



Aged Care Amendment (Aged Care Recipient Classification) Act 2020

No. 147, 2020

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

[Assented to 17 December 2020]

The Parliament of Australia enacts:

1 Short title

This Act is the *Aged Care Amendment (Aged Care Recipient Classification) 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 later of: (a) 1 March 2021; and (b) the day after this Act receives the Royal Assent. | 1 March 2021 (paragraph (a) applies) |

Note: This table relates only to the provisions of this Act as originally enacted.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Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

Aged Care Act 1997

1 Section 5-1

After:

- the recipient of the care—the recipient must (in most cases) be approved in respect of the type of *aged care provided (see Part 2.3). In the case of home care, the recipient must be a *prioritised home care recipient (see Part 2.3A). In the case of residential care or flexible care, the recipient can be classified in respect of the level of care that is required (see Part 2.4).

insert:

Part 2.4A provides for the classification of recipients of residential care and some kinds of flexible care on the initiative of the Secretary. The effect of these classifications is limited (see section 29F-1).

2 Paragraph 16-11(2)(a)

After “records”, insert “held by the transferor”.

3 After Part 2.4

Insert:

Part 2.4A—Classification of care recipients on Secretary’s initiative

Division 29B—Introduction

29B-1 What this Part is about

On the Secretary’s initiative, the Secretary may classify care recipients approved under Part 2.3 for residential care, or for some

kinds of flexible care, according to the level of care they need. The effect of a classification under this Part is limited (see section 29F-1).

Note: Care recipients who are approved under Part 2.3 for home care only are not classified under this Part.

Table of Divisions

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29B-2 The Classification Principles

The classification of care recipients under this Part is also dealt with in the Classification Principles. The provisions of this Part indicate when a particular matter is or may be dealt with in these Principles.

Note: The Classification Principles are made by the Minister under section 96-1.

Division 29C—How are care recipients classified?

29C-1 Application of this Division

This Division applies in relation to the following:

- (a) a care recipient who is approved under Part 2.3 for residential care;
- (b) a care recipient who is approved under Part 2.3 for flexible care and whose flexible care is of a kind specified in the Classification Principles.

Note: The Classification Principles may exclude a class of care recipients from classification under this Part—see section 29C-6.

29C-2 Classification of care recipients*How care recipients may be classified*

- (1) The Secretary may classify a care recipient for *respite care or *non-respite care (the **relevant kind of care**) according to the level of care the care recipient needs, relative to the needs of other care recipients, if:
 - (a) there is no classification of the care recipient for the relevant kind of care under this Part; or
 - (b) the Secretary decides to reclassify the care recipient for the relevant kind of care under this Part (see section 29D-1).

Note: Classifications are reviewable under Part 6.1.

- (2) However, the Secretary must not classify the care recipient unless the level of care needed by the care recipient, relative to the needs of other care recipients, has been assessed under section 29C-3 for the purposes of making the classification.

Requirements for classification

- (3) The classification must specify the appropriate *classification level for the care recipient for the relevant kind of care (see section 29C-5). The Classification Principles may specify methods or procedures that the Secretary must follow in determining the appropriate classification level for the care recipient.
- (4) In classifying the care recipient, the Secretary must take into account:
 - (a) the assessment of the care needs of the care recipient mentioned in subsection (2); and
 - (b) any other matters specified in the Classification Principles.

Notice of classification

- (5) The Secretary must notify the care recipient, and any approved provider that is providing care to the care recipient, of the following in writing:
 - (a) whether the classification is for *respite care or *non-respite care;
 - (b) the classification of the care recipient;
 - (c) the day the classification takes effect;

- (d) if the classification of the care recipient is a reclassification (see section 29D-1)—that it is a reclassification.

When classification takes effect

- (6) The classification takes effect on the day specified in the Classification Principles.
- (7) For the purposes of subsection (6), the Classification Principles may specify a day before the classification was made, so long as the day is not before the commencement of this Part.

Note: Classifications under this Part have a limited effect—see section 29F-1.

29C-3 Secretary may assess care recipient

- (1) While a care recipient is being provided with *respite care or *non-respite care (the *relevant kind of care*), the Secretary may assess the level of care needed by the care recipient, relative to the needs of other care recipients, for the following purposes:
- (a) classifying (including reclassifying) the care recipient under this Part for the relevant kind of care;
 - (b) deciding whether to reclassify the care recipient under this Part for the relevant kind of care (see section 29D-1).
- (2) The Classification Principles may specify procedures that the Secretary must follow in making the assessment.
- (3) If the approval of a care recipient under Part 2.3 covers the provision of *respite care and the circumstances specified in the Classification Principles apply:
- (a) an assessment of the care recipient's care needs made under section 22-4 for the purposes of the approval is taken to be an assessment of the level of care needed by the care recipient under this section; and
 - (b) the assessment is taken to have been made for the purposes of classifying (or reclassifying) the care recipient under this Part for respite care.

29C-4 Care recipients may have classifications for both respite and non-respite care

A classification of a care recipient under this Part for *respite care, and a classification of the care recipient under this Part for *non-respite care, may both be in effect at the same time.

29C-5 Classification levels

- (1) The Classification Principles may set out the *classification levels for classifications of care recipients under this Part.
- (2) Without limiting subsection (1), the Classification Principles may set out different *classification levels for classifications for *respite care and classifications for *non-respite care.
- (3) The Classification Principles may specify the criteria, in respect of each *classification level, for determining which level applies to a care recipient.

29C-6 Exclusion of classes of care recipients

- (1) The Classification Principles may exclude a class of care recipients from classification under this Part. A care recipient who is in such a class cannot be classified under this Part for the period specified in the Classification Principles in relation to that class.
- (2) A classification of a care recipient under this Part does not cease merely because, under subsection (1), the care recipient becomes excluded from classification under this Part.

29C-7 Classifications of persons who cease to be care recipients

- (1) A classification of a person under this Part is not in effect if the person has ceased to be a care recipient in relation to whom this Division applies (see section 29C-1).
- (2) However, if the person becomes such a care recipient again at a time, the classification continues from that time.

29C-8 Use of computer programs to make decisions

- (1) The Secretary may arrange for the use, under the Secretary's control, of computer programs for making decisions on the classification of care recipients under section 29C-2.
- (2) A decision made by the operation of a computer program under such an arrangement is taken to be a decision made by the Secretary.
- (3) The Secretary may, under section 29C-2, substitute a decision for a decision the Secretary is taken to have made under subsection (2) if the Secretary is satisfied that the decision made by the operation of the computer program is incorrect.
- (4) Subsection (3) does not limit any other provision of this Act that provides for the review or reconsideration of a decision.

Division 29D—How are care recipients reclassified?

29D-1 Reclassification of care recipients

- (1) The Secretary may reclassify a care recipient under section 29C-2 for *respite care or *non-respite care if an approved provider that is providing that kind of care to the care recipient requests, in writing, that the Secretary reclassify the care recipient.

Note: A decision not to reclassify a care recipient is reviewable under Part 6.1.

- (2) The Secretary must not reclassify the care recipient unless the Secretary is satisfied that the care needs of the care recipient have changed significantly.

Note: The Secretary may assess the care needs of the care recipient for the purposes of deciding whether to reclassify the care recipient—see paragraph 29C-3(1)(b).

- (3) For the purposes of subsection (2), the Classification Principles may specify the circumstances in which the care needs of the care recipient are taken to have changed significantly.
- (4) If the Secretary decides not to reclassify the care recipient, the Secretary must notify the care recipient and the approved provider of the decision in writing.

Note: For notice requirements if the Secretary decides to reclassify the care recipient, see subsection 29C-2(5).

Division 29E—How are classifications changed?

29E-1 Changing classifications

- (1) The Secretary must change a classification of a care recipient under this Part if the Secretary is satisfied that:
- (a) the assessment of the level of care needed by the care recipient, relative to the needs of other care recipients, that was made for the purposes of the classification (see section 29C-3) was incorrect or inaccurate; or
 - (b) the classification was, for any other reason, incorrect.

Note: Changes of classifications are reviewable under Part 6.1.

- (2) The classification cannot be changed under this section in any other circumstances.

Note: The Secretary may reclassify the care recipient in certain circumstances—see section 29D-1.

- (3) Before changing the classification, the Secretary must review it, having regard to:
- (a) any material on which the classification was based that the Secretary considers relevant; and
 - (b) any matters specified in the Classification Principles as matters to which the Secretary must have regard; and
 - (c) any other material or information that the Secretary considers relevant (including material or information that has become available since the classification was made).
- (4) If the Secretary changes the classification:
- (a) the change takes effect on the same day that the classification took effect (see subsection 29C-2(6)); and
 - (b) the Secretary must notify the care recipient, and any approved provider that is providing care to the care recipient, in writing, of the change.

Division 29F—Limited effect of classifications under this Part

29F-1 Limited effect of classifications under this Part

Application of this section

- (1) This section applies to:
 - (a) a classification of a care recipient under this Part; and
 - (b) a *classification level to which a care recipient has been classified under this Part.

Effect of classifications

- (2) Unless expressly provided otherwise, the classification or *classification level does not have effect, and is not to be treated as a classification or classification level of the care recipient, for the purposes of the following:
 - (a) this Act, other than:
 - (i) paragraph 16-11(2)(a) (which deals with the transfer of certain records); and
 - (ii) this Part;
 - (b) the *Aged Care (Transitional Provisions) Act 1997*;
 - (c) any legislative instrument made under this Act, other than Classification Principles made for the purposes of a provision of this Part;
 - (d) any legislative instrument made under the *Aged Care (Transitional Provisions) Act 1997*;
 - (e) any other law of the Commonwealth.
- (3) Without limiting subsection (2), the *classification level cannot affect:
 - (a) any amount of *subsidy payable under Chapter 3 of this Act or Chapter 3 of the *Aged Care (Transitional Provisions) Act 1997*; or
 - (b) any amount that an approved provider may charge the care recipient for the provision of care and services.

4 Before paragraph 63-1(1)(i)

Insert:

(ha) to allow delegates of the Secretary access to the service, as required under the Accountability Principles, in order to assess, under section 29C-3, the care needs of care recipients provided with care through the service;

5 Section 85-1 (after table item 31)

Insert:

| | | |
|-----|--|---------------------|
| 32 | To classify a care recipient | subsection 29C-2(1) |
| 32A | To not reclassify a care recipient | subsection 29D-1(1) |
| 32B | To change the classification of a care recipient | subsection 29E-1(1) |

6 Subsections 85-5(4A) and 85-6(1)

Omit “subsection 29-1(1) (a decision to change the classification of a care recipient)”, substitute “subsection 29-1(1) or 29E-1(1) (which deal with a decision to change the classification of a care recipient under Part 2.4 or 2.4A)”.

6A Section 86-4

Before “A person”, insert “(1)”.

7 Section 86-4

After “section 22-4”, insert “or 29C-3”.

8 After paragraph 86-4(b)

Insert:

(ba) if the person is a care recipient—assessing the level of care the person needs, relative to the needs of other care recipients;

9 At the end of section 86-4

Add:

; (d) monitoring, reporting on, and conducting research into, the quality or safety of aged care.

(2) However, the purposes mentioned in paragraphs (1)(c) and (d) do not include publication (whether in writing or otherwise) of *personal information.

10 Section 96-1 (cell at table item 9, column headed “Part or provision”)

Repeal the cell, substitute:

Parts 2.4 and 2.4A,
section 85-6 and
subsection 96-2(15)

11 After subsection 96-2(14)

Insert:

Person to make assessment under section 29C-3

- (15) The Secretary may, in writing, delegate the Secretary’s powers and functions under section 29C-3 (Secretary may assess care recipients) to a person who satisfies the criteria specified in the Classification Principles for the purposes of this subsection.

12 After section 96-2

Insert:

96-2A Identity cards for certain delegates

- (1) The Secretary must cause an identity card to be issued to each person to whom the Secretary’s powers and functions under section 29C-3 are delegated under subsection 96-2(15).

Note: Section 29C-3 provides for assessments of the care needs of care recipients for the purposes of making classifications under Part 2.4A.

Form of identity card

- (2) The identity card must:
- (a) be in the form approved in an instrument under subsection (3); and
 - (b) include a photograph of the person that is no more than 5 years old.
- (3) The Secretary may, by notifiable instrument, approve a form for the purposes of subsection (2).

Offence

- (4) A person commits an offence of strict liability if:
- (a) the person has been issued with an identity card under this section; and
 - (b) the person ceases to be a delegate of the Secretary under subsection 96-2(15); and
 - (c) the person does not return the identity card to the Secretary within 14 days after ceasing to be such a delegate.

Penalty: 1 penalty unit.

- (5) Subsection (4) does not apply if the identity card was lost or destroyed.

Note: A defendant bears an evidential burden in relation to the matter in this subsection—see subsection 13.3(3) of the *Criminal Code*.

Requirement to carry and show identity card

- (6) When a person to whom the Secretary's powers and functions under section 29C-3 are delegated under subsection 96-2(15) is exercising those powers or performing those functions:
- (a) the delegate must, at all times, carry the delegate's identity card; and
 - (b) if a person who apparently represents an approved provider requests the delegate to show the delegate's identity card—the delegate must:
 - (i) do so when requested; or
 - (ii) if it is not reasonably practicable to do so when requested—do so as soon as reasonably practicable after that.

13 Clause 1 of Schedule 1 (at the end of the definition of *classification level*)

Add "or Part 2.4A".

14 Clause 1 of Schedule 1

Insert:

non-respite care means residential care, or flexible care of a kind specified in the Classification Principles for the purposes of paragraph 29C-1(b), other than respite care.

[*Minister's second reading speech made in—
House of Representatives on 21 October 2020
Senate on 9 December 2020*]

(134/20)
