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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

AGED CARE AMENDMENT (RESIDENTIAL CARE) BILL 2006

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Ageing,
Senator the Honourable Santo Santoro)

AGED CARE AMENDMENT (RESIDENTIAL CARE) BILL 2006

OUTLINE

The purpose of this 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). The Bill also amends the Act to allow 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.

Schedule 1 to the Bill amends Division 44 of the Aged Care Act to give effect to changes to the treatment of income streams and assets that have been disposed of (gifts) under the assets test for entry into permanent residential aged care. These amendments will enable gifts and income streams to be treated in the same way under the aged care assets test, as they are under the pension assets test.

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, they may be charged for entry to a residential care service.

The amendments stem from an option proposed in the *Review of Pricing Arrangements in Residential Aged Care* that the aged care means testing arrangements should be brought into line with those that apply for the age pension and that, in determining an individual's income and assets, the same gifting and deeming rules as apply for the age pension should apply. These rules already apply for aged care income testing purposes.

Under current arrangements, the total amount of gifts is excluded when calculating the value of assets under the aged care assets assessment. Income stream products from which the capital component (principal amount) cannot be drawn upon are exempt.

Schedule 1 to the Bill enables gifts and income streams to be treated for the purposes of the Aged Care Act in the same way as they are treated under the *Social Security Act 1991* and the *Veterans' Entitlements Act 1986* for the pension assets test.

The new arrangements will apply to people who undergo an assets assessment for entry into permanent residential aged care and enter permanent residential aged care on or after 1 January 2007. However, gifts made on or after 10 May 2006 will be assessable.

The changes will not affect people who are currently receiving permanent residential aged care unless they undergo another assets assessment on or after 1 January 2007 and change aged care homes on or after 1 January 2007.

Section 44-8AB of the Aged Care Act makes provision for the Secretary to the Department of Health and Ageing to make determinations as to the value of a person's assets.

The Secretary of the Department of Health and Ageing has delegated the power to determine the value of a person's assets under section 44-8AB of the Aged Care Act to the CEO of Centrelink and the Secretary to the Department of Veterans' Affairs.

A determination made under subsection 44-8AB(1) of the Aged Care Act, is a reviewable decision under item 39C of section 85-1 of that Act. Determinations under subsection 44-8AB(1) are made in accordance with section 44-10. Therefore, a decision to include an income stream or gift amount as an asset when working out the value of a person's assets, is reviewable.

Schedule 2 to the Bill amends the Act to allow the Secretary to the Department of Health and Ageing to delegate to members of the Aged Care Assessment Teams (ACATs) the Secretary's power to extend the maximum number of days per year on which a person may be provided with residential respite care. The purpose of this change is to remove any uncertainty about the role of ACATs in this process.

FINANCIAL IMPACT STATEMENT

Schedule 1 to the Bill has financial implications for the Department of Health and Ageing to meet costs associated with the policy and legislative changes, and to publicise the new arrangements, and also to meet Centrelink's costs for forms and system design changes in relation to the harmonisation measure. There will also be financial implications for the departmental and capital costs of the Department of Veterans' Affairs for forms and system design changes required to implement the changed arrangements for veterans, war widows and widowers and partners.

The amendments will also result in savings to administered costs for the Department of Health and Ageing because a very small percentage of residents will not receive government assistance with their accommodation costs.

The departmental and capital costs and estimated savings on administered costs for the current financial year and the next four years for the Department of Health and Ageing and the Department of Veterans' Affairs are shown below.

Budget Measure – Harmonising aged care and pension assets testing

	05-06	06-07	07-08	09-10	10-11	Total
	\$M	\$M	\$M	\$M	\$M	\$M
Health and Ageing						
Departmental costs		1.4				1.4
Savings – Administered costs		(6.2)	(15.5)	(22.9)	(28.8)	(73.4)
Subtotal		(4.8)	(15.5)	(22.9)	(28.8)	(72.0)
Veterans' Affairs						
Departmental costs	0.1	0.1				0.2
Capital		0.1				0.1
Subtotal	0.1	0.2				0.3
Total	0.1	(4.6)	(15.5)	(22.9)	(28.8)	(71.7)

Schedule 2 to the Bill has no financial impact.

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NOTES ON CLAUSES

Clause 1: Short title

Clause 1 provides that the Act may be cited as the *Aged Care Amendment (Residential Care) Act 2006*.

Clause 2: Commencement

Clause 2 provides that Schedule 1 commences on 1 January 2007 and Schedule 2 commences the day on which the Act receives Royal Assent.

Clause 3: Schedule(s)

Clause 3 provides that each Act that is specified in the 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

HARMONISING AGED CARE AND PENSION REQUIREMENTS IN RELATION TO INCOME STREAMS AND ASSET DISPOSALS

Summary

Schedule 1 to the Bill amends the *Aged Care Act 1997* to enable certain assets that have been disposed of (gifts) and income streams to be taken into account for the purposes of the assets test for entry into permanent residential aged care in the same way as they are taken into account for the purposes of the pension assets test under the *Social Security Act 1991* and the *Veterans' Entitlements Act 1986*. This alignment of the treatment of gifts and income streams in the aged care asset test and the pension asset test was announced in the 2006-07 Budget.

ITEM 1

A new subsection 44-10(1A) is inserted and provides for the inclusion of certain income streams (as that term is defined in the *Veterans' Entitlements Act 1986*) when working out the value of the assets of a person who is receiving a service pension or an income support supplement under the *Veterans' Entitlements Act 1986*.

New paragraph 44-10(1A)(a) provides that the value of such a person's assets is taken to include the amount that the Secretary to the Department of Health and Ageing determines is the value of that income stream that would be included in the value of the person's assets if Subdivision A of Division 11 of Part IIIB of the *Veterans' Entitlements Act 1986* applied for the purposes of working out the value of the person's assets under the *Aged Care Act 1997*.

New paragraph 44-10(1A)(b) provides that the value of such a person's assets is taken to exclude the amount that the Secretary to the Department of Health and Ageing determines is the value of that income stream that would be excluded from the value of the person's assets if Subdivision A of Division 11 of Part IIIB of the *Veterans' Entitlements Act 1986* applied

for the purposes of working out the value of the person's assets under the *Aged Care Act 1997*.

A new subsection (1B) is inserted and provides for the inclusion of certain income streams (as that term is defined in the *Social Security Act 1991*) when working out the value of the assets of a person who is not receiving a service pension or income support supplement under the *Veterans' Entitlements Act 1986*.

New paragraph 44-10(1B)(a) provides that the value of such a person's assets is taken to include the amount that the Secretary to the Department of Health and Ageing determines is the value of that income stream that would be included in the value of the person's assets if Division 1 of Part 3.12 of the *Social Security Act 1991* applied for the purposes of working out the value of the person's assets under the *Aged Care Act 1997*.

New paragraph 44-10(1B)(b) provides that the value of such a person's assets is taken to include the amount that the Secretary to the Department of Health and Ageing determines is the value of that income stream that would be excluded from the value of the person's assets if Division 1 of Part 3.12 of the *Social Security Act 1991* applied for the purposes of working out the value of the person's assets under the *Aged Care Act 1997*.

New subsection 44-10(1C) is inserted and provides for the inclusion of the value of certain assets, that the person has disposed of, in the value of the person's assets.

New paragraph 44-10(1C)(a) provides that the value of the assets of a person who is receiving a service pension or an income support supplement under the *Veterans Entitlements Act 1986* is taken to include the amount that the Secretary to the Department of Health and Ageing determines to be the amount that would be included in the value of the person's assets if Subdivisions B and BB of Division 11 of Part IIIB of the *Veterans' Entitlements Act 1986* applied for the purpose of working out the value of the person's assets under the *Aged Care Act 1997*.

New paragraph 44-10(1C)(b) provides that the value of the assets of a person who is not receiving a service pension or an income support supplement under the *Veterans' Entitlements Act 1986* is taken to include the amount that the Secretary to the Department of Health and Ageing determines to be the amount that would be included in the value of the person's assets if Division 2 of Part 3.12 of the *Social Security Act 1991* applied for the purpose of working out the value of the person's assets under the *Aged Care Act 1997*.

A new note to subsection 44-10(1C) states that Subdivisions B and BB of Division 11 of Part IIIB of the *Veterans' Entitlements Act 1986* and Division 2 of Part 3.12 of the *Social Security Act 1991* deals with the disposal of assets.

Subdivisions B and BB of Division 11 of Part IIIB of the *Veterans' Entitlements Act 1986* and Division 2 of Part 3.12 of the *Social Security Act 1991* provide that the amount of gifts in excess of the allowable amounts will be included as an asset when working out the value of the person's assets.

ITEM 2 – Application of subsections 44-10(1A), (1B) and (1C) – working out the value of assets on or after 1 January 2007 for people entering an aged care service after that date

Item 2 provides that new subsections 44-10(1A) to (1C), which take into account certain income streams and certain assets that have been disposed of (gifts), when working out the value of a person's assets under the Act, only apply if the value of the person's assets is calculated on or after 1 January 2007 and the person enters an aged care service on or after 1 January 2007.

ITEM 3 – Application of subsection 44-10(1C) – assets disposed of after 10 May 2006

Item 3 provides that when determining an amount under paragraph 44-10(1C)(a) of the Act, the Secretary must take into account assets that a person has disposed of (within the meaning of Subdivisions B of Division 11 of Part IIIB of the *Veterans' Entitlements Act 1986*) on or after 10 May 2006.

This item also provides that when determining an amount under paragraph 44-10(1C)(b) of the Act, the Secretary must taken into account assets that a person has disposed of (within the meaning of Division 2 of Part 3.12 of the *Social Security Act 1991*), on or after 10 May 2006.

SCHEDULE 2 - DELEGATIONS

ITEM 1

Subsection 96-2(5) of the Act is amended to enable the Secretary to the Department of Health and Ageing to delegate functions under the *Residential Care Subsidy Principles 1997* to designated ACAT positions, to allow the delegates to extend the maximum numbers of days a person can receive residential respite care.

ITEM 2

This Item provides that despite the repeal and substitution of subsection 96-2(5) of the Act, delegations made under that subsection as in force immediately before the commencement of Schedule 2 to this Bill continue to have effect as if they had been made under subsection 96-2(5) in force immediately after the commencement of Schedule .2. The effect of this item is that delegations currently held by Aged Care Assessment Teams (ACATs) members under Part 2.3 of the Act to assess and approve people for aged care services under the Act remain in force after the commencement of Schedule 2 to this Bill. This will ensure that ACATs can continue to exercise the Secretary's powers under Part 2.3 of the Act until such time as the Secretary to the Department of Health and Ageing signs a new instrument of delegation.