





# **Aged Care Legislation Amendment (Improved Home Care Payment Administration No. 2) Act 2021**

**No. 2, 2021**

**An Act to amend the law in relation to home care  
subsidy, 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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# **Aged Care Legislation Amendment (Improved Home Care Payment Administration No. 2) Act 2021**

**No. 2, 2021**

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## **An Act to amend the law in relation to home care subsidy, and for related purposes**

*[Assented to 16 February 2021]*

The Parliament of Australia enacts:

### **1 Short title**

*This Act is the **Aged Care Legislation Amendment (Improved Home Care Payment Administration No. 2) Act 2021**.*

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*No. 2, 2021*

*Aged Care Legislation Amendment (Improved Home Care Payment  
Administration No. 2) Act 2021*

*1*

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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 February 2021
2. Schedule 1, Parts 1 and 2	A single day to be fixed by Proclamation. However, if the commencement of the provisions is not fixed by a Proclamation registered on the Federal Register of Legislation established under the <i>Legislation Act 2003</i> , within the period of 6 months beginning on the day this Act receives the Royal Assent, the provisions are repealed on the day after the end of that period.	1 September 2021 (F2021N00042)
3. Schedule 1, Part 3	Immediately after the commencement of the provisions covered by table item 2. However, if the provisions covered by table item 2 do not commence, the provisions covered by this table item are repealed at the same time as the provisions covered by table item 2 are repealed.	1 September 2021

Note: This table relates only to the provisions of this Act as originally enacted.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.

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### **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.

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## Schedule 1—Amendments

### Part 1—Payment on invoice for services provided

#### *Aged Care Act 1997*

#### 1 Before section 48-1

Insert:

#### Subdivision A—Amount of home care subsidy

#### 2 Subsection 48-1(2)

Repeal the subsection, substitute:

- (2) The amount of \*home care subsidy for a care recipient in respect of the \*payment period is worked out as follows:

##### **Home care subsidy calculator**

- Step 1. Work out the *Commonwealth contribution amount* using section 48-1A.
- Step 2. Work out the *shortfall amount* using section 48-13.
- Step 3. If subsection (3) does not apply, work out, using section 48-17, the *home care account balance* in the care recipient's \*home care account immediately before the approved provider gives to the Secretary, under section 47-4, a claim in respect of the \*payment period.
- Step 4. Identify:
- (a) if subsection (3) applies—the Commonwealth contribution amount; or
  - (b) otherwise—the sum of the Commonwealth contribution amount and the home care account balance.

This is the ***maximum contribution amount***.

Step 5. Identify the lesser of the following amounts (or either amount if they are the same):

- (a) the shortfall amount;
- (b) the maximum contribution amount.

This is the ***amount of home care subsidy*** for the care recipient in respect of the \*payment period.

- (3) This subsection applies if:
- (a) within the period specified in the Subsidy Principles before the day the approved provider gives to the Secretary, under section 47-4, the claim in respect of the \*payment period, another approved provider ceases to provide home care to the care recipient; or
  - (b) any other circumstances specified in the Subsidy Principles apply.

### **3 After section 48-1**

Insert:

## **Subdivision B—Commonwealth contribution amount**

### **48-1A Commonwealth contribution amount**

The ***Commonwealth contribution amount*** for the care recipient in respect of the \*payment period is worked out as follows:

#### **Commonwealth contribution amount calculator**

- Step 1. Work out the ***basic subsidy amount*** using section 48-2.
- Step 2. Add to this amount the amounts of any ***primary supplements*** worked out using section 48-3.

**Schedule 1** Amendments

**Part 1** Payment on invoice for services provided

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Step 3. Subtract the amounts of any *reductions in subsidy* worked out using section 48-4.

Step 4. Add the amounts of any *other supplements* worked out using section 48-9.

The result is the *Commonwealth contribution amount* for the care recipient in respect of the \*payment period.

**4 Subsection 48-3(1)**

Omit “home care subsidy”, substitute “Commonwealth contribution amount”.

**5 Section 48-4**

Omit “home care subsidy”, substitute “Commonwealth contribution amount”.

**6 Subsection 48-9(1)**

Omit “home care subsidy”, substitute “Commonwealth contribution amount”.

**7 At the end of Part 3.2**

Add:

**Subdivision C—Shortfall amount**

**48-13 Shortfall amount**

- (1) The *shortfall amount* for the care recipient in respect of the \*payment period is worked out as follows:

**Shortfall amount calculator**

Step 1. Work out, in accordance with the Subsidy Principles, the *price* for the home care provided during the \*payment period to the care recipient by the approved provider.

Step 1A. If, in accordance with the User Rights Principles, the approved provider elects to return the \*Commonwealth portion of the care recipient's \*unspent home care amount to the Commonwealth, reduce the price by the amount of the Commonwealth portion available at the end of the previous \*payment period, up to 100% of the price.

Step 2. Subtract the *care recipient contribution amount* (if any) specified in, or worked out in accordance with, the Subsidy Principles.

The result is the *shortfall amount* for the care recipient in respect of the \*payment period. However, if the result does not exceed zero, the *shortfall amount* is zero.

- (2) The Subsidy Principles must specify the way to work out the price for home care provided during a \*payment period to a care recipient by an approved provider for the purposes of step 1 of the shortfall amount calculator.
- (3) Without limiting subsection (2), the Subsidy Principles may require the price to include or exclude amounts in relation to particular matters.
- (4) The Subsidy Principles may specify the care recipient contribution amount, or the way to work out the care recipient contribution amount, for a care recipient in respect of a \*payment period for the purposes of step 2 of the shortfall amount calculator.

## **Subdivision D—Home care accounts**

### **48-14 Home care account**

- (1) There is a *home care account* for each person who is, at any time on or after the \*implementation day, a \*prioritised home care recipient.
- (2) A person starts to have a \*home care account on:
  - (a) if the person is, on the \*implementation day, a \*prioritised home care recipient—the implementation day; or

## Schedule 1 Amendments

### Part 1 Payment on invoice for services provided

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- (b) otherwise—the day the Secretary first makes, after the implementation day, a determination under section 23B-1 that the person is a prioritised home care recipient.

#### 48-15 Home care credits

The following table sets out when a credit arises in a care recipient's \*home care account and the amount of the credit. The credit is called a *home care credit*.

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Credits in the home care account			
Item	If ...	a credit of ...	arises ...
1	the amount worked out at step 1 (Commonwealth contribution amount) of the home care subsidy calculator in subsection 48-1(2) for the care recipient in respect of a *payment period exceeds the amount worked out at step 2 (shortfall amount) of that calculator for the care recipient in respect of the payment period	the amount of the excess	at the later of: (a) the end of the subsequent payment period; and (b) the time the approved provider gives to the Secretary, under section 47-4, a claim in respect of the payment period
2	the circumstances specified in the Subsidy Principles happen	an amount specified in, or worked out in accordance with, the Subsidy Principles	at the time specified in the Subsidy Principles

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#### 48-16 Home care debits

The following table sets out when a debit arises in a care recipient's \*home care account and the amount of the debit. The debit is called a *home care debit*.

<b>Debits in the home care account</b>			
<b>Item</b>	<b>If ...</b>	<b>a debit of ...</b>	<b>arises ...</b>
1	the amount worked out at step 2 (shortfall amount) of the home care subsidy calculator in subsection 48-1(2) for the care recipient in respect of a *payment period exceeds the amount worked out at step 1 (Commonwealth contribution amount) of that calculator for the care recipient in respect of the payment period	the amount (if any) that is the difference between: (a) the amount identified in step 5 of that calculator for the care recipient in respect of the payment period; and (b) the amount worked out at step 1 (Commonwealth contribution amount) of that calculator for the care recipient in respect of the payment period	at the time the approved provider gives to the Secretary, under section 47-4, a claim in respect of the payment period
2	the circumstances specified in the Subsidy Principles happen	an amount specified in, or worked out in accordance with, the Subsidy Principles	at the time specified in the Subsidy Principles

#### **48-17 Home care account balance**

The *home care account balance* in a care recipient's \*home care account at a particular time equals:

- (a) the sum of the \*home care credits in that account at that time; less
- (b) the sum of the \*home care debits in that account at that time.

#### **48-18 When home care account ceases**

A care recipient's \*home care account ceases when the care recipient dies.

**8 Subparagraphs 56-2(b)(i) and (c)(i)**

After “charge”, insert “the care recipient”.

**9 Section 96-1 (table item 23)**

Omit “Part 4.2”, substitute “Parts 3.2 and 4.2”.

**10 Clause 1 of Schedule 1**

Insert:

*home care account* means an account that arises under section 48-14.

*home care credit* has the meaning given by section 48-15.

*home care debit* has the meaning given by section 48-16.

*implementation day* means the day Part 1 of Schedule 1 to the *Aged Care Legislation Amendment (Improved Home Care Payment Administration No. 2) Act 2021* commences.

**11 Clause 1 of Schedule 1 (definition of *payment period*)**

Repeal the definition, substitute:

*payment period*:

- (a) in relation to residential care: see section 43-2; and
- (b) in relation to home care: see section 47-2.

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

**12 Subsections 48-1(2) to (4)**

Repeal the subsections, substitute:

- (2) The amount of \*home care subsidy payable to the approved provider in respect of a care recipient in respect of the \*payment period is the amount:
  - (a) specified in the Aged Care (Transitional Provisions) Principles; or
  - (b) worked out in accordance with a method specified in the Aged Care (Transitional Provisions) Principles.

- (3) Without limiting subsection (2), the Aged Care (Transitional Provisions) Principles made for the purposes of subsection (2) may authorise the making of legislative instruments by the Minister.

### **13 Clause 1 of Schedule 1 (definition of *payment period*)**

Repeal the definition, substitute:

***payment period:***

- (a) in relation to residential care: see section 43-2; and
- (b) in relation to home care: see section 47-2.

## ***A New Tax System (Goods and Services Tax) Act 1999***

### **14 Subsection 38-30(1)**

Repeal the subsection, substitute:

- (1) A supply of \*home care is ***GST-free*** if:
- (a) home care subsidy is payable under Part 3.2 of the *Aged Care Act 1997* or Part 3.2 of the *Aged Care (Transitional Provisions) Act 1997* to the supplier for the care; or
  - (b) the Commonwealth contribution amount worked out in respect of the supplier, using section 48-1A of the *Aged Care Act 1997*, for the recipient of the care in respect of the payment period (within the meaning of that Act) in which the supply is made, is greater than zero; or
  - (c) both of the following apply:
    - (i) the supplier is eligible for home care subsidy under section 46-1 of the *Aged Care (Transitional Provisions) Act 1997* in the payment period (within the meaning of that Act) in which the supply is made;
    - (ii) the supply is a supply of a kind specified in the regulations.

### **15 Application of amendments**

The amendments of the *Aged Care Act 1997* and the *Aged Care (Transitional Provisions) Act 1997* made by this Part apply in relation to payment periods beginning on or after the day this item commences.

## 16 Rules

- (1) The Minister may, by legislative instrument, make rules prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by this Act.
- (2) To avoid doubt, the rules may not do the following:
  - (a) create an offence or civil penalty;
  - (b) provide powers of:
    - (i) arrest or detention; or
    - (ii) entry, search or seizure;
  - (c) impose a tax;
  - (d) directly amend the text of an Act.
- (3) Rules may provide that, during or in relation to the first 12 months after the commencement of this item, this Act or any other Act or instrument has effect with any modifications prescribed by the rules.
- (4) Subsection 12(2) (retrospective application of legislative instruments) of the *Legislation Act 2003* does not apply to rules made for the purposes of this item.
- (5) This Act (other than subitem (2)) does not limit the rules that may be made for the purposes of subitem (1).

## **Part 2—Variation of claims for home care subsidy**

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

#### **17 Paragraph 47-4A(1)(a)**

Repeal the paragraph, substitute:

- (a) either:
  - (i) the period specified in the Subsidy Principles; or
  - (ii) if no such period is specified—2 years after the end of that payment period; or

#### **18 After subsection 47-4A(1)**

Insert:

- (1A) Without limiting subparagraph (1)(a)(i), the Subsidy Principles may specify different periods in respect of different classes of variations.

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

#### **19 Paragraph 47-4A(1)(a)**

Repeal the paragraph, substitute:

- (a) either:
  - (i) the period specified in the Aged Care (Transitional Provisions) Principles; or
  - (ii) if no such period is specified—2 years after the end of that payment period; or

#### **20 After subsection 47-4A(1)**

Insert:

- (1A) Without limiting subparagraph (1)(a)(i), the Aged Care (Transitional Provisions) Principles may specify different periods in respect of different classes of variations.

## **21 Application of amendments**

- (1) The amendments of subsection 47-4A(1) of the *Aged Care Act 1997* and subsection 47-4A(1) of the *Aged Care (Transitional Provisions) Act 1997* made by this Part apply in relation to any claim made in respect of a payment period beginning on or after the day this item commences.
- (2) On and from the day that is 12 months after the day this item commences, the amendments of subsection 47-4A(1) of the *Aged Care Act 1997* and subsection 47-4A(1) of the *Aged Care (Transitional Provisions) Act 1997* made by this Part also apply in relation to any claim made in respect of a payment period beginning before the day this item commences.

## **Part 3—Previous claims**

### *Aged Care Act 1997*

#### **22 Paragraph 47-1(1A)(b)**

Repeal the paragraph, substitute:

- (b) in respect of a payment period if the approved provider has not given to the Secretary under section 47-4:
  - (i) a claim in respect of the payment period; and
  - (ii) a claim in respect of each preceding payment period (if any) ending on or after the first day on which the approved provider is eligible under section 46-1.

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

#### **23 Paragraph 47-1(1A)(b)**

Repeal the paragraph, substitute:

- (b) in respect of a payment period if the approved provider has not given to the Secretary under section 47-4:
  - (i) a claim in respect of the payment period; and
  - (ii) a claim in respect of each preceding payment period (if any) ending on or after the first day on which the approved provider is eligible under section 46-1.

#### **24 Application of amendments**

The amendments of the *Aged Care Act 1997* and the *Aged Care (Transitional Provisions) Act 1997* made by this Part apply in relation to payment of home care subsidy in respect of payment periods beginning on or after the day this item commences.

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*[Minister's second reading speech made in—  
House of Representatives on 21 October 2020  
Senate on 2 February 2021]*

*(30/20)*

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*16      Aged Care Legislation Amendment (Improved Home Care Payment      No. 2, 2021  
Administration No. 2) Act 2021*