

# AGED CARE AMENDMENT (RESIDENTIAL CARE) BILL 2006

## THE INQUIRY

1.1 The Aged Care Amendment (Residential Care) Bill 2006 (the Bill) was introduced into the Senate on 13 September 2006. On 14 September 2006, the Senate, on the recommendation of the Selection of Bills Committee (Report No.10 of 2006), referred the Bill to the Community Affairs Committee (the committee) for report.

1.2 The committee received four submissions relating to the Bill and these are listed at Appendix 1. The committee considered the Bill at a public hearing in Canberra on 4 October 2006. Details of the public hearing are referred to in Appendix 2. The submissions and Hansard transcript of evidence may be accessed through the committee's website at [http://www.aph.gov.au/senate\\_ca](http://www.aph.gov.au/senate_ca)

## THE BILL

1.3 The purpose of the Bill is to amend the *Aged Care Act 1997* (the Act) to harmonise aged care and pension assets tests in relation to income streams and asset disposals (gifts).<sup>1</sup>

1.4 The Bill also amends the Act to allow the Secretary of the Department of Health and Ageing (the secretary) to delegate to specific members of Aged Care Assessment Teams (ACATs) the powers under the *Residential Care Subsidy Principles 1997*, to increase the maximum number of days allowed for a care recipient to receive residential respite care. The purpose of this change is to remove any uncertainty about the role of ACATs in this process.

1.5 Details of the financial impact of each of these amendments can be found at Appendix 3.

## BACKGROUND

### *Harmonising aged care and pension assets tests*

1.6 The aged care assets assessment is undertaken to determine whether a person is eligible for subsidised aged care accommodation costs. The assessment also helps people to work out the maximum amount of an accommodation bond, or the maximum daily accrual amount of an accommodation charge, that they may be

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1 Information relating to the content of the Bill has been drawn largely from the relevant Explanatory Memorandum, available at [http://parlinfoweb.parl.net/parlinfo/view\\_document.aspx?id=2400&table=EMS](http://parlinfoweb.parl.net/parlinfo/view_document.aspx?id=2400&table=EMS)

charged for entry to a residential care service. The Department of Health and Ageing (the department) explains the process as follows:

Aged care assets assessments are conducted by Centrelink (or in the case of Veterans, the Department of Veterans' Affairs) and [are] only necessary upon entry to care or when moving to another aged care home. To assist applicants, forms are provided to the prospective resident by Aged Care Assessment Teams when they are assessed as eligible for admission to a Australian Government funded residential aged care service. Around 90% of aged care residents are pensioners and therefore most people will already have had their assets assessed for pension purposes before they undergo an aged care assets assessment.

The assets assessment for entry to residential care is not compulsory unless a person is seeking government assistance with their accommodation costs.

People who qualify for government assistance with their residential aged care accommodation costs (Concessional Residents) must receive an Australian Government means-tested pension, must either have not owned a home in the past two years or have a home that is protected and have less than (currently) \$32 000 in assets.

Additionally, a small number of people can be assisted as Assisted Residents. In this case the resident must receive an Australian Government means-tested pension have not owned a home in the past two years or have a home that is protected and have (currently) at least \$32 001 but not more than \$51 500 in assets.<sup>2</sup>

1.7 The *Review of Pricing Arrangements in Residential Aged Care* (the Hogan Report) was released in April 2004. Option 3 of the Hogan Report proposed that:

In the longer term, the aged care means testing arrangements should be brought into line with those that obtain for the age pension.

Moreover, in determining an individual's income and assets the same gifting and deeming rules as obtain for the age pension should apply.<sup>3</sup>

1.8 Schedule 1 to the Bill aims to implement Option 3 of the Hogan Report by enabling gifts and income streams to be treated for the purposes of the Act in the same way as they are treated for the pension assets test under the *Social Security Act 1991* and the *Veterans' Entitlements Act 1986*.

1.9 This initiative was announced in the 2006-07 Budget on 9 May 2006, and is expected to lead to net savings of \$71.7 million over five years.<sup>4</sup> These savings are largely attributable to savings of costs administered by the Department of Health and Ageing. The department explained the benefits of the new arrangements in a fact sheet issued soon after the Budget announcement:

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2 Department of Health and Ageing, *Submission 3*, p. 1.

3 Warren Hogan, *Review of Pricing Arrangements in Residential Aged Care*, 2004, p. xxiv.

4 Australian Government, 2006, *Budget Paper No. 2*, p. 251.

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Entry to aged care homes for prospective residents will be made less complex by making assets testing arrangements for the pension and aged care the same. Older Australians who can afford it will make a fairer contribution to the cost of residential aged care services they receive.<sup>5</sup>

### ***Gifts***

1.10 Under current arrangements, the total value of gifts (assets that have been given away) is excluded when calculating the value of assets under the aged care assets assessment.

1.11 With the proposed amendments, people who enter residential aged care or move to another aged care home from 1 January 2007 and who seek an assets assessment through Centrelink or the Department of Veterans' Affairs will have any gifts they have made from 10 May 2006 (the day after Budget night) that exceed the allowable amounts included in that assessment. The allowable amounts are those that currently apply for the pension asset test as well as for pension and aged care income assessment purposes – \$10 000 in any financial year or \$30 000 over five years.<sup>6</sup>

1.12 The department notes that:

The effect of this measure will be that a person will not be able to give away assets to qualify for government assistance with their aged care accommodation costs. These changes do not prevent people from giving away their assets.<sup>7</sup>

1.13 The intent of nominating 10 May 2006 as the commencement date for the proposed new arrangements in relation to gifts is to prevent divestment of assets following the Budget announcement.<sup>8</sup>

### ***Income streams***

1.14 Income streams can be purchased through an investment of capital. Currently, the money used to buy the income stream is exempted from the aged care assets assessment.<sup>9</sup>

1.15 Changes to pension arrangements announced by the Government in February 2004 mean that market linked income streams purchased from

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5 Department of Health and Ageing, 2006, *Aged Care and Pensions – Further Harmonisation*, available at:  
<http://www.health.gov.au/internet/budget/publishing.nsf/Content/budget2006-afact16.htm>

6 Minister for Finance and Administration, Senator the Hon Nick Minchin, Second Reading Speech, 13 September 2006.

7 Department of Health and Ageing, *Submission 3*, p. 2.

8 *Submission 3*, p. 1 (DoHA).

9 *Submission 3*, p. 2 (DoHA).

20 September 2004 that satisfy certain conditions are granted ‘complying income stream’ status, qualifying them for exemption from the pension assets test. At the same time, the then 100% assets test exemption for purchased complying income streams was reduced to 50% for products purchased on or after 20 September 2004. Complying income streams purchased before that date continue to be fully exempt from the assets test.<sup>10</sup>

1.16 With the proposed amendments, from 1 January 2007 the exemption that applies to complying income streams for the pension assets test will also apply to the aged care assets test. That is, a 50% assets test exemption will apply for complying products purchased on or after 20 September 2004, and a 100% exemption will apply for complying products purchased prior to that date.

### ***Delegation to ACATs***

1.17 The role of ACATs is to assess frail older Australians with complex care needs and assist them to access the most appropriate care services available. The Secretary currently delegates to designated ACAT members the power to approve a person to receive aged care services.

1.18 ACAT members also currently assess the merits of applications for respite care extensions, but they do not have the delegated power to formally approve an extension. Currently, residential respite care is limited to 63 days per financial year for a care recipient. However the secretary may increase the maximum number of days allowed by periods of 21 days where there is a need to do so, such as carer stress or absence, or because of the severity of the care recipient’s condition. The proposed amendment to the Act will give ACAT delegates the power to formally approve respite care extensions in addition to assessing applications for extension.<sup>11</sup>

1.19 Age related growth indexation for the Aged Care Assessment Programme was first introduced in the 1998-99 Budget in recognition of the ageing of the population and associated increasing demand for assessment services. The Government announced in the 2006-07 Budget that \$20.1 million over four years will be provided to continue the age related growth funding for Aged Care Assessment Teams.<sup>12</sup>

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10 Minister for Finance and Administration, Senator the Hon Nick Minchin, *Second Reading Speech*, 13 September 2006.

11 Minister for Finance and Administration, Senator the Hon Nick Minchin, *Second Reading Speech*, 13 September 2006.

12 Australian Government, 2006, *Budget Paper No. 2*, p. 251.

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## ISSUES

### *Harmonising aged care and pension assets tests*

1.20 All submissions supported the proposed alignment of the aged care assets assessment with the current pension assets assessments in relation to income streams and asset disposals (gifts).

1.21 Catholic Health Australia (CHA) noted that: ‘CHA has previously advocated for this to occur and is pleased to support the Bill accordingly.’<sup>13</sup>

1.22 The Committee sought clarification on whether gifts made to a disability trust (of up to \$500,000 in total from an individual or individuals, per trust) would be taken into consideration in aged care assets assessments. Under the current pension assets assessment provisions, certain transfers of assets to special disability trusts can be taken not to be disposals of the assets.

1.23 The department responded that such transfers are exempt as long as they satisfy the provisions of section 1209Z of the Social Security Act 1991. An asset that has been disposed of, and which is not included as an asset under the pension assets test, will not be included as an asset under the aged care assets test.<sup>14</sup>

### *Access to residential respite care*

1.24 All submissions supported the proposed delegation of power to ACATs to allow them to formally approve respite care extensions. The department submitted that flexibility to increase the maximum number of residential respite care days is: ‘...necessary to ensure that carers are supported in their caring role to the best extent possible’.<sup>15</sup>

They further noted that: ‘the proposed amendment to the Act...will make the process for people needing extra respite care simpler and quicker and will reduce red tape’.<sup>16</sup>

1.25 The National Seniors Association (National Seniors) stated that:

Given the intent is to improve the capacity of the Aged Care Assessment Teams to assess the care needs of frail older people and extend the maximum number of days of respite care for those families who are in need, National Seniors supports this legislative change.<sup>17</sup>

1.26 The Australian Medical Association (AMA) expressed support for:

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13 Catholic Health Australia, *Submission 4*.

14 Department of Health and Ageing, *Submission 3*, Additional information dated 9.10.06.

15 Department of Health and Ageing, *Submission 3*, p. 3.

16 *Submission 3*, p. 3 (DoHA).

17 National Seniors Association, *Submission 2*, p. 3.

...any changes that improve the flexibility with which Aged Care Assessment Teams operate. Delegating ACATs with the power to formally approve respite extensions in addition to assessing applications for extensions achieves that.<sup>18</sup>

However, the AMA cautioned that ‘...the availability of residential aged care beds for respite may be a limiting factor and needs to be considered’.<sup>19</sup>

### **Recommendation**

**1.27 The Committee reports to the Senate that it has considered the Aged Care Amendment (Residential Care) Bill 2006 and recommends that the Bill be passed without amendment.**

Senator Gary Humphries

Chairman

October 2006

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18 Australian Medical Association (AMA), *Submission 1*.

19 *Submission 1* (AMA).