

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

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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

[*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*.

2 Commencement

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

| Commencement information | | |
| --- | --- | --- |
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 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Note: This table relates only to the provisions of this Act as originally enacted.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Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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 Ministermay 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.

[*Minister’s second reading speech made in—*

*House of Representatives on 13 May 2020*

*Senate on 14 May 2020*]

(66/20)