

2004-2005

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

AGED CARE AMENDMENT (2005 MEASURES NO. 1) BILL 2005

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Ageing, the Honourable Julie Bishop MP)

AGED CARE AMENDMENT (2005 MEASURES NO. 1) BILL 2005

OUTLINE

The purpose of the Bill is to amend the *Aged Care Act 1997* (the Act) to give effect to the establishment of new prudential regulatory arrangements to improve the management of residents' accommodation bonds and entry contributions.

This Bill forms part of a suite of Bills, including the Aged Care (Bond Security) Bill 2005 and the Aged Care (Bond Security) Levy Bill 2005, which together strengthen protection of residents' accommodation bonds, as announced by the Government in September 2005, by enhancing prudential regulatory requirements and by guaranteeing the repayment of bond balances to residents in the event that an approved provider becomes insolvent and is unable to repay bonds.

This Bill enables the making of Prudential Standards to ensure stronger prudential regulation of approved providers and to minimise the risk of an approved provider becoming insolvent.

This Bill also amends the provisions in the *Aged Care Act 1997* relating to when a bond must be refunded (to increase the timeframes for refunding of bonds in some instances, reduce the timeframes in other instances and to provide greater clarity in relation to when a bond must be refunded in the event that a care recipient has died) and to enable interest to be paid to residents for the period after the resident leaves a facility and before the bond is repaid.

This Bill also includes consequential amendments to the *Aged Care Act 1997* to ensure that all of the rules relating to the bonds (including the new Prudential Standards, the new timeframes for refunding bonds and the new interest provisions) apply to all services holding bonds whether they are residential care services or flexible care services.

FINANCIAL IMPACT STATEMENT

The proposed new prudential regulation (which will be enabled through this Bill and described in detail in Principles made under the legislation) will ultimately be fully cost recovered from approved providers holding bonds. However, the Government will meet the costs of the new prudential regulatory framework for the first three years of operation. There will, therefore, be no cost recovery impacts for approved providers in the first three years.

The Department of Health and Ageing will be provided additional funding of \$8.5 million over 3 years as follows:

2005-06 \$m	2006-07 \$m	2007-08 \$m
2.7	2.7	3.0

During the first three years, a full cost analysis will be undertaken and a cost recovery mechanism developed in accordance with the cost recovery policy of the Department of Finance and Administration. A full Cost Recovery Impact Statement (CRIS) will then be prepared in accordance with the *Cost Recovery Guidelines*.

There will be no cost to industry associated with the guarantee scheme unless a provider becomes bankrupt or insolvent and the Australian Government has to pay outstanding bond balances. Costs will only be realised in the event of a default. This is described in more detail in the Explanatory Memorandum to the Aged Care (Bond Security) Bill 2005.

REGULATION IMPACT STATEMENT

This Bill forms part of a package of Bills that strengthens protection of residents' accommodation bonds and entry contributions. The Regulatory Impact Statement for the suite of Bills is included in the Explanatory Memorandum for the Aged Care (Bond Security) Bill 2005.

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NOTES ON CLAUSES

Clause 1 – Short title

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

Clause 2 – Commencement

This clause provides that sections 1 to 3 of the Bill commence on the day on which the Bill receives Royal Assent and Schedules 1 to 7 commence on a day to be fixed by Proclamation or, at the latest, 6 months after Royal Assent.

Clause 3 – Schedules

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

Schedule 1 – Flexible care

Aged Care Act 1997

Item 1

This item repeals paragraph 56-3(a) of the *Aged Care Act 1997* (the Act) which states that approved providers of flexible care services are required to comply with the requirements of the User Rights Principles in relation to accommodation bonds and charges, and substitutes this with a proposed new provision stating that approved providers of flexible care services must also comply with the requirements of Division 57 of the Act in relation to accommodation bonds. The current requirement in relation to accommodation charges is restated. This proposed change, together with the amendments in items 2 to 50, is to ensure that, where applicable, all of the rules and responsibilities relating to accommodation bonds apply to all approved providers holding bonds regardless of whether they are approved providers of residential care services or flexible care services. It is considered appropriate that all the protections for residents' accommodation bonds that are in place for residents in residential aged care services should equally apply to residents in flexible care services.

Item 2

This item amends section 57-1 of the Act (What the Division is about) to state that Division 57 rules relating to accommodation bonds apply to all approved providers holding bonds including approved providers of flexible care services. Currently, most of the provisions in Division 57 apply only to residential care services and not to flexible care services. This proposed amendment and amendments in items 3 to 50 extend the rules, where applicable, to flexible care services holding bonds. This provides greater clarity for approved providers and ensures that all care recipients who have paid bonds benefit from the same protections.

Items 3 to 12

These items amend subsection 57-2(1) of the Act to ensure that, where applicable, the rules relating to accommodation bonds apply to all approved providers holding bonds regardless of

whether they are approved providers of residential care services or flexible care services. Where a rule is to apply only to residential aged care services or only flexible care services, this is explicitly stated.

Items 13 to 17

These items amend subsection 57-9(1) of the Act to ensure that the rules relating to the content of accommodation bond agreements apply to all approved providers holding bonds regardless of whether they are approved providers of residential care services or flexible care services.

Items 18 to 24

These items amend section 57-12 of the Act to ensure that the rules relating to the maximum amount of an accommodation bond apply to all approved providers holding bonds regardless of whether they are approved providers of residential care services or flexible care services.

Items 25 to 27

These items amend the section 57-13 heading and section 57-13 of the Act to ensure that the rules relating to the maximum amount of an accommodation bond if a care recipient moves between certain aged care services apply to all approved providers holding bonds regardless of whether they are approved providers of residential care services or flexible care services.

Item 28

This item amends section 57-15 of the Act to ensure that the rules relating to the revocation of determinations of financial hardship apply to all approved providers holding bonds regardless of whether they are approved providers of residential care services or flexible care services.

Items 29 to 32

These items amend section 57-16 of the Act to ensure, where applicable, that the rules relating to the period for payment of an accommodation bond apply to all approved providers holding bonds regardless of whether they are approved providers of residential care services or flexible care services.

Items 33 to 34

These items amend section 57-18 of the Act to ensure that the rules relating to an approved provider's right to income derived from the investment of an accommodation bond apply to all approved providers holding bonds regardless of whether they are approved providers of residential care services or flexible care services.

Items 35 to 39

These items amend section 57-20 of the Act to ensure that the rules relating to retention amounts that may be deducted from accommodation bonds apply to all approved providers holding bonds regardless of whether they are approved providers of residential care services or flexible care services.

Items 40 to 43

These items amend section 57-21 of the Act to ensure that the rules relating to refunding an accommodation bond balance apply to all approved providers holding bonds regardless of whether they are approved providers of residential care services or flexible care services.

Items 44 to 46

These items amend section 57-22 of the Act to ensure that the rules relating to delaying refunds to secure re-entry to a service apply to all approved providers holding bonds regardless of whether they are approved providers of residential care services or flexible care services.

Items 47 to 49

These items amend section 57-23 of the Act to ensure that the rules relating to charging an accommodation bond instead of an accommodation charge apply to all approved providers holding bonds regardless of whether they are approved providers of residential care services or flexible care services.

Item 50

Section 66-1 of the Act details the sanctions that may be imposed on an approved provider that has not complied with one or more responsibilities under Parts 4.1, 4.2 and 4.3 of the Act. This item replaces the current paragraph 66-1(j) of the Act which prohibits the charging of accommodation bonds or the accrual of accommodation charges by a specified residential aged care service, with a proposed new provision that prohibits the charging of accommodation bonds or the accrual of accommodation charges by both residential aged care services and flexible care services.

Schedule 2 – Entry contributions

Aged Care Act 1997

Items 1 and 2

These items amend sections 56-1 and 56-3 of the Act to include requirements that Prudential Standards made under proposed new section 57-4 (see Item 1 in Schedule 3 below), which will apply to approved providers of residential care services and flexible care services that hold accommodation bonds, also apply to approved providers that hold an entry contribution paid by a care recipient prior to 1 October 1997. 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.

These items also require approved providers of residential care services and flexible care services holding entry contributions paid prior to 1 October 1997 to comply with the requirements of new section 57-21B (see Item 5 of Schedule 2 below).

Items 3 and 4

These items amend the Division 57 heading and section 57-1 of the Act (What the Division is about) to state that several rules in Division 57 must be followed in relation to entry contributions paid prior to 1 October 1997, particularly the rules relating to prudential arrangements and the payment of interest on entry contribution balances (see Item 5 of Schedule 2 below).

Item 5

This item inserts a new section (57-21B) before section 57-22.

The proposed new section 57-21B provides that an approved provider who is required, under a formal agreement, to refund an entry contribution balance must pay an amount representing interest on the entry contribution balance in circumstances specified in the User Rights Principles.

The proposed new section provides that the amount of interest to be paid by the approved provider is to be worked out in accordance with the User Rights Principles and paid to the person specified in those Principles.

Amendments may be made to the User Rights Principles to require interest on entry contribution balances to be paid by the approved provider to the resident (or the resident's estate).

Items 6 to 9

These items include proposed new definitions for *entry contribution*, *entry contribution balance*, *formal agreement* and *operator* in Clause 1 of Schedule 1 to the Act.

Aged Care (Consequential Provisions) Act 1997

Items 10 to 12

To make it clear the Prudential Standards made under proposed new section 57-4 (see Item 1 in Schedule 3 below) and the requirements of proposed new section 57-21B (see Item 5 of Schedule 2 above) do apply to approved providers that hold an entry contribution paid by a care recipient prior to 1 October 1997, subsection 71(3) of the *Aged Care (Consequential Provisions) Act 1997* has been amended.

Schedule 3 – Prudential requirements

Aged Care Act 1997

Item 1

This item repeals Subdivision 57-B (ie. sections 57-3 to 57-8 inclusive) and inserts a new Subdivision.

Currently Subdivision 57-B provides that an approved provider complies with prudential requirements if they comply with either general prudential requirements under section 57-4 or specific prudential requirements approved, in relation to an organisation operating a specific prudential arrangement, under section 57-5. The provisions relating to specific prudential requirements (sections 57-5 to 57-8) have not been active for some time.

The proposed amendment therefore repeals these provisions and replaces them with proposed new sections 57-3 and 57-4, which require approved providers to comply with the new Prudential Standards made under proposed new section 57-4.

Proposed new section 57-4 provides that the User Rights Principles may set out Prudential Standards and that these Standards may provide for protection of accommodation bond balances and entry contribution balances, sound financial management of approved providers and provision of information about the financial management of approved providers. Proposed new section 57-4 also provides examples of the types of matters that may be dealt

with in Prudential Standards (such as liquidity requirements and information retention and disclosure requirements).

Item 2

This item repeals paragraphs 57-9(2)(b) and (c). These paragraphs will become obsolete with the insertion of proposed new sections 57-3 and 57-4 described above.

Item 3

This item repeals table item 50 in section 85-1 of the Act. Currently, this provides that a decision to reject an application for approval of prudential requirements is a reviewable decision. As the power to grant approval of prudential requirements relating to specific prudential arrangements will be removed through the proposed repeal of section 57-5, this provision is no longer necessary.

Schedule 4 – Refunds of accommodation bond balances

Aged Care Act 1997

Item 1

This item inserts a new paragraph (57-21(3)(aa)) before paragraph 57-21(3)(a).

The effect of this proposed amendment is that when a care recipient who has paid an accommodation bond dies, approved providers will be required to refund the bond balance within 14 days of the approved provider being shown a grant of probate or letters of administration. This proposed amendment does not prevent approved providers from choosing to repay bonds without being shown evidence of probate or letters of administration.

Item 2

Currently, if a care recipient leaves a residential care service conducted by an approved provider to enter another residential aged care service, and the resident has notified the approved provider of the move more than 7 days before the day on which the approved provider ceased providing care to the care recipient, then the approved provider is required to refund the accommodation bond balance on the day that the approved provider ceased providing that care.

This proposed amendment to subparagraph 57-21(3)(a)(i) will extend the timeframe within which a care recipient must provide notice of their departure from 7 to 14 days if the care recipient is to be entitled to receive a refund of their accommodation bond balance on the day the approved provider ceases to provide care to the care recipient.

Item 3

Currently, if a care recipient is to leave one service and enter another service, and the resident has notified the approved provider of the move within 7 days before the move, the approved provider is required to refund the accommodation bond balance within 7 days after the day on which notice is provided.

The proposed amendment to subparagraph 57-21(3)(a)(ii) will provide that if a care recipient has provided notice within 14 days before the move, the approved provider must refund the bond balance within 14 days after the day on which notice is given.

Item 4

Currently, if the care recipient is to leave a residential care service and enter another residential aged care service, and the resident has not notified the approved provider before the day of the move, the approved provider is required to refund the accommodation bond balance within 7 days after the care recipient leaves the service.

The proposed amendment to subparagraph 57-21(3)(a)(iii) will extend the period within which a provider must repay a bond once a resident has left a facility from 7 to 14 days.

Items 5 and 6

Currently, in any case other than the circumstances described in items 2 to 4 of Schedule 4 above (for example, where a resident leaves the service to return to their own home or the home of a carer) the approved provider is required to refund the accommodation bond balance within 2 months after the day the approved provider ceased providing care.

The proposed amendments to subparagraph 57-21(3)(b) will reduce the period within which an approved provider must repay an accommodation bond balance once a resident has left a facility from 2 months to 14 days. This proposed amendment is consistent with the proposed amendments to subparagraph 57-21(3)(a)(i)-(iii).

Item 7

This item inserts a new section (57-21A) after section 57-21.

The proposed new section 57-21A provides that an approved provider who is required to refund an accommodation bond balance must pay an amount representing interest on the accommodation bond balance in circumstances specified in the User Rights Principles.

The proposed new section provides that the amount of interest to be paid by the approved provider is to be worked out in accordance with the User Rights Principles and paid to the person specified in those Principles.

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.

Amendments are proposed to be made to the User Rights Principles to require interest to be paid by the approved provider to the resident (or the resident's estate) in these circumstances.

Schedule 5 – Requirement to give information

Aged Care Act 1997

Item 1

This item inserts a new section 9-3A after section 9-3.

Proposed new subsection 9-3A(1) provides that the Secretary may, at any time, request an approved provider to give the Secretary certain information in relation to accommodation bonds and entry contributions. This proposed new provision ensures that the Secretary can access necessary information in order to administer the Aged Care (Bond Security) Bill 2005 and the Aged Care (Bond Security) Levy Bill 2005 and also to ensure compliance with the proposed new Prudential Standards.

Proposed new subsection 9-3A(2) provides that the approved provider must comply with the Secretary's request for information within 28 days or a shorter period if a shorter period is specified in the request.

If an approved provider does not comply with the request they may be subject to sanctions imposed by the Secretary under Part 4.4 of the *Aged Care Act 1997*. Proposed new subsection 9-3A(4) provides that the request must make it clear that failure to comply with the request may give rise such a sanction being imposed.

Proposed new subsection 9-3A(3) provides that if an approved provider, that is a corporation, fails to comply with a request they have committed an offence and may be subject to a penalty of up to 30 penalty units. This penalty is consistent with other penalties in the *Aged Care Act 1997* for like offences.

Item 2

This item inserts a new subparagraph after subparagraph 62-1(b)(iii). Section 62-1 describes the responsibilities of approved providers to protect personal information relating to care recipients. The proposed amendments to this section clarify that personal information may be disclosed to the Secretary for the purposes of complying with a request for information under the new section 9-3A. For example, this enables a defaulting approved provider to give the Secretary information about outstanding bond balances so that the Secretary can arrange for the Commonwealth to refund outstanding bond balances in accordance with the Aged Care (Bond Security) Bill 2005. All personal information provided to the Secretary by an approved provider under the Act is protected information under Division 86 of the Act.

Item 3

This item is a consequential amendment which adds to the responsibilities of an approved provider to provide information under subsections 9-2(2) and 9-3(2), the responsibility to provide information under proposed new subsection 9-3A(2).

Schedule 6 – Annual report

Aged Care Act 1997

Item 1

This item amends subsection 63-2(1) by requiring the Minister to table in Parliament the annual report on the operation of the *Aged Care Act 1997* by 30 November rather than 30 September.

Currently, section 63-2 states that the Minister must, as soon as practicable after 30 June but before 30 September in each year, cause to be laid before each House of the Parliament a report on the operation of the Act during the year ending on 30 June of that year. The report includes information on accommodation bonds.

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 on the operation of the *Aged Care Act 1997* (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.

Schedule 7 – Regulations

Item 1

This item provides that regulations may be made to give effect to this Bill. In particular, regulations may address matters of a transitional nature relating to amendments or repeals made by the Bill.