



Aged Care Amendment Act 2011

No. 86, 2011

An Act to amend the *Aged Care Act 1997*, and for other purposes

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

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No. 86, 2011

An Act to amend the *Aged Care Act 1997*, and for other purposes

[Assented to 26 July 2011]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Aged Care Amendment Act 2011*.

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.
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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 this Act receives the Royal Assent.	26 July 2011
2. Schedule 1	1 October 2011.	1 October 2011
3. Schedule 2	1 September 2011.	1 September 2011
4. Schedule 3	The day after this Act receives the Royal Assent.	27 July 2011

Note: This table relates only to the provisions of this Act as originally enacted.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

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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

Part 1—Amendments

Aged Care Act 1997

1 After section 9-3A

Insert:

9-3B Obligation to give information about ability to refund accommodation bond balances

- (1) This section applies if the Secretary believes, on reasonable grounds, that an approved provider:
 - (a) has not refunded, or is unable or unlikely to be able to refund, an *accommodation bond balance as required by section 57-21; or
 - (b) is experiencing financial difficulties; or
 - (c) has used an *accommodation bond for a use that is not *permitted.
- (2) The Secretary may request the approved provider to give the Secretary information specified in the request relating to any of the following:
 - (a) the approved provider's suitability to be a provider of *aged care (see section 8-3);
 - (b) the approved provider's financial situation;
 - (c) the amount of one or more *accommodation bond balances at a particular time;
 - (d) how *accommodation bonds have been used by the approved provider;
 - (e) the approved provider's policies and procedures relating to managing, monitoring and controlling the use of accommodation bonds;
 - (f) the roles and responsibilities of *key personnel in relation to managing, monitoring and controlling the use of accommodation bonds.

The request must be in writing.

- (3) The Secretary may request the approved provider to give the specified information on a periodic basis.
- (4) The approved provider must comply with the request:
 - (a) within 28 days after the request was made, or within such shorter period as is specified in the request; or
 - (b) if the information is to be given on a periodic basis—before the time or times worked out in accordance with 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.

- (5) An approved provider commits an offence if:
 - (a) the Secretary requests the approved provider to give information under subsection (2); and
 - (b) the approved provider is required under subsection (4) to comply with the request within a period or before a particular time; and
 - (c) the approved provider fails to comply with the request within the period or before the time; and
 - (d) the approved provider is a *corporation.

Penalty: 30 penalty units.

- (6) The request must contain a statement setting out the effect of subsections (4) and (5).

2 Paragraphs 57-2(1)(k) and (ka)

Repeal the paragraphs, substitute:

- (k) the approved provider must not use the accommodation bond unless the use of the bond is *permitted (see section 57-17A);

Note: For the use of bonds charged before 1 October 2011, see Part 2 of Schedule 1 to the *Aged Care Amendment Act 2011*.

3 Before paragraph 57-2(1)(l)

Insert:

- (ka) the approved provider must comply with the prudential requirements (see section 57-3);

4 Paragraphs 57-2(1)(n) and (na)

Repeal the paragraphs.

5 After Subdivision 57-E

Insert:

Subdivision 57-EA—Permitted use of accommodation bonds

57-17A Permitted use of accommodation bonds

Permitted use—general

- (1) A use of an *accommodation bond by an approved provider is **permitted** if the bond is:
- (a) used for *capital expenditure (see subsection (2)); or
 - (b) invested in a financial product covered by subsection (3); or
 - (c) used to make a loan in relation to which the following conditions are satisfied:
 - (i) the loan is not made to an individual;
 - (ii) the loan is made on a commercial basis;
 - (iii) there is a written agreement in relation to the loan;
 - (iv) it is a condition of the agreement that the money loaned will only be used as mentioned in paragraph (a) or (b);
 - (v) the agreement includes any other conditions specified in the User Rights Principles; or
 - (d) used to refund *accommodation bond balances or *entry contribution balances; or
 - (e) used to repay debt accrued for the purposes of capital expenditure or refunding accommodation bond balances; or
 - (f) used to repay debt that is accrued before the commencement of this section, if the debt is accrued for the purposes of providing *aged care to care recipients; or
 - (g) used as permitted by the User Rights Principles.

Note 1: An approved provider, and the approved provider's key personnel, may commit an offence if the approved provider uses an accommodation bond otherwise than for a permitted use (see section 57-17B).

Note 2: This section commences on 1 October 2011 (see paragraph (f) of this subsection and section 2 of the *Aged Care Amendment Act 2011*).

Permitted use—capital expenditure

- (2) For the purposes of subsection (1), the following expenditure is **capital expenditure** if it is reasonable in the circumstances:
- (a) expenditure to acquire land on which are, or are to be built, the premises needed for providing residential care or flexible care;
 - (b) expenditure to acquire, erect, extend or significantly alter premises used or proposed to be used for providing residential care or flexible care;
 - (c) expenditure to acquire or install furniture, fittings or equipment for premises used or proposed to be used for providing residential care or flexible care, when those premises are initially erected or following an extension, a significant alteration or a significant refurbishment;
 - (d) expenditure that is directly attributable to doing a thing mentioned in paragraph (a), (b) or (c);
 - (e) expenditure specified in the User Rights Principles.

Example: Repairs to, or maintenance of, premises (such as painting, plumbing, electrical work or gardening) would not constitute a significant alteration for the purposes of this subsection.

Permitted use—financial products

- (3) For the purposes of subsection (1), the following (within the meaning of section 764A of the *Corporations Act 2001*) are financial products covered by this subsection:
- (a) any deposit-taking facility made available by an ADI in the course of its banking business (within the meaning of the *Banking Act 1959*), other than an RSA within the meaning of the *Retirement Savings Accounts Act 1997*;
Note 1: ADI is short for authorised deposit-taking institution.
Note 2: RSA is short for retirement savings account.
 - (b) a debenture, stock or bond issued or proposed to be issued by the Commonwealth, a State or a Territory;
 - (c) a security, other than a security of a kind specified in the User Rights Principles;
 - (d) any of the following in relation to a registered scheme:
 - (i) an interest in the scheme;

- (ii) a legal or equitable right or interest in an interest covered by subparagraph (i);
- (iii) an option to acquire, by way of issue, an interest or right covered by subparagraph (i) or (ii);
- (e) a financial product specified in the User Rights Principles.

Permitted uses specified in User Rights Principles

- (4) Without limiting paragraph (1)(g), the User Rights Principles may specify that a use of an *accommodation bond is only **permitted** for the purposes of that paragraph if:
 - (a) specified circumstances apply; or
 - (b) the approved provider complies with conditions specified in, or imposed in accordance with, the User Rights Principles.

Note: For paragraph (4)(a), the User Rights Principles might, for example, specify that the use of an accommodation bond is only permitted if the approved provider obtains the prior consent of the Secretary to the use of the bond.

57-17B Offences relating to non-permitted use of accommodation bonds

Offence for approved provider

- (1) A *corporation commits an offence if:
 - (a) the corporation is or has been an approved provider; and
 - (b) the corporation uses an *accommodation bond; and
 - (c) the use of the accommodation bond is not *permitted; and
 - (d) both of the following apply at a particular time during the period of 2 years after the use of the bond:
 - (i) an insolvency event (within the meaning of the *Aged Care (Bond Security) Act 2006*) has occurred in relation to the corporation;
 - (ii) there has been at least one outstanding bond balance (within the meaning of that Act) of the corporation.

Penalty: 300 penalty units.

Note: The Secretary must make a default event declaration under the *Aged Care (Bond Security) Act 2006* in relation to the corporation if paragraph (d) of this subsection applies (see section 10 of that Act).

Offence for key personnel

- (2) An individual commits an offence if:
- (a) the individual is one of the *key personnel of an entity that is or has been an approved provider; and
 - (b) the entity uses an *accommodation bond; and
 - (c) the use of the accommodation bond is not *permitted; and
 - (d) the individual knew that, or was reckless or negligent as to whether:
 - (i) the bond would be used; and
 - (ii) the use of the bond was not permitted; and
 - (e) the individual was in a position to influence the conduct of the entity in relation to the use of the bond; and
 - (f) the individual failed to take all reasonable steps to prevent the use of the bond; and
 - (g) both of the following apply at a particular time during the period of 2 years after the use of the bond:
 - (i) an insolvency event (within the meaning of the *Aged Care (Bond Security) Act 2006*) has occurred in relation to the entity;
 - (ii) there has been at least one outstanding bond balance (within the meaning of that Act) of the entity; and
 - (h) at the time the bond was used, the entity was a *corporation.

Penalty: Imprisonment for 2 years.

Strict liability

- (3) Strict liability applies to paragraphs (1)(d) and (2)(g) and (h).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

6 Paragraph 57A-2(1)(l)

Repeal the paragraph.

7 Paragraph 63-1(1)(c)

Omit “and 9-3A(2)”, substitute “, 9-3A(2) and 9-3B(4)”.

8 Clause 1 of Schedule 1

Insert:

capital expenditure has the meaning given by subsection 57-17A(2).

9 Clause 1 of Schedule 1

Insert:

permitted: for when the use of an *accommodation bond is *permitted*, see section 57-17A.

Part 2—Transitional and application provisions

10 Interpretation

A term used in this Part of this Schedule has the same meaning as in the *Aged Care Act 1997*.

11 Transitional—general

Use of accommodation bonds charged before commencement

- (1) Despite section 57-2 (basic rules about accommodation bonds) of the *Aged Care Act 1997*, as amended by item 2 of this Schedule, an approved provider must not use an accommodation bond that is charged before the commencement of this Schedule other than:
- (a) in the case of a bond charged for entry to a residential care service—for a purpose related to providing aged care to care recipients; or
 - (b) in the case of a bond charged for entry to a flexible care service—for a purpose related to providing flexible care to care recipients; or
 - (c) in any case—for a use of the bond permitted within the meaning of section 57-17A of that Act (as amended by item 5 of this Schedule).

Note 1: This Schedule commences on 1 October 2011 (see section 2 of this Act).

Note 2: For the use of accommodation bonds charged on or after commencement, see item 12 of this Schedule.

Use of income derived from accommodation bonds or retention amounts

- (2) The amendment of the *Aged Care Act 1997* by item 4 of this Schedule applies to income derived from an accommodation bond, or a retention amount, irrespective of whether the bond was charged, or the retention amount received, before, on or after the commencement of this Schedule.

Note: Item 4 of this Schedule amends the *Aged Care Act 1997* to remove restrictions on the use of income received from accommodation bonds and retention amounts.

Use of income derived from accommodation charges

- (3) The amendment of the *Aged Care Act 1997* by item 6 of this Schedule applies to the payment of an accommodation charge irrespective of whether the payment was received before, on or after the commencement of this Schedule.

Note: Item 6 of this Schedule amends the *Aged Care Act 1997* to remove restrictions on the use of accommodation charges.

12 Application—use of accommodation bonds charged after commencement

Application of new rule

- (1) The amendment of the *Aged Care Act 1997* by item 2 of this Schedule applies to accommodation bonds charged on or after the commencement of this Schedule.

Note 1: This Schedule commences on 1 October 2011 (see section 2 of this Act).

Note 2: Item 2 of this Schedule amends the *Aged Care Act 1997* to require accommodation bonds to be used only as permitted within the meaning of section 57-17A of that Act.

Use of accommodation bonds within 2 years after commencement

- (2) However, subitems (3) and (4) apply if:
- (a) an accommodation bond is charged by an approved provider on or after the commencement of this Schedule; and
 - (b) the bond is used by the approved provider during the period of 2 years starting at the commencement of this Schedule; and
 - (c) the bond is used for a purpose relating to providing:
 - (i) in the case of a bond charged for the entry of a care recipient to a residential care service—residential care; or
 - (ii) in the case of a bond charged for the entry of a care recipient to a flexible care service—flexible care; and
 - (d) the approved provider complies with any requirement of the User Rights Principles imposed for the purposes of this paragraph.
- (3) Subsections 57-17B(1) and (2) of the *Aged Care Act 1997* (offences relating to non-permitted use of accommodation bonds), as inserted by

Schedule 1 Permitted use of accommodation bonds

Part 2 Transitional and application provisions

item 5 of this Schedule, do not apply in relation to the use of the accommodation bond by the approved provider.

Note: A defendant bears an evidential burden in relation to the matters in this subitem (see subsection 13.3(3) of the *Criminal Code*).

- (4) For the purposes of Part 4.4 of the *Aged Care Act 1997* (consequences of non-compliance), the approved provider is taken to have complied with the provider's responsibilities under Part 4.2 of that Act (user rights) in relation to the use of the bond (despite paragraph 57-2(1)(k) of that Act (use of bond must be permitted), as substituted by item 2 of this Schedule).

Schedule 2—Complaints Principles

Part 1—Amendments

Aged Care Act 1997

1 Paragraph 56-4(1)(e)

Omit “Investigation Principles”, substitute “Complaints Principles”.

2 Paragraph 84-1(e)

Repeal the paragraph, substitute:

<p>(e) the management and resolution of complaints and other concerns about the provision of aged care services (see Part 6.4A);</p>
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3 Paragraph 84-1(g)

Omit “investigations”, substitute “the management and resolution of complaints and other concerns about the provision of aged care services”.

4 Part 6.4A (heading)

Repeal the heading, substitute:

Part 6.4A—Complaints

5 Division 94A (heading)

Repeal the heading, substitute:

Division 94A—Complaints Principles

6 Subsections 94A-1(1), (2) and (3)

Repeal the subsections, substitute:

Management and resolution of complaints and concerns

- (1) The Complaints Principles may provide a scheme for the management and resolution of complaints and other concerns about *aged care services through which *aged care is provided by approved providers.

Note: The Complaints Principles are made by the Minister under section 96-1.

- (2) Without limiting subsection (1), the Complaints Principles may deal with one or more of the following matters:
- (a) how complaints and concerns may be received, managed and resolved;
 - (b) different ways of receiving, managing and resolving different types of complaints and concerns, and complaints and concerns in relation to different *aged care services;
 - (c) the roles, rights and responsibilities of complainants, approved providers and other participants in the scheme;
 - (d) considerations relevant to making decisions under the Complaints Principles;
 - (e) procedures for the review of decisions and processes under the Complaints Principles;
 - (f) actions that may be taken (including making requirements of an approved provider) to address complaints or concerns.

Note: Part 6.6 also provides for the Complaints Principles to do certain things.

Transitional provisions relating to investigations

- (3) The Complaints Principles may make provision of a transitional or saving nature relating to investigations that:
- (a) related to this Act or the Principles made under section 96-1; and
 - (b) were being dealt with under the Investigation Principles immediately before the commencement of this subsection.

Note: The heading to section 94A-1 is replaced by the heading “**Complaints Principles**”.

7 Subsection 94A-1(4)

Omit “Investigation Principles”, substitute “Complaints Principles”.

8 Paragraph 95A-1(2)(a)

Omit “by the Secretary under the Investigation Principles”, substitute “under the Complaints Principles”.

9 Paragraphs 95A-1(2)(b) and (c)

Omit “Secretary’s processes for handling matters under the Investigation Principles”, substitute “processes for handling matters under the Complaints Principles”.

10 Paragraph 95A-1(2)(g)

Omit “Investigation Principles”, substitute “Complaints Principles”.

11 Subsections 95A-4(1) and (2)

Omit “Investigation Principles”, substitute “Complaints Principles”.

12 Paragraph 95A-12(2)(a)

Omit “by the Secretary under the Investigation Principles”, substitute “under the Complaints Principles”.

13 Subparagraph 95A-12(2)(b)(i)

Repeal the subparagraph, substitute:

- (i) the processes for handling matters under the Complaints Principles;

14 Paragraph 95A-12(2)(k)

Omit “Investigation Principles”, substitute “Complaints Principles”.

15 Subsection 96-1(1)

Omit “(1)”.

16 Subsection 96-1(1)

After “The Minister may”, insert “, by legislative instrument”.

17 Subsection 96-1(1) (after table item 13)

Insert:

13A	Complaints Principles	Parts 6.4A and 6.6
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18 Subsection 96-1(1) (table item 16A)

Repeal the item.

19 Subsection 96-1(2)

Repeal the subsection.

Part 2—Saving and transitional provisions

20 Saving—complaints resolution mechanisms

Despite the amendments made by Part 1 of this Schedule, the *Aged Care Act 1997*, as in force immediately before the commencement of this Schedule, continues to apply in relation to compliance, under paragraph 56-4(1)(e), with a requirement made of an approved provider under the Investigation Principles before that commencement.

Note: This Schedule commences on 1 September 2011 (see section 2 of this Act).

21 Transitional—Aged Care Commissioner annual reports

- (1) Section 95A-12 of the *Aged Care Act 1997* continues to apply, as in force immediately before the commencement of this Schedule, in relation to the Aged Care Commissioner's annual report for the financial year ending on 30 June 2011.

Note: This Schedule commences on 1 September 2011 (see section 2 of this Act).

- (2) Section 95A-12 of the *Aged Care Act 1997* applies in relation to the Aged Care Commissioner's annual report for the financial year ending on 30 June 2012 as if paragraph 95A-12(2)(a), subparagraph 95A-12(2)(b)(i) and paragraph 95A-12(2)(k) of that Act applied in relation to both:

- (a) the Investigation Principles, to the extent that they continued in force during that financial year (and before the commencement of this Schedule); and
- (b) the Complaints Principles.

- (3) In this item:

Aged Care Commissioner's annual report means the report the Aged Care Commissioner is required to prepare and give to the Minister under section 95A-12 of the *Aged Care Act 1997* on the Commissioner's operations during each financial year.

Schedule 3—Spent legislation

Part 1—Amendments

Aged Care Act 1997

1 Subparagraph 16-2(3)(g)(iii)

Omit “paid; or”, substitute “paid;”.

2 Subparagraph 16-2(3)(g)(iv)

Repeal the subparagraph.

3 Paragraph 16-9(2)(g)

Repeal the paragraph.

4 Subparagraph 32-4(1)(d)(ii)

Repeal the subparagraph, substitute:

- (ii) the service meets its *accreditation requirement (see section 42-4); and

5 Section 38-1 (note 1)

Repeal the note.

6 Section 38-1 (note 2)

Omit “Note 2”, substitute “Note”.

7 Subsection 42-4(1)

Omit “(1)”.

8 Subsection 42-4(1)

Omit “On or after the *accreditation day, a residential care service”, substitute “A residential care service”.

9 Subsections 42-4(2) to (6)

Repeal the subsections.

10 Paragraph 43-1(3)(c)

Repeal the paragraph.

11 Subsection 43-6(5) (paragraphs (b) to (f) of the definition of *capital payment*)

Repeal the paragraphs.

12 Section 43-7

Repeal the section.

13 Paragraph 54-1(1)(d)

Omit “after the *accreditation day”.

14 Paragraph 54-1(1)(e)

Repeal the paragraph.

15 Subsection 54-2(1)

Omit “on and after the *accreditation day”.

16 Section 54-3

Repeal the section.

17 Clause 1 of Schedule 1 (definition of *accreditation day*)

Repeal the definition.

Health Insurance Act 1973

18 Subparagraph 16A(5AA)(d)(v)

Repeal the subparagraph, substitute:

- (v) a residential care service within the meaning of the *Aged Care Act 1997*, or other institution, in which the person is receiving care; or

19 Subparagraph 16A(5AA)(e)(ii)

Repeal the subparagraph, substitute:

- (ii) a member of the staff of a residential care service within the meaning of the *Aged Care Act 1997*, or other institution, in which the person is receiving care.

National Health Act 1953

20 Subsection 4(1) (definition of *adjusted fee government nursing home*)

Repeal the definition.

21 Subsection 4(1) (definition of *approved*)

Repeal the definition.

22 Subsection 4(1) (definition of *approved nursing home patient*)

Repeal the definition.

23 Subsection 4(1) (definition of *classified patient*)

Repeal the definition.

24 Subsection 4(1) (definition of *Government nursing home*)

Repeal the definition.

25 Subsection 4(1) (definition of *nursing home*)

Repeal the definition.

26 Subsection 4(1) (definition of *nursing home adviser*)

Repeal the definition.

27 Subsection 4(1) (definition of *nursing home care*)

Repeal the definition.

28 Subsection 4(1) (definition of *nursing home for disabled people*)

Repeal the definition.

29 Subsection 4(1) (definition of *official appointee*)

Repeal the definition.

30 Subsection 4(1) (definition of *proprietor*)

Repeal the definition.

31 Subsection 4(1) (definition of *qualified nursing home patient*)

Repeal the definition.

32 Subsection 4(1) (definition of *Repatriation nursing home patient*)

Repeal the definition.

33 Subsection 4(1) (definition of *Secretary*)

Repeal the definition, substitute:

Secretary means the Secretary of the Department.

34 Subsection 4(1) (definition of *short-term respite care patient*)

Repeal the definition.

35 Subsection 4(1) (definition of *temporary operator*)

Repeal the definition.

36 Subsection 4(1) (definition of *transferred home*)

Repeal the definition.

37 Subsections 4(1AAA), (1C) and (5)

Repeal the subsections.

38 Section 4AA

Repeal the section.

39 Parts V to VD

Repeal the Parts.

40 Section 105AAB

Repeal the section.

41 Subsection 105AB(1AA)

Repeal the subsection.

42 Subsection 105AB(9)

Repeal the subsection.

43 Subsections 105AC(1A) and (1B)

Repeal the subsections.

44 Subsection 105AC(2)

Omit “, (1A) or (1B)”.

45 Division 3A of Part VIII

Repeal the Division.

46 Section 134B

Omit “, other than an offence against subsection 42(2) or section 61A or 62,”.

47 Subsection 135A(5B)

Repeal the subsection.

48 Subsection 135A(8)

Omit “, an optometrical service, the provision of hospital treatment or nursing home care”, substitute “or an optometrical service, the provision of hospital treatment”.

49 Subsection 135A(24) (definition of *appointed nursing home adviser*)

Repeal the definition.

50 Subsection 135B(1)

Omit “61A, 62, 82,”.

51 Subsection 135B(3)

Omit all the words after “impose”, substitute “is imprisonment for a period not exceeding 6 months”.

52 Subsection 137(1)

Omit “and section 57”.

53 Paragraph 139A(1)(a)

Omit “or an approved nursing home”.

54 Paragraphs 139B(1)(a) to (ec)

Repeal the paragraphs.

55 Schedule 4

Repeal the Schedule.

Part 2—Repeal of Acts

Aged or Disabled Persons Care Act 1954

56 The whole of the Act

Repeal the Act.

Nursing Home Charge (Imposition) Act 1994

57 The whole of the Act

Repeal the Act.

Part 3—Repeal of Acts: saving provision

58 Saving—repeal of the *Aged or Disabled Persons Care Act 1954*

The *Aged or Disabled Persons Care Act 1954*, as in force immediately before its repeal by item 56 of this Schedule, continues to apply in relation to a grant (including any related grant conditions or agreements) made under that Act before that repeal.

*[Minister's second reading speech made in—
House of Representatives on 26 May 2011
Senate on 14 June 2011]*