



# **Aged Care Amendment (2008 Measures No. 2) Act 2008**

**No. 140, 2008**

**An Act to amend the law in relation to aged care,  
and for related purposes**

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



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## **An Act to amend the law in relation to aged care, and for related purposes**

*[Assented to 9 December 2008]*

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Aged Care Amendment (2008 Measures No. 2) Act 2008*.

### **2 Commencement**

This Act commences on 1 January 2009.

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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

### **Part 1—Amendments**

#### *Aged Care Act 1997*

##### **1 Section 7-1**

Repeal the section, substitute:

##### **7-1 Pre-conditions to receiving subsidy**

Payments of subsidy cannot be made under Chapter 3 to a person for providing \*aged care unless:

- (a) the person is approved under this Part as a provider of aged care; and
- (b) the approval is in force in respect of the type of aged care provided, at the time it is provided; and
- (c) the approval is in force in respect of the \*aged care service through which the aged care is provided, at the time it is provided.

##### **2 Subsections 8-1(2) and (3)**

Repeal the subsections, substitute:

- (2) The approval is in respect of:
  - (a) either:
    - (i) all types of \*aged care; or
    - (ii) if the approval is specified to be in respect of one or more types of aged care—that type or those types of aged care; and
  - (b) each \*aged care service in respect of which:
    - (i) an allocation of a \*place to the person in respect of the aged care service is in effect (whether because the place was originally allocated to the person or because of a transfer); or
    - (ii) a \*provisional allocation of a place to the person in respect of the aged care service is in force (whether because the place was originally allocated to the person

but the allocation has not yet taken effect or because of a transfer).

- (3) The approval in respect of an \*aged care service begins to be in force on the first day on which:
  - (a) an allocation of a \*place to the person in respect of the aged care service takes effect; or
  - (b) a \*provisional allocation of a place to the person in respect of the aged care service begins to be in force; or
  - (c) a transfer day occurs for the transfer under Division 16 of a place to the person for the provision of \*aged care through the aged care service.
- (4) However, the approval does not come into force in respect of any \*aged care service through which the person provides \*aged care unless one of those events occurs in respect of one of the aged care services through which the person provides aged care within a period of 2 years, or such longer period as is specified in the Approved Provider Principles, beginning on the day on which the instrument of approval is made.
- (5) The approval is not subject to any limitation relating to when it ceases to be in force, unless the instrument of approval specifies otherwise.

### **3 After paragraph 8-3(1)(g)**

Insert:

- (ga) if the applicant has relevant key personnel in common with a person who is or has been an approved provider:
  - (i) the person's record of meeting relevant standards for the provision of aged care (see Part 4.1); and
  - (ii) the person's record of commitment to the rights of the recipients of aged care; and
  - (iii) the person's record of financial management, and the methods that the person uses or used in order to ensure sound financial management; and
  - (iv) the person's record of financial management relating to the provision of aged care; and
  - (v) the conduct of the person as a provider of aged care, and its compliance with its responsibilities as such a provider and its obligations arising from the receipt of



any payments from the Commonwealth for providing that aged care; and

#### **4 Subsections 8-3(3) and (4)**

Repeal the subsections.

#### **5 Subsection 8-3(6)**

Omit “and (g)”, substitute “, (g) and (ga)”.

#### **6 After subsection 8-3(6)**

Insert:

- (6A) For the purposes of paragraph (1)(ga), the applicant has *relevant key personnel in common* with a person who is or has been an approved provider if:
- (a) at the time the person provided \*aged care as an approved provider, another person was one of its \*key personnel; and
  - (b) that other person is one of the key personnel of the applicant.

#### **7 After section 8-3**

Insert:

#### **8-3A Meaning of *key personnel***

- (1) For the purposes of this Act, each of the following is one of the *key personnel* of an entity at a particular time:
- (a) a member of the group of persons who is responsible for the executive decisions of the entity at that time;
  - (b) any other person who has authority or responsibility for (or significant influence over) planning, directing or controlling the activities of the entity at that time;
  - (c) if, at that time, the entity conducts an \*aged care service:
    - (i) any person who is responsible for the nursing services provided by the service; and
    - (ii) any person who is responsible for the day-to-day operations of the service;whether or not the person is employed by the entity;
  - (d) if, at that time, the entity proposes to conduct an aged care service:

- (i) any person who is likely to be responsible for the nursing services to be provided by the service; and
  - (ii) any person who is likely to be responsible for the day-to-day operations of the service;whether or not the person is employed by the entity.
- (2) Without limiting paragraph (1)(a), a reference in that paragraph to a person who is responsible for the executive decisions of an entity includes:
  - (a) where the entity is a body corporate that is incorporated, or taken to be incorporated, under the *Corporations Act 2001*—a director of the body corporate for the purposes of that Act; and
  - (b) in any other case—a member of the entity’s governing body.
- (3) A person referred to in subparagraph (1)(c)(i) or (1)(d)(i) must hold a recognised qualification in nursing.

### **8 Paragraph 8-5(2)(b)**

Repeal the paragraph, substitute:

- (b) the types of \*aged care in respect of which the approval is given;

### **9 Paragraph 8-5(2)(d)**

Repeal the paragraph, substitute:

- (d) a statement that the approval is in respect of those \*aged care services in respect of which:
  - (i) an allocation of a \*place to the person in respect of the aged care service is in effect (whether because the place was originally allocated to the person or because of a transfer); or
  - (ii) a \*provisional allocation of a place to the person in respect of the aged care service is in force (whether because the place was originally allocated to the person but the allocation has not yet taken effect or because of a transfer);
- (da) a statement that the approval will not come into force unless one of the following occurs within a period of 2 years, or such longer period as is specified in the Approved Provider

Principles, beginning on the day on which the instrument of approval is made:

- (i) an allocation of a place to the person in respect of an aged care service takes effect; or
  - (ii) a provisional allocation of a place to the person in respect of an aged care service begins to be in force; or
  - (iii) a transfer day occurs for the transfer under Division 16 of a place to the person for the provision of aged care through an aged care service;
- (db) if the approval specifies that it will cease to be in force on a particular day—the day on which it will cease to be in force;

#### **10 Paragraph 8-5(2)(f)**

Omit “sections 10-3, 10-4”, substitute “section 10-3”.

#### **11 At the end of section 8-5**

Add:

- (3) If the applicant is approved as a provider of \*aged care, the Secretary may, by written notice given to the applicant at the time the applicant is notified of the approval under subsection (1), specify any circumstance that the Secretary is satisfied materially affects the applicant’s suitability to provide aged care.
- (4) The notice may specify the steps to be taken by the applicant to notify the Secretary and obtain his or her agreement before there is any change to that circumstance.
- (5) A notice given to the applicant under subsection (3) is not a legislative instrument.

#### **12 Paragraph 8-6(2)(b)**

Omit “or 10-4”.

#### **13 Paragraph 8-6(3)(b)**

Repeal the paragraph, substitute:

- (b) if the applicant is a State or Territory—paragraphs 8-3A(a) and (b) do not apply.

#### **14 Subsections 9-1(2) and (3)**

Repeal the subsections, substitute:

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- (2) The notification must be in the form approved by the Secretary.
- (3) Despite paragraph (1)(b), an approved provider is not obliged to notify the Secretary of a change to the approved provider's \*key personnel if:
  - (a) the approved provider is a State or Territory; and
  - (b) the change relates to:
    - (i) a member of a group of persons who is responsible for the executive decisions of the approved provider; or
    - (ii) any other person who has authority or responsibility for (or significant influence over) planning, directing or controlling the activities of the approved provider.

### **15 After subsection 9-1(3A)**

Insert:

- (3B) If:
  - (a) a person has been approved under section 8-1 as a provider of \*aged care; and
  - (b) the approval has not yet begun to be in force because:
    - (i) no allocation of a \*place to the person in respect of the \*aged care service or services through which it provides aged care is in effect; and
    - (ii) no \*provisional allocation of a place to the person in respect of the aged care service or services through which it provides, or proposes to provide, aged care is in force; and
    - (iii) the transfer day has not occurred for any transfer under Division 16 of a place to the person for the provision of aged care through the aged care service or services through which it provides, or proposes to provide, aged care;

this section has effect in respect of the person in the same way as it has effect in respect of an approved provider.

### **16 After subsection 9-2(2)**

Insert:

- (2A) If:

- (a) a person has been approved under section 8-1 as a provider of \*aged care; and
- (b) the approval has not yet begun to be in force because:
  - (i) no allocation of a \*place to the person in respect of the \*aged care service or services through which it provides aged care is in effect; and
  - (ii) no \*provisional allocation of a place to the person in respect of the aged care service or services through which it provides, or proposes to provide, aged care is in force; and
  - (iii) the transfer day has not occurred for any transfer under Division 16 of a place to the person for the provision of aged care through the aged care service or services through which it provides, or proposes to provide, aged care;

this section has effect in respect of the person in the same way as it has effect in respect of an approved provider.

#### **17 Subsection 9-3A(1)**

Omit “request an approved provider”, substitute “request a person who is or has been an approved provider”.

#### **18 Subsection 9-3A(1)**

Omit “the approved provider” (wherever occurring), substitute “the person”.

#### **19 After paragraph 9-3A(1)(f)**

Insert:

- ; (g) \*unregulated lump sums paid to the person;
- (h) the amount of one or more \*unregulated lump sum balances at a particular time.

#### **20 Subsection 9-3A(2)**

Omit “The approved provider”, substitute “The person”.

#### **21 Subsection 9-3A(3)**

Repeal the subsection, substitute:

- (3) A person commits an offence if:

- (a) the Secretary requests the person to give information under subsection (1); and
- (b) the person is required under subsection (2) to comply with the request within a period; and
- (c) the person fails to comply with the request within the period; and
- (d) the person is a \*corporation.

Penalty: 30 penalty units.

**22 Paragraph 10-1(1)(b)**

Omit “or 10-4”.

**23 Paragraph 10-1(1)(c)**

Omit “subsection 8-1(3)”, substitute “subsection 8-1(5)”.

**24 Section 10-2**

Repeal the section, substitute:

**10-2 Approval lapses if no allocated places**

The approval of a person as a provider of \*aged care that is in force lapses if:

- (a) no allocation of a \*place to the provider in respect of any \*aged care service through which it provides aged care is in effect; and
- (b) no \*provisional allocation of a place to the provider in respect of any aged care service through which it provides, or proposes to provide, aged care is in force; and
- (c) the transfer day has not occurred for any transfer under Division 16 of a place to the person for the provision of aged care through the aged care service or services through which it provides, or proposes to provide, aged care.

**25 Subsection 10-3(1)**

Repeal the subsection, substitute:

- (1) The Secretary must revoke an approval of a person as a provider of \*aged care under section 8-1 if the Secretary is satisfied that:
  - (a) the person has ceased to be a \*corporation; or

- (b) the person has ceased to be suitable for approval (see section 8-3); or
- (c) the person's application for approval contained information that was false or misleading in a material particular.

Note 1: Revocation of approvals are reviewable under Part 6.1.

Note 2: Approvals may also be revoked as a sanction under Part 4.4.

**26 Subsections 10-3(3), (5), (6), (7) and (7B)**

Omit "the approved provider" (wherever occurring), substitute "the person".

**27 Section 10-4**

Repeal the section.

**28 After paragraph 13-1(c)**

Insert:

- (ca) it is accompanied by the statements and other information required by that form; and

**29 Subsection 14-1(1)**

Omit ", but only if the person is an approved provider".

**30 Subsection 14-1(2)**

Repeal the subsection, substitute:

- (2) The \*places may only be allocated to a person who:
  - (a) is approved under section 8-1 to provide the \*aged care in respect of which the places are allocated; or
  - (b) will be approved to provide aged care in respect of which the places are allocated once the allocation takes effect or, in the case of a \*provisional allocation, begins to be in force.

- (2A) The \*places must not be allocated to the person if a sanction imposed under Part 4.4 is in force prohibiting allocation of places to the person.

**31 Subsection 14-1(4)**

Omit "an approved provider", substitute "a person".

**32 Paragraph 14-1(4)(a)**

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Omit “the approved provider”, substitute “the person”.

**33 After paragraph 14-2(1)(d)**

Insert:

- (da) if the applicant has relevant \*key personnel in common with a person who is or has been an approved provider—the conduct of that person as a provider of aged care, and its compliance with its responsibilities as such a provider and its obligations arising from the receipt of any payments from the Commonwealth for providing that aged care; and

**34 Subsection 14-2(2)**

Omit “paragraph (1)(d)”, substitute “paragraphs (1)(d) and (da)”.

**35 At the end of section 14-2**

Add:

- (3) For the purposes of paragraph (1)(da), the applicant has *relevant key personnel in common* with a person who is or has been an approved provider if:
  - (a) at the time the person provided \*aged care, another person was one of its \*key personnel; and
  - (b) that other person is one of the key personnel of the applicant.

**36 Subsection 14-4(1)**

Omit “each approved provider”, substitute “each person”.

**37 Paragraph 14-4(1)(a)**

Omit “approved providers”, substitute “persons”.

**38 Paragraph 14-4(2)(a)**

Omit “each approved provider”, substitute “each person”.

**39 Paragraph 14-4(3)(a)**

Omit “each approved provider”, substitute “each person”.

**40 Subsection 14-5(1)**

Omit “an approved provider”, substitute “a person”.



#### **41 Paragraph 14-5(4)(c)**

Omit “approved provider”, substitute “person”.

#### **42 After paragraph 14-5(4)(d)**

Insert:

- ; (e) the treatment of any \*pre-allocation lump sum, or part of such a sum, paid or payable to the person to whom the place is allocated (the *pre-allocation lump sum holder*) by a care recipient, including:
  - (i) the refund of the sum or part of the sum, with the consent of the care recipient; or
  - (ii) the forgiveness of any obligation (including a contingent obligation) in relation to the sum or part of the sum, with the consent of the care recipient;
- (f) the conditions and entry into force of any accommodation bond agreement entered into as a consequence of the refund of a pre-allocation lump sum or part of such a sum, or the forgiveness of an obligation (including a contingent obligation) in relation to a pre-allocation lump sum or part of such a sum.

#### **43 At the end of section 14-5**

Add:

(5) If:

- (a) a condition imposed on an allocation of \*places to a person requires:
    - (i) the refund by the person to a care recipient, with the consent of the care recipient, of a \*pre-allocation lump sum or part of such a sum; or
    - (ii) the forgiveness by the person of an obligation (including a contingent obligation) by a care recipient, with the consent of the care recipient, in relation to a pre-allocation lump sum or part of such a sum; and
  - (b) the care recipient continues, on the day on which the allocation was made, to be provided with \*aged care through the residential care service in relation to entry to which the pre-allocation lump sum was paid or became payable;
- then the care recipient and the pre-allocation lump sum holder have the same rights, duties and obligations in relation to the charging of

an \*accommodation bond or an \*accommodation charge as the care recipient and the pre-allocation lump sum holder would have under this Act if:

- (c) the care recipient had \*entered the residential care service or flexible care service on the day on which the allocation was made; and
  - (d) the pre-allocation lump sum were an accommodation bond paid in respect of aged care provided through another residential care service or flexible care service.
- (6) A *pre-allocation lump sum* is an amount paid or payable to a person (the *pre-allocation lump sum holder*) by a care recipient in the following circumstances:
- (a) the amount does not accrue daily;
  - (b) the amount is for the care recipient's \*entry to a residential care service or flexible care service conducted by the pre-allocation lump sum holder;
  - (c) the amount is not an \*accommodation bond, an \*entry contribution or an \*unregulated lump sum.

**44 Subsection 14-6(1)**

Omit "an approved provider", substitute "a person".

**45 Subsection 14-9(1)**

Omit "an approved provider", substitute "a person".

**46 Subsection 15-1(1)**

Omit "an approved provider", substitute "a person".

**47 Subsection 15-1(1)**

Omit "the approved provider", substitute "the person".

**48 Section 15-3**

Omit "approved provider" (wherever occurring), substitute "person".

**49 Subsections 15-4(3), (5), (6) and (8)**

Omit "approved provider" (wherever occurring), substitute "person".

**50 Subsections 15-5(1), (4) and (6)**

Omit “approved provider”, substitute “person”.

Note: The heading to section 15-5 is altered by omitting “of approved provider”.

**51 Sections 15-6 and 15-7**

Omit “approved provider” (wherever occurring), substitute “person”.

**52 Before section 16-1**

Insert:

**Subdivision 16-A—Transfer of places other than provisionally allocated places**

**16-1A Application of this Subdivision**

This Subdivision applies to the transfer of an allocated \*place, other than a \*provisionally allocated place.

**53 Subsection 16-1(1)**

Omit “an allocated \*place”, substitute “a \*place to which this Subdivision applies”.

**54 Subsection 16-1(2)**

After “a \*place”, insert “to which this Subdivision applies”.

**55 Paragraph 16-1(2)(a)**

Repeal the paragraph.

**56 Paragraph 16-1(2)(d)**

After “completed”, insert “in respect of the \*aged care service to which the places will relate after transfer”.

**57 Paragraph 16-1(3)(a)**

Omit “Division”, substitute “Subdivision”.

**58 Subsection 16-2(1)**

After “a \*place”, insert “to the transfer of which this Subdivision applies”.

**59 Paragraph 16-2(4)(a)**

Omit “is an approved provider”, substitute “has been approved under section 8-1 as a provider of \*aged care (even if the approval has not yet begun to be in force)”.

**60 Paragraph 16-2(4)(b)**

Omit “is not an approved provider”, substitute “has not been approved under section 8-1 as a provider of aged care”.

**61 At the end of subsection 16-2(7)**

Add “The notice is not a legislative instrument.”.

**62 Section 16-4**

Before “In deciding whether”, insert “(1)”.

**63 After paragraph 16-4(e)**

Insert:

- (ea) if the transferee has been a provider of aged care—its conduct as such a provider, and its compliance with its responsibilities as such a provider and its obligations arising from the receipt of any payments from the Commonwealth for providing that aged care;
- (eb) if the transferee has relevant \*key personnel in common with a person who is or has been an approved provider—the conduct of that person as a provider of aged care, and its compliance with its responsibilities as such a provider and its obligations arising from the receipt of any payments from the Commonwealth for providing that aged care;

**64 At the end of section 16-4**

Add:

- (2) The reference in paragraphs (1)(ea) and (eb) to aged care includes a reference to any care for the aged, whether provided before or after the commencement of this subsection, in respect of which any payment was or is payable under a law of the Commonwealth.
- (3) For the purposes of paragraph (1)(eb), the transferee has *relevant key personnel in common* with a person who is or has been an approved provider if:
  - (a) at the time the person provided \*aged care as an approved provider, another person was one of its \*key personnel; and

(b) that other person is one of the key personnel of the transferee.

### **65 Subsection 16-8(1)**

After “a \*place”, insert “to which this Subdivision applies”.

### **66 At the end of Division 16**

Add:

### **Subdivision 16-B—Transfer of provisionally allocated places**

#### **16-12 Application of this Subdivision**

This Subdivision applies to the transfer of a \*provisionally allocated \*place.

#### **16-13 Transfer of provisionally allocated places**

- (1) A transfer of a \*provisionally allocated \*place from one person to another is of no effect unless it is approved by the Secretary.
- (2) The Secretary must not approve the transfer of a \*provisionally allocated \*place unless:
  - (a) an application for the transfer is made under section 16-14; and
  - (b) the Secretary is satisfied that, because of the needs of the aged care community in the region for which the places were provisionally allocated, there are exceptional circumstances justifying the transfer; and
  - (c) the Secretary is satisfied, having regard to the matters mentioned in section 16-16, that the needs of the aged care community in the region for which the places were provisionally allocated are best met by the transfer; and
  - (d) the Secretary is satisfied that the transferee will be an approved provider when the transfer is completed in respect of the \*aged care service to which the places will relate after transfer; and
  - (e) the location in respect of which the place is provisionally allocated will not change as a result of the transfer; and
  - (f) the provisional allocation is in respect of residential care subsidy.

- (3) If the transfer is approved:
  - (a) the transferee is taken, from the transfer day (see section 16-19), to be the person to whom the \*place is \*provisionally allocated under this Subdivision; and
  - (b) if, as part of the transfer, approval is sought for one or more variations of the conditions to which the allocation is subject under section 14-5—the Secretary is taken to have made such variation of the conditions as is specified in the instrument of approval.

#### **16-14 Applications for transfer of provisionally allocated places**

- (1) A person to whom a \*place has been \*provisionally allocated under Division 14 may apply in writing to the Secretary for approval to transfer the place to another person.
- (2) The application must:
  - (a) be in a form approved by the Secretary; and
  - (b) include the information referred to in subsection (3); and
  - (c) be signed by the transferor and the transferee; and
  - (d) set out any variation of the conditions to which the \*provisional allocation is subject under section 14-5, for which approval is being sought as part of the transfer.
- (3) The information to be included in the application is as follows:
  - (a) the transferor's name;
  - (b) the number of \*places to be transferred;
  - (c) the \*aged care service to which the places currently relate, and its location;
  - (d) the proposed transfer day;
  - (e) the transferee's name;
  - (f) if, after the transfer, the places would relate to a different aged care service—that aged care service;
  - (g) whether any of the places are:
    - (i) places included in a residential care service, or a \*distinct part of a residential care service, that has \*extra service status; or
    - (ii) places in respect of which one or more \*residential care grants have been paid;

- (h) if the places are included in a residential care service and, after the transfer, the places would relate to a different residential care service—whether that service, or a distinct part of that service, has extra service status;
- (i) evidence of the progress made by the transferor towards being in a position to provide care in respect of the places;
- (j) the day on which, if the transfer were to take place, the transferee would be in a position to provide care in respect of the places;
- (k) such other information as is specified in the Allocation Principles.

Note: The Secretary must not approve the transfer if the location in respect of which the place is provisionally allocated will change as a result of the transfer (see paragraph 16-13(2)(e)).

- (4) The application must be made:
  - (a) if the transferee has been approved under section 8-1 as a provider of \*aged care (even if the approval has not yet begun to be in force)—no later than 60 days, or such other period as the Secretary determines under subsection (5), before the proposed transfer day; or
  - (b) if the transferee has not been approved under section 8-1 as a provider of aged care—no later than 90 days, or such other period as the Secretary determines under subsection (5), before the proposed transfer day.
- (5) The Secretary may, at the request of the transferor and the transferee, determine another period under paragraph (4)(a) or (b) if the Secretary is satisfied that it is justified in the circumstances.
- (6) In deciding whether to make a determination, and in determining another period, the Secretary must consider any matters set out in the Allocation Principles.
- (7) The Secretary must give written notice of his or her decision under subsection (5) to the transferor and the transferee. The notice is not a legislative instrument.
- (8) If the information included in an application changes, the application is taken not to have been made under this section unless the transferor and the transferee give the Secretary written notice of the changes.

### 16-15 Requests for further information

- (1) If the Secretary needs further information to determine the application, the Secretary may give to the transferor and the transferee a notice requesting that:
  - (a) either the transferor or the transferee give the further information; or
  - (b) the transferor and the transferee jointly give the further information;within 28 days after receiving the notice.
- (2) The application is taken to be withdrawn if the further information is not given within the 28 days.

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).

### 16-16 Consideration of applications

- (1) In considering whether the needs of the aged care community in the region for which the \*places were allocated are best met by the transfer, the Secretary must consider each of the following matters:
  - (a) whether the transfer would meet the objectives of the planning process set out in section 12-2;
  - (b) whether the transferor has made such significant progress towards being in a position to provide care, in respect of the places, that it would be contrary to the interests of the aged care community in the region not to permit the transfer;
  - (c) whether the transferee is likely to be in a position to provide care in respect of the places within a short time after the transfer;
  - (d) the standard of care, accommodation and other services proposed to be provided by the \*aged care service in which the places would be included if the transfer were to occur;
  - (e) the suitability of the transferee to provide the \*aged care to which the places to be transferred relate;
  - (f) the suitability of the premises proposed to be used to provide care through the aged care service in which the places would be included if the transfer were to occur;



- (g) if the places were allocated to meet the needs of \*people with special needs—whether those needs would be met once the allocation of the places to be transferred took effect;
- (h) if the places were allocated to provide a particular type of aged care—whether that type of aged care would be provided once the allocation of the places to be transferred took effect;
- (i) if the transferee has been a provider of aged care—its conduct as such a provider, and its compliance with its responsibilities as such a provider and its obligations arising from the receipt of any payments from the Commonwealth for providing that aged care;
- (j) if the transferee has relevant \*key personnel in common with a person who is or has been an approved provider—the conduct of that person as a provider of aged care, and its compliance with its responsibilities as such a provider and its obligations arising from the receipt of any payments from the Commonwealth for providing that aged care;
- (k) the financial viability, if the transfer were to occur, of the transferee and the aged care service in which the places would be included if the transfer were to occur;
- (l) the measures to be adopted by the transferee to protect the rights of care recipients;
- (m) any matters set out in the Allocation Principles.

Note: The Secretary must not approve the transfer if the location in respect of which the place is provisionally allocated will change as a result of the transfer (see paragraph 16-13(2)(e)).

- (2) The reference in paragraphs (1)(i) and (j) to aged care includes a reference to any care for the aged, whether provided before or after the commencement of this section, in respect of which any payment was or is payable under a law of the Commonwealth.
- (3) For the purposes of paragraph (1)(j), the transferee has **relevant key personnel in common** with a person who is or has been an approved provider if:
  - (a) at the time the person provided \*aged care, another person was one of its \*key personnel; and
  - (b) that other person is one of the key personnel of the transferee.

### 16-17 Time limit for decisions on applications

- (1) Subject to this section, the Secretary must, at least 14 days before the proposed transfer day:
  - (a) approve the transfer; or
  - (b) reject the application;and notify the transferor and transferee accordingly.

Note: Rejections of applications are reviewable under Part 6.1.

- (2) The Secretary may make a decision under subsection (1) on a later day if the transferor and the transferee agree. However, the later day must not occur on or after the proposed transfer day.
- (3) If:
  - (a) the Secretary is given written notice (the *alteration notice*) under subsection 16-14(8) of changes to the information contained in the application; and
  - (b) the alteration notice is given on or after the day occurring 30 days before the day by which the Secretary must act under subsection (1) of this section;the Secretary is not obliged to act under subsection (1) until the end of the 30 day period following the day on which the alteration notice was given by the Secretary.

### 16-18 Notice of decision on transfer

If the transfer is approved, the notice must include statements setting out the following matters:

- (a) the number of \*places to be transferred;
- (b) the proposed transfer day;
- (c) the \*aged care service to which the places currently relate, and its location;
- (d) if, after the transfer, the places will relate to a different aged care service—that aged care service;
- (e) the proportion of care, in respect of the places to be transferred, to be provided once the allocation takes effect to:
  - (i) \*people with special needs; or
  - (ii) \*supported residents, \*concessional residents and \*assisted residents; or
  - (iii) recipients of \*respite care; or

- (iv) people needing a particular level of care; or
- (v) people of the kinds specified in the Allocation Principles;
- (f) such other information as is specified in the Allocation Principles.

Note: The Secretary must not approve the transfer if the location in respect of which the place is provisionally allocated will change as a result of the transfer (see paragraph 16-13(2)(e)).

### **16-19 Transfer day**

- (1) The transfer day is the proposed transfer day specified in the application if the transfer is completed on or before that day.
- (2) If the transfer is not completed on or before the proposed transfer day, the transferor and the transferee may apply, in writing, to the Secretary to approve a day as the transfer day.

Note: Because the proposed transfer day must be specified in the application for transfer, the Secretary must be notified if the transfer is not completed on or before the proposed transfer day (see subsection 16-14(8)).

- (3) The Secretary must, within 28 days after receiving the application under subsection (2):
  - (a) approve a day as the transfer day; or
  - (b) reject the application;and, within that period, notify the transferor and the transferee accordingly.

Note: Approvals of days and rejections of applications are reviewable under Part 6.1.

- (4) However, the day approved by the Secretary as the transfer day must not be earlier than the day on which the transfer is actually completed.

### **16-20 Transfer of places to service with extra service status**

- (1) The Secretary must not approve the transfer of a \*provisionally allocated \*place from one person to another if:
  - (a) the transfer would result in residential care in respect of the place being provided by a different residential care service;and

- (b) that residential care service has, or a \*distinct part of that service has, \*extra service status;  
unless subsection (2) or (3) applies to the transfer.

Note: The Secretary must not approve the transfer if the location in respect of which the place is provisionally allocated will change as a result of the transfer (see paragraph 16-13(2)(e)).

- (2) The Secretary may approve the transfer if satisfied that the \*places other than the transferred places could, after the allocation has taken effect, form one or more \*distinct parts of the residential care service concerned.

Note: The transferred places would not have \*extra service status because of the operation of section 31-3.

- (3) The Secretary may approve the transfer if satisfied that:
- (a) granting the transfer would be reasonable, having regard to the criteria set out in section 32-4; and
  - (b) granting the transfer would not result in the maximum proportion of \*extra service places under section 32-7, for the State, Territory or \*region concerned, being exceeded; and
  - (c) any other requirements set out in the Allocation Principles are satisfied.

Note: The places would have \*extra service status because of the operation of section 31-1. (Section 31-3 would not apply.)

### **16-21 Information to be given to transferee**

The Secretary may give to the transferee information specified in the Allocation Principles at such times as are specified in those Principles.

### **67 Subsection 18-1(1)**

Omit “either of the following”, substitute “any of the following”.

### **68 At the end of subsection 18-1(1)**

Add:

- ; (c) the person to whom the place is allocated ceases to be an approved provider.

### **69 Subsection 23-3(1)**

Omit “A person’s”, substitute “Except in the circumstances mentioned in subsection (1A), a person’s”.

Note 1: The heading to section 23-3 is replaced by the heading “**Circumstances in which approval lapses**”.

Note 2: The following heading to subsection 23-3(1) is inserted “*Care not received within a certain time*”.

## **70 After subsection 23-3(1)**

Insert:

(1A) A person’s approval does not lapse under subsection (1) if:

- (a) the care in respect of which he or she is approved is limited to residential care provided as \*respite care; or
- (b) if the approval is for residential care other than residential care provided as respite care—the care in respect of which he or she is approved is not limited to a \*low level of residential care; or
- (c) if the care in respect of which he or she is approved is flexible care—the care is specified for the purposes of this paragraph in the Approval of Care Recipients Principles.

Note: The following heading to subsection 23-3(3) is inserted “*Person ceases to be provided with care in respect of which approved*”.

## **71 Paragraph 31-3(1)(b)**

Omit “or 16-8(2)”, substitute “, 16-8(2) or 16-20(2)”.

## **72 After paragraph 32-4(1)(c)**

Insert:

- (ca) if the applicant has relevant \*key personnel in common with a person who is or has been an approved provider—the person has a very good record of:
  - (i) conduct as a provider of \*aged care; and
  - (ii) compliance with its responsibilities as such a provider, and meeting its obligations arising from the receipt of any payments from the Commonwealth for providing aged care;

## **73 At the end of subsection 32-4(2)**

Add:

; and (d) whether a person with whom the applicant has relevant \*key personnel in common and who is or has been an approved provider has a very good record of conduct, compliance or meeting its obligations, for the purposes of paragraph (1)(ca).

**74 Subsection 32-4(3)**

Omit “paragraph (1)(c)”, substitute “paragraphs (1)(c) and (ca)”.

**75 At the end of section 32-4**

Add:

- (4) For the purposes of paragraphs (1)(ca) and (2)(d), the applicant has *relevant key personnel in common* with a person who is or has been an approved provider if:
- (a) at the time the person provided \*aged care, another person was one of its \*key personnel; and
  - (b) that other person is one of the key personnel of the applicant.

**76 Subsection 35-1(1)**

Omit “An approved provider”, substitute “A person”.

**77 Paragraph 36-1(1)(b)**

Omit “the approved provider”, substitute “the person”.

**78 Subsection 36-3(1) (note)**

Omit “approved providers”, substitute “the persons providing care”.

**79 After paragraph 38-3(1)(c)**

Insert:

- (ca) if the applicant has relevant \*key personnel in common with a person who is or has been an approved provider—the conduct of that person as a provider of aged care, and its compliance with its responsibilities as such a provider and its obligations arising from the receipt of any payments from the Commonwealth for providing that aged care; and

**80 Subsection 38-3(2)**

Omit “paragraph (1)(c)”, substitute “paragraphs (1)(c) and (ca)”.

**81 At the end of section 38-3**

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Add:

- (4) For the purposes of paragraph (1)(ca), the applicant has *relevant key personnel in common* with a person who is or has been an approved provider if:
- (a) at the time the person provided \*aged care, another person was one of its \*key personnel; and
  - (b) that other person is one of the key personnel of the applicant.

## **82 At the end of subsection 41-3(2)**

Add:

- ; (d) care that is specified in the Residential Care Subsidy Principles not to be residential care.

## **83 Paragraph 44-7(3)(a)**

Omit “section 57-14 or section 57A-9”, substitute “paragraph 57-14(1)(a) or 57A-9(1)(a)”.

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

## **84 After subsection 44-8(1A)**

Insert:

*If there is financial hardship (whatever the applicable time)*

- (1AA) A person is also an *assisted resident* if:
- (a) a determination is in force under paragraph 57-14(1)(b) or 57A-9(1)(b) in respect of the person; and
  - (b) the person is a \*pre-2008 reform resident.

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

## **85 Paragraph 44-10(1C)(a)**

After “Subdivisions B and BB of Division 11”, insert “and Subdivision H of Division 11A”.

## **86 Paragraph 44-10(1C)(b)**

After “Division 2 of Part 3.12”, insert “and Division 8 of Part 3.18”.

## **87 Subsection 44-10(1C) (note)**

Omit “Note”, substitute “Note 1”.

**88 Subsection 44-10(1C) (after the note)**

Insert:

Note 2: Subdivision H of Division 11A of Part IIIB of the *Veterans’ Entitlements Act 1986*, and Division 8 of Part 3.18 of the *Social Security Act 1991*, deal with the attribution to individuals of assets of private companies and private trusts.

**89 Section 53-1 (note)**

Omit “An approved provider’s responsibilities cover all the care recipients in an \*aged care service”, substitute “The responsibilities of an approved provider in respect of an \*aged care service cover all the care recipients in the service”.

**90 Paragraph 54-1(2)(b)**

Repeal the paragraph, substitute:

(b) both:

- (i) the approved provider is approved in respect of the aged care service through which the person is provided, or to be provided, with \*aged care and for the type of aged care provided, or to be provided, to the person; and
- (ii) the person is approved under Part 2.3 as a recipient of the type of aged care provided, or to be provided, through the service.

**91 Section 55-1**

Omit “Approved providers have general responsibilities to users, and proposed users, of their \*aged care services”, substitute “A person who is an approved provider in respect of an \*aged care service has general responsibilities to users, and proposed users, of the service”.

**92 Paragraph 56-5(b)**

Repeal the paragraph, substitute:

(b) both:

- (i) the approved provider is approved in respect of the aged care service through which the person is provided, or to be provided, with \*aged care and for the type of aged care provided, or to be provided, to the person; and



- (ii) the person is approved under Part 2.3 as a recipient of the type of aged care provided, or to be provided, through the service.

**93 Paragraph 57-2(1)(g)**

Omit “, 57-13 or 57-23”, substitute “or 57-13, paragraph 57-14(1)(b) or section 57-23”.

**94 Paragraph 57-2(1)(h)**

Omit “section 57-14”, substitute “paragraph 57-14(1)(a)”.

**95 Subsection 57-12(1)**

Omit “section 57-13”, substitute “sections 57-13 and 57-14”.

**96 Subsection 57-14(1)**

Repeal the subsection, substitute:

- (1) The Secretary may determine, in accordance with the User Rights Principles, that a person:
  - (a) must not be charged an \*accommodation bond because payment of an accommodation bond would cause the person financial hardship; or
  - (b) must not be charged an accommodation bond of more than a specified maximum amount because payment of more than that amount would cause the person financial hardship.

Note: Refusals to make determinations are reviewable under Part 6.1.

Note: The heading to section 57-14 is altered by omitting “**not payable**”.

**97 Subsection 57-14(4)**

After “\*accommodation bond”, insert “, or an accommodation bond of more than a specified maximum amount,”.

**98 Paragraph 57-14(4)(b)**

After “accommodation bond”, insert “, or a larger accommodation bond,”.

**99 Subsection 57-14(7)**

Repeal the subsection, substitute:

- (7) If the Secretary makes a determination, the notice must:

- (a) set out any period at the end of which, or any event on the occurrence of which, the determination will cease to be in force; and
- (b) if the determination is that a person must not be charged an \*accommodation bond of more than a specified maximum amount—specify the maximum amount of the accommodation bond.

**100 Paragraph 57-20(4)(c)**

Omit “section 57-14”, substitute “paragraph 57-14(1)(a)”.

**101 Paragraph 57-21(1)(b)**

Repeal the paragraph, substitute:

- (b) the care recipient ceases to be provided with:
  - (i) residential care by the residential care service (other than because the care recipient is on \*leave); or
  - (ii) flexible care provided in a residential setting by the flexible care service; or

**102 After section 57-21**

Insert:

**57-21AA Refunding of accommodation bond balance—former approved providers**

- (1) If:
  - (a) an \*accommodation bond is paid to a person by a care recipient for \*entry to a residential care service or flexible care service conducted by the person; and
  - (b) the person ceases to be an approved provider in respect of the residential care service or flexible care service;the person (the *former approved provider*) must refund the \*accommodation bond balance in respect of the accommodation bond to the care recipient.
- (2) The \*accommodation bond balance must be refunded under subsection (1):
  - (a) if the care recipient dies within 90 days after the day on which the former approved provider ceased to be an approved provider in respect of the residential care service or

flexible care service that provided the care recipient with care (the **90 day period**)—within 14 days after the day on which the former approved provider is shown the probate of the will of the care recipient or letters of administration of the estate of the care recipient; or

- (b) if the care recipient is to \*enter another service to receive residential care within the 90 day period:
  - (i) if the care recipient has notified the former approved provider of the move more than 14 days before the day on which the former approved provider ceased providing care to the care recipient—on the day on which the former approved provider ceased providing that care; or
  - (ii) if the care recipient so notified the former approved provider within 14 days before the day on which the former approved provider ceased providing that care—within 14 days after the day on which the notice was given; or
  - (iii) if the care recipient did not notify the former approved provider before the day on which the former approved provider ceased providing that care—within 14 days after the day on which the former approved provider ceased providing that care; or
- (c) in any other case—within the 90 day period.

- (3) A person commits an offence if:
  - (a) the person is required under this section to refund an amount on a particular day or within a particular period; and
  - (b) the person does not refund the amount before that day or within that period; and
  - (c) the person is a \*corporation.

Penalty for a contravention of this subsection: 30 penalty units.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note: The heading to section 57-21 is altered by adding at the end “—**approved providers**”.

### **103 After subsection 57-21A(1)**

Insert:

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- (1A) A \*corporation that has been an approved provider and is required under this Subdivision to refund an \*accommodation bond balance must pay an amount representing interest on the accommodation bond balance in the circumstances (if any) specified in the User Rights Principles.

**104 After subsection 57-21B(1)**

Insert:

- (1A) A \*corporation that has been an approved provider and is required under a \*formal agreement to refund an \*entry contribution balance must pay an amount representing interest on the entry contribution balance in the circumstances (if any) specified in the User Rights Principles.

**105 Paragraph 57A-2(1)(g)**

After “section 57A-6”, insert “or 57A-8A or paragraph 57A-9(1)(b)”.

**106 Paragraph 57A-2(1)(i)**

Omit “section 57A-9”, substitute “paragraph 57A-9(1)(a)”.

**107 Subsection 57A-6(1)**

Omit “section 57A-8A”, substitute “sections 57A-8A and 57A-9”.

**108 Subsection 57A-9(1)**

Repeal the subsection, substitute:

- (1) The Secretary may determine, in accordance with the User Rights Principles, that a person:
- (a) must not be charged an \*accommodation charge because payment of an accommodation charge would cause the person financial hardship; or
  - (b) must not be charged an accommodation charge of more than a specified maximum daily amount because payment of more than that amount would cause the person financial hardship.

Note: Refusals to make determinations are reviewable under Part 6.1.

Note: The heading to section 57A-9 is altered by omitting “**not payable**”.

**109 Subsection 57A-9(4)**

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After “\*accommodation charge”, insert “, or an accommodation charge of more than a specified maximum daily amount,”.

**110 Paragraph 57A-9(4)(b)**

After “accommodation charge”, insert “, or a larger accommodation charge,”.

**111 Subsection 57A-9(7)**

Repeal the subsection, substitute:

- (7) If the Secretary makes the determination, the notice must:
- (a) set out any period at the end of which, or any event on the occurrence of which, the determination will cease to be in force; and
  - (b) if the determination is that a person must not be charged an \*accommodation charge of more than a specified maximum daily amount—specify the maximum daily amount of the accommodation charge.

**112 Subparagraph 62-1(b)(iv)**

Repeal the subparagraph, substitute:

- (iv) for the purpose of complying with an obligation under this Act or any of the Principles made under section 96-1;

**113 Paragraph 63-1(2)(b)**

Repeal the paragraph, substitute:

- (b) both:
- (i) the approved provider is approved in respect of the aged care service through which the person is provided, or to be provided, with \*aged care and for the type of aged care provided, or to be provided, to the person; and
  - (ii) the person is approved under Part 2.3 as a recipient of the type of aged care provided, or to be provided, through the service.

**114 After section 63-1B**

Insert:

**63-1C Responsibility relating to circumstances materially affecting an approved provider's suitability to provide aged care**

- (1) The responsibility of an approved provider in relation to a circumstance specified by the Secretary in a notice given under subsection 8-5(3) is to comply with subsection (2).
- (2) The approved provider must do all things reasonably practicable to ensure that there is no change to the circumstance without complying with the steps specified in the notice under subsection 8-5(3).

**115 Section 65-2**

Before "In", insert "(1)".

**116 After paragraph 65-2(c)**

Insert:

- (ca) whether the non-compliance would threaten the health, welfare or interests of future care recipients;

**117 After paragraph 65-2(d)**

Insert:

- (da) the desirability of deterring future non-compliance;

**118 At the end of section 65-2**

Add:

- (2) However, whether the non-compliance threatens or would threaten the health, welfare or interests of current and future care recipients is to be the Secretary's paramount consideration.

**119 Paragraph 66-1(c)**

Repeal the paragraph, substitute:

- (c) restricting the payment of subsidy under Chapter 3 to the provision of care to either:
  - (i) care recipients to whom the approved provider is providing care at the section 67-5 notice time; or
  - (ii) care recipients other than those to whom the approved provider commenced providing care, through one or

more specified aged care services, after the section 67-5 notice time;

**120 Section 85-1 (table item 2)**

Repeal the item.

**121 Section 85-1 (cell at table item 3, column headed “Decision”)**

Omit “an approved provider”, substitute “a provider of \*aged care”.

**122 Section 85-1 (table item 4)**

Repeal the item.

**123 Section 85-1 (cell at table item 6, column headed “Decision”)**

Omit “an approved provider”, substitute “a person”.

**124 Section 85-1 (table items 10, 11 and 12)**

Repeal the items, substitute:

10	To reject an application for transfer of allocated places, other than provisionally allocated places	subsection 16-5(1)
11	To approve a day as a transfer day for the transfer of allocated places, other than provisionally allocated places	subsection 16-7(3)
12	To reject an application to approve a day as a transfer day for the transfer of allocated places, other than provisionally allocated places	subsection 16-7(3)

**125 Section 85-1 (after table item 12)**

Insert:

12A	To reject an application for transfer of provisionally allocated places	subsection 16-17(1)
12B	To approve a day as a transfer day for the transfer of provisionally allocated places	subsection 16-19(3)
12C	To reject an application to approve a day as a transfer day for the transfer of provisionally allocated places	subsection 16-19(3)

**126 Section 85-1 (cell at table item 51, column headed  
“Provision under which decision is made”)**

Repeal the cell, substitute:  
paragraph 57-14(1)(a)

**127 Section 85-1 (after table item 51)**

Insert:

- 51A To refuse to make a determination that paying an accommodation bond of more than a specified maximum amount would cause financial hardship, or to specify a particular maximum amount under such a determination paragraph 57-14(1)(b)

**128 Section 85-1 (cell at table item 53A, column headed  
“Provision under which decision is made”)**

Repeal the cell, substitute:  
paragraph 57A-9(1)(a)

**129 Section 85-1 (after table item 53A)**

Insert:

- 53AA To refuse to make a determination that paying an accommodation charge of more than a specified maximum daily amount would cause financial hardship, or to specify a particular maximum daily amount under such a determination paragraph 57A-9(1)(b)

**130 Paragraph 93-1(2)(a)**

Omit “an approved provider”, substitute “a person who is or has been an approved provider”.

**131 Paragraph 93-1(3)(a)**

Repeal the paragraph, substitute:

- (a) the affairs of a \*corporation that is or has been an approved provider; or

**132 Subparagraph 93-1(4)(b)(i)**

Repeal the subparagraph, substitute:

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- (i) the affairs of a \*corporation that is or has been an approved provider; or

**133 Paragraph 93-4(2)(a)**

Repeal the paragraph, substitute:

- (a) the affairs of a \*corporation that is or has been an approved provider; or

**134 Subparagraph 93-4(3)(b)(i)**

Repeal the subparagraph, substitute:

- (i) the affairs of a \*corporation that is or has been an approved provider; or

**135 Clause 1 of Schedule 1 (at the end of the definition of *accommodation bond*)**

Add “, and in respect of which the approved provider holds an allocation of \*places”.

**136 Clause 1 of Schedule 1 (definition of *key personnel*)**

Repeal the definition, substitute:

*key personnel* has the meaning given by section 8-3A.

**137 Clause 1 of Schedule 1**

Insert:

*pre-allocation lump sum* has the meaning given by subsection 14-5(6).

**138 Clause 1 of Schedule 1**

Insert:

*provisionally allocated*: a \*place is *provisionally allocated* if it is a place in relation to which a \*provisional allocation is in force under Division 15.

**139 Clause 1 of Schedule 1**

Insert:

*unregulated lump sum* has the meaning given by the *Aged Care (Bond Security) Act 2006*.

**140 Clause 1 of Schedule 1**

Insert:

*unregulated lump sum balance* has the meaning given by the *Aged Care (Bond Security) Act 2006*.

***Aged Care (Bond Security) Act 2006***

**141 Section 3**

After “an approved provider” (wherever occurring), insert “or former approved provider”.

**142 Subsection 6(1) (after paragraph (e) of the definition of *administrative costs*)**

Insert:

(ea) making any refund declarations under section 13A that were permitted to be made as a result of the making of the default event declaration; and

**143 Subsection 6(1)**

Insert:

*aged care service* has the meaning given by the Dictionary in Schedule 1 to the *Aged Care Act 1997*.

**144 Subsection 6(1) (at the end of the definition of *bond*)**

Add:

; or (c) an unregulated lump sum.

**145 Subsection 6(1) (at the end of the definition of *bond balance*)**

Add:

; or (c) in relation to a bond that is an unregulated lump sum—the unregulated lump sum balance.

**146 Subsection 6(1)**

Insert:

*entry*, in relation to a person and an aged care service, has the meaning given by the Dictionary in Schedule 1 to the *Aged Care Act 1997*.

**147 Subsection 6(1)**

Insert:

*flexible care* has the meaning given by the Dictionary in Schedule 1 to the *Aged Care Act 1997*.

**148 Subsection 6(1)**

Insert:

*flexible care service* has the meaning given by the Dictionary in Schedule 1 to the *Aged Care Act 1997*.

**149 Subsection 6(1) (definition of *insolvency event*)**

Omit “an approved provider”, substitute “a person who is or has been an approved provider (the *approved provider or former approved provider*)”.

**150 Subsection 6(1) (definition of *insolvency event*)**

After “the approved provider” (wherever occurring), insert “or former approved provider”.

**151 Subsection 6(1)**

Insert:

*provisional allocation* has the meaning given by the Dictionary in Schedule 1 to the *Aged Care Act 1997*.

**152 Subsection 6(1) (at the end of the definition of *refund declaration*)**

Add “or 13A”.

**153 Subsection 6(1)**

Insert:

*residential care* has the meaning given by the Dictionary in Schedule 1 to the *Aged Care Act 1997*.

**154 Subsection 6(1)**

Insert:

*residential care service* has the meaning given by the Dictionary in Schedule 1 to the *Aged Care Act 1997*.

**155 Subsection 6(1)**

Insert:

*respite care* has the meaning given by the Dictionary in Schedule 1 to the *Aged Care Act 1997*.

**156 Subsection 6(1)**

Insert:

*unregulated lump sum* has the meaning given by subsection (3).

**157 Subsection 6(1)**

Insert:

*unregulated lump sum balance*, in relation to an unregulated lump sum is, at a particular time, an amount equal to the difference between:

- (a) the amount of the unregulated lump sum; and
- (b) any amounts that have been, or are permitted to be, deducted at that time under the agreement under which the unregulated lump sum was paid.

**158 Subsection 6(2)**

Omit “of an approved provider at a particular time”, substitute “at a particular time of a person who is or has been an approved provider”.

**159 Paragraph 6(2)(b)**

Omit “that time is later than the time required for the bond balance to be refunded by the approved provider”, substitute “in relation to an accommodation bond or entry contribution—that time is later than the time required for the bond balance to be refunded by the person”.

**160 At the end of subsection 6(2)**

Add:

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- ; and (c) in relation to an unregulated lump sum—that time is later than the earlier of the following:
- (i) the start of the first day on which the person (the ***unregulated lump sum holder***) to whom the amount was paid is obliged, under the agreement under which it was paid, to refund the amount or part of the amount;
  - (ii) the end of a period of 14 days beginning immediately after the day on which the care recipient in relation to whose entry to a residential care service or flexible care service the amount was paid ceased to be provided with care by the unregulated lump sum holder through that service.

### **161 At the end of section 6**

Add:

*What is an unregulated lump sum?*

- (3) An ***unregulated lump sum*** is an amount of money paid to a person (the ***unregulated lump sum holder***) in the following circumstances:
- (a) the amount is paid to the unregulated lump sum holder by a care recipient under a written agreement for the care recipient's entry to:
    - (i) a residential care service through which residential care other than respite care is, or is to be, provided by the unregulated lump sum holder; or
    - (ii) a flexible care service through which flexible care is, or is to be, provided by the unregulated lump sum holder;
  - (b) the amount does not accrue daily;
  - (c) under the agreement, the amount, or part of the amount, must be refunded to the care recipient if the unregulated lump sum holder ceases to provide residential care or flexible care (as the case requires) to the care recipient;
  - (d) the unregulated lump sum holder is an approved provider immediately before 1 January 2009;
  - (e) the amount was paid to the unregulated lump sum holder before 1 January 2009 and before the unregulated lump sum holder began to be an approved provider;
  - (f) the amount is not an entry contribution;

- (g) the care recipient did not cease to be provided with residential care through the residential care service, or flexible care through the flexible care service (as the case requires), after the amount was paid but before the unregulated lump sum holder began to be an approved provider.

## 162 After section 6

Insert:

### 6A Transitional application of this Act to certain insolvency events

If:

- (a) immediately before the commencement of the *Aged Care Amendment (2008 Measures No. 2) Act 2008*, a person is an approved provider; and
- (b) the person ceases to be an approved provider in respect of an aged care service on the day immediately after the period of 6 months beginning on the commencement of that Act has expired (the *transition day*); and
- (c) the person ceases to be an approved provider in respect of the service because:
  - (i) there is no allocation of a place to the person in respect of the service in effect on the transition day; or
  - (ii) there is no provisional allocation of a place to the person in respect of the service in force on the transition day;

this Act does not apply in relation to any insolvency event that occurs after the period of 12 months beginning on the transition day has expired.

## 163 Subsection 7(1)

Omit “an approved provider”, substitute “a person who is or has been an approved provider”.

## 164 Subparagraph 7(1)(a)(i)

Omit “the approved provider”, substitute “the person”.

## 165 Subparagraph 7(1)(a)(ii)

Omit “the approved provider or the approved provider’s property”, substitute “the person or the person’s property”.

**166 Paragraph 7(1)(b)**

Omit “the approved provider”, substitute “the person”.

**167 Subsection 7(1) (note)**

Omit “An approved provider”, substitute “A person”.

**168 Subsection 8(1)**

Omit “the approved provider to which”, substitute “the person to whom”.

**169 Section 9**

Repeal the section, substitute:

**9 Notice of certain insolvency events**

(1) If:

- (a) a person is an approved provider; and
- (b) any of the events mentioned in paragraph (a), (b), (c), (d), (e) or (f) of the definition of *insolvency event* occur in relation to the person;

the person must notify the Secretary the first time that the event occurs.

(2) If:

- (a) a person has been, but is no longer, an approved provider; and
- (b) any of the events mentioned in paragraph (a), (b), (c), (d), (e) or (f) of the definition of *insolvency event* occur in relation to the person; and
- (c) there was at least one outstanding bond balance of the person at the time the event occurs;

the person must notify the Secretary the first time that the event occurs.

(3) The notification under subsection (1) or (2) must be given in writing by the end of the first business day after the day on which the event occurs.

(4) A person commits an offence if the person refuses or fails to comply with a requirement under this section.

Penalty: 30 penalty units.

**170 Paragraph 10(1)(a)**

Omit “an approved provider”, substitute “a person who is or has been an approved provider (the *approved provider or former approved provider*)”.

**171 Paragraph 10(1)(b)**

After “the approved provider”, insert “or former approved provider”.

**172 Subsection 10(2)**

After “the approved provider” (wherever occurring), insert “or former approved provider”.

**173 Subsection 11(1)**

After “the approved provider” (wherever occurring), insert “or former approved provider”.

**174 Subsection 12(1)**

Omit “an approved provider”, substitute “a person who is or has been an approved provider (the *approved provider or former approved provider*)”.

**175 Subsection 12(1)**

After “the approved provider” (wherever occurring), insert “or former approved provider”.

**176 Paragraph 12(2)(b)**

Omit “at the time that bond balance became an outstanding bond balance”, substitute “at the time the Secretary makes the determination”.

**177 Paragraph 12(2)(d)**

After “the approved provider”, insert “or former approved provider”.

**178 At the end of section 12**

Add:



*Where all or part of a refund is clawed back as a result of insolvency or bankruptcy*

(3) If:

- (a) before the determination is made, part of a bond balance is refunded; and
- (b) in a case where the approved provider or former approved provider is a corporation:
  - (i) a transaction under which the refund took place is a voidable transaction under subsection 588FE(2), (2A) or (2B) of the *Corporations Act 2001*; and
  - (ii) the liquidator takes action, including but not limited to the making of an application under section 588FF of that Act, as a result of which the person to whom the refund was made does not retain the value of the refund, or part of the value of the refund; and
- (c) in a case where the approved provider or former approved provider is not a corporation:
  - (i) a transfer of any property for the purposes of giving the refund is void under section 122 of the *Bankruptcy Act 1966*; and
  - (ii) the trustee in bankruptcy takes action as a result of which the person to whom the refund was made does not retain the value of the refund, or part of the value of the refund;

then, for the purposes of paragraph (2)(b), to the extent that the person to whom the refund was made does not retain the value of the refund, the refund is taken not to have been made.

### **179 Subsection 13(1)**

Omit “an approved provider”, substitute “a person who is or has been an approved provider (the *approved provider or former approved provider*)”.

### **180 Paragraph 13(2)(b)**

After “the approved provider”, insert “or former approved provider”.

### **181 After section 13**

Insert:

**13A Additional refund declaration where refund by approved provider or former approved provider void or voidable**

- (1) This section applies if:
- (a) a person who is or has been an approved provider (an ***approved provider or former approved provider***) refunds part of the bond balance in relation to a bond (the ***initial refund***); and
  - (b) after the initial refund, the Secretary, under paragraph 12(2)(b), determines in respect of the outstanding bond balance of the ***approved provider or former approved provider*** in relation to the bond, the amount that the Secretary considers is equal to the amount of the bond balance that has not been refunded at the time the Secretary makes the determination; and
  - (c) a refund declaration is made under section 13 in reliance on that determination; and
  - (d) in a case where the approved provider or former approved provider is a corporation:
    - (i) a transaction under which the initial refund took place is a voidable transaction under subsection 588FE(2), (2A) or (2B) of the *Corporations Act 2001*; and
    - (ii) the liquidator takes action, including but not limited to the making of an application under section 588FF of that Act, as a result of which the person to whom the initial refund was made does not retain the value of the initial refund, or part of the value of the initial refund; and
  - (e) in a case where the approved provider or former approved provider is not a corporation:
    - (i) a transfer of any property for the purposes of giving the initial refund is void under section 122 of the *Bankruptcy Act 1966*; and
    - (ii) the trustee in bankruptcy takes action as a result of which the person to whom the initial refund was made does not retain the value of the initial refund, or part of the value of the initial refund.
- (2) The Secretary may:

- (a) determine the amount that the Secretary considers is equal to the amount of the value of the initial refund that has not been retained by the person to whom it was made; and
  - (b) as soon as practicable after the Secretary has determined that matter, make another refund declaration relating to the outstanding bond balance.
- (3) The refund declaration must:
- (a) be in writing; and
  - (b) specify the approved provider or former approved provider who has not refunded all, or part, of the relevant outstanding bond balance; and
  - (c) declare that the Commonwealth is to pay an amount equal to the amount determined under paragraph (2)(a).
- (4) The refund declaration is not a legislative instrument.

**182 Paragraph 14(1)(b)**

After “the approved provider”, insert “or former approved provider”.

**183 Section 15**

After “the approved provider”, insert “or former approved provider”.

**184 Section 15 (note)**

After “the approved provider”, insert “or former approved provider”.

## Part 2—Application and transitional provisions

### 185 Interpretation

- (1) In this Part:
- commencing day* means 1 January 2009.
- transition day* means the day immediately after the end of the transition period.
- transition period* means a period of 6 months beginning at the start of the commencing day.
- (2) Subject to subitem (1), an expression used in this Part that is also used in the *Aged Care Act 1997* has the same meaning in this Part as it has in that Act.

### 186 Application of amendments to existing approved providers

- (1) If, immediately before the commencing day, a person is an approved provider, the approved provider amendments do not apply in relation to the person during the transition period.
- (2) On the transition day, the approval of the person is taken to be in respect of:
- (a) for types of aged care:
    - (i) if, immediately before the transition day, the approval was in respect of all types of aged care—all types of aged care; and
    - (ii) if, immediately before the transition day, the approval was limited to a specified type or types of aged care—that type or those types of aged care; and
  - (b) for aged care services:
    - (i) each aged care service in respect of which an allocation of a place to the person in respect of the aged care service is in effect (whether because the place was originally allocated to the person or because of a transfer); or
    - (ii) each aged care service in respect of which a provisional allocation of a place to the person in respect of the aged

care service is in force (whether because the place was originally allocated to the person but the allocation has not yet taken effect or because of a transfer).

- (3) The approval of the person in relation to any other service is taken to cease at the start of the transition day. However, the obligation under section 57-21AA of the *Aged Care Act 1997*, inserted by the amendment made in item 102, does not apply in relation to accommodation bond balances in respect of accommodation bonds paid for entry to such a service before the transition day.
- (4) In this item, the *approved provider amendments* are the amendments made by items 1, 24 to 26, 89 to 92, 113, 120, 121 and 123.

### **187 Application of amendments relating to approval of persons as providers of aged care**

The amendments made by items 2, 8 and 9 apply to the approval of a person as a provider of aged care where the approval is given on or after the commencing day.

### **188 Application of key personnel amendments**

- (1) The amendments made by items 3, 4, 5 and 6 apply in relation to an application for the approval of a person as a provider of aged care made on or after the commencing day.
- (2) Despite the amendment made by item 7, a person who is an approved provider immediately before the commencing day is not required to notify the Secretary until the transition day of a change in key personnel that is only a change in key personnel because of the amendment made by that item.
- (3) The amendment made by item 14 applies in relation to a change in key personnel that occurs on or after the commencing day.
- (4) The amendments made by items 63 and 64 apply to applications for transfer of allocated places made on or after the commencing day.
- (5) The amendments made by items 72 to 75 apply in relation to applications for extra service status made on or after the commencing day.

- (6) The amendments made by items 79 to 81 apply to applications for certification of a residential care service made on or after the commencing day.

**189 Application of amendments relating to revocation of a provider's approval on request**

The amendments made by items 10, 12, 22, 27 and 122 do not apply if the request is made before the commencing day by an approved provider to revoke its approval.

**190 Application of amendments relating to matters materially affecting a person's suitability to provide aged care**

The amendments made by items 11 and 114 apply to the approval of a person as a provider of aged care where the approval is given on or after the commencing day.

**191 Application of amendment applying to notice of certain changes**

The amendment made by item 15 applies to a person who has been approved as a provider of aged care on or after the commencing day.

**192 Application of amendment relating to applications for allocation of places**

The amendment made by item 28 applies in relation to an application for an allocation of places made on or after the commencing day.

**193 Application of amendments relating to allocation of places**

The amendments made by items 29 to 51 apply to an allocation of places made on or after the commencing day.

**194 Application of amendments relating to lapsing of approval as a recipient of aged care**

The amendments made by items 69 and 70 apply on and from 1 July 2009.

**195 Application of amendments relating to extra service status**

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The amendments made by items 76 to 78 apply to applications for extra service status made on or after the commencing day.

**196 Application of amendments relating to working out residential care subsidy**

- (1) The amendments made by items 83 to 88 apply for the purposes of working out the amount of residential care subsidy payable to an approved provider for the provision of residential care through a residential care service to a care recipient in respect of a payment period that begins on or after the commencing day.
- (2) Nothing in items 93 to 100 affects a determination made before the commencing day under subsection 57-14(1) of the *Aged Care Act 1997* (as in force immediately before the commencing day), or anything done in relation to or in reliance upon such a determination.
- (3) Nothing in item 105, 106, 107, 108, 109, 110 or 111 affects a determination made before the commencing day under subsection 57A-9(1) of the *Aged Care Act 1997* (as in force immediately before the commencing day), or anything done in relation to or in reliance upon such a determination.
- (4) The amendments made by items 126 and 127 apply in relation to a refusal to make a determination on or after the commencing day under paragraph 57-14(1)(a) or (b) of the *Aged Care Act 1997* (as in force at that time).
- (5) The amendments made by items 128 and 129 apply in relation to a refusal to make a determination on or after the commencing day under paragraph 57A-9(1)(a) or (b) of the *Aged Care Act 1997* (as in force at that time).

**197 Application of amendment relating to refund of accommodation bond**

The amendment made by item 101 applies where the care recipient ceases to be provided with care by a residential care service or a flexible care service in a residential setting on or after the commencing day.

**198 Application of amendments relating to refund of bonds by former approved providers**

The amendments made by items 102 to 104 apply where a person ceases to be an approved provider on or after the commencing day.

### **199 Application of amendments relating to the imposition of sanctions**

- (1) The amendments made by items 115, 116, 117 and 118 apply in relation to decisions made on or after the commencing day on whether it is appropriate to impose sanctions on an approved provider for non-compliance with one or more of its responsibilities under Part 4.1, 4.2 or 4.3 of the *Aged Care Act 1997* (as in force at that time).
- (2) The amendment made by item 119 applies to sanctions imposed on or after the commencing day on an approved provider that has not complied, or is not complying, with one or more of its responsibilities under Part 4.1, 4.2 or 4.3 of that Act (as in force at that time).

### **200 Application of amendments dealing with sanctions**

The repeal of paragraph 66-1(c) in item 119 does not affect the validity of any restriction imposed under that paragraph before its repeal.

### **201 Application of amendment of definition of *accommodation bond***

The amendment made by item 135 applies in relation to amounts of money that are paid or payable on or after the transition day.

### **202 Application of amendments relating to refund declarations**

The amendments made by items 142, 152, 176, 178 and 181 apply in relation to the determination of matters on or after the commencing day.

### **203 Application of amendment relating to insolvency event declarations**

The amendment made by item 169 applies in relation to insolvency events that occur on or after the commencing day.



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*[Minister's second reading speech made in—  
House of Representatives on 16 October 2008  
Senate on 26 November 2008]*

(204/08)

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