



# **Social Services Legislation Amendment (No. 2) Act 2015**

**No. 128, 2015**

**An Act to amend the law relating to social security  
and 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 relating to social security and aged care, and for related purposes**

*[Assented to 16 September 2015]*

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Social Services Legislation Amendment (No. 2) Act 2015*.

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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>Provisions</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 this Act receives the Royal Assent.       | 16 September 2015   |
| 2. Schedule 1, Parts 1 and 3  | The day after this Act receives the Royal Assent. | 17 September 2015   |
| 3. Schedule 1, Part 4   | 1 July 2017.                                      | 1 July 2017         |
| 4. Schedule 1, Part 5   | The day after this Act receives the Royal Assent. | 17 September 2015   |
| 5. Schedule 2   | The day after this Act receives the Royal Assent. | 17 September 2015   |
| 6. Schedule 3   | The day this Act receives the Royal Assent.       | 16 September 2015   |

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

## 3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

### **Part 1—Abolition of certain incentive payments**

#### *Social Security Act 1991*

##### **1 Subsection 23(1)**

Repeal the following definitions:

- (a) definition of *matched savings scheme (income management) payment*;
- (b) definition of *voluntary income management agreement*;
- (c) definition of *voluntary income management incentive payment*.

##### **2 Parts 2.25D and 2.25E**

Repeal the Parts.

#### *Social Security (Administration) Act 1999*

##### **3 Section 12J**

Repeal the section.

##### **4 Subsection 47(1) (paragraphs (fa) and (fb) of the definition of lump sum benefit)**

Repeal the paragraphs.

##### **5 Subdivision DD of Division 5 of Part 3B**

Repeal the Subdivision.

## Part 3—Miscellaneous

### *Social Security (Administration) Act 1999*

#### **9 Section 123TC (paragraph (a) of the definition of *child*)**

Repeal the paragraph, substitute:

- (a) a child for whom the person is the principal carer; or

#### **9A Paragraphs 123UF(1)(g) and (2)(h)**

Omit “1 January 2016”, substitute “1 July 2017”.

#### **10 Section 123UGC (heading)**

Repeal the heading, substitute:

#### **123UGC Exempt welfare payment recipient—person is not the principal carer of a child**

#### **11 Paragraph 123UGC(1)(a)**

Repeal the paragraph, substitute:

- (a) at the test time, the person is not the principal carer of a child who is a school age child or younger; and

#### **12 Subparagraph 123UGC(1)(b)(ii)**

Repeal the subparagraph, substitute:

- (ii) within at least 4 of the last 6 fortnights before the test time, the person has received less than 25% of the maximum basic rate of youth allowance, newstart allowance, pension PP (single) or benefit (PP) partnered (other than because a compliance penalty period applied to the person);
- (iia) within at least 4 of the last 6 fortnights before the test time, the person has received less than 25% of the equivalent rate of special benefit (other than because a compliance penalty period applied to the person);

#### **13 Subsection 123UGC(1) (note)**

Repeal the note.

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**14 Subsection 123UGC(4)**

Repeal the subsection.

**15 Section 123UGD (heading)**

Repeal the heading, substitute:

**123UGD Exempt welfare payment recipient—person is the principal carer of a child**

**16 Paragraph 123UGD(1)(a)**

Repeal the paragraph, substitute:

- (a) at the test time, the person is the principal carer of a child who is a school age child or younger; and

**17 Paragraphs 123UGD(1)(b) and (c)**

Omit “dependent”.

**18 Subsection 123UGD(1) (note 1)**

Repeal the note.

**19 Subsection 123UGD(1) (note 2)**

Omit “Note 2”, substitute “Note”.

**20 Subsection 123UGD(3) (heading)**

Repeal the heading, substitute:

*Activities relating to children (other than school age children)*

**21 Subsection 123UGD(3)**

Omit “dependent”.

**22 Subsection 123UGD(7) (definition of *dependent child*)**

Repeal the definition.

**23 Section 123UGE**

Repeal the section.

#### **24 Paragraph 123UH(a)**

Repeal the paragraph, substitute:

- (a) at the particular time, the first person is a child for whom the other person is the principal carer; or

#### **25 Subsection 123WL(4)**

Repeal the subsection.

#### **26 Section 123YR**

Repeal the section, substitute:

#### **123YR Credit of income management account in error**

- (1) If the Secretary is satisfied that an amount (the *excess amount*) has been credited to a person's income management account in error, the Secretary may determine, in writing, that:
  - (a) the person's income management account is to be debited by one or more amounts equal to the excess amount; or
  - (b) the person must repay to the Commonwealth, as a debt due to the Commonwealth, an amount equal to the excess amount.

Note: Paragraph (b)—for debt recovery, see Chapter 5 of the 1991 Act.
- (2) If the Secretary makes a determination under paragraph (1)(a):
  - (a) the Income Management Record is debited by one or more amounts equal to the excess amount; and
  - (b) the person's income management account is debited by one or more amounts equal to the excess amount.
- (3) A determination made under subsection (1) is not a legislative instrument.

#### **27 At the end of Division 8 of Part 3B**

Add:

#### **123ZJA Action purportedly taken under Division 6 as a result of administrative error**

*Scope*

- (1) This section applies if:
-

- (a) the Secretary purports to take action under Division 6; and
- (b) apart from this section, the action is invalid; and
- (c) the action is due to an administrative error.

*Relevant excess*

- (2) If the action purportedly taken results in an amount (an **excess amount**) being credited to a person's income management account in error, the Secretary may determine, in writing, that:
  - (a) the person's income management account is to be debited by one or more amounts equal to the excess amount; or
  - (b) the person must repay to the Commonwealth, as a debt due to the Commonwealth, an amount equal to the excess amount.

Note: Paragraph (b)—for debt recovery, see Chapter 5 of the 1991 Act.

- (3) If the Secretary makes a determination under paragraph (2)(a):
  - (a) the Income Management Record is debited by one or more amounts equal to the excess amount; and
  - (b) the person's income management account is debited by one or more amounts equal to the excess amount.

*Debt due to the Commonwealth*

- (4) If the action purportedly taken results in an amount (an **excess amount**) being paid to a person in error and the person does not have an income management account, an amount equal to the excess amount is a debt due by the person to the Commonwealth.

Note: For debt recovery, see Chapter 5 of the 1991 Act.

- (5) If the action purportedly taken results in a voucher being given to a person in error, an amount equal to the face value of the voucher is a debt due by the person to the Commonwealth.

Note: For debt recovery, see Chapter 5 of the 1991 Act.

- (6) If the action purportedly taken results in a stored value card being given to a person in error, an amount equal to the monetary value of the stored value card is a debt due by the person to the Commonwealth.

Note: For debt recovery, see Chapter 5 of the 1991 Act.

- (7) Subject to subsection (8), if the action purportedly taken results in a payment being made to the credit of an account held by a person with:
- (a) a bank; or
  - (b) a person specified in a legislative instrument made by the Secretary for the purposes of subparagraph 123YK(2)(a)(ii) or (b)(ii) or 123YL(2)(a)(ii) or (b)(ii);
- in error, an amount equal to the amount of the payment is a debt due by the person to the Commonwealth.

Note: For debt recovery, see Chapter 5 of the 1991 Act.

- (8) If an account mentioned in subsection (7) is held by a person jointly or in common with another person, each account holder is jointly and severally liable for the payment of a debt due to the Commonwealth under that subsection.
- (9) If the action purportedly taken results in a payment being made to a person by way of a cheque or cash, and the payment is made in error, an amount equal to the amount of the payment is a debt due by the person to the Commonwealth.

Note: For debt recovery, see Chapter 5 of the 1991 Act.

*Crediting of amounts*

- (10) If the action purportedly taken results in an amount (a **shortfall amount**) being debited from a person's income management account in error, an amount equal to the shortfall amount must be:
- (a) credited to the Income Management Record; and
  - (b) credited to the person's income management account.
- (11) A determination made under subsection (2) is not a legislative instrument.

**28 At the end of subsection 123ZN(1)**

Add:

- ; and (i) making a payment to cover an invalid action, as mentioned in subsection 123ZJA(1).

## **Part 4—Consequential amendments**

### ***Income Tax Assessment Act 1997***

#### **29 Section 11-15 (table item headed “social security or like payments”)**

Omit:

matched savings scheme (income management)  
payment under the *Social Security Act 1991* ..... 52-10

#### **30 Section 11-15 (table item headed “social security or like payments”)**

Omit:

voluntary income management incentive payment under  
the *Social Security Act 1991* ..... 52-10

#### **31 Subsection 52-10(1EA)**

Repeal the subsection.

## Part 5—Transitional and savings provisions

### 32 Voluntary income management incentive payment

Despite the repeal of Part 2.25D of the *Social Security Act 1991* by this Schedule, a person may accrue a qualifying incentive payment period and be qualified for a voluntary income management incentive payment under that Part if:

- (a) the person's qualifying savings period ends on or before 28 December 2015; and
- (b) the requirements of that Part are otherwise satisfied in relation to the person.

### 33 Matched savings scheme (income management) payment

Despite the repeal of Part 2.25E of the *Social Security Act 1991* by this Schedule, a person is qualified for a matched savings scheme (income management) payment under that Part if:

- (a) the person's qualifying savings period ends after the day this item commences, but on or before 31 December 2015; and
- (b) the requirements of that Part are otherwise satisfied in relation to the person; and
- (c) the person makes a claim, in writing, for the payment on or before the later of the following days:
  - (i) 28 days after the day this item commences;
  - (ii) 31 December 2015.

## **Schedule 2—Ceasing residential care subsidy for pre-entry leave**

### ***Aged Care Act 1997***

#### **1 At the end of section 42-1**

Add:

- (4) Despite any other provision of this Act, an approved provider operating a residential care service is not eligible for \*residential care subsidy for a care recipient in respect of a day if the care recipient is on \*pre-entry leave from that service on that day.

#### **2 After subsection 42-2(3)**

Insert:

- (3AA) For the purposes of paragraph (3)(c), disregard days on which the care recipient is on \*pre-entry leave from the residential care service.

#### **3 Subsection 42-3(3)**

Omit “on the day of entry”, substitute “at the end of the day before the day the person enters the residential care service”.

#### **4 At the end of section 52C-3**

Add:

- (4) Steps 2 to 6 of the resident fee calculator in subsection (1) do not apply in relation to a day on which the care recipient is, because of subsection 42-3(3), taken to be on \*leave under section 42-2.

#### **5 Application provisions**

- (1) The amendment of section 42-1 of the *Aged Care Act 1997* made by this Schedule applies in relation to working out whether an approved provider is eligible for residential care subsidy in respect of days occurring on or after the commencement of this item (regardless of whether the pre-entry leave began before, on or after that commencement).

- (2) The amendment of section 42-2 of the *Aged Care Act 1997* made by this Schedule applies in relation to days occurring on or after the commencement of this item (regardless of whether the pre-entry leave began before, on or after that commencement).
- (3) The amendment of section 52C-3 of the *Aged Care Act 1997* made by this Schedule applies in relation to working out the amount of the resident fee in respect of days occurring on or after the commencement of this item (regardless of whether the pre-entry leave began before, on or after that commencement).

### ***Aged Care (Transitional Provisions) Act 1997***

#### **6 At the end of section 42-1**

Add:

- (5) Despite any other provision of this Act, an approved provider operating a residential care service is not eligible for \*residential care subsidy for a care recipient in respect of a day if the care recipient is on \*leave from that service on that day because of subsection 42-3(3).

#### **7 After subsection 42-2(3)**

Insert:

- (3AA) For the purposes of paragraph (3)(c), disregard days on which the care recipient is on \*leave from the residential care service because of subsection 42-3(3).

#### **8 Subsection 42-3(3)**

Omit “on the day of entry”, substitute “at the end of the day before the day the person enters the residential care service”.

#### **9 Section 58-2**

Before “The maximum daily amount of”, insert “(1)”.

#### **10 At the end of section 58-2**

Add:

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- (2) Steps 2 to 6 of the resident fee calculator in subsection (1) do not apply in relation to a day on which the care recipient is, because of subsection 42-3(3), taken to be on \*leave under section 42-2.

## **11 Section 58-5**

Omit “section 58-2”, substitute “subsection 58-2(1)”.

## **12 Application provisions**

- (1) The amendment of section 42-1 of the *Aged Care (Transitional Provisions) Act 1997* made by this Schedule applies in relation to working out whether an approved provider is eligible for residential care subsidy in respect of days occurring on or after the commencement of this item (regardless of whether the period referred to in subsection 42-3(3) of that Act began before, on or after that commencement).
- (2) The amendment of section 42-2 of the *Aged Care (Transitional Provisions) Act 1997* made by this Schedule applies in relation to days occurring on or after the commencement of this item (regardless of whether the period referred to in subsection 42-3(3) of that Act began before, on or after that commencement).
- (3) The amendments of section 58-2 of the *Aged Care (Transitional Provisions) Act 1997* made by this Schedule apply in relation to working out the amount of the resident fee in respect of days occurring on or after the commencement of this item (regardless of whether the period referred to in subsection 42-3(3) of that Act began before, on or after that commencement).

## Schedule 3—Aged Care Planning Advisory Committees

### *Aged Care Act 1997*

#### **1 Section 11-4**

Omit “*Advice may be sought from an Aged Care Planning Advisory Committee (see section 12-7)*”.

#### **2 Paragraph 12-1(2)(c)**

Omit “12-7”, substitute “12-6”.

#### **3 Section 12-7**

Repeal the section.

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*[Minister’s second reading speech made in—  
House of Representatives on 28 May 2015  
Senate on 16 June 2015]*

(66/15)

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