



# **Aged Care (Bond Security) Act 2006**

**No. 26, 2006**

**An Act to guarantee the refund of certain bond  
balances, and for related purposes**

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



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# **Aged Care (Bond Security) Act 2006**

**No. 26, 2006**

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## **An Act to guarantee the refund of certain bond balances, and for related purposes**

[Assented to 6 April 2006]

The Parliament of Australia enacts:

### **Part 1—Preliminary**

#### **1 Short title**

This Act may be cited as the *Aged Care (Bond Security) Act 2006*.

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### 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 and 2 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. Sections 3 to 22	At the same time as Schedule 5 to the <i>Aged Care Amendment (2005 Measures No. 1) Act 2006</i> commences.	31 May 2006

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 Simplified outline

The following is a simplified outline of this Act and some related material:

In certain circumstances, the Commonwealth will pay to a person an amount that the Secretary considers is equal to a bond balance, and interest, owed to the person by an approved provider (see sections 10, 12, 13 and 16).

Any rights that a person who is paid such an amount had to recover the amount from an approved provider are transferred to the Commonwealth (see section 15).

The Commonwealth may recoup certain costs it incurs from other approved providers (see sections 18 and 19 and the *Aged Care (Bond Security) Levy Act 2006*).

#### **4 Application of this Act**

- (1) This Act applies in all the States and Territories.
- (2) However, this Act does not apply in any external Territory.

#### **5 Binding the Crown**

- (1) This Act binds the Crown in each of its capacities.
- (2) This Act does not make the Crown liable to be prosecuted for an offence.

#### **6 Definitions**

- (1) In this Act:

***accommodation bond*** has the meaning given by the Dictionary in Schedule 1 to the *Aged Care Act 1997*.

***administrative costs***, in relation to a default event declaration, means costs incurred by the Commonwealth in relation to, and as the result of, the making of the default event declaration and includes, but is not limited to, costs incurred by the Commonwealth as a result of:

- (a) making any insolvency event declaration under section 7 that enabled the making of the default event declaration; and
- (b) giving notice of such an insolvency event declaration under section 8; and
- (c) giving notice of the default event declaration under section 11; and
- (d) determining matters under section 12 that were required to be determined as a result of the making of the default event declaration; and

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- (e) making any refund declarations under section 13 that were required to be made as a result of the making of the default event declaration; and
- (f) giving notice of those refund declarations under section 14; and
- (g) attempting to recover amounts that the Commonwealth gained the right to recover under section 15 as a result of the making of those refund declarations; and
- (h) making refund costs recoupment determinations under section 18 relating to those refund declarations; and
- (i) recovering levy that the Commonwealth was enabled, as a result of the making of those refund costs recoupment determinations, to impose by regulations made under section 6 of the *Aged Care (Bond Security) Levy Act 2006*.

***administrative costs recoupment determination*** means a determination made under section 19.

***approved provider*** has the meaning given by the Dictionary in Schedule 1 to the *Aged Care Act 1997*.

***bond*** means:

- (a) an accommodation bond; or
- (b) an entry contribution.

***bond balance***:

- (a) in relation to a bond that is an accommodation bond—means an accommodation bond balance as defined in the Dictionary in Schedule 1 to the *Aged Care Act 1997*; or
- (b) in relation to a bond that is an entry contribution—means an entry contribution balance as defined in the Dictionary in Schedule 1 to the *Aged Care Act 1997*.

***corporation*** means a trading or financial corporation within the meaning of paragraph 51(xx) of the Constitution.

***default event declaration*** means a declaration made under section 10.

***entry contribution*** has the meaning given by the Dictionary in Schedule 1 to the *Aged Care Act 1997*.



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***Finance Minister*** means the Minister who administers the *Financial Management and Accountability Act 1997*.

***formal agreement*** has the meaning given by the Dictionary in Schedule 1 to the *Aged Care Act 1997*.

***insolvency event***: each of the following events is an ***insolvency event*** that may occur in relation to an approved provider:

- (a) a CGT event G3 (within the meaning of the *Income Tax Assessment Act 1997*) in respect of shares or financial instruments of the approved provider;
- (b) the making of an order:
  - (i) under section 459A or 459B of the *Corporations Act 2001*; or
  - (ii) under a provision of the law of a State, or Territory, which deals with the incorporation of associations; that the approved provider be wound up in insolvency;
- (c) the passing of a special resolution:
  - (i) under section 491 of the *Corporations Act 2001*; or
  - (ii) under a provision of the law of a State, or Territory, which deals with the incorporation of associations; that the approved provider be wound up voluntarily;
- (d) the passing of a resolution under paragraph 439C(c) of the *Corporations Act 2001* by the creditors of the approved provider that the approved provider be wound up;
- (e) the making of a sequestration order against the estate of the approved provider;
- (f) the acceptance of a debtor's petition (within the meaning of the *Bankruptcy Act 1966*) against the approved provider by an Official Receiver (within the meaning of that Act);
- (g) the making of an insolvency event declaration in relation to the approved provider (see section 7).

***insolvency event declaration*** means a declaration made under section 7.

***national newspaper*** means a newspaper circulating generally throughout Australia.

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**operator** has the meaning given by the Dictionary in Schedule 1 to the *Aged Care Act 1997*.

**outstanding bond balance** has the meaning given by subsection (2).

**refund amount**, in relation to a refund declaration, means the amount that the refund declaration declares is to be paid by the Commonwealth.

**refund costs recoupment determination** means a determination made under section 18.

**refund declaration** means a declaration made under section 13.

**refund recipient**, in relation to a refund declaration, means the person that the refund declaration declares is to be paid an amount by the Commonwealth.

**Secretary** means the Secretary of the Department.

*Outstanding bond balance*

- (2) For the purposes of this Act, a bond balance is an **outstanding bond balance** of an approved provider at a particular time if:
- (a) at that time all, or part, of the bond balance has not been refunded; and
  - (b) that time is later than the time required for the bond balance to be refunded by the approved provider under:
    - (i) Subdivision 57-G of the *Aged Care Act 1997*; or
    - (ii) the User Rights Principles made under section 96-1 of the *Aged Care Act 1997*; or
    - (iii) a formal agreement applying in respect of the bond balance.

## **Part 2—Insolvency event declaration**

### **7 Making of insolvency event declaration**

- (1) The Minister may make an insolvency event declaration in relation to an approved provider if:
  - (a) either:
    - (i) the approved provider is an externally-administered body corporate (within the meaning of the *Corporations Act 2001*); or
    - (ii) a personal insolvency agreement under Part X of the *Bankruptcy Act 1966* is in effect in relation to the approved provider or the approved provider's property; and
  - (b) there is at least one outstanding bond balance of the approved provider.

Note: An approved provider that is a body that is incorporated under a law of a State or Territory may be an externally-administered body corporate within the meaning of the *Corporations Act 2001*.

- (2) The insolvency event declaration must be in writing.
- (3) An insolvency event declaration is not a legislative instrument.

### **8 Notice of insolvency event declaration**

- (1) The Secretary must give a copy of an insolvency event declaration to the approved provider to which the insolvency event declaration relates.
- (2) A failure to comply with subsection (1) does not affect the validity of any insolvency event declaration.

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**Part 3—Requirement to notify Secretary of certain insolvency events**

**9 Notice of certain insolvency events**

- (1) An approved provider must notify the Secretary the first time that any of the events mentioned in paragraph (a), (b), (c), (d), (e) or (f) of the definition of ***insolvency event*** occur in relation to the approved provider. The notification must be given in writing by the end of the first business day after the day on which the event occurs.

- (2) An approved provider commits an offence if the approved provider refuses or fails to comply with a requirement under subsection (1).

Penalty: 30 penalty units.

## **Part 4—Default event declaration**

### **10 Making of default event declaration**

- (1) As soon as practicable after the Secretary first becomes aware that:
  - (a) an insolvency event has occurred in relation to an approved provider; and
  - (b) there is at least one outstanding bond balance of the approved provider;the Secretary must make a default event declaration.
- (2) The default event declaration must:
  - (a) be in writing; and
  - (b) state that an insolvency event has occurred in relation to the approved provider; and
  - (c) state that the Secretary considers that there is at least one outstanding bond balance of the approved provider.
- (3) A default event declaration is not a legislative instrument.

### **11 Notice of default event declaration**

- (1) The Secretary must give a copy of a default event declaration to:
  - (a) the approved provider in relation to which the declaration states an insolvency event has occurred; and
  - (b) each person whom the Secretary considers may be entitled to receive a refund of an outstanding bond balance of the approved provider.
- (2) The Secretary must publish a copy of a default event declaration in a national newspaper.
- (3) A failure to comply with subsection (1) or (2) does not affect the validity of any default event declaration.

## **Part 5—Refund declaration**

### **12 Secretary to determine certain matters**

- (1) If the Secretary has made a default event declaration stating that an insolvency event has occurred in relation to an approved provider, the Secretary must identify each bond balance that:
  - (a) was an outstanding bond balance of the approved provider at the time that the default event declaration was made; or
  - (b) later becomes an outstanding bond balance of the approved provider.
- (2) In respect of each bond balance identified by the Secretary under subsection (1), the Secretary must determine:
  - (a) the date on which the bond balance became an outstanding bond balance; and
  - (b) the amount that the Secretary considers is equal to the amount of the bond balance that had not been refunded at the time that bond balance became an outstanding bond balance; and
  - (c) the amount that the Secretary considers is equal to the amount representing interest on the amount determined under paragraph (b), worked out in accordance with the User Rights Principles made under section 96-1 of the *Aged Care Act 1997*, that has accrued at the time that the Secretary determines the amount under paragraph (b); and
  - (d) the person to whom the Secretary considers the approved provider was required to refund the bond balance at the time that it became an outstanding bond balance; and
  - (e) the method that the Secretary considers would be most appropriate for the Commonwealth to use to pay a refund amount to the person mentioned in paragraph (d).

### **13 Making of refund declaration**

- (1) As soon as practicable after the Secretary has determined the matters mentioned in subsection 12(2) in respect of an outstanding

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bond balance of an approved provider, the Secretary must make a refund declaration relating to the outstanding bond balance.

- (2) The refund declaration must:
  - (a) be in writing; and
  - (b) specify the approved provider that has not refunded all, or part, of the relevant outstanding bond balance; and
  - (c) declare that the Commonwealth is to pay an amount equal to the sum of:
    - (i) the amount determined under paragraph 12(2)(b); and
    - (ii) the amount determined under paragraph 12(2)(c);to the person determined under paragraph 12(2)(d).
- (3) A refund declaration is not a legislative instrument.

**14 Notice of refund declaration**

- (1) The Secretary must give a copy of a refund declaration to:
  - (a) the refund recipient; and
  - (b) the approved provider specified in the refund declaration.
- (2) A failure to comply with subsection (1) does not affect the validity of any refund declaration.

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## **Part 6—Transfer of rights and payments of refund amounts**

### **15 Transfer of recovery rights to Commonwealth**

Immediately after the Secretary makes a refund declaration, any rights that the refund recipient had when the refund declaration was made to recover an amount equal to the refund amount from the approved provider specified in the refund declaration are, by force of this section, transferred to the Commonwealth.

Note: Any rights that the refund recipient has to receive from the approved provider any additional amounts are not transferred to the Commonwealth by force of this section.

### **16 Payments by Commonwealth**

Within 14 days after the Secretary makes a refund declaration, the Commonwealth must pay the refund amount to the refund recipient.

### **17 Appropriation**

The amounts payable under section 16 are to be paid out of the Consolidated Revenue Fund, which is appropriated accordingly.



## **Part 7—Costs recoupment determinations**

### **18 Making of refund costs recoupment determination**

- (1) The Minister may, at a particular time, make a refund costs recoupment determination relating to one or more refund declarations if:
  - (a) before that time, the Minister has informed the Treasurer and the Finance Minister that the Minister intends to make a refund costs recoupment determination relating to those refund declarations; and
  - (b) at that time, the Commonwealth has not recovered all of each refund amount in relation to those refund declarations; and
  - (c) at that time, the Commonwealth has not previously made a refund costs recoupment determination relating to each of those refund declarations.
- (2) A refund costs recoupment determination must:
  - (a) be in writing; and
  - (b) specify the refund declarations to which the determination relates; and
  - (c) specify the costs recoupment amount (see subsection (3)); and
  - (d) specify the default event declaration to which the determination relates (see subsection (4)).
- (3) The costs recoupment amount specified in a refund costs recoupment determination is the amount equal to the sum of each refund amount that:
  - (a) is specified in a refund declaration specified in the determination; and
  - (b) has not been recovered by the Commonwealth at the time the determination is made.
- (4) A default event declaration is a default event declaration to which a refund costs recoupment determination relates if the making of the default event declaration was a precondition of the making of the

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refund declarations specified in the refund costs recoupment determination.

- (5) A refund costs recoupment determination is not a legislative instrument.

**19 Making of administrative costs recoupment determination**

- (1) The Minister may, at a particular time, make an administrative costs recoupment determination relating to a default event declaration if:
- (a) before that time, the Minister has informed the Treasurer and the Finance Minister that the Minister intends to make an administrative costs recoupment determination relating to that default event declaration; and
  - (b) at that time, the Minister considers, on reasonable grounds, that the Commonwealth has not recouped all of the administrative costs relating to the default event determination.
- (2) An administrative costs recoupment determination must:
- (a) be in writing; and
  - (b) specify the default event declaration to which it relates; and
  - (c) specify the costs recoupment amount (see subsection (3)).
- (3) The costs recoupment amount specified in an administrative costs recoupment determination must not exceed the sum of:
- (a) the amount that the Minister considers, on reasonable grounds, is equal to the amount of the administrative costs relating to the default event declaration specified in the determination that the Commonwealth has not recouped at the time that the determination is made; and
  - (b) the amount that the Minister considers, on reasonable grounds, is likely to cover the costs of recovering levy that the Commonwealth will be enabled to impose by regulations made under section 6 of the *Aged Care (Bond Security) Levy Act 2006* as a result of the making of the determination.
- (4) An administrative costs recoupment determination is not a legislative instrument.

## **Part 8—Miscellaneous**

### **20 Delegations by Minister**

- (1) The Minister may, in writing, delegate to the Secretary all or any of the Minister's powers or functions under this Act.
- (2) In exercising powers or functions delegated under subsection (1), the Secretary must comply with any directions of the Minister.

### **21 Delegations by Secretary**

- (1) The Secretary may, in writing, delegate to an SES employee, or acting SES employee, in the Department all or any of the Secretary's powers or functions under this Act.
- (2) In exercising powers or functions delegated under subsection (1), the delegate must comply with any directions of the Secretary.

### **22 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; or
  - (c) necessary or convenient to be prescribed for enabling or facilitating the collection of levy imposed by regulations under section 6 of the *Aged Care (Bond Security) Levy Act 2006*.
- (2) Without limiting paragraph (1)(c), regulations prescribing matters necessary or convenient to be prescribed for enabling or facilitating the collection of levy may provide for the following:
  - (a) the person who is liable to pay levy;
  - (b) the time levy is due and payable;
  - (c) liability for levy being a debt due to the Commonwealth;

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- (d) the methods by which levy may be paid (including by instalments);
  - (e) the payment of penalties in respect of late payment of levy;
  - (f) repayments of levy;
  - (g) repayments of overpayments of levy;
  - (h) penalties for offences against the regulations, not exceeding a fine of 50 penalty units.
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*[Minister's second reading speech made in—  
House of Representatives on 8 December 2005  
Senate on 9 February 2006]*

(191/05)

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