



# **Aged Care Legislation Amendment (Emergency Leave) Act 2020**

**No. 41, 2020**

**An Act to amend the law in relation to leave from  
residential care services, and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation  
(<https://www.legislation.gov.au/>)



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## **An Act to amend the law in relation to leave from residential care services, and for related purposes**

*[Assented to 15 May 2020]*

The Parliament of Australia enacts:

### **1 Short title**

*This Act is the **Aged Care Legislation Amendment (Emergency Leave) Act 2020**.*

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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. The whole of this Act	The day this Act receives the Royal Assent.	15 May 2020

Note: This table relates only to the provisions of this Act as originally enacted.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Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

### **Part 1—Amendments**

#### *Aged Care Act 1997*

##### **1 After paragraph 42-2(3)(b)**

Insert:

- (ba) the care recipient is not on leave under subsection (3B) on that day; and

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

Insert:

- (3B) A care recipient is on \*leave under this section from a residential care service (the *affected service*) on a day if:
  - (a) during the whole of that day, the care recipient is absent from the affected service; and
  - (b) either:
    - (i) the care recipient does not, during that day, attend a hospital for the purpose of receiving hospital treatment; or
    - (ii) the care recipient does, during that day, attend a hospital for that purpose and the day is before the day on which the care recipient \*enters the affected service; and
  - (c) the Minister determines under subsection 42-2A(1) that there is a situation of emergency for that day for the affected service or a class of residential care services that includes the affected service.

##### **3 Subsection 42-2(4)**

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

##### **4 After section 42-2**

Insert:

#### **42-2A Determining situations of emergency to enable additional leave**

- (1) The Minister may determine in writing that there is a situation of emergency for a specified day for a residential care service, or a class of residential care services, if the Minister is satisfied that an emergency is affecting or has affected:
  - (a) the service or services for that day; or
  - (b) the community in which the service or services are located for that day.

Note: An emergency affecting a residential care service or community may include a disaster (whether natural or otherwise), an epidemic or a pandemic.

- (2) For the purposes of subsection (1):
  - (a) a class of residential care services may include all residential care services in Australia; and
  - (b) a day for which a situation of emergency is determined may be a day that is before, on or after the day the determination is made.
- (3) A determination made under subsection (1) for a class of residential care services is a legislative instrument.
- (4) A determination made under subsection (1) for a particular residential care service is not a legislative instrument, but must be published on the Department's website.
- (5) The Minister may, in writing, delegate to the Secretary the power to make a determination under subsection (1). In exercising the power, the Secretary must comply with any directions of the Minister.

#### **5 Paragraph 52C-5(b)**

Repeal the paragraph, substitute:

- (b) the care recipient is not on \*leave from the residential care service on that day; and
- (ba) the care recipient would have been on leave from the residential care service on that day under subsection 42-2(3) except that the care recipient had previously been on leave under that subsection, during the current financial year, for 52 days;



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

### **6 After paragraph 42-2(3)(b)**

Insert:

- (ba) the care recipient is not on leave under subsection (3B) on that day; and

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

Insert:

- (3B) A care recipient is on \*leave under this section from a residential care service (the *affected service*) on a day if:
  - (a) during the whole of that day, the care recipient is absent from the affected service; and
  - (b) either:
    - (i) the care recipient does not, during that day, attend a hospital for the purpose of receiving hospital treatment; or
    - (ii) the care recipient does, during that day, attend a hospital for that purpose and the day is before the day on which the care recipient \*enters the affected service; and
  - (c) the Minister determines under subsection 42-2A(1) of the *Aged Care Act 1997* that there is a situation of emergency for that day for the affected service or a class of residential care services that includes the affected service.

### **8 Subsection 42-2(4)**

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

### **9 Paragraph 58-6(b)**

Repeal the paragraph, substitute:

- (b) the care recipient is not on \*leave from the residential care service on that day; and
- (ba) the care recipient would have been on leave from the residential care service on that day under subsection 42-2(3) except that the care recipient had previously been on leave under that subsection, during the current financial year, for 52 days;

## Part 2—Application of amendments

### 10 Emergency determinations for days occurring before commencement

A determination may be made under subsection 42-2A(1) of the *Aged Care Act 1997* for a day that occurs before the commencement of this item, provided the day does not occur before 1 April 2020.

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[Minister's second reading speech made in—  
*House of Representatives on 13 May 2020*  
*Senate on 14 May 2020*]

(66/20)

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