



Aged Care Amendment (2005 Measures No. 1) Bill 2005

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Aged Care Amendment (2005 Measures No. 1) Bill 2005

Date introduced: 8 December 2005

House: House of Representatives

Portfolio: Ageing

Commencement: The Bill's formal provisions commence on Royal Assent. The substantive provisions commence six months after Royal Assent unless commenced earlier by proclamation.

Purpose

The Aged Care Amendment (2005 Measures No. 1) Bill 2005 (the No. 1 Bill) will enable the strengthening of existing prudential requirements related to accommodation bonds especially in relation to liquidity, record keeping and disclosure. These new prudential requirements will be developed over time and will be subject to review.

The No. 1 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 (Bond Security) Levy Bill 2005 (the Levy Bill). An overview the purpose of the package of 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 84 of 2005–06.

Background

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

Main Provisions

Schedule 1—Flexible care

Flexible care services are those that are provided outside the normal residential and community care system. One example of this is that in some rural/regional areas there are Multipurpose Services that provide care more 'flexibly' because some aged and health care services may not be viable in small communities if provided separately. Economies of

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scale can often be achieved in this way. Residential aged care services are essentially beds (and care) in residential aged care facilities, formerly called nursing homes and hostels.

The purpose of much of **Schedule 1** is to ensure that residents of flexible care services are afforded the same protections as residents in residential aged care services.

Item 1 requires approved providers of flexible care services to comply with not only with the User Rights Principles¹ (the current requirement) but also with Division 57 of the *Aged Care Act 1997* (‘the Aged Care Act’). Division 57 deals with rules about accommodation bonds that must be complied with by approved providers.

Items 2-49 amend specific provisions in Division 57 so that particular rules about accommodation bonds apply to approved providers of flexible care services residents in as well as to approved providers of residential aged care services. For instance, **items 13-17** apply rules about the content of accommodation bond agreements to approved providers of flexible care services (currently these rules only apply to approved providers of residential aged care). **Items 40-43** apply the rules about refunding accommodation bond balances to approved providers of flexible care services.

Item 50 amends existing section 66-1 of the Aged Care Act so that the charging of accommodation bonds or the accrual of accommodation charges by either a provider of residential aged care services or a provider of flexible care services is prohibited if that provider has not complied with its responsibilities under Parts 4.1, 4.2 or 4.3 of the Act. These Parts of the Act relate to quality of care, user rights and accountability.

Schedule 2—Entry contributions

The amendments in **Schedule 2** mean that rules applying to approved providers of residential care services and flexible care services that hold accommodation bonds will also apply to approved providers that hold entry contributions paid before 1 October 1997. The Explanatory Memorandum explains:

This is because entry contributions paid prior to 1 October 1997 are akin to accommodation bonds and should be subject to the same prudential regulation. Residents who have paid entry contributions should also be afforded the same protections as residents who have paid accommodation bonds.²

Schedule 3—Prudential requirements

Item 1 of **Schedule 3** provides that approved providers will comply with prudential requirements if they comply with new Prudential Standards that will be made under **proposed new section 57-4**. **Proposed new subsection 57-4(1)** provides that the User Rights Principles may set out Prudential Standards. It then defines prudential standards as standards providing for the protection of accommodation bond balances and entry

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contribution balances of care recipients, sound financial management of approved providers and the provision of financial management information. Examples of matters that may be dealt with by the Prudential Standards include corporate governance requirements, financial reporting requirements, insurance requirements and information retention and provision requirements (**proposed new subsection 57-4(2)**).

It is intended that initially there will be three standards; a liquidity standard, records standards and information standards. The implementation of the last two standards will assist the operation of the guarantee and recoupment schemes provided for under the Bond Security and Levy Bills. For instance, the records standard will mean that approved providers holding bonds will establish and maintain independently audited accommodation bond registers.

Items 2 and 3 repeal provisions that will become redundant with the enactment of the amendments made by **item 1**.

Schedule 4—Refunds of accommodation bond balances

Items 1-6 of **Schedule 4** deal with timeframes and notice periods for the refund of accommodation bond balances when, for example, care recipients die or move to other care. For instance, at present if a care recipient dies an approved provider must refund any bond balance within 60 days of being shown a grant of probate or letters of administration. The amendments will reduce the period to 14 days (**item 1**). In some other circumstances the notice period will be extended. For example, at present if a care recipient moves from one residential care service to another, they must be refunded their bond balance on the date they leave the first service if they have given their provider at least seven days notice. **Item 2** stipulates that at least 14 days notice be given.

Item 7 provides that where an approved provider refunds an accommodation bond balance, they must calculate the interest to be paid in accordance with the User Rights Principles. Further, payment must be made to the person specified in those Principles. The Explanatory Memorandum explains that:

This proposed amendment enables a current inequity to be addressed. Currently residents can be charged interest on the accommodation bond to be paid to an approved provider from the day the resident enters a service until the day that the bond is paid, yet approved providers are not required to pay interest to a resident from the day the resident leaves the service until the day the bond balance is repaid.³

Schedule 5—Requirement to give information

Item 1 of **Schedule 5** inserts **proposed new section 9-3A** into the Aged Care Act. This new section will enable the Secretary of the Department to require an approved provider to

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provide information including information relating to accommodation bonds, accommodation bond balances, and entry contributions. This information must be provided within 28 days after the request is made or such shorter time as is specified in the request. A note alerts the reader to the fact that sanctions are available under Part 4.4 of the Act if an approved provider fails to comply. Further, if the approved provider is a corporation, failure to comply with the request within the specified period is an offence subject to a maximum penalty of 30 penalty units (\$3300).

Item 2 adds an additional exception to the general prohibition on approved providers disclosing ‘personal information’⁴ relating to a person for whom they provide aged care services. This will enable approved providers to provide personal information relating to accommodation bonds and entry contributions etc to the Secretary.

The amendments in **Schedule 5** are an integral part of the proposed scheme for guaranteeing payment of all outstanding bond balances to aged care recipients and enabling the Commonwealth to recoup its costs as provided for in the Bond Security Bill and the Levy Bill. They enable the Commonwealth to require defaulting approved providers to provide information about outstanding bond balances so that affected aged care recipients can be recompensed by the Commonwealth. They also provide a basis on which the Commonwealth can recoup this money via a levy or otherwise.

Schedule 6—Annual report

Item 1 of **Schedule 6** changes the latest date for tabling the annual report on the operation of the Aged Care Act from 30 September to 30 November.

The Explanatory Memorandum explains that:

As part of the proposed new Prudential Standards to be made under the User Rights Principles, approved providers will be required to report certain information about compliance with the new Standards to the Secretary by 31 October each year. By changing the date for tabling of the annual report ... from 30 September to 30 November ... this will enable analysis of information provided by approved providers to be undertaken and for relevant results to be included in the annual report.⁵

Schedule 7—Regulations

Item 1 of **Schedule 7** contains the standard regulation-making provision and also specifically allows regulations to be made governing transitional matters.

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Endnotes

- 1 The *User Rights Principles* are part of the general legislative framework that covers the Commonwealth's role in aged care. That framework includes the *Aged Care Act 1997* and the *Aged Care Principles* that are made under that Act. There are various sets of principles including those relating to User Rights ie the rights of older people using services provided under the *Aged Care Act*. For more detail see the following link -
<http://www.health.gov.au/internet/wcms/publishing.nsf/Content/ageing-legislat-legindex.htm>
- 2 Explanatory Memorandum, p. 5.
- 3 Explanatory Memorandum, p. 8.
- 4 The Aged Care Act defines 'personal information' as 'information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.'
- 5 Explanatory Memorandum, p. 10.

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