



Aged Care Amendment (Residential Care) Bill 2007

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Social Policy and Law and Bills Digest Sections

Contents

Purpose.	2
Background.	3
Overview of Aged Care Sector.	3
The Current Resident Classification Scale	3
The Hogan Report.	4
The Proposed Changes	4
Financial implications	5
Main provisions.	6
Schedule 1— Residential Care.	6
Part 1—Amendments to the <i>Aged Care Act 1997</i>	6
Aged Care Funding Instrument and classification levels	6
Time Limits	7
Changes to suspension powers of Secretary	7
Expiry and renewal of classifications	9
Record-keeping requirements	11
Part 2—Application and Transitional Provisions.	11
Concluding comments	11
Endnotes.	12

Aged Care Amendment (Residential Care) Bill 2007

Date introduced: 21 March 2007

House: House of Representatives

Portfolio: Ageing

Commencement: Sections 1 to 3 commence on the day the Act receives Royal Assent. Schedule 1 commences on a single day to be fixed by Proclamation or 12 months from the date of Royal Assent.

Purpose

Schedule 1 to the Bill amends the *Aged Care Act 1997* (the Act) to support proposed amendments to the Classification Principles 1997 to replace the Resident Classification Scale (RCS) with the Aged Care Funding Instrument (ACFI) as the means of allocating subsidy to providers of residential aged care.

The Bill also proposes the following amendments:

- change to the way in which classifications expire to avoid unnecessary reclassifications
- allow the Secretary to define the type and form of records that the approved provider must keep in order to support the classification made for a resident
- allow an approved provider to choose to accept a resident's current classification, when a resident moves from one aged care home to another, rather than being required to submit a new appraisal
- remove a provision allowing more than one aged care home to be paid a subsidy for the same resident when the person is on High Dependency Care Leave
- allow the Secretary to stay the suspension of a provider from failing to conduct appraisals or reappraisals for funding purposes if the provider meets certain obligations such as undergoing training or seeking advice.

Part 2 to the Bill provides for application and transitional arrangements to implement the amendments to this Bill and ensure a smooth transition for approved providers.

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Background

Overview of Aged Care Sector

The Commonwealth Government is essentially responsible for funding and regulating the formal residential aged care sector in Australia. The framework under which this formal residential aged care sector operates comes via the *Aged Care Act 1997* and the associated *Aged Care Principles 1997*.

The three main strands of residential aged care are:

- high care places (formerly nursing home beds)
- low care places (formerly hostel beds), and
- Community Aged Care Packages (CACPs) and Extended Age Care at Home (EACH) packages – these packages provide an alternative to residential aged care and allow the elderly to stay in their home or like environment.

Under existing section 22-4 of the Act the initial assessment of care needs for a person who may need aged care is undertaken by the Secretary. This is delegated to Aged Care Assessment Teams (ACAT). ACAT are separate from any aged care providers. They assess and approve older people for Australian Government subsidised aged care, such as residential aged care, Community Aged Care Packages (CACPs) or flexible care, such as Extended Aged Care at Home (EACH) Packages. They are funded by the Commonwealth but through the State Government system.

This Bill only changes the funding arrangements for aged care providers based on classifications of care levels, not the ACAT process. The definition of ‘residential care’ in section 43-1 remains unchanged but the ‘specified levels’ of residential care are amended by this Bill as explained in the ‘Main Provisions’ section below.

According to the latest data in the *2007 Report on Government Services—Aged Care Attachment* (Productivity Commission) there were, as at June 2006, a total of 163,468 residential aged care places across Australia. At that time there were 2929 residential services providing these places. The Commonwealth’s contribution to the funding of these residential aged care places (including funding for aged care packages) in 2005-06 was about \$5 billion.

The Current Resident Classification Scale

The Resident Classification Scale (RCS) is the basic tool used to fund residential aged care. How aged care residents are classified is important because the amount of basic Commonwealth subsidy paid to residential providers is dependent upon the classification level that residents are placed in. For example, a resident currently classified at classification scale 1 attracts a Commonwealth basic subsidy of \$122.77 per day whereas a resident designated as classification level 7 attracts a daily basic subsidy of \$26.27.

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The average subsidy paid to approved providers per utilised aged care place in 2005-06 was \$34,000.¹

The Hogan Report

In the 2002-03 Federal Budget the Government announced that it would establish a comprehensive review of the pricing arrangements for residential aged care. A key emphasis of the Review, formally called the *Review of Pricing Arrangements in Residential Aged Care*, was on the long term funding needs and options of the sector. The Reviewer was Professor Warren Hogan and the subsequent report (released in May 2004) is commonly called the 'Hogan Report'. A number of the recommendations in the Report called for changes related to the RCS funding mechanism and the changes in this legislation are a response to the relevant recommendations made by Hogan. In the context of the 2004 Federal Budget the government announced that it would, after trialling the funding instrument and consulting with relevant parties, introduce a new method of funding to replace the RCS.

In his report, Hogan recommended that the number of RCS funding levels be reduced and argued that the

...main disadvantages identified in the current funding delivery mechanism are the administrative burden inherent in the RCS and the adequacy of the current funding arrangements to appropriately compensate for the care needs of particular groups of care recipients.²

The administrative burden issue associated with the RCS was also noted in a recent Senate Community Affairs Committee Report entitled *Quality and Equity in Aged Care* tabled in June 2005. In that report the Committee supported the moves towards the new ACFI stating that one of the main advantages of the new funding instrument would be a 'reduction in paperwork for aged care services'.³

Hogan also referred to the volatility of the RCS system that leads to inconsistency between aged care services in terms of the classification scales that residents are placed in. According to Hogan this volatility leads to uncertainty of income streams for providers.

The Proposed Changes

The main thrust of the reforms to the RCS proposed in the Hogan Report is contained in this Bill. Under the RCS system there are eight residential funding levels and the proposed new Aged Care Funding Instrument (ACFI) will see the number of funding levels for basic care decrease as well as the provision of new subsidies for residents with complex health needs, such as dementia and mental health conditions.

The ACFI is aimed at reducing the administrative burden identified by Hogan and the amount of documentation and record keeping in order to justify the various funding classification for each resident will be reduced. The Bill will enable the Secretary of the

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Department of Health and Ageing to determine the type of forms and records that providers will need to keep to support the classification of resident in care. It also allows for providers to choose to accept a resident's current classification in the case where a resident moves to a new aged care facility. Currently, in such cases, a new appraisal of the resident must be done.

Under the present system appraisals of residents are only valid for twelve months. The Bill alters this, such that there will be much more flexibility in terms of the reappraisal of resident classifications.

More flexibility is also given to the Secretary in terms of dealing with providers who repeatedly conduct appraisals and reappraisals in an improper manner. Currently, the Secretary can suspend a provider for undertaking improper appraisals and reappraisals and this Bill will allow the Secretary, where appropriate, to stay such suspensions contingent on the provider meeting various obligations such as undergoing training or appointing a specialist adviser.

Financial implications

The new funding model has been extensively trialled and the estimated cost to the Commonwealth of the new funding system is \$393.6m over the four years from 2007-08 to 2010-11.⁴ According to the Explanatory Memorandum the funding allocated will ensure:

- that the funding for existing residents will not decrease as a result of reassessments under the new ACFI
- that sufficient funding is available for the new supplements for residents with complex health and care needs; and
- the establishment of a panel of experts to help providers implement the new ACFI.

The Financial Impact Statement refers to a five year forecast of Budget funding for aged care and states that the amendments made by Schedule 1 to the Bill have financial implications for the Department of Health and Ageing and the Department of Veterans' Affairs.

When introducing the Bill, the Assistant Minister for Health and Ageing Chris Pyne stated that:

Maintaining the resident classification scale and associated processes costs over \$142 million, involving a loss of 5.8 million hours. Within the \$142 million, a cost of \$116 million is attributed to the resident classification scale appraisal process alone—this can be compared to the Aged Care Funding Instrument impact of \$5.21 million.⁵

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Main provisions

In order to be prepared in time for the debate in the House of Representatives, this Digest has focused on the key amendments to be introduced by this Bill.

Schedule 1— Residential Care

Part 1—Amendments to the *Aged Care Act 1997*

This Bill does not introduce the ACFI itself. The Bill amends the way the [Classification Principles 1997](#) are taken into account by the Secretary when making classification decisions under Part 2.4 (see existing section 24.2). Care recipients who are approved under Part 2.3 of the Act for residential care, or some kinds of flexible care, are classified according to the level of care they need. A care recipient's classification affects the amount of residential care, or flexible care, subsidy payable to an approved provider for providing care to the care recipient.

Section 96-1 of the Act enables the Minister to make up to 23 sets of Principles that are required or permitted under the Act, or that the Minister considers are necessary or convenient to carry out or give effect to a Part or section of the Act. The Classification Principles deal with a number of aspects of the classification of care recipients. Schedule 1 contains the current Classification Principles Appraisal procedures (see section 9.17). Schedule 2 sets out the RCS classification levels. Subsection 22-2(3) currently provides for the Secretary to limit an approval of a person as a residential care recipient made under section 22-1 to one or more levels of care corresponding to the formula set out in Schedule 2 to the Classification Principles. This will be replaced with the new ACFI.

The Minister has made 21 sets of Principles under the Act. The Principles may be amended at any time by tabling the changes in Parliament. The ACFI amendments to the principles will follow the passage of this Bill. Some of the detail of the policy changes are contained in a policy document tabled when the Bill was introduced and referred to in the second reading speech. Principles are disallowable instruments (see section 96-1(2) of the Act) and provide maximum flexibility for governmental policy changes.

Aged Care Funding Instrument and classification levels

Item 1 specifies that existing subsection 22-2(3) is repealed and replaced by a **new subsection 22-2(3)**. As the RCS classification levels will be replaced by the ACFI classification levels, this amendment allows the Secretary to limit an approval of a person as a residential care recipient under section 22-1 to a *low level of residential care* as calculated under the ACFI. The decision to limit the approval of a care recipient to a low level of residential care is a reviewable decision under existing section 85-1 of the Act, table item 21 as amended by **item 38** of this Bill. The definition of low level of residential care in the Dictionary in Schedule 1 to the Act is repealed and substituted by **item 48**. The

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new definition provides that the meaning of low level of residential care is specified in the *Classification Principles 1997*.

The Explanatory Memorandum states:

It is intended that definitions of high and low level of care will be based on ACFI classifications, which will be set out in a Schedule to the Classification Principles. This requires that the definitions also be included in the Classification Principles.⁶

It may be preferable to have key definitions which affect funding decisions and levels of care contained in the Act itself, but this does give the Government flexibility to make immediate changes.

Item 3 amends subsection 25-1(2) to provide that the Classification Principles may specify methods or procedures that the Secretary must follow in determining the appropriate classification level for a care recipient. Once the ACFI changes are tabled therefore, the Secretary must follow the new ACFI formula.

Time Limits

This Digest does not explore the interface between the initial ACAT assessment and ACFI appraisals once a person has entered an aged care facility.

Item 6 repeals subsection 25-3(2) and substitutes **new subsections 25-3(2) and 25-3(2A)**.

New subsection 25-3(2) specifies that an ACFI appraisal must not be made during the 7 day period when the provision of care to the care recipient starts and that the ACFI appraisal must not be given to the Secretary during the period of 28 days commencing when the provision of care to the care recipient starts.

New subsection 25-3(2A) allows the Classification Principles to specify an alternative period of appraisal in circumstances where subsection 25-3(2) does not apply. Any such circumstances are to be specified in the Classification Principles.

The Explanatory Memorandum states:

It is intended that section 9.17 of the Classification Principles will be amended to reflect the new ACFI appraisal process and that section 9.23 of the Classification Principles will be amended to allow for circumstances in which an ACFI appraisal must be completed over a shorter period.⁷

Changes to suspension powers of Secretary

The Bill would amend the Act to give the Secretary more flexibility to help industry providers comply with appraisals or reappraisals before suspending them which means

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funding for that Commonwealth place would cease. The Explanatory Memorandum states:

The Aged Care Act allows the Secretary to suspend a provider from appraising residents for funding purposes if the provider repeatedly fails to conduct appraisals or reappraisals in a proper manner. This Bill allows the Secretary to stay the suspension, subject to the provider meeting certain obligations. These obligations may include appointing an adviser at the provider's cost, or undertaking training. This gives the Secretary greater flexibility to encourage providers to conduct appraisals and reappraisals properly to avoid a suspension coming into effect.⁸

Item 14 creates a new power to stay suspensions subject to an agreement. The details of such agreements and the consequences of any failure to comply is laid out in **proposed sections 25-4A--25-4E** inserted by **Item 16**.

Item 14 inserts a **new subsection 25-4(6A)** to allow the Secretary to specify in a notice of suspension to an approved provider that the suspension will not take effect if the approved provider enters into an agreement with the Secretary to undertake training or appoint an adviser as provided for in **proposed new section 25-4A** which deals with stay of suspension agreements (see **item 16**).

Proposed subsection 25-4(6B) allows the Secretary to stay the suspension of an approved provider if the approved provider enters into an agreement with the Secretary within the timeframe specified in the notice of suspension (as set out in **new section 25-4B, item 15**).

Proposed section 25-4B provides that a stayed suspension may take effect if the Secretary is satisfied that:

- if the agreement requires an approved provider to appoint an adviser—the approved provider has not complied with subsections 25-4A(2) or (3), or
- the approved provider has not complied with the agreement, or
- despite having complied with the agreement, the approved provider has continued not to conduct appraisals and reappraisals of the care needs of its care recipients in a proper manner.

Proposed subsection 25-4B(2) deals with notice requirements to the approved provider if the Secretary decides the suspension is to take effect, which will be 7 days after the date notice is given (**proposed subsection 25-4B(3)**).

Proposed section 25-4C deals with applications for lifting of suspension to the Secretary. **Proposed subsection 25-4C(4)** provides that the Secretary must have regard to any matters specified in the Classification Principles in deciding whether it is appropriate to lift an approved provider's suspension from making appraisals or reappraisals.

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Proposed section 25-4D deals with requests for further information by the Secretary when deciding whether to lift an approved provider's suspension from making appraisals and reappraisals.

Proposed section 25-4E deals with notification to the provider of Secretary's decision to lift the suspension or not within 28 days of the Secretary receiving the application or any further information requested by the Secretary.

The amendments in **items 7 to 13** and **17 to 20** of Schedule 1 clarify that the Secretary's suspension powers in section 25-4 of the Act and authorisation powers under section 25-5 apply in relation to reappraisals as well as appraisals conducted by approved providers.

Item 21 amends section 26-1 to clarify that a classification is taken to have had effect from the day an approved provider began providing care to a care recipient if the Secretary receives an appraisal from the approved provider who has been providing care to the care recipient from that day.

Expiry and renewal of classifications

Item 22 repeals Divisions 27 and 28 and substitutes a **new Division 27**.

The amendments to Division 27 are designed to 'extend the period during which a resident's classification has effect and removes the requirement for providers to submit unnecessary reappraisals, but gives providers the option to reappraise a resident after twelve months'.⁹

Existing subsection 28-2(5) of the Act deals provides that a reappraisal must take place after any 'significant change' in the resident's care needs. This provision is unaffected by this Bill.

Division 27 currently provides that a classification expires 12 months from the day it took effect, or when a care recipient departs from a residential care service, or on the last day of leave when a care recipient takes *extended hospital leave* (30 days or more).

Proposed subsection 27-2(1) specifies the circumstances in a table when a particular classification will expire, when the expiry date occurs and what the reappraisal period is. Readers are directed to examine that table.

The definition of expiry date in the Dictionary in Schedule 1 to the Act is repealed and substituted by **item 45**. The new definition provides that for a classification under Part 2.4, expiry date means the expiry date determined under section 27-2 which is the day of departure; or any such other day as is specified in the Classification Principles.

The circumstances where a classification will expire include:

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- the day on which the care recipient departs a residential care service where the care recipient does not enter an aged care service again within 28 days
- the last day of leave where a care recipient takes extended hospital leave
- 6 months after the day a care recipient began receiving residential care after an in-patient hospital episode
- 6 months after the first day an approved provider began providing residential care to a care recipient after taking extended hospital leave
- 6 months after a care recipient's classification was renewed due to a significant change in their care needs
- on a day specified in a notice or the date of receipt of the reappraisal where the Secretary gives notice that the approved provider must reappraise one or more of their care recipients, and
- the last day of care where a care recipient is being provided with respite care.

Proposed section 27-3 deals with reappraisals required by the Secretary if the Secretary is satisfied that the approved provider has continued to give false, misleading or inaccurate information in appraisals or reappraisals following a review under 29-1(3).

New section 27-4 is inserted to specify circumstances where a reappraisal may be submitted at the approved provider's own initiative.

New subsection 27-4(2) provides that if a classification or a renewal of a classification has been in effect for more than 12 months, an approved provider may reappraise the level of care needed by a care recipient.

New subsection 27-4(3) provides that if the care needs of a care recipient have changed significantly, a reappraisal of the level of care needed by the care recipient may be made. **New subsection 27-4(4)** provides that the Classification Principles may specify the circumstances in which the care needs of a care recipient are taken to have changed significantly.

The Explanatory Memorandum states:

It is intended that the Classification Principles will be amended to define the circumstances under which the care needs of a care recipient classified under the ACFI are taken to have changed significantly.¹⁰

Proposed subsection 27-5(1) provides that a reappraisal must be made in accordance with the Classification Principles.

Proposed subsection 27-6(2) provides that the renewal of the classification must specify the appropriate classification level for the care recipient and that the Classification

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Principles may specify methods or procedures that the Secretary must follow in determining the appropriate classification level.

Subsection 42-1(4) is repealed by **item 27**. Subsection 42-1(4) allowed more than one residential care service to be paid subsidy for the same resident. If a care recipient who was a permanent resident of a low care service temporarily required a high level of residential care, the low care service could continue to receive subsidy in respect of the care recipient while the care recipient was receiving care in a high care service. The Explanatory Memorandum states that ‘this provision is no longer necessary since changes were introduced to allow residents to ‘age in place’—that is, to allow a resident to move from low care to high care within the same low care service’.¹¹

For analysis of the ‘age in place’ reforms, see further the Australian Institute of Health and Welfare Bulletin, ‘[Ageing in Place](#)’, No. 1, June 2002.

Existing subsection 44-3(3) allows the Minister to determine different amounts of basic subsidy. **Items 30 to 31** allow the Minister to determine the basic subsidy amount for the residential care subsidy in respect of various scenarios.

Record-keeping requirements

Subsection 88-2(1) is amended by **item 43** to include a requirement for approved providers to keep records in the form specified in the *Records Principles 1997*. The Explanatory Memorandum states that ‘this requirement is necessary as the ACFI classification is based primarily on assessment records that are created through the use of standard assessment tools, rather than ongoing care records’.

A **new paragraph 88-2(2)(aa)** is inserted by **item 44** to include appraisal and reappraisal records in the list of records that may be specified in the *Records Principles 1997*.

Part 2—Application and Transitional Provisions

Part 2 to the Bill provides for application and transitional arrangements to implement the amendments to this Bill and the Explanatory Memorandum says are designed to ensure a smooth transition for approved providers.

Readers are directed to the Explanatory Memorandum for further detail.

Concluding comments

This Digest has been completed against a tight debate time frame. The authors have only been able to address key issues. One key issue raised by this Bill is whether the reduction of paperwork and administrative flexibility for aged care providers will have any impact on the level of care received by a resident. Most of the substance of the Bill (which determines how effective it will be in achieving the claims for flexibility and cost

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effectiveness made in the second reading speech) will be the Classification Principles, yet to be amended. This does not allow for some of the key claims of the Bill to be properly assessed during debate.

A similar issue of process was dealt with recently by the Senate Standing Committee on Community Affairs [report](#) into the Provisions of the Aged Care Amendment (Security and Protection) Bill 2007. It dealt with new 'Investigation Principles'.

The [Bills Digest](#) on the Aged Care Amendment (Security and Protection) Bill 2007 commented on the Senate's findings as follows:

The lack of detail available regarding the 'Investigation Principles' was identified by several contributors as a problem, certainly a procedural issue and possibly a substantive issue as well, although without sufficient further information it was not possible to give any useful analysis. The Committee noted that the Department had undertaken to provide interested parties with adequate opportunities to respond, and simply commented in passing that similar details had been available and useful during the recent discussions of the Private Health Insurance legislation.¹²

Parliament may wish to consider that since some important definitions and substantive issues raised by this Bill will be contained in the proposed amendments to the Classification Principles, then the draft policy document tabled with this Bill should be examined closely.

Endnotes

1. Hon. Chris Pyne, *Debates*, House of Representatives, 21 March 2007, p. 1.
2. Hogan Report, p. 208.
3. Senate Community Affairs Committee Report, *Quality and Equity in Aged Care*, June 2002, para. 3.215.
4. Explanatory Memorandum, p. 2.
5. Hon Chris Pyne, *op. cit.*
6. Explanatory Memorandum, p. 15
7. *op. cit.*, p. 4.
8. *ibid.*, p. 1.
9. *ibid.*
10. *ibid.*, p. 10.
11. *ibid.*
12. Kirsty Magarey, [Bills Digest](#) no. 120, 2006–07, p. 4.

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