:

- (a) inform the approved provider when the suspension will cease to apply; and
- (b) set out any other matters specified in the Classification Principles.

### **17 Subsection 25-5(1)**

After “appraisals” (first occurring), insert “and reappraisals”.

Note: The heading to section 25-5 is altered by adding at the end “**or reappraisals**”.

### **18 Subsection 25-5(1)**

Omit “must”, substitute “may”.

### **19 Subsection 25-5(1)**

After “appraisals” (second occurring), insert “or reappraisals”.

### **20 Subsection 25-5(2)**

After “appraisals”, insert “or reappraisals”.

### **21 Section 26-1**

Omit “the day on which provision of the level of care specified in an appraisal to the care recipient began, if the appraisal”, substitute “the day on which the approved provider began providing care to the care recipient, if the appraisal by that approved provider”.

Note: The heading to section 26-2 is altered by omitting “**Assessments**” and substituting “**Appraisals**”.

### **22 Divisions 27 and 28**

Repeal the Divisions, substitute:

## Division 27—Expiry and renewal of classifications

### 27-1 When do classifications cease to have effect?

- (1) A classification that has an \*expiry date under section 27-2 ceases to have effect on that date, unless it is renewed under section 27-6.
- (2) A classification that does not have an \*expiry date under section 27-2 continues to have effect but may be renewed under section 27-6 if a reappraisal is made under section 27-4.

### 27-2 Expiry dates and reappraisal periods

- (1) The following table sets out:
  - (a) when a classification has an \*expiry date; and
  - (b) when that expiry date occurs; and
  - (c) for the purposes of renewing the classification, the reappraisal period for the expiry date:

<b>Expiry dates and reappraisal periods</b>			
<b>Item</b>	<b>If this circumstance applies in relation to the care recipient ...</b>	<b>the <i>expiry date</i> for the care recipient's classification is ...</b>	<b>and the <i>reappraisal period</i> for that *expiry date is ...</b>
1	The care recipient: <ol style="list-style-type: none"> <li>(a) ceases being provided with residential care or flexible care through a residential care service or a flexible care service (other than because the recipient is on *leave); and</li> <li>(b) has not *entered an *aged care service that is a residential care service or a flexible care service within 28 days after ceasing to be provided with that care.</li> </ol>	The day on which the care recipient ceased being provided with that care.	No reappraisal period.
2	The care recipient has taken	The day on which that	The period:

**Schedule 1 Residential care**  
**Part 1 Amendment of the Aged Care Act 1997**

<b>Expiry dates and reappraisal periods</b>			
<b>Item</b>	<b>If this circumstance applies in relation to the care recipient ...</b>	<b>the <i>expiry date</i> for the care recipient's classification is ...</b>	<b>and the <i>reappraisal period</i> for that <i>*expiry date</i> is ...</b>
	*extended hospital leave.	*leave ends.	(a) beginning 7 days after the day on which the care recipient next began receiving residential care from an approved provider; and (b) ending 2 months after that day.
3	Both: (a) an approved provider began providing the care recipient with residential care (other than residential care provided as <i>*respite care</i> ) on the day after the end of an in-patient hospital episode (see subsection (7)); and (b) the care recipient was not on <i>*leave</i> at the time of that attendance.	The day that occurs 6 months after the day on which the approved provider began providing care to the care recipient.	The period: (a) beginning one month before the <i>*expiry date</i> for the classification; and (b) ending one month after that date.
4	The care recipient has taken <i>*extended hospital leave</i> .	The day that occurs 6 months after the first day on which an approved provider began providing care to the care recipient after the end of that <i>*leave</i> .	The period: (a) beginning one month before the <i>*expiry date</i> for the classification; and (b) ending one month after that date.

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**Expiry dates and reappraisal periods**

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<b>Item</b>	<b>If this circumstance applies in relation to the care recipient ...</b>	<b>the <i>expiry date</i> for the care recipient's classification is ...</b>	<b>and the <i>reappraisal period</i> for that *expiry date is ...</b>
5	The care recipient's classification has been renewed under section 27-5 because the care recipient's care needs have changed significantly.	The day that occurs 6 months after the day on which the renewal took effect.	The period: (a) beginning one month before the *expiry date for the classification; and (b) ending one month after that date.
6	The Secretary has given the approved provider a notice under section 27-3 requiring a reappraisal of the level of care needed by the care recipient to be made.	Either: (a) the day after the last day of the period specified in the notice within which the reappraisal is to be made; or (b) if the reappraisal is received by the Secretary before the end of that period—the date of receipt.	The period specified in the notice within which the reappraisal is to be made.
7	The care recipient is being provided with residential care as *respite care.	The day on which the period during which the care recipient was provided with the respite care ends.	No reappraisal period.

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Note: If a classification has an expiry date but no reappraisal period, the classification cannot be renewed (see subsection 27-6(1)).

*Reappraisal period deferred if care recipient on leave*

(2) If:

(a) the \*expiry date for the classification occurs:

- (i) while the care recipient is on \*leave (other than \*extended hospital leave) from a residential care service; or
  - (ii) within one month after the residential care service began providing residential care to the care recipient after that leave ended; and
- (b) the classification does not have that expiry date because of item 6 of the table in subsection (1);
- then, despite subsection (1), the reappraisal period for the classification is the period of 2 months beginning on the day on which the residential care service began providing residential care to the care recipient after that leave ended.

*If more than one expiry date applies*

- (3) If:
- (a) a classification has an \*expiry date (the ***first expiry date***) because a particular circumstance specified in the table in subsection (1) applies in relation to the care recipient; and
  - (b) another circumstance specified in that table starts to apply in relation to the care recipient before the first expiry date;
- then, subject to subsection (4):
- (c) the first expiry date ceases to apply in relation to the classification; and
  - (d) the expiry date for the other circumstance applies in relation to the classification.
- (4) If the other circumstance is that specified in item 6 of the table:
- (a) the first expiry date continues to apply in relation to the classification, unless the relevant notice under section 27-3 is given before the start of the reappraisal period for the first expiry date; and
  - (b) the \*expiry date for the circumstance specified in item 6 of the table does not apply.

*If reappraisal made at initiative of approved provider before expiry date*

- (5) If:
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- (a) a classification has an \*expiry date because a particular circumstance specified in the table in subsection (1) applies in relation to the care recipient; and
  - (b) before the start of the reappraisal period for that expiry date, the Secretary receives a reappraisal of the level of care needed by the care recipient made under section 27-4;
- that expiry date ceases to apply in relation to the classification.

*Classification Principles may specify different expiry date or reappraisal period*

- (6) The Classification Principles may specify that:
  - (a) a different \*expiry date applies in relation to a classification to that provided for under this section; or
  - (b) a different reappraisal period applies in respect of an expiry date to that provided for under this section.

*Meaning of in-patient hospital episode*

- (7) In this section, *in-patient hospital episode*, in relation to a care recipient, means a continuous period during which the care recipient:
  - (a) is an in-patient of a hospital; and
  - (b) is provided with medical or related care or services.

### **27-3 Reappraisal required by Secretary**

- (1) If:
  - (a) the Secretary is satisfied that an approved provider, or a person acting on an approved provider's behalf, gave false, misleading or inaccurate information in a substantial number of appraisals or reappraisals connected with classifications reviewed under subsection 29-1(3); and
  - (b) the classifications made in connection with those appraisals or reappraisals were changed under section 29-1; and
  - (c) the Secretary is satisfied that, after those classifications were changed, the approved provider continued to give false, misleading or inaccurate information in other appraisals or reappraisals;

the Secretary may give the approved provider a written notice requiring a reappraisal to be made of the level of care needed by

one or more care recipients to whom the approved provider provides care.

- (2) In considering whether a number of appraisals or reappraisals in which false, misleading or inaccurate information was given is substantial, the Secretary must apply the criteria (if any) specified in the Classification Principles.
- (3) The notice must specify a period for each care recipient within which the reappraisal of the level of care needed by the care recipient is to be made.
- (4) The Secretary may, at his or her own initiative or on application from the approved provider, give the approved provider a notice varying or revoking a notice under subsection (1). The Secretary may vary a notice more than once.
- (5) The Secretary may, in writing, authorise a person or persons (other than the approved provider) to make the reappraisals required by the notice under subsection (1).
- (6) The Secretary must inform the approved provider, in writing, of the name of a person who has been authorised under subsection (5).

#### **27-4 Reappraisal at initiative of approved provider**

- (1) A reappraisal of the level of care needed by a care recipient may be made at the initiative of an approved provider in accordance with this section.

##### *Reappraisal after first year of effect of classification or renewal*

- (2) A reappraisal of the level of care needed by a care recipient may be made if:
  - (a) the classification of the care recipient has been in effect for more than 12 months; or
  - (b) if the classification of the care recipient has been renewed—the most recent renewal of the classification has been in effect for more than 12 months.

##### *Reappraisal if needs of care recipient have changed significantly*

- (3) A reappraisal of the level of care needed by a care recipient may be made if the care needs of the care recipient change significantly.

- (4) The Classification Principles may specify the circumstances in which the care needs of a care recipient are taken to change significantly.

*Reappraisal if care recipient enters another aged care service*

- (5) If a care recipient \*enters an \*aged care service (the **later service**) that is a residential care service or a flexible care service within 28 days after another residential care service or flexible care service ceased to provide residential care or flexible care to the care recipient (other than because the care recipient was on \*leave), a reappraisal of the level of care needed by the care recipient may be made during the period:
- (a) beginning 7 days after the day on which the care recipient entered the later service; and
  - (b) ending 2 months after the day on which the care recipient entered the later service.

*Reappraisal if care recipient classified at lowest applicable classification level*

- (6) A reappraisal of the level of care needed by a care recipient may be made if the care recipient is classified at the \*lowest applicable classification level.
- (7) Subsections (2), (3) and (6) do not apply if the care recipient is classified at the \*lowest applicable classification level because of the operation of subsection 25-1(4).

## **27-5 Requirements for reappraisals**

- (1) A reappraisal of the level of care needed by a care recipient must be made in accordance with the Classification Principles applying to an appraisal under Division 25.
- (2) The reappraisal must be made by:
- (a) the approved provider that is providing care to the care recipient, or a person acting on the approved provider's behalf; or
  - (b) if a person has been authorised under subsection 25-5(1) or 27-3(5) to make the reappraisal—that person.
- (3) The reappraisal must be in a form approved by the Secretary.

- (4) The Secretary may approve forms which must be used in the course of making a reappraisal.

### **27-6 Renewal of classifications**

- (1) The Secretary may renew the classification of a care recipient (other than a classification to which item 1 or 7 of the table in subsection 27-2(1) applies) if:
- (a) the Secretary receives a reappraisal of the level of care needed by the care recipient; and
  - (b) either:
    - (i) the reappraisal is made in respect of an expiry date for the classification; or
    - (ii) the reappraisal is made under section 27-4.

Note: Refusals to renew the classifications of care recipients are reviewable under Part 6.1.

- (2) The renewal of the classification must specify the appropriate \*classification level for the care recipient. The Classification Principles may specify methods or procedures that the Secretary must follow in determining the appropriate classification level for the care recipient.
- (3) In renewing the classification, the Secretary must take into account:
- (a) the reappraisal made in respect of the care recipient; and
  - (b) any other matters specified in the Classification Principles.

### **27-7 Date of effect of renewal of classification that has an expiry date—reappraisal received during reappraisal period**

- (1) This section applies if:
- (a) a reappraisal is made in respect of an \*expiry date for a care recipient's classification; and
  - (b) the reappraisal is received by the Secretary during the reappraisal period for the expiry date (see subsection 27-2(1)).
- (2) The renewal of the classification takes effect from the \*expiry date for the classification.

- (3) Despite subsection (2), if the \*expiry date for the classification occurs:
- (a) while the care recipient is on \*leave from a residential care service; or
  - (b) within one month after a residential care service began providing residential care to the care recipient after that leave ended;
- the renewal of the classification takes effect from the day on which the care recipient next began receiving residential care after that leave ended.
- (4) Despite subsections (2) and (3), if the Secretary has given a notice under section 27-3 requiring the reappraisal to be made, the renewal of the classification takes effect from the day on which the reappraisal is received by the Secretary.

**27-8 Date of effect of renewal of classification that has an expiry date—reappraisal received after reappraisal period**

- (1) If:
- (a) a reappraisal is made in respect of an \*expiry date for a care recipient's classification; and
  - (b) the reappraisal is received by the Secretary after the end of the reappraisal period for that expiry date (see subsection 27-2(1));
- the renewal of the classification takes effect from the day on which the reappraisal is received by the Secretary.
- (2) However, if the Secretary is satisfied that the reappraisal was sent in sufficient time to be received by the Secretary, in the ordinary course of events, within that period, the renewal is taken to have had effect from the \*expiry date for the classification.
- Note: A decision that the Secretary is not satisfied a reappraisal was sent in sufficient time is reviewable under Part 6.1.
- (3) In considering whether a reappraisal received after that period was sent in sufficient time, the Secretary may have regard to any information, relevant to that question, that the approved provider gives to the Secretary.

- (4) The Secretary must notify the approved provider, in writing, if the Secretary is not satisfied that a reappraisal received outside that period was sent in sufficient time.
- (5) Subsections (2), (3) and (4) do not apply if the Secretary has given a notice under section 27-3 requiring the reappraisal to be made.

**27-9 Date of effect of renewal—reappraisals at initiative of approved provider**

If:

- (a) a reappraisal of the level of care needed by the care recipient is made under section 27-4; and
- (b) if there is an \*expiry date for the care recipient’s classification—the reappraisal is received by the Secretary before the start of the reappraisal period in respect of that expiry date;

the renewal of the classification takes effect:

- (c) if the reappraisal is made under subsection 27-4(2), (3) or (6)—from the day on which the reappraisal is received by the Secretary; or
- (d) if the reappraisal is made under subsection 27-4(5)—from the day on which the care recipient \*entered the \*aged care service.

**23 Paragraph 29-1(1)(b)**

Omit “made incorrectly”, substitute “incorrect”.

**24 Subsection 29-1(2)**

Omit “Division 28”, substitute “section 27-6”.

**25 Subsection 29-1(3)**

Repeal the subsection, substitute:

- (3) Before changing a classification under subsection (1), the Secretary must review it, having regard to:
  - (a) any material on which the classification was based that the Secretary considers relevant; and
  - (b) any matters specified in the Classification Principles as matters to which the Secretary must have regard; and

- (c) any other material or information that the Secretary considers relevant (including material or information that has become available since the classification was made).

**26 Paragraph 42-1(4)(b)**

Omit “so as to preclude any high level of residential care”, substitute “to a \*low level of residential care”.

**28 Subsection 42-2(2) (note)**

Repeal the note, substitute:

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

**29 Subsection 42-2(3A) (note)**

Repeal the note, substitute:

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

**30 After paragraph 44-3(3)(a)**

Insert:

- (aa) whether the care recipient’s approval under Part 2.3 is limited under subsection 22-2(3) to a \*low level of residential care;

**31 After paragraph 44-3(3)(c)**

Insert:

- (ca) whether a care recipient is on \*extended hospital leave;  
(cb) whether an appraisal of a care recipient’s care needs is received after the end of the period mentioned in paragraph 26-1(a) or (b) (whichever is applicable);  
(cc) whether a reappraisal of a care recipient’s care needs is received after the end of the reappraisal period for the classification determined under section 27-2;

**31A At the end of section 44-3**

Add:

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

**32 Section 44-4**

Repeal the section.

**33 Paragraph 44-6(2)(a)**

Omit “subject to subsection (3),”.

**34 Subsection 44-6(3)**

Repeal the subsection.

**35 Paragraph 44-12(2)(b)**

Omit “Part 2.2”, substitute “Part 2.3”.

**36 Subparagraph 62-1(b)(ii)**

Omit “but only”.

**37 After subparagraph 62-1(b)(ii)**

Insert:

- (ia) for a purpose connected with the provision of aged care to the person by another approved provider, so far as the disclosure relates to an appraisal or reappraisal connected with a classification that is in force for a care recipient to whom subsection 27-4(5) applies (\*entry into another aged care service within 28 days); or

**38 Section 85-1 (table item 21)**

Omit “one or more levels of care”, substitute “a \*low level of residential care”.

**39 Section 85-1 (cell at table item 27, column headed “Decision”)**

Repeal the cell, substitute:

To suspend an approved provider from making appraisals under section 25-3 and



reappraisals under section 27-5

**40 Section 85-1 (after table item 27)**

Insert:

- 27A To refuse to lift a suspension of an approved subsection 25-4C(1)  
provider from making appraisals and  
reappraisals

**41 Section 85-1 (table item 29)**

Omit “28-1(1)”, substitute “27-6(1)”.

**42 Section 85-1 (table item 30)**

Omit “28-5(2)”, substitute “27-8(2)”.

**43 Subsection 88-2(1)**

After “of the kind”, insert “and in the form”.

**44 After paragraph 88-2(2)(a)**

Insert:

- (aa) appraisal and reappraisal records;

**45 Clause 1 of Schedule 1 (definition of *expiry date*)**

Repeal the definition, substitute:

*expiry date*, for a classification under Part 2.4, means the expiry date determined under section 27-2.

**46 Clause 1 of Schedule 1 (definition of *extended hospital leave*)**

Repeal the definition, substitute:

*extended hospital leave*, in relation to a care recipient provided with residential care, means:

- (a) leave taken by the care recipient under subsection 42-2(2) for a continuous period of 30 days or more; and  
(b) leave taken by the care recipient for a continuous period of 30 days or more, first under subsection 42-2(2) and later under subsection 42-2(3A).

**47 Clause 1 of Schedule 1 (definition of *high level of residential care*)**

Repeal the definition, substitute:

*high level of residential care* has the meaning given by the Classification Principles.

**48 Clause 1 of Schedule 1 (definition of *low level of residential care*)**

Repeal the definition, substitute:

*low level of residential care* has the meaning given by the Classification Principles.

## **Part 2—Application and transitional provisions**

### **49 Interpretation**

Expressions used in this Part that are defined in the *Aged Care Act 1997* have the same meaning in this Part as they have in that Act.

### **50 Approval of persons as care recipients**

#### *Application*

- (1) Subsection 22-2(3) of the *Aged Care Act 1997*, as in force after the commencement of this Schedule, applies in relation to approvals made on or after the commencement of this Schedule.
- (2) Paragraph 22-6(2)(c) of the *Aged Care Act 1997*, as in force after the commencement of this Schedule, applies in relation to notices under subsection 22-6(1) of that Act that relate to approvals made on or after the commencement of this Schedule.

#### *Saving*

- (3) If, immediately before the commencement of this Schedule, a person's approval was limited under subsection 22-2(3) of the *Aged Care Act 1997* to one or more levels of care corresponding to the classification levels, then, on and after the commencement of this Schedule, the person's approval is taken to be limited under that subsection as in force after the commencement of this Schedule to a low level of residential care.

### **51 Classification of care recipients**

- (1) This item applies to a care recipient:
  - (a) to whom an approved provider begins providing care before the commencement of this Schedule; and
  - (b) whose approval is limited under subsection 22-2(3) of the *Aged Care Act 1997* to a low level of residential care; and
  - (c) who was not classified under subsection 25-1(1) of that Act before the commencement of this Schedule.

- (2) The Secretary must not, on or after the commencement of this Schedule, classify the care recipient under subsection 25-1(1) of the *Aged Care Act 1997* to a level of care exceeding a low level of residential care.

## **52 Appraisals of level of care needed by care recipients**

### *Application*

- (1) Subsections 25-3(2), (2A) and (3A) of the *Aged Care Act 1997*, as in force after the commencement of this Schedule, apply in relation to an appraisal of a care recipient to whom an approved provider begins providing care on or after the commencement of this Schedule.

### *Saving*

- (2) Despite the repeal and substitution of subsection 25-3(2) of the *Aged Care Act 1997* made by this Schedule, if a care recipient to whom an approved provider began providing care before the commencement of this Schedule had not been appraised before that commencement, Classification Principles in force immediately before the commencement of this Schedule and made for the purposes of that subsection continue to have effect in relation to the care recipient's appraisal.

### *Transitional*

- (3) Paragraph 26-1(b) of the *Aged Care Act 1997*, as in force after the commencement of this Schedule, applies in relation to a care recipient to whom an approved provider begins providing care during the period of one month beginning on the commencement of this Schedule as if the period of 2 months specified in that paragraph were extended to 3 months.

## **53 Suspension of approved providers from making appraisals and reappraisals**

Subsections 25-4(1) to (3) of the *Aged Care Act 1997*, as in force after the commencement of this Schedule, apply in relation to an approved provider to whom a notice under subsection 25-4(3) of that Act is given on or after the commencement of this Schedule.

## **54 Reappraisals of level of care needed by care recipients**

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*Application*

- (1) This item applies in relation to a care recipient in respect of whom an appraisal was made under section 25-3, or a reappraisal was made under section 28-2, of the *Aged Care Act 1997* as in force immediately before the commencement of this Schedule.
- (2) Subject to the modifications set out in subitems (3), (4) and (5), Divisions 27 and 28 of the *Aged Care Act 1997*, as in force immediately before the commencement of this Schedule, and Classification Principles made for the purposes of those Divisions, continue to apply in relation to the care recipient until the care recipient's classification is renewed under Division 28 of that Act as it applies because of this subitem.
- (3) The following provisions of the *Aged Care Act 1997*, as in force after the commencement of this Schedule, and Classification Principles made for the purposes of those provisions, apply from that commencement in relation to the care recipient:
  - (a) section 27-3 (reappraisal required by Secretary);
  - (b) Division 27, to the extent to which it applies to notices given under section 27-3;
  - (c) section 27-5 (requirements for reappraisals), instead of repealed subsections 28-2(1) to (3) and Classification Principles made for the purposes of those repealed subsections;
  - (d) subsections 27-6(2) and (3) (renewal of classifications), instead of repealed subsections 28-1(2) and (3) and Classification Principles made for the purposes of those repealed subsections.

*Extended reappraisal period for classifications*

- (4) Paragraph 28-3(1)(a) of the *Aged Care Act 1997*, as it applies because of subitem (2), applies in relation to a classification whose expiry date occurs during the period of one month beginning on the commencement of this Schedule, as if the period mentioned in that paragraph ended 2 months after the expiry date of the classification.
- (5) Subsection 28-3(2) of the *Aged Care Act 1997*, as it applies because of subitem (2), applies in relation to a classification of a care recipient to whom the provision of residential care recommences during the period of one month beginning on the commencement of this Schedule, as if

the reappraisal period specified in that subsection were the period of 3 months beginning on the day on which the provision of residential care to the care recipient through the residential care service recommenced.

### **55 Eligibility for residential care subsidy**

Sections 42-1 and 42-2 of the *Aged Care Act 1997*, as in force immediately before the commencement of this Schedule, continue to have effect after the commencement of this Schedule, in relation to a care recipient who was covered by subsection 42-1(4) immediately before the commencement of this Schedule, until the end of the period of leave mentioned in that subsection.

### **56 Effect of long periods in hospital on basic subsidy amount**

Sections 44-4 and 44-6 of the *Aged Care Act 1997*, as in force immediately before the commencement of this Schedule, continue to have effect after the commencement of this Schedule, in relation to a care recipient who was covered by paragraph 44-4(1)(a) immediately before the commencement of this Schedule, until the end of the period of leave mentioned in that paragraph.

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*[Minister's second reading speech made in—  
House of Representatives on 21 March 2007  
Senate on 21 June 2007]*

(40/07)

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