



Aged Care (Bond Security) Levy Bill 2005

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Aged Care (Bond Security) Levy Bill 2005

Date introduced: 8 December 2005

House: House of Representatives

Portfolio: Ageing

Commencement: Commencement: The Bill's formal provisions commence on Royal Assent. The substantive provisions commence at the same time as Schedule 5 to the Aged Care Amendment (2005 Measures No. 1) Act 2005.¹

Purpose

The Aged Care (Bond Security) Levy Bill 2005 (the Levy Bill or the Bill) will enable the Commonwealth to impose a levy on approved providers of aged care if it needs to recover its costs (including administrative costs) after repaying accommodation bonds to aged care residents whose approved providers become insolvent and default.

The Levy Bill is part of a suite of three Bills. The other Bills are the Aged Care (Bond Security) Bill 2005 (the Bond Security Bill) and the Aged Care Amendment (2005 Measures No. 1) Bill 2005 (the No. 1 Bill). An overview of the purpose of the three Bills is found in the Bills Digest for the Bond Security Bill.

This Digest should be read in conjunction with Bills Digests Nos. 83 and 85 of 2005–06.

Background

For a background on aged care in Australia and a summary of the financial implications of the three Bills, see the Bills Digest for the Bond Security Bill (Bills Digest No. 83, 2005–06).

The Levy Bill, which enables a levy to be imposed, is a stand-alone Bill separate from the related Bond Security Bill. This separation is done for an abundance of constitutional caution and is designed to forestall legal challenges and ensure that the legislation is not invalidated by the High Court.²

Main Provisions

Clause 3 applies the legislation to all the States and the internal Territories (ie the Australian Capital Territory, the Northern Territory and Jervis Bay Territory).

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Clause 4 provides that the Crown in each of its capacities (ie Commonwealth, State and Territory) is bound by the legislation but not liable to be prosecuted for breaches of it.

A levy can be imposed on approved providers³ of aged care once a *costs recoupment determination* is made by the Minister (**clause 6**). Such a determination is made when the Commonwealth has not recouped money it has paid out in compensation to aged care residents entitled to bond refunds from a defaulting approved provider *or* when the Commonwealth wants to recover associated administrative costs. The Bond Security Bill provides for the making of costs recoupment determinations and contains a process via which defaulting approved providers are identified and arrangements are made for the Commonwealth to compensate affected aged care residents and recoup its costs.

As stated above, the Bill does not actually impose a levy. Instead, the rate of any levy will be determined by regulation (**clause 7**). The rate cannot exceed the costs recoupment determination amount in any particular case (**clause 8**). As the second reading speech for the Levy Bill points out:

... each default event is likely to be different, [so] the Government will take the necessary steps to work out the details of the levy when the situation occurs, including the rate at which the levy will be recouped. This will enable the Government to consider all the factors which will influence how and when the levy is to be imposed and ensure that costs to Government are recouped without jeopardising quality of care for residents.⁴

While any levy imposed may apply different rates to different classes of approved provider, it cannot discriminate between providers on the basis of their location in a particular State or part of a State (**clause 9**). This proviso has been included with section 99 of the Commonwealth Constitution in mind. Section 99 reads:

The Commonwealth shall not, by any law or regulation of trade, commerce, or revenue, give preference to one State or any part thereof over another State or any part thereof.

Clause 10 is a standard regulation-making clause. Note, however, any regulations necessary or convenient for facilitating the *collection* of the levy—such as who pays the levy, when it is payable, how it is paid, penalties for late payment, repayment etc—will be made under the proposed Bond Security Bill.

Endnotes

- 1 Schedule 5 commences six months after the Aged Care Amendment (2005 Measures No. 1) Bill 2005 receives Royal Assent unless commenced earlier by proclamation. Schedule 5 requires approved providers to provide the Secretary with written information about such

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things as accommodation bonds when requested to do so. This commencement of Schedule 5 is integral to the effective operation of both the Levy Bill and the Bond Security Bill.

- 2 As stated elsewhere in this Digest, the Bill does not actually impose a levy. Rather it enables a levy to be imposed. However, general drafting practice is followed ie that bills imposing a levy (tax bills) are stand-alone bills. Even in relation to imposition bills, High Court jurisprudence suggests that bills imposing taxation may be validly combined with legislation for the assessment, collection and recovery of taxation (see *Permanent Trustee Australia Pty Ltd v. Commissioner of State Revenue* 211 ALR 18). However, bills are separated for an abundance of constitutional caution springing from section 55 of the Commonwealth Constitution which reads:

Laws imposing taxation shall deal only with the imposition of taxation, and any provision therein dealing with any other matter shall be of no effect.

- 3 The expression, 'approved provider' is defined in the *Aged Care Act 1997* as 'a person or body in respect of which an approval under Part 2.1 is in force, and, to the extent provided for in section 8-6, includes any State or Territory, authority of a State or Territory or local government authority.'
- 4 Second reading speech, House of Representatives, *Hansard*, 8 December 2005, p. 15.

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