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BILLS DIGEST

3 April 2007, no. 129, 2006–07, ISSN 1328-8091

Aged Care Amendment (Residential Care) Bill 2006

Greg McIntosh
Social Policy section

Thomas John
Law and Bills Digest Section

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Aged Care Amendment (Residential Care) Bill 2006

Date introduced: 13 September 2006

House: The Senate

Portfolio: Minister for Ageing

Commencement: Schedule 1 of the Aged Care Amendment (Residential Care) Bill 2006 will commence on prospectively on 1 January 2007. Schedule 2 will commence upon the legislation receiving Royal Assent.

Purpose

The Aged Care Amendment (Residential Care) Bill 2006 will make amendments to the *Aged Care Act 1997* to:

- harmonise age care pension requirements in relation to income streams and asset disposals (Schedule 1 of the Bill), and
- make changes to the delegation powers of the Secretary (Schedule 2).

Brief overview of the proposed changes

Harmonisation of age care pension requirements

The Bill amends the *Aged Care Act 1997* in relation to assets testing as it applies to income streams and gifting so that there is equal treatment of income streams and gifting provisions in both aged care assets testing and pensions asset testing.

Prior to entry into residential aged care, an assets test may be conducted to ascertain the prospective resident's eligibility for subsidised accommodation costs and also to ascertain the level of accommodation fees and charges that need to be paid. At present, if prospective residential aged care residents 'gift' away assets, they are not counted in the aged care assets test. However, such gifts are included in the general aged pension assets test. This Bill brings the gifting provisions for both types of assets testing into line.

In terms of income streams, there is currently a similar anomaly. For the aged care assets test, income stream products from which the capital component cannot be drawn down are exempt, whilst for the aged pension assets test there is a 50% assets test exemption from such 'complying' income streams. As from 1 January 2007, income stream exemptions that apply to the aged pension assets test will also apply to the aged care asset testing arrangements.

Delegation powers

The Bill also formalises a delegation of power to Aged Care Assessment Teams (ACATs) to allow them to extend the number of days that a person can get residential respite care. Currently, this power rests with the Secretary of the Department of Health and Ageing.

Background

Overview of Residential Aged Care

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 Principles).

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 Aged 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.

In 1997, the Howard Government introduced significant reforms to the aged care sector (the 1997 Reforms). The main changes included the abolition of the distinction between nursing homes and hostels and the increased emphasis on 'user pays'. This has meant that residents are now expected (within their means) to pay more for their residential care. The main aspects of the 1997 Reforms were contained in the *Aged Care Act 1997* and the associated Principles.

In summary, the 1997 Reforms included:

- the integration of hostels/nursing homes into one residential aged care system
- a new single residential classification system (formerly there were two)
- the introduction of resident accommodation payments (entry contributions) for all residential care (formerly applying to hostels only)
- income testing of daily resident fees payable for all types of care (formerly applying to hostels only)
- a new system of accreditation designed to ensure proper standards of care
- less onerous paperwork requirements on residential facilities, and

- improved consumer protection arrangements.

Funding

With respect to the funding of residential aged care, the Commonwealth provides approximately three-quarters of the total funds available (mainly via residential care subsidies and capital grants to providers). The remaining funding comes from permanent residents in aged care facilities paying accommodation and daily living charges. Most of the funding comes via the Commonwealth Department of Health and Aged Care but there is also specific residential aged care funding via the Department of Veterans' Affairs for aged veterans.

Total Commonwealth funding for residential and community aged care has been rising steadily as the aged population in Australia grows. For example, according to the latest Department of Health and Ageing *Report on the Operation of the Aged Care Act 1997*, covering the financial year 2004-05, the Commonwealth spent $6.7 billion in that year on funding for ageing and aged care. This compares to a figure of about $3 billion in 1995-06.

Residential Aged Care Fees and Charges

Accommodation Payments

Accommodation payments are one of the main forms of resident contributions that are levied on people in residential aged care facilities. These accommodation payments are paid as either:

- accommodation bonds (for residents in low care or hostel beds), or
- accommodation charges (for residents in high care or nursing homes beds).

The amount of accommodation payment levied essentially depends on the asset level of each resident and the type of care utilised.

Accommodation payments are designed to help provide a stream of capital income for operators of residential facilities and enable to them to build facilities, carry out maintenance and capital upgrades and the like.

The maximum accommodation charge that can currently be levied on new entrants to high level care is $17.13 per day. Accommodation bond (for low level or hostel care) amounts and payment methods vary and are negotiated with the residential care provider. They can only be levied on residents who have assets in excess of $32,000. The average accommodation bond being levied in the 2004-05 financial year was about $127,000.

The changes to assets testing envisaged in this Bill will mean that, as from 1 January 2007, new residents into residential aged care will face a tougher asset test in relation to any gifts that have may have made since 10 May 2006 (when the new arrangements were announced) as well as tightened income stream exemption criteria.

All existing residents (that is, those who are in aged care facilities prior to 1 January 2007) are not affected by the changes in this Bill.

It is difficult to ascertain just how many new residents will be adversely affected by the changes but the government estimates that it will save almost $72m between 2006-07 and 2010-11 because of the changes to the asset test (see also Financial Implications below).

Daily Care Fees

There are two types of care fees. The level of the fees is essentially dependent upon the resident's income and the type of service chosen. There is a basic daily care fee (currently of up to $29.98 per day for respite residents and pensioners and up to $37.38 per day for other non pensioner residents) and income tested fees (which can range from up to $23.12 per day for part means tested pensioners to up to $52.56 per day for non pensioner residents). Thus, the maximum daily care fees that a wealthy person may have to pay is $89.94 per day made up of $37.38 for the basic daily care and $52.56 for the income tested fee.

This Bill does not make any changes to the current arrangements for daily income tested fees. The changes only apply to accommodation fees and charges as outlined above.

Aged Care Assessment Teams

There are Aged Care Assessment Teams (ACATs) in each State and Territory and their role is to assess a client's need for residential aged care, community care (for example, Community Aged Care Packages and often for Home and Community Care services although this is not mandatory) or flexible care (for example, Extended Aged Care at Home, Innovative Care Places and Multipurpose Services places). According to the latest *Report on Government Services* (Productivity Commission 2006) ACATs across Australia undertook 190,203 assessments in 2003-04. Commonwealth funding for aged care assessment in that year totalled $47.1m.

Under current arrangements the Secretary has the power to delegate to ACATs the power to approve a prospective resident's entry into aged care. ACAT teams also currently assess the merit of applications for extensions to respite care although formally they do not have the delegated power to approve such extensions. Residential respite care is limited to 63 days per year but the Secretary may increase the maximum number of respite days by periods of 21 days in certain circumstances. The passage of this Bill will formally give

ACAT teams the power to approve respite care extensions as well as actually assessing applications for extensions.

National Seniors Association/Australian Medical Association Comment on Bill

There has been very little public comment about the Bill but both the National Seniors Association and the Australian Medical Association (AMA) have supported the main provisions. In submissions to the Senate Community Affairs Committee (which is examining the Bill as part of a formal reference from the Senate), both National Seniors and the AMA indicated that the changes proposed in the Bill were sensible and provided a simplified and more flexible approach to both assets testing arrangements and how ACATs operated.

The National Seniors Association noted that the changes contained in the Bill related to assets testing were recommended in the 2004 *Review of Pricing Arrangements in Residential Aged Care* (Hogan Report).

Financial Implications

The main financial implication of the Bill is net savings to the Commonwealth of the order of $71.7 m over the period 2005-06 to 2010-2011. The savings are generated because the stricter assets testing arrangements related to gifting and the assessment of income streams will see, over time, more aged care residents not receiving, or receiving less, Commonwealth assistance with their accommodations costs. Net savings a a result of the Bill are estimated to be $4.6m in 2006-07; $15.5m in 2007-08; $22.9m in 2009-10 and $28.8m in 2010-11. These estimated savings are net of some small administrative and capital costs that are associated with the changes.

Main provisions

Item 1 of **Schedule 1** provides a new assessment system to calculate the value of a person's assets where this person receives either a service pension or an income support supplement. The new system is going to be based on the inclusion of certain *income streams* into the assessment. The term income stream for the purpose of the assessment system will take the definition either from the *Veterans Entitlements Act 1986* (new **subsection 44-10(1A)**),[1] or the *Social Security Act 1991* (new **subsection 44-10(1B)**) (as the case may be).[2]

New **subsection 44-10(1C)** provides that certain assets that had been disposed off by a person, must be included when calculating the value of the person’s assets for the purpose of the *Aged Care Act 1997*.

Item 2 ensures that the new assessment system will only apply to calculations performed on or after 1 January 2007 and where the person enters an aged care service as defined in the *Aged Care Act 1997* on or after that date.

Item 3 provides specific rules relating to proposed paragraphs 44-10(1C)(a) and (b), requiring the Secretary to take into account any assets a recipient of income support supplements, service pensions or other entitlements had disposed off on or after 10 May 2006.

Item 1 of **Schedule 2** repeals current subsection 96-2(5) of the *Aged Care Act 1997* and substitutes a new version. The new provision will enable the Secretary to allow certain delegates to extend 'the maximum numbers of days a person can receive residential respite care'.[3]

Item 2 of **Schedule 2** saves those delegations that have been made under current subsection 96-2(5) of the *Aged Care Act 1997* so as they continue to remain in force.

Concluding comments

As noted above, the Bill has attracted little attention; however, the National Seniors Association and the AMA have provided their support for the proposed changes.

Endnotes

1. Division 11 of Part III B of the *Veterans' Entitlements Act 1986*.
2. Division 1 of Part 3.12 of the *Social Security Act 1997*.
3. *Explanatory Memorandum* to the Aged Care Amendment (Residential Care) Bill 2006, p. 6.

Members, Senators and Parliamentary staff can obtain further information from the Parliamentary Library on (02) 6277 2503.