



Aged Care Amendment (2005 Measures No. 1) Act 2006

No. 28, 2006

**An Act to amend the law relating to aged care, and
for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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An Act to amend the law relating to aged care, and for related purposes

[Assented to 6 April 2006]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Aged Care Amendment (2005
Measures No. 1) Act 2006*.

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.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	6 April 2006
2. Schedules 1 to 7	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	31 May 2006 (see F2006L01217)

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Flexible care

Aged Care Act 1997

1 Paragraph 56-3(a)

Repeal the paragraph, substitute:

- (a) to comply with the requirements of Division 57, and the User Rights Principles, in relation to any *accommodation bond charged for the care recipient's *entry to the flexible care service through which the care is, or is to be, provided;
- (aa) to comply with the requirements of the User Rights Principles in relation to any *accommodation charge charged for the care recipient's entry to the flexible care service through which the care is, or is to be, provided;

2 Section 57-1

After “residential care service”, insert “or flexible care service”.

3 Subsection 57-2(1)

After “residential care service” (first occurring), insert “, or flexible care service,”.

4 Subparagraph 57-2(1)(aa)(i)

Omit “the person”, substitute “if the accommodation bond is charged for the entry of the care recipient to a residential care service—the care recipient”.

5 At the end of paragraph 57-2(1)(aa)

Add:

- (iv) if the accommodation bond is charged for the entry of the care recipient to a flexible care service—the care recipient requires a level of care that corresponds to a *low level of residential care provided through a residential care service;

6 Paragraph 57-2(1)(a)

Before “the residential care service”, insert “if the accommodation bond is charged for the entry of the care recipient to a residential care service—”.

7 Paragraph 57-2(1)(c)

After “residential care service”, insert “or flexible care service”.

8 Paragraph 57-2(1)(f)

After “residential care service”, insert “or flexible care service”.

9 Paragraph 57-2(1)(k)

Before “the approved provider”, insert “if the accommodation bond is charged for the entry of the care recipient to a residential care service—”.

10 After paragraph 57-2(1)(k)

Insert:

- (ka) if the accommodation bond is charged for the entry of the care recipient to a flexible care service—the approved provider must not use the accommodation bond for a purpose that is not related to providing flexible care to care recipients, or that does not comply with the prudential requirements (see section 57-3);

11 Paragraph 57-2(1)(n)

Before “the approved provider”, insert “if the accommodation bond is charged for the entry of the care recipient to a residential care service—”.

12 After paragraph 57-2(1)(n)

Insert:

- (na) if the accommodation bond is charged for the entry of the care recipient to a flexible care service—the approved provider must use the income derived from the accommodation bond and the retention amount to improve the quality and range of flexible care services;

13 Subsection 57-9(1)

After “residential care service” (first occurring), insert “, or flexible care service,”.

14 Paragraph 57-9(1)(a)

After “residential care service” (wherever occurring), insert “or flexible care service”.

15 Paragraph 57-9(1)(b)

After “residential care service”, insert “or flexible care service”.

16 Paragraph 57-9(1)(g)

After “residential care service” (wherever occurring), insert “or flexible care service”.

17 Paragraph 57-9(1)(h)

After “residential care service”, insert “or flexible care service”.

18 Subsection 57-12(1)

After “residential care service” (first occurring), insert “or flexible care service”.

19 Paragraph 57-12(1)(b)

After “residential care service”, insert “or flexible care service”.

20 Paragraph 57-12(2)(a)

After “residential care service”, insert “, or flexible care service,”.

21 Subsection 57-12(2)

After “residential care service” (second occurring), insert “or flexible care service”.

22 Paragraph 57-12(3)(a)

After “residential care service”, insert “or flexible care service”.

23 Paragraph 57-12(5)(a)

After “residential care service”, insert “or flexible care service”.

24 Subsection 57-12(5) (table item 1)

After “residential care service”, insert “or flexible care service”.

25 Paragraph 57-13(a)

Omit “a residential care service (the *original service*)”, substitute “an aged care service (the *original service*) that is a residential care service or a flexible care service”.

Note: The heading to section 57-13 is altered by omitting “residential” and substituting “certain aged”.

26 Paragraph 57-13(b)

After “residential care”, insert “, or flexible care,”.

27 Paragraph 57-13(c)

Omit “residential care service”, substitute “aged care service that is a residential care service or a flexible care service”.

28 Subsection 57-15(2)

After “residential care”, insert “or flexible care”.

29 At the end of subsection 57-16(1)

Add “or flexible care service”.

30 Subsection 57-16(2)

Omit “If”, substitute “If the care recipient has entered a residential care service and”.

31 Subsection 57-16(2) (note 1)

Repeal the note, substitute:

Note 1: However, under sections 57-18 and 57-20, amounts representing income derived and retention amounts are payable from:

- (a) the date a care recipient^{*} enters a residential care service that is^{*} certified or a flexible care service; or
- (b) the date on which a residential care service is certified, if it was not certified at the time a care recipient entered it.

32 Subsection 57-16(2) (note 2)

Repeal the note, substitute:

Note 2: Paragraph 57-2(1)(e) in most cases requires the^{*} accommodation bond agreement to have been entered into before, or within 21 days after, the care recipient’s^{*} entry to the service—this applies even if the care recipient has entered a residential care service that was not^{*} certified at the time of the care recipient’s entry to the service.

33 Paragraph 57-18(3)(a)

After “residential care service”, insert “or flexible care service”.

34 Subsection 57-18(6) (definition of *due date*)

Repeal the definition, substitute:

due date means:

- (a) in relation to an *accommodation bond payable by a care recipient for *entry to a residential care service—whichever of the following days is applicable:
 - (i) the day on which the care recipient entered the residential care service;
 - (ii) if the residential care service was not *certified on that day—the day on which the residential care service was certified; or
- (b) in relation to an accommodation bond payable by a care recipient for entry to a flexible care service—the day on which the care recipient entered the flexible care service.

35 Subsection 57-20(3)

Repeal the subsection, substitute:

- (3) Subject to subsections (4) and (5), a retention amount may be deducted from an *accommodation bond balance for each month, or part of a month, during which the care recipient concerned is:
 - (a) provided with residential care through the residential care service in respect of which the *accommodation bond was paid; or
 - (b) provided with flexible care through the flexible care service in respect of which the accommodation bond was paid.

36 Paragraph 57-20(4)(a)

After “residential care service”, insert “or flexible care service”.

37 Paragraph 57-20(4)(b)

After “if the service”, insert “is a residential care service and”.

38 Subsection 57-20(5) (note)

After “residential care”, insert “or flexible care”.

39 Paragraph 57-20(6)(a)

After “residential care service”, insert “or flexible care service”.

40 Subsection 57-21(1)

After “residential care service” (first occurring), insert “or flexible care service”.

41 Paragraph 57-21(1)(b)

Repeal the paragraph, substitute:

- (b) the care recipient ceases to be provided with:
 - (i) residential care by a residential care service conducted by the approved provider (other than because the care recipient is on *leave); or
 - (ii) flexible care provided in a residential setting by a flexible care service conducted by the approved provider; or

42 Paragraph 57-21(1)(c)

Before “the”, insert “in respect of an accommodation bond paid for the entry to a residential care service—”.

43 Paragraph 57-21(3)(a)

Omit “residential care service”, substitute “service to receive residential care”.

44 Subsection 57-22(1)

After “*leave)”, insert “, or ceases to be provided with flexible care by a flexible care service”.

45 Subparagraph 57-22(1)(a)(ii)

Omit “the care recipient”, substitute “in a case where the service is a residential care service—the care recipient”.

46 Subparagraph 57-22(2)(a)(i)

After “residential care”, insert “or flexible care (as applicable)”.

47 Paragraph 57-23(1)(a)

Omit “a residential care service (the *original service*)”, substitute “an aged care service (the *original service*) that is a residential care service or a flexible care service”.

48 Paragraph 57-23(1)(b)

After “residential care”, insert “or flexible care”.

49 Paragraph 57-23(1)(c)

Omit “residential care service (the *later service*)”, substitute “aged care service (the *later service*) that is a residential care service or a flexible care service and”.

50 Paragraph 66-1(j)

Repeal the paragraph, substitute:

- (j) prohibiting the charging of *accommodation bonds, or the accrual of *accommodation charges, for the *entry of care recipients to:
 - (i) one or more specified residential care services; or
 - (ii) all residential care services; or
 - (iii) one or more specified flexible care services; or
 - (iv) all flexible care services;conducted by the approved provider;

Schedule 2—Entry contributions

Aged Care Act 1997

1 After paragraph 56-1(a)

Insert:

(aa) to comply with the requirements of:

- (i) the Prudential Standards made under section 57-4; and
- (ii) section 57-21B;

in relation to any *entry contribution given or loaned under a *formal agreement binding the approved provider and the care recipient;

2 Before paragraph 56-3(b)

Insert:

(ab) to comply with the requirements of:

- (i) the Prudential Standards made under section 57-4; and
- (ii) section 57-21B;

in relation to any *entry contribution given or loaned under a *formal agreement binding the approved provider and the care recipient;

3 Division 57 (heading)

Repeal the heading, substitute:

Division 57—What are the responsibilities relating to accommodation bonds and entry contributions?

4 At the end of section 57-1

Add:

<p>If an approved provider has been given or loaned an *entry contribution, several rules must be followed. The rules set out in this Division relate particularly to prudential arrangements and payment of interest on *entry contribution balances. Other rules are</p>
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set out in section 71 of the <i>Aged Care (Consequential Provisions) Act 1997</i> .

5 Before section 57-22

Insert:

57-21B Payment of interest on entry contribution balance

- (1) An approved provider that is required under a *formal agreement to refund an *entry contribution balance must pay an amount representing interest on the entry contribution balance in the circumstances (if any) specified in the User Rights Principles.
- (2) The amount is to be worked out in accordance with the User Rights Principles.
- (3) The amount must be paid to the person specified in the User Rights Principles in the way specified in the User Rights Principles.

6 Clause 1 of Schedule 1

Insert:

entry contribution, relating to a care recipient, means any payment, made before 1 October 1997, of money or other valuable consideration required by an *operator to be given or loaned in return for, or in contemplation of, *entry of the care recipient to a hostel (within the meaning of the *Aged or Disabled Persons Care Act 1954*).

7 Clause 1 of Schedule 1

Insert:

entry contribution balance, in relation to an *entry contribution, is, at a particular time, an amount equal to the difference between the amount of the entry contribution and any amounts that have been, or are permitted to be, deducted under a *formal agreement as at that time.

8 Clause 1 of Schedule 1

Insert:

formal agreement means a legally binding agreement in writing, entered into before 1 October 1997, between:

- (a) a care recipient; and
- (b) an *operator.

9 Clause 1 of Schedule 1

Insert:

operator means an organisation that was approved for the payment of financial assistance by way of recurrent subsidy under section 10B of the *Aged or Disabled Persons Care Act 1954* immediately before the commencement of this Act (other than Division 1).

Aged Care (Consequential Provisions) Act 1997

10 Subsection 71(3)

Omit “on and after the commencement day”, substitute “then”.

11 Paragraph 71(3)(c)

Before “paragraph 56-1(a)”, insert “on and after the commencement day,”.

12 Paragraph 71(3)(d)

Repeal the paragraph, substitute:

- (d) subject to paragraph (e), on and after the commencement day, Division 57 of the new Act does not apply in relation to the entry contribution; and
- (e) on and after the day that Schedule 2 to the *Aged Care Amendment (2005 Measures No. 1) Act 2006* commenced:
 - (i) the Prudential Standards made under section 57-4 of the new Act; and
 - (ii) section 57-21B of the new Act;apply in relation to the entry contribution.

Schedule 3—Prudential requirements

Aged Care Act 1997

1 Subdivision 57-B

Repeal the Subdivision, substitute:

Subdivision 57-B—Prudential requirements

57-3 Compliance with prudential requirements

An approved provider complies with the prudential requirements if the approved provider complies with the Prudential Standards made under section 57-4.

57-4 Prudential Standards

- (1) The User Rights Principles may set out Prudential Standards. Prudential Standards are standards providing for:
 - (a) protection of *accommodation bond balances of care recipients; and
 - (b) protection of *entry contribution balances of care recipients; and
 - (c) sound financial management of approved providers; and
 - (d) provision of information about the financial management of approved providers.
- (2) The following are examples of matters with which the Prudential Standards may deal:
 - (a) corporate governance requirements for approved providers;
 - (b) financial reporting requirements for approved providers;
 - (c) liquidity requirements for approved providers;
 - (d) capital requirements for approved providers;
 - (e) insurance requirements for approved providers;
 - (f) information retention and provision requirements for approved providers.

2 Paragraphs 57-9(2)(b) and (c)

Repeal the paragraphs.

3 Section 85-1 (table item 50)

Repeal the item.

Schedule 4—Refunds of accommodation bond balances

Aged Care Act 1997

1 Before paragraph 57-21(3)(a)

Insert:

- (aa) if the care recipient dies—within 14 days after the day on which the approved provider is shown the probate of the will of the care recipient or letters of administration of the estate of the care recipient; or

2 Subparagraph 57-21(3)(a)(i)

Omit “7 days”, substitute “14 days”.

3 Subparagraph 57-21(3)(a)(ii)

Omit “7 days” (wherever occurring), substitute “14 days”.

4 Subparagraph 57-21(3)(a)(iii)

Omit “7 days”, substitute “14 days”.

5 Paragraph 57-21(3)(b)

Omit “2 months”, substitute “14 days”.

6 Paragraph 57-21(3)(b)

Omit “paragraph (1)(a), (b)”, substitute “paragraph (1)(b)”.

7 After section 57-21

Insert:

57-21A Payment of interest on accommodation bond balance

- (1) An approved provider that is required under this Subdivision to refund an *accommodation bond balance must pay an amount representing interest on the accommodation bond balance in the circumstances (if any) specified in the User Rights Principles.

Schedule 4 Refunds of accommodation bond balances

- (2) The amount is to be worked out in accordance with the User Rights Principles.
- (3) The amount must be paid to the person specified in the User Rights Principles in the way specified in the User Rights Principles.

Schedule 5—Requirement to give information

Aged Care Act 1997

1 After section 9-3

Insert:

9-3A Obligation to give information relating to accommodation bonds, entry contributions etc.

- (1) The Secretary may, at any time, request an approved provider to give to the Secretary specified information relating to any of the following:
 - (a) *accommodation bonds charged by the approved provider;
 - (b) the amount of one or more *accommodation bond balances at a particular time;
 - (c) the amount equal to the total of the accommodation bond balances that the approved provider would have had to refund at a specified earlier time if certain assumptions specified in the request were made;
 - (d) *entry contributions given or loaned under a *formal agreement binding the approved provider;
 - (e) the amount of one or more *entry contribution balances at a particular time;
 - (f) the amount equal to the total of the entry contribution balances that the approved provider would have had to refund at a specified earlier time if certain assumptions specified in the request were made.

The request must be in writing.

- (2) The approved provider must comply with the request within 28 days after the request was made, or within such shorter period as is specified in the request.

Note: Approved providers have a responsibility under Part 4.3 to comply with this obligation. Failure to comply with a responsibility can result in a sanction being imposed under Part 4.4.

- (3) An approved provider that is a *corporation commits an offence if it fails to comply with the request within the period referred to in subsection (2).

Penalty: 30 penalty units.

- (4) The request must contain a statement setting out the effect of subsections (2) and (3).

2 At the end of paragraph 62-1(b)

Add:

- or (iv) for the purpose of complying with an obligation under section 9-3A or subsection 93-1(1) or a requirement under the Prudential Standards made under section 57-4;

3 Paragraph 63-1(1)(c)

Omit “and 9-3(2)”, substitute “, 9-3(2) and 9-3A(2)”.

Schedule 6—Annual report

Aged Care Act 1997

1 Subsection 63-2(1)

Omit “30 September”, substitute “30 November”.

Schedule 7—Regulations

1 Regulations

- (1) The Governor-General may make regulations prescribing matters:
 - (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
 - (2) In particular, regulations may be made prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by this Act.
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*[Minister's second reading speech made in—
House of Representatives on 8 December 2005
Senate on 9 February 2006]*

(190/05)
