

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Ageing

Aged Care Act 1997

User Rights Amendment Principles 2006 (No 1)

In March 2006, amendments were made to the *Aged Care Act 1997* (the Act), through the *Aged Care Amendment (2005 Measures No 1) Act 2006*, to:

- provide for strengthened prudential arrangements for approved providers of aged care services holding accommodation bonds and entry contributions; and
- enable Principles to be made to require approved providers to pay interest to care recipients in circumstances where there is a delay in the repayment of accommodation bond balances and entry contribution balances.

The main purpose of these consequential amendments to the *User Rights Principles 1997* (the Principles) is to provide additional detail about the new prudential arrangements for the protection of accommodation bonds and about how the new interest requirements will operate (including information about the interest rates to be applied).

The amendments to the Principles also:

- remove inoperable prudential requirements;
- formally terminate the Aged Care Accommodation Bond Trust Fund which has not had the capacity to accept accommodation bonds since 23 December 1997;
- provide that the only types of flexible care services that may charge bonds are multi-purpose services (residential aged care services are also able to charge bonds); and
- extend the rules relating to accommodation bonds to flexible care services that hold accommodation bonds (multi-purpose services). This is consistent with amendments made to the Act to ensure that all of the rules that apply to residential aged care services holding accommodation bonds also apply to flexible care services holding accommodation bonds (multi-purpose services).

Principles made under the Act

Subsection 96-1(1) of the Act provides, in part, that the Minister for Health and Ageing may make Principles, not inconsistent with the Act, prescribing all matters which are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Subsection 96-1(2) of the Act makes any Principles made under subsection 96-1(1) of the Act disallowable instruments.

The User Rights Principles are one of the sets of Principles made under the Act.

Consultation

Extensive consultation was undertaken between September 2005 and April 2006 with peak industry organisations, aged care providers and consumer representatives through an Industry Consultative Group. The Group was consulted on the proposed amendments to the Principles to ensure that the objectives of Government could be achieved without placing undue burdens on industry or disadvantaging consumers.

Legislative Instrument

The *User Rights Amendment Principles 2006 (No. 1)* (the Amending Principles) are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Regulation Impact Statement

The Office of Regulation Review has advised that no Regulation Impact Statement is required (ORR ID Number 7920).

Details of the amendments to the Principles are listed at Attachment A.

NOTES ON CLAUSES

Clause 1 states that the name of the Amending Principles is the *User Rights Amendment Principles 2006 (No. 1)*.

Clause 2 states that the commencement dates are as follows:

- Sections 1 to 5 and Schedule 1 commence on 31 May 2006; and
- Schedule 2 commences on 1 July 2006.

Clause 3 states that Schedules 1 and 2 amend the Principles.

Clause 4 describes transitional arrangements and states that an approved provider's responsibilities under the current subsections 23.40B(1), (1A) and (5) continue to apply for the period between 31 May 2006 and 30 June 2006.

This means that approved providers must continue to comply with the existing prudential requirements until 30 June 2006. For example, approved providers will continue to have to:

- give each care recipient who pays an accommodation bond during this period, a written guarantee of the refund of the bond - 23.40B(1);
- have enough insurance to cover any losses which may affect the repayment of any accommodation bond refund which falls due in this period - 23.40B(1A); and
- provide a copy of the last annual prudential compliance statement to prospective care recipients - 23.40B(5).

Sub-clause 4(1)(b) of the Amending Principles requires approved providers to continue to comply with subsections 23.40B(2) to (4) for the whole or part of the 2005-2006 financial year. This will ensure that, despite the new Prudential Standards taking effect from 1 July 2006, approved providers will still be expected to submit the 2006 Prudential Compliance Statement to the Department, and report on compliance with the old prudential requirements, within 4 months of the end of the 2005-2006 financial year. For most approved providers this will be by the end of October 2006. This is the case regardless of whether the approved provider has been responsible for the aged care service for the whole or a part of the 2005-2006 financial year.

Sub-clause 4(2) of the transitional provisions defines the "2005-2006 financial year" as the period of 12 months ending on 30 June 2006 or another period that has been determined by the Secretary in accordance with the provisions relating to financial years in subsection 21.26B(1) of the *Residential Care Subsidy Principles 1997* (commonly referred to as the Conditional Adjustment Payment (CAP) requirements).

Clause 5 terminates the Aged Care Accommodation Bond Trust which was established on 1 October 1997 to hold accommodation bonds on behalf of approved providers. The Trust has not had the capacity to receive accommodation bonds since 23 December 1997.

Schedule 1 Amendments commencing on 31 May 2006

Item 1

This item adds a new definition of “annual prudential compliance statement” to the definitions in subsection 23.3(1). The “annual prudential compliance statement” is the statement required to be given to the Secretary under section 23.40 of the Principles which describes the Disclosure Standard.

Item 2

This item omits the definitions of “Board”, “complying aged care service”, “costs of the scheme”, “Fund” and “income” from subsection 23.3(1). These definitions are no longer necessary because the sections in which the words previously appeared have been deleted. These are the sections relating to the Aged Care Accommodation Bond Trust and the old prudential requirements.

Item 3

This item adds three new definitions to subsection 23.3(1):

- “bond” meaning either an accommodation bond, paid on or after 1 October 1997, or an entry contribution paid before 1 October 1997;
- “bond balance” meaning either an accommodation bond balance or an entry contribution balance; and
- “bond register” meaning the register established and maintained by the approved provider in accordance with Subdivision 3.3 of Division 3 of Part 4 of these Principles (Records Standard).

Item 4

This item adds two new definitions to Subsection 23.3(1):

- “multi-purpose service” is described as having the same meaning given under section 15.3 of the *Flexible Care Subsidy Principles 1997*. This is a flexible care service approved under subsection 15.14(1) of those Principles; and
- “Prudential Standard” means the standards approved providers are required to comply with in Division 3 of Part 4 of these Principles.

Item 5

The definitions of “scheme manager”, “Trust” and “trustee” have been omitted from subsection 23.3(1). These definitions relate to the Aged Care Accommodation Bond Trust which has been terminated as a result of these amendments to the Principles, and the definitions are, therefore, redundant.

Item 6

This item amends paragraph 23.17(a) (ii) to fix the punctuation to reflect the omission of subsection 23.17(b) from the Principles (see Item 7 below).

Item 7

This item omits subsection 23.17(b). This subsection, which required an approved provider to give care recipients (who have paid a bond) information about the approved provider’s compliance with their prudential scheme, is now redundant as it is covered under Item 13 of these Principles.

Item 8

This item amends section 23.27A, which sets out the Purpose of Part 4 of the Principles, by replacing the words “(including the general prudential requirements and the prudential scheme set out under them)” with the words “(including the Prudential Standards)”. This reflects the new arrangements established by Division 3 of Part 4 of these Principles.

Item 9

This item amends the punctuation in paragraph 23.28(2)(j) to reflect the omission of paragraph 23.28 (2)(k) (refer Item 10) which referenced the old prudential scheme). As the Amending Principles remove all of the old prudential requirements, paragraph 23.28 (2)(k) is no longer necessary.

Item 10

This item removes paragraph 23.28(2)(k) which referenced the old prudential scheme. As the Amending Principles remove all of the old prudential requirements, paragraph 23.28 (2)(k) is no longer necessary.

Item 11

This item removes subsection 23.28(3) which cross-references paragraph 23.28(2)(k) (refer Item 10 above). As a result of removing paragraph 23.28(2)(k), subsection 23.28(3) is also no longer needed.

Item 12

This item inserts a new Division (Division 2A When an accommodation bond must not be charged) after section 23.28.

Section 23.28A Purpose of Division

This section provides that the purpose of this Division is to specify instances (in addition to those described in Section 57-2 of the Act) in which an accommodation bond must not be charged.

Section 23.28B Flexible care services

This section specifies that an accommodation bond may not be charged by a flexible care service which is not a multi-purpose service or if the care recipient is not being provided with residential care by the flexible care service. In combination with the Act, this means that only residential aged care services and multi-purpose services are able to charge accommodation bonds.

Item 13

This item substitutes Divisions 3, 3A and 4 of Part 4 with a new Division 3. This replaces the old prudential requirements with the new Prudential Standards.

Division 3 Prudential Standards

Subdivision 3.1 Purpose and application of Division

Section 23.32 Purpose of Division

This section sets out the purpose of the Prudential Standards. These standards serve as a mechanism for protecting accommodation bond balances (Liquidity Standard), providing sound financial management (Records Standard) and the provision of information about the financial management of approved providers (Disclosure Standard).

Section 23.33 Application of Division 3

This section provides information about which approved providers must comply with the Prudential Standards.

In summary, the following approved providers must comply with the Prudential Standards:

- those who are paid a lump sum accommodation bond on, or after, 1 July 2006 regardless of whether they operate a flexible care service (noting that the only flexible care services that may charge accommodation bonds are multi-purpose services) or a residential aged care service;
- those who hold accommodation bond balances as at 1 July 2006 (for example, where a care recipient has paid a lump sum accommodation bond prior to 1 July 2006 and the approved provider has not refunded the accommodation bond balance as at 1 July 2006); and
- those who hold entry contributions as at 1 July 2006.

Section 23.33 (and subsequent sections) refer to “bond” and “bond balance”. Subsection 23.3 (1) defines “bond” to mean both an accommodation bond and an entry contribution. Similarly a “bond balance” is defined to mean both an accommodation bond balance and an entry contribution balance

Section 23.34 Definitions

This section defines the following two terms that are used in the Division:

- “2005-2006 financial year” – this is defined as the period of 12 months ending on 30 June 2006, or if another period has been determined by the Secretary under the provisions relating to financial years in section 21.26B of the *Residential Care Subsidy Principles 1997* – that other period; and
- “financial year” – this is defined as a period of 12 months beginning on 1 July, or if another period has been determined by the Secretary under the provisions relating to financial years in section 21.26B of the *Residential Care Subsidy Principles 1997* – that other period.

Section 23.35 Requirements annual prudential compliance statements

This section specifies that the annual prudential compliance statement (which must be submitted to the Department in accordance with the Disclosure Standard) must be in writing, in a form approved by the Secretary, and include all relevant statements and information required by the form. The application must be signed by a person who is one of the approved provider’s key personnel and who is authorised by the approved provider to sign the statement. The annual prudential compliance statement must not contain any false or misleading information.

Subdivision 3.2 Liquidity Standard

Section 23.36 Requirement for sufficient liquidity

This section requires that an approved provider have sufficient liquidity in order to refund bond balances that can be expected to fall due in the following 12 months. This is intended to ensure that approved providers maintain ready access to funds to allow them to refund bond balances in a timely way. Approved providers are expected to continuously have sufficient liquidity to refund bonds over the next 12 months. For example, at 28 June of any

year, an approved provider would need enough liquidity for the next 12 months, not just until the end of the current financial year.

Section 23.37 Requirement to implement, maintain and comply with liquidity management strategy

Subsection 23.37(1) specifies that approved providers holding bond balances must implement and maintain a written liquidity management strategy that sets out:

- the amount, expressed in whole dollars, that ensures that the approved provider has sufficient liquidity for the purposes of section 23.36 (the “minimum level of liquidity”);
- the factors that the approved provider had regard to in determining the minimum level of liquidity. Approved providers are expected to determine (and assess) relevant factors based on their own individual circumstances and experiences. Examples of the types of factors that approved providers may wish to consider include, their historical pattern of bond balance refunds, the characteristics of the care recipients for whom they care that may influence the timing of their bond balance refunds, the average value of bond balances held and the likely timing and value of any incoming bonds; and
- the form in which the approved provider will maintain the minimum level of liquidity. In order to ensure that an approved provider is able to meet its obligation to refund bond balances as they fall due, it is important that the minimum level of liquidity for an approved provider is maintained in form(s) that can be readily accessed. There is a wide range of financial instruments that have a high level of liquidity including, for example, cash, bank deposits, bank bills, stand-by lines of credit and guarantees.

Subsection 23.37(2) requires that an approved provider must:

- maintain, as specified in the approved provider’s liquidity management strategy, the minimum level of liquidity;
- ensure the liquidity management strategy is up to date and complies with the requirements set out in subsection (1); and
- modify or replace the liquidity management strategy if the approved provider becomes aware that the current liquidity management strategy no longer complies with the requirements as established in subsection (1).

These requirements are aimed at assisting approved providers to meet their bond balance refund obligations.

Subdivision 3.3 Records Standard

Section 23.38 Bond Register

Subsection 23.38(1) provides that an approved provider must establish and maintain a bond register that sets out information in relation to bonds (meaning both accommodation bonds and entry contributions).

Subsection 23.38 (2) states that the bond register must include the information set out in the subsection. The subsection distinguishes between information that must be recorded in relation to accommodation bonds and information that must be recorded in relation to entry contributions.

Information that must be recorded in relation to accommodation bonds

In accordance with paragraphs 23.38(2)(a), (c) and (e) and subsections 23.38(3) and (4), approved providers who hold an accommodation bond balance on or after 1 July 2006, must record:

- the care recipient's name, and Resident Identification Number as allocated by the Department;
- the date on which the care recipient entered the service. If, immediately preceding this care, the care recipient had been provided with care elsewhere and had paid an accommodation bond, then the approved provider must also record the date that the care recipient entered the original service;
- the date on which the accommodation bond was paid and the amount of the accommodation bond;
- the amount, date and reason for any deduction made from the accommodation bond on or after 1 July 2006;
- the accommodation bond balance as at 1 July 2006 (for accommodation bonds paid prior to 1 July 2006 and still held by the approved provider as at 1 July 2006);
- the accommodation bond balance at the end of each calendar month commencing on 1 July 2006. This means that, for each bond held, a bond balance must be recorded at the end of each month commencing on 1 July;
- if the accommodation bond balance is refunded on, or after, 1 July 2006:
 - because the care recipient died – the date on which the care recipient died, and, if applicable, the date on which the approved provider is shown the probate of the will or letters of administration of the estate of the care recipient; and
 - because the care recipient ceased to be provided with care by the approved provider – the date that care ceased. If the care recipient notified the approved provider prior to going to another service, then the approved provider must also record the date of that notice;
 - because the service ceased to be certified (in the case of residential aged care services) - the date that the service ceased to be certified;
 - the date that the accommodation bond balance was required to be refunded in accordance with section 57-21 of the Act. If the care recipient left the service (or the service ceased to be certified) prior to 31 May 2006, then this will be date that the accommodation bond balance should be refunded in accordance with the timeframes that existed prior to amendments to the Act that changed the timeframes for refunds. If the care recipient left the service on, or after, 31 May 2006 then the date that the bond will be required to be refunded is worked out in accordance with the new timeframes for refund that resulted from the amendments (this is the effect of subsections 23.38(3) and (4));
 - the date the accommodation bond balance was actually refunded;
 - the amount of the accommodation bond balance that was refunded;
 - the amount of base interest that was paid (if any); and
 - the amount of maximum permissible interest paid that was paid (if any); and
- any other information determined, by legislative instrument, by the Secretary. Legislative instruments are disallowable instruments under the *Legislative Instruments Act 2003*.

The approved provider may also choose to record any other useful information in the bond register.

Information that must be recorded in relation to entry contributions

Paragraphs 23.38(2)(b), (d) and (e) require that if, on or after 1 July 2006, the approved provider is holding an entry contribution, then the approved provider must record:

- the care recipient's name, and Resident Identification Number as allocated by the Department;
- the date on which the entry contribution was paid;
- the amount of the entry contribution;
- the balance of the entry contribution as at 1 July 2006;
- if the entry contribution is refunded on, or after, 1 July 2006:
 - the date the care recipient ceased to be provided with care by the approved provider;
 - the date the approved provider was required to refund the entry contribution, in accordance with the formal agreement applying to the entry contribution;
 - the date upon which the entry contribution balance was refunded;
 - the amount of the entry contribution balance refunded;
 - the amount of maximum permissible interest paid (if any); and
- any other information determined, by legislative instrument, by the Secretary. Legislative instruments are disallowable instruments under the *Legislative Instruments Act 2003*.

Subdivision 3.4 Disclosure Standard

Section 23.39 Disclosure to the Department – 2006

This section requires that by 31 October 2006, all approved providers must give the Secretary a written statement setting out:

- the total number of bond balances (both accommodation bond balances and entry contribution balances) held as at 1 July 2006; and
- the total value of bond balances held as at 1 July 2006.

The date of 31 October 2006 is fixed, regardless of whether the approved provider prepares financial reports in accordance with a standard financial year or an alternative financial year.

This requirement supplements the requirement for approved providers to return to the Department a 2006 Prudential Compliance Statement within 4 months of the end of the approved provider's financial year. The 2006 Prudential Compliance Statement requires approved providers to report on compliance with the old prudential requirements under former section 23.40B of the Principles for the 2005 – 2006 financial year (refer clause 4 of the Amending Principles which describes these transitional arrangements).

Section 23.40 Annual prudential compliance statement

Section 23.40 provides that within four months of the end of each financial year (other than the 2005-2006 financial year for which there are different arrangements as described above), the approved provider must give the Secretary a written statement which includes the following:

- the total number and value of bond balances (meaning both accommodation bond balances and entry contribution balances) held at the end of the financial year;
- if, during the financial year, bond balances were not refunded in accordance with subsection 57-21(3) of the Act then the approved provider must report against the information required in subsection (2) of this section (except in cases where the bond balance was not refunded because, in accordance with section 57-22 of the Act, there

had been an agreement between the approved provider and the care recipient not to refund the bond balance);

- if the approved provider was not allowed to charge a bond during the whole or a part of the financial year, the approved provider must detail the period(s) of the year that the approved provider was not allowed to charge accommodation bonds (for example because the approved provider was a residential aged care service and was not certified for a certain period of time);
- a statement about whether the approved provider has complied with the Liquidity Standard;
- a statement about whether the approved provider has complied with the Records Standard and if the approved provider has not complied with the Standard, any reasons for the failure to comply with the Standard;
- a statement about whether the approved provider has complied with the Disclosure Standard. If the approved provider has not complied with the Disclosure Standard, then the approved provider must also state (in accordance with subsection 23.40(3)):
 - the total number of occasions on which the approved provider did not comply with the Disclosure Standard; and
 - the reason or reasons that the approved provider did not comply with the Disclosure Standard and, in relation to each reason, the number of times non-compliance was due to that reason.
- a statement about whether the approved provider has complied with the requirement to enter into a bond agreement with a care recipient within 21 days of them entering the service (as required by section 57-2(1)(e) of the Act); and
- a statement about whether the approved provider has refunded bonds on time. In the case of accommodation bonds, the approved provider will be reporting on whether they met the statutory timeframes for refunding bond balances as detailed in section 57-21 of the Act. In the case of entry contributions, the approved provider will be reporting on compliance with the timeframes detailed in the formal agreement entered into with the care recipient at the time the entry contribution was paid.

Subsection 23.40(2) further provides that if, during the financial year, bond balances were not refunded on time then the approved provider must also report to the Department:

- the total number of accommodation bond balances or entry contribution balances not refunded within the required period;
 - the reasons or reason for the delay in refunding the accommodation bond balances or entry contribution balances; and
 - in respect of each reason, the number of times a delay was due to that reason.
- a statement about whether the approved provider has complied with Division 2 of Part 4 of the Principles (rules about accommodation bonds) and Division 5 of Part 4 of the Principles (requirements relating to the contents of bond agreements);
 - an audit opinion on whether the approved provider has complied with the applicable Prudential Standards in the relevant financial year; and
 - any other information determined, by legislative instrument, by the Secretary.

Section 23.41 Audit of annual prudential compliance statement

This section requires that the annual prudential compliance statement be supported by an independent audit provided by a registered company auditor or a person approved under

subsection 21.26F(6) of the *Residential Care Subsidy Principles 1997* (for the purposes of the Conditional Adjustment Payment).

Section 23.42 Disclosure to care recipients

Subsection 23.42(1) requires that the approved provider must give a copy of the accommodation bond agreement (and written guarantee of repayment of the bond) to the care recipient within 7 days of the accommodation bond agreement being entered into.

Subsection 23.42(2) requires approved providers to give information about their compliance with the prudential requirements to each bond-paying care recipient or their representative, within 4 months after the end of the financial year. This information must include:

- the number of bond balances which were not refunded in accordance with the timeframes specified in subsection 57-21(3) of the Act or in accordance with a formal agreement;
- a statement about whether the approved provider has complied with the Prudential Standards (as described in Division 3 of the Principles) in the financial year;
- a copy of the bond register entry for the care recipient, as at the end of the financial year; and
- a copy of an audit opinion on whether the approved provider has complied with the Prudential Standards in the financial year.

Subsection 23.42(3) requires approved provider to provide, if requested to do so by a care recipient or their representative, the following information within 7 days of the request:

- the entry in the bond register that relates to that care recipient; and
- either the most recent statement of the service's audited accounts, or the most recent statement of the audited accounts of the organisation's aged care component. In the case of approved providers who receive the Conditional Adjustment Payment, this will be the audited General Purpose Financial Report.

Section 23.43 Disclosure to prospective care recipients

This section specifies that an approved provider must, if requested to do so by a prospective care recipient or their representative, provide information about their compliance with the prudential requirements and other relevant financial information within 7 days of the request being made.

Specifically, the approved provider must provide:

- information about the number of bond balances (which includes entry contribution balances) which were not refunded within the timeframes set out under subsection 57-21(3) of the Act or in accordance with a formal agreement;
- information about whether they have complied with the applicable Prudential Standards in the previous financial year;
- a copy of an audit opinion on whether the approved provider has complied with the applicable Prudential Standards in the previous financial year; and
- a copy of the most recent statement of the aged care service's audited accounts, or if the aged care service is part of a broader organisation, that of the aged care component. In the case of approved providers who receive the Conditional Adjustment Payment, this will be the audited General Purpose Financial Report.

For example, a prospective care recipient for residential aged care services is someone who is approved by an Aged Care Assessment Team to receive residential aged care services.

Item 14

This item omits Schedule 2 of the Principles which detail the requirements in relation to the Aged Care Accommodation Bond Trust. As this Trust is terminated by virtue of section 5 of the Amending Principles, this Schedule is no longer needed.

Schedule 2 Amendments commencing on 1 July 2006

Item 1

This section amends section 23.13 (which sets out the purpose of the Division regarding responsibilities of an approved provider to a residential aged care recipient) to extend the description to, for the purposes of section 23.17, flexible care though multi-purpose services in a residential setting.

Item 2

This item replaces section 23.17 (Statement of audited accounts) with a new section.

Previously section 23.17 required all approved providers, if asked, to give care recipients a copy of the most recent audited accounts and, if the care recipient had paid, or agreed to pay a bond, information regarding the approved provider's level of coverage under the prudential scheme.

This section needed to be amended for two reasons. Firstly, the "prudential scheme" as referred to in the section, no longer exists (and all sections relating to the scheme have been deleted through these amendments).

Secondly, the section needs to be amended to only apply to approved providers who do not hold bond balances and.

As detailed in Schedule 1 of these Amending Principles, new requirements have been introduced in relation to approved providers who hold bond balances from 1 July 2006. These approved providers must now comply with a Disclosure Standard which, among other things, requires such approved providers to provide a copy of the audited accounts, on request, to both care recipients and prospective care recipients.

As a result, this section has been amended so that it only applies to approved providers that are not otherwise covered by the new Prudential Standard (that is, approved providers who do not hold bond balances). Such approved providers must, if asked, give care recipients a copy of the most recent audited accounts. Subsection 23.17(2) clarifies that if the approved provider is in receipt of the Conditional Adjustment Payment under the *Residential Care Subsidy Principles 1997*, the requirement under subsection (1) is satisfied if the approved provider gives a copy of the most recent General Purpose Financial Report under Section 21.26F of those Principles.

Items 3, 4 and 5

These items amend section 23.27 and subsections 23.28(1) and (2) to ensure that the requirements in relation to information that must be provided to care recipients about accommodation bonds applies to both flexible care services that charge accommodation

bonds (multi-purpose services) and residential aged care services that charge accommodation bonds.

This is consistent with amendments made to the Act that ensure that all of the rules that apply to residential aged care services that charge accommodation bonds, also apply to flexible care services that charge accommodation bonds (multi-purpose services).

Item 6

This item inserts a new subsection in section 23.28 of the Principles. Subsection 23.28(3) requires that approved providers give all care recipients who have paid accommodation bonds (or their representatives), a written guarantee that the accommodation bond balance will be refunded in accordance with the Act. This reflects the requirement that previously existed in section 23.40B of the Principles (which is being deleted as a result of these amendments).

Item 7

Item 13 of Schedule 1 of the amendments replaces the existing Divisions 3, 3A and 4 with a new Division (Division 3 Prudential Standards). Within this Division is a new section 23.40 which describes the requirements in relation to annual prudential compliance statements. This item amends this new section to provide that, from 1 July 2006, subparagraph 23.40(1)(b)(v) will be amended to read “subsection 23.38(3), and Divisions 2 and 5 of Part 4, of these Principles” rather than “Division 2 and 5 of Part 4 of these Principles”.

Item 8

This item inserts two new Divisions after Part 4 of Division 13 of the Principles. Division 14 details the arrangements for payment of interest in relation to accommodation bond balances and Division 15 details the arrangements in relation to payment of interest on entry contribution balances.

Division 14 Payment of interest on accommodation bond balance

Section 23.79A Purpose of Division (Act, 57-21A)

This section provides that the purpose of the Division is to specify the method for working out interest amounts that approved providers must pay on outstanding accommodation bond balances in a number of different circumstances. The Division also sets out the way in which the approved provider must pay the interest.

Section 23.79B Definitions

This section defines the following terms that are used in the new Division:

- “base interest rate” means a rate being the sum of the below threshold rate and 2%;
- “below threshold rate” means the rate determined by the Minister for Family and Community Services under subsection 1082(1) of the *Social Security Act 1991*;
- “refunding event” means:
 - an event mentioned in paragraph 57-21(1)(a), (b) or (c) of the Act that occurred on or after 31 May 2006 – that is, the care recipient dies or ceases to be provided with residential care or the residential aged care service ceases to be certified; or
 - an event mentioned in paragraph 57-21(1)(a), (b) or (c) of the Act as in force immediately before 31 May 2006 - that is, the care recipient dies or ceases to be provided with residential or flexible care or the residential aged care service ceases to be certified.
- “refund period” means:

- for refunding events that occurred on, or after, 31 May 2006, the timeframes specified in paragraphs 57-21(3)(aa) or (b), or subparagraphs 57-21(a)(ii) or (iii);
- for refunding events that occurred before 31 May 2006, the timeframes in subsection 57-21(3)(a)(ii) or (iii) or (3)(b) in force immediately before 31 May 2006.

The timeframes specified in paragraphs 57-21(3)(aa) or (b), or subparagraphs 57-21(a)(ii) or (iii) (that is, those timeframes in force from 31 May 2006) are as follows:

- where the care recipient dies – within 14 days after the day on which the approved provider is shown probate or letters of administration;
- where the care recipient leaves to enter another residential care service:
 - giving no notice – within 14 days of leaving;
 - giving less than 14 days' notice – 14 days after notice was given; or
 - giving more than 14 days' notice – on the day of departure; and
- in any other case (for example, where the service ceases to be certified or where the care recipient returns home) – within 14 days of the departure of the care recipient from the service (or the date when certification ceased).

The timeframes as in force immediately before 31 May 2006 are as follows (in accordance with section 57-21(3)(a)(ii) or (iii) or (3)(b)):

- where the care recipient leaves to enter another residential care service:
 - giving no notice – within 7 days after leaving;
 - giving less than 7 days notice – within 7 days after notice is given;
 - giving more than 7 days notice – on the day of departure; and
- where the care recipient otherwise leaves (e.g. goes home, dies or moves to the home of a carer) – within 2 months of leaving.

Section 23.79C Application

This section contains provisions relating to the application of this Division. In summary:

- subsection 23.79C(1) provides that this Division applies to an approved provider if:
 - on or after 1 July 2006, an approved provider is required to refund an accommodation bond balance; and
 - either the approved provider and the recipient have not made an agreement under subsection 57-22(1), or such an agreement has ceased.
- subsection 23.79C(2) provides that if this Division applies to an approved provider in relation to a refunding event occurring between 31 May 2006 and 1 July 2006, then this Division applies as if the refunding event had occurred on 1 July 2006. For example, if a care recipient left a service in June 2006 and their bond had still not been refunded by 1 July 2006 then this Division applies as if the refunding event (i.e. the resident ceasing to be provided with residential care) occurred on 1 July 2006. Interest will begin accruing from the day after this day;
- subsection 23.79C(3) provides that, subject to subsection (4), for refunding events occurring before 31 May 2006, then section 23.79D applies as if:
 - a reference in section 23.79D to 57-21(3)(a)(i), (ii) and (iii) or (3)(b) were a reference to that provision as in force before 31 May 2006; and
 - there were no references to paragraph 57-21(3)(aa); and
 - the refunding event occurred on 1 July 2006.
- subsections 23.79C(4) and (5) provide that if a care recipient died before 31 May 2006 and the accommodation bond has not been refunded by 1 July 2006, then the approved provider will be required to pay base interest (in accordance with section 23.79D(1)) as

if the care recipient died on 1 July 2006 but will not be required to pay maximum permissible interest (in accordance with 23.79D(2)) provided that the only reason that the accommodation bond balance has not been refunded within 2 months is because the approved provider is awaiting probate or letters of administration.

Section 23.79D Working out of amounts of interest on accommodation bond balances

Subsection 23.79D(1) describes the formula for working out amounts of interest on accommodation bond balances *where the accommodation bond balance is refunded on or before the last day of the refund period.*

In these circumstances the approved provider must pay interest in accordance with the following formula:

$$\frac{\text{BIR} \times \text{ABB} \times \text{ND}}{365}$$

BIR is the “base interest rate” as defined in section 23.79B (that is, the sum of the below threshold rate and 2%).

ABB is the dollar amount of the accommodation bond balance.

ND is the number of days beginning on the day *after* the day on which the refunding event occurred and ending on the day on which the accommodation bond balance is paid

Subsection 23.79D(2) describes the formula for working out the amount of interest payable on accommodation bond balances *which are refunded after the last day of the refund period.*

In these circumstances the approved provider must pay interest in accordance with the following formula:

$$\frac{\text{BIR} \times \text{ABB} \times \text{ND(RP)}}{365} + \frac{\text{MPIR} \times \text{ABB} \times \text{ND(PP)}}{365}$$

BIR and ABB have the same meanings as detailed above.

MPIR is the maximum permissible interest rate calculated in accordance with subsection 23.3(2). However, for the purposes of working out the MPIR payable to care recipients when they leave a service, approved providers should use as a reference point the date that the care recipient should have been refunded their accommodation bond balance in accordance with the legislated timeframes. The interest rate remains fixed at this rate until the bond is refunded. Each quarter the Department publishes the MPIR in a table available on the Department of Health and Ageing website.

ND(RP) is the number of days in the refund period during which base interest is payable.

ND(RP) is worked out as follows:

- where a care recipient dies, and the last day of the refund period is on or after 1 July - the number of days in the period beginning on the day after the refunding event and ending on the last day of the refund period. For example, if a care recipient dies on 2 July 2006 then the base interest component of the total interest payable will be

calculated from 3 July 2006 until 14 days after the day that probate or letters of administration are shown to the approved provider;

- where a care recipient leaves to go to another residential care service and gives less than 14 days notice, or no notice, or otherwise leaves - the number of days in the refund period minus the number of days in the refund period before 1 July 2006. For example, if a care recipient leaves to move to another service on 5 July 2006 and does not provide any notice then the base interest component of the total interest paid will be calculated from 6 July until 14 days later;
- where a care recipient dies and the last day of the refund period is pre 1 July 2006 – zero. For example, if a care recipient dies on 5 June 2006 and was shown probate on 10 June 2006, then the accommodation bond balance should have been refunded by 24 June 2006. As the new interest requirements do not take effect until 1 July 2006, no interest will be payable for any period before this time. After 1 July 2006, no base interest will be payable (because the timeframe for refunding the accommodation bond balance has expired) but maximum permissible interest will accrue from 2 July 2006 (in accordance with the second half of the formula); and
- where a care recipient leaves to go to another residential care service giving more than 14 days notice – zero. No base interest is payable in these circumstances because the accommodation bond balance is due for refund on the day that the care recipient leaves the service.

ND(PP) is the number of days for which the approved provider must pay interest at the MPIR. This is the number of days between:

- the day after the expiration of the refund period (i.e. the day on which the bond should have been refunded in accordance with the legislated timeframes) or 1 July 2006 (whichever occurs later); and
- the day that the accommodation bond balance is actually refunded.

Section 23.79E The person to whom, and the way in which, amounts of interest are to be paid

This section specifies that the approved provider is to pay the interest on the same day the approved provider refunds the accommodation bond balance to the care recipient.

Division 15 Payment of interest on entry contribution balance

Section 23.80A Purpose of Division

This section specifies that the purpose of the Division is to provide a method for calculating the interest an approved provider must pay to a care recipient on an entry contribution balance and to detail the circumstances in which, and the way in which, the approved provider must pay that interest.

Section 23.80B Definition

This section defines the term “refund day” which is used in the Division. “Refund day” means the last day for the entry contribution balance to be refunded by the approved provider in accordance with the formal agreement that applies in relation to the entry contribution balance.

Section 23.80C Application

This section contains provisions relating to the application of this Division. The requirement to pay interest on entry contributions applies to all approved providers of residential care and

flexible care services who are required to refund an entry contribution balance after 1 July 2006 in accordance with a formal agreement (and there is no agreement that refund of the balance be delayed in order to secure re-entry to the service).

Approved providers refunding entry contribution balances are not required to pay any base interest for the time between when the care recipient leaves the service (or dies) and the time when the entry contribution balance is required to be refunded in accordance with the formal agreement. However, they must pay the MPIR from the expiration of the time period for refund of the balance (in accordance with the formal agreement) until the date that the entry contribution balance is actually refunded. The only exception to this is if the approved provider is awaiting being shown probate or letters of administration prior to refunding the entry contribution balance. In this case, interest (at the MPIR) will not be payable for the period during which the approved provider is awaiting probate or letters of administration.

Section 23.80D Working out of amounts of interest on entry contributions

This section sets out the formula for working out amounts of interest on entry contribution balances which are refunded after the date that the refund becomes due in accordance with the formal agreement.

The formula for working out the interest payable is as follows:

$$\frac{\text{MPIR} \times \text{ECB} \times \text{ND(PP)}}{365}$$

MPIR (maximum permissible interest rate) is calculated with reference to the definition of maximum permissible interest rate in subsection 23.3(2) as if the reference in that definition to “entry day” is the day after the entry contribution should be refunded under the formal agreement.

ECB is the entry contribution balance.

ND(PP) is the number of days in the period which commences the day after the entry contribution should have been refunded (or 1 July 2006, whichever is the later) and ends on the day the entry contribution is refunded.

Section 23.80E The person to whom, and the way in which, amounts of interest are to be paid

This section specifies that the approved provider is to pay the interest on the same day as the approved provider refunds the entry contribution balance to the care recipient.

Item 9

This item amends section 23.81Y to specify that a determination under subsection 1082(1) of the *Social Security Act 1991* is one that is made by the Minister for Family and Community Services. This is to avoid any doubt regarding which determination is being referenced.