



# User Rights Amendment Principles 2006 (No. 1)

*Aged Care Act 1997*

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I, SANTO SANTORO, Minister for Ageing, make these Principles under subsection 96-1 (1) of the *Aged Care Act 1997*.

Dated 8 May 2006

SANTO SANTORO  
Minister for Ageing

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## **1 Name of Principles**

These Principles are the *User Rights Amendment Principles 2006 (No. 1)*.

## **2 Commencement**

These Principles commence as follows:

- (a) on 31 May 2006 — sections 1 to 5 and Schedule 1;
- (b) on 1 July 2006 — Schedule 2.

## **3 Amendment of *User Rights Principles 1997***

Schedules 1 and 2 amend the *User Rights Principles 1997*.

#### 4 Transitional

- (1) Despite the amendments made by Schedule 1:
- (a) subsections 23.40B (1), (1A) and (5) of the *User Rights Principles 1997* as in force immediately before 31 May 2006 continue to apply to an approved provider, being an approved provider responsible for the operation of a residential care service, in respect of the period beginning on 31 May 2006 and ending on 30 June 2006; and
  - (b) subsections 23.40B (2) to (4) of those Principles as in force immediately before 31 May 2006 continue to apply to an approved provider, being an approved provider responsible for the operation of a residential care service for the whole or a part of the 2005-2006 financial year, in respect of that whole or part of the 2005-2006 financial year.
- (2) In this section:
- 2005-2006 financial year**, in relation to an approved provider, means:
- (a) the period of 12 months ending on 30 June 2006; or
  - (b) if another period has been determined by the Secretary under paragraph 21.26B (2) (c) of the *Residential Care Subsidy Principles 1997* for paragraph (b) of the definition of **relevant financial year** in subsection 21.26B (1) of those Principles — that other period.

#### 5 Termination of Aged Care Accommodation Bond Trust

The Aged Care Accommodation Bond Trust is terminated.

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## Schedule 1      Amendments commencing on 31 May 2006

(section 3)

[1]      **Subsection 23.3 (1), after definition of *agreed fee***

*insert*

***annual prudential compliance statement***, of an approved provider, means the annual prudential compliance statement required to be given under section 23.40.

[2]      **Subsection 23.3 (1), definition of *Board, complying aged care service, costs of the scheme, Fund and income***

*omit*

[3]      **Subsection 23.3 (1), after definition of *authorised body***

*insert*

***bond*** means:

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

***bond balance*** means:

- (a) in relation to a bond that is an accommodation bond — an accommodation bond balance; or
- (b) in relation to a bond that is an entry contribution — an entry contribution balance.

***bond register***, of an approved provider, means the register established and maintained by the approved provider in accordance with Subdivision 3.3 of Part 4.

[4]      **Subsection 23.3 (1), after definition of *minimum permissible asset value***

*insert*

***multi-purpose service*** has the meaning given by section 15.3 of the *Flexible Care Subsidy Principles 1997*.

***Prudential Standard*** means a Prudential Standard set out in Division 3 of Part 4.

- [5] **Subsection 23.3 (1), definitions of *scheme manager*, *Trust* and *trustee***  
*omit*
- [6] **Subparagraph 23.17 (a) (ii)**  
*omit*  
component; and  
*insert*  
component.
- [7] **Paragraph 23.17 (b)**  
*omit*
- [8] **Section 23.27A**  
*omit*  
(including the general prudential requirements and the prudential scheme set out under them)  
*insert*  
(including the Prudential Standards)
- [9] **Paragraph 23.28 (2) (j)**  
*omit*  
refundable;  
*insert*  
refundable.
- [10] **Paragraph 23.28 (2) (k), excluding the note**  
*omit*
- [11] **Subsection 23.28 (3)**  
*omit*

**[12] After section 23.28***insert***Division 2A When an accommodation bond must not be charged****23.28A Purpose of Division (Act, s 57-2)**

This Division specifies when an accommodation bond must not be charged.

*Note* The Act specifies additional circumstances in which an accommodation bond must not be charged (see, for example, paragraphs 57-2 (1) (h) and (o) of the Act).

**23.28B Flexible care services**

An approved provider must not charge an accommodation bond for the entry of a person to a flexible care service if, at the time of entry:

- (a) the flexible care service is not a multi-purpose service; or
- (b) the care to be provided through the service to the person will be provided other than in a residential setting.

**[13] Part 4, Divisions 3, 3A and 4***substitute***Division 3 Prudential Standards****Subdivision 3.1 Purpose and application of Division****23.32 Purpose of Division (Act, s 57-4)**

This Division sets out Prudential Standards providing for:

- (a) protection of bond balances of care recipients (the *Liquidity Standard*); and
- (b) sound financial management of approved providers (the *Records Standard*); and
- (c) provision of information about the financial management of approved providers (the *Disclosure Standard*).

**23.33 Application of Division 3**

This Division applies to an approved provider:

- (a) if, on or after 1 July 2006, an accommodation bond is paid, wholly or partly as a lump sum, for entry to an aged care service through which

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residential care or flexible care is provided by the approved provider;  
or

- (b) if:
- (i) before 1 July 2006, a bond was paid, wholly or partly as a lump sum, for entry to an aged care service through which residential care or flexible care is provided by the approved provider on or after that date; and
  - (ii) as at 1 July 2006, the bond balance in respect of that bond had not been refunded.

*Note* For **bond** and **bond balance** — see subsection 23.3 (1).

### 23.34 Definitions

In this Division:

**2005-2006 financial year**, in relation to an approved provider, means:

- (a) the period of 12 months ending on 30 June 2006; or
- (b) if another period has been determined by the Secretary under paragraph 21.26B (2) (c) of the *Residential Care Subsidy Principles 1997* for paragraph (b) of the definition of **relevant financial year** in subsection 21.26B (1) of those Principles — that other period.

**financial year**, in relation to an approved provider, means:

- (a) a period of 12 months commencing on 1 July; or
- (b) if another period has been determined by the Secretary under paragraph 21.26B (2) (c) of the *Residential Care Subsidy Principles 1997* for paragraph (b) of the definition of **relevant financial year** in subsection 21.26B (1) of those Principles — that other period.

### 23.35 Requirements for annual prudential compliance statements

An annual prudential compliance statement:

- (a) must be in writing in a form approved by the Secretary; and
- (b) must include all the statements and information required by the form; and
- (c) must not contain false or misleading information; and
- (d) must be signed by a person who:
  - (i) is one of the approved provider's key personnel; and
  - (ii) is authorised by the approved provider to sign the statement.

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## Subdivision 3.2      Liquidity Standard

### 23.36      Requirement for sufficient liquidity

Whenever an approved provider holds bond balances, the approved provider must maintain sufficient liquidity to ensure that the approved provider can refund, in accordance with the Act and these Principles, any bond balances that can be expected to fall due in the following 12 months.

*Note* For **bond balance** — see subsection 23.3 (1).

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

- (1) An approved provider that holds one or more bond balances must implement and maintain a written liquidity management strategy that sets out:
  - (a) the amount (expressed as an amount of whole dollars) required to ensure that the approved provider has sufficient liquidity for the purposes of section 23.36 (the **minimum level of liquidity**); and
  - (b) the factors that the approved provider had regard to in determining the minimum level of liquidity; and
  - (c) the form in which the approved provider will maintain the minimum level of liquidity.

*Note* For **bond balance** — see subsection 23.3 (1).

- (2) An approved provider must:
  - (a) maintain, in the form specified in the provider's liquidity management strategy, the minimum level of liquidity; and
  - (b) ensure that the provider's liquidity management strategy is up to date and complies with the requirements set out in subsection (1); and
  - (c) modify, or replace, its liquidity management strategy if the provider becomes aware that the liquidity management strategy no longer complies with the requirements set out in subsection (1).

## Subdivision 3.3      Records Standard

### 23.38      Bond register

- (1) An approved provider must establish and maintain a register (the **bond register**) that sets out information in relation to bonds.

*Note* For **bond** — see subsection 23.3 (1).

- (2) The bond register must include, but is not limited to, the following information:
  - (a) for each care recipient in respect of whom an accommodation bond is paid to the approved provider on or after 1 July 2006, or in respect of

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- whom the approved provider holds an accommodation bond balance on or after 1 July 2006:
- (i) the name of the care recipient; and
  - (ii) the Resident Identification Number allocated by the Department in respect of the care recipient; and
  - (iii) the date on which the care recipient entered the aged care service through which the care recipient is provided with care by the approved provider on or after 1 July 2006; and
  - (iv) if, immediately before entering the aged care service mentioned in subparagraph (iii), the care recipient was provided with care through an aged care service (the *original aged care service*), and an accommodation bond was paid for the care recipient's entry to the original aged care service — the date on which the care recipient entered the original aged care service; and
  - (v) the date on which the whole or each part of an accommodation bond paid by lump sum was paid for entry to the aged care service mentioned in subparagraph (iii); and
  - (vi) the amount of each payment mentioned in subparagraph (v); and
  - (vii) the amount of any deduction made from the accommodation bond on or after 1 July 2006; and
  - (viii) the date of any deduction mentioned in subparagraph (vii); and
  - (ix) the reason for any deduction mentioned in subparagraph (vii); and
  - (x) the accommodation bond balance as at 1 July 2006 (if applicable); and
  - (xi) the accommodation bond balance as at the end of each calendar month (being a month commencing no earlier than 1 July 2006 and during which the approved provider held an accommodation bond balance in respect of the care recipient);
- (b) for each care recipient in respect of whom the approved provider holds an entry contribution balance on or after 1 July 2006:
- (i) the name of the care recipient; and
  - (ii) the Resident Identification Number allocated by the Department in respect of the care recipient; and
  - (iii) the date on which the entry contribution was paid; and
  - (iv) the amount of the entry contribution; and
  - (v) the entry contribution balance as at 1 July 2006;
- (c) for each care recipient in respect of whom an accommodation bond balance is refunded on or after 1 July 2006:
- (i) if the accommodation bond balance was refunded 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 of the care recipient or letters of administration of the estate of the care recipient; and



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- (ii) if the accommodation bond balance was refunded because the care recipient ceased to be provided with care through the aged care service — the date on which the care recipient ceased to be provided with that care; and
  - (iii) if subparagraph (ii) applies and the care recipient notified the approved provider, before the date mentioned in that subparagraph, that the care recipient was to enter another aged care service to receive residential care — the date on which the care recipient notified the approved provider; and
  - (iv) if the accommodation bond was paid for entry to a residential care service, and the accommodation bond balance was refunded because the residential care service ceased to be certified — the date the residential care service ceased to be certified; and
  - (v) the date on which, or by which, the approved provider was required to refund the accommodation bond balance to the care recipient, worked out, subject to subsection (3), in accordance with Subdivision 57-G of the Act; and
  - (vi) the date on which the accommodation bond balance was refunded; and
  - (vii) the amount of the accommodation bond balance refunded; and
  - (viii) the amount of base interest paid (if any) under Division 14; and
  - (ix) the amount of maximum permissible interest paid (if any) under Division 14;
- (d) for each care recipient in respect of whom an entry contribution balance is refunded on or after 1 July 2006:
- (i) the date on which the care recipient ceased to be provided with care through the aged care service; and
  - (ii) the date on which the approved provider was required to refund the entry contribution balance to the care recipient, worked out in accordance with the formal agreement applying in respect of the entry contribution balance; and
  - (iii) the date on which the entry contribution balance was refunded; and
  - (iv) the amount of the entry contribution balance refunded; and
  - (v) the amount of maximum permissible interest paid (if any) under Division 15;
- (e) any other information determined, by legislative instrument, by the Secretary.
- (3) For subparagraph (2) (c) (v), if the refunding event occurred before 31 May 2006, the date on which, or by which, the approved provider is required to refund the accommodation bond balance to the care recipient is worked out in accordance with Subdivision 57-G of the Act as in force immediately before 31 May 2006.

(4) In this section:

**refunding event** means an event mentioned in paragraph 57-21 (1) (a), (b) or (c) of the Act as in force immediately before 31 May 2006.

### **Subdivision 3.4 Disclosure Standard**

#### **23.39 Disclosure to the Department — 2006**

By 31 October 2006 the approved provider must give the Secretary a written statement that sets out:

- (a) the total number of bond balances held by the approved provider as at 1 July 2006; and
- (b) the total value of bond balances held by the approved provider as at 1 July 2006.

*Note 1* An approved provider may also have disclosure requirements in respect of the 2005-2006 financial year under section 23.40B of these Principles as in force immediately before 31 May 2006 (see section 4 of the *User Rights Amendment Principles 2006 (No. 1)*).

*Note 2* For **bond balance** — see subsection 23.3 (1).

#### **23.40 Annual prudential compliance statement**

- (1) Within 4 months after the end of each financial year for an approved provider (other than the 2005-2006 financial year), the approved provider must give the Secretary a written statement (the **annual prudential compliance statement**) that includes:
  - (a) the following information:
    - (i) the total number of bond balances held by the approved provider as at the end of the financial year;
    - (ii) the total value of bond balances held by the approved provider as at the end of the financial year;
    - (iii) if, during the financial year, bond balances were not refunded in accordance with subsection 57-21 (3) of the Act (other than an accommodation bond balance in relation to which the approved provider has made an agreement as mentioned in subsection 57-22 (1) of the Act) or an applicable formal agreement — the information specified in subsection (2);
    - (iv) if, for the whole or a part of the financial year, the approved provider was not permitted to charge an accommodation bond for entry by a care recipient to any aged care service that the approved provider is responsible for operating — the period or periods during which the approved provider was not permitted to charge an accommodation bond, and the aged care service in respect of which each period specified applies;
    - (v) any other information determined, by legislative instrument, by the Secretary; and

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- (b) a statement about whether the approved provider has, during the financial year, complied with:
    - (i) Subdivision 3.2 of Division 3 of Part 4 of these Principles (the *Liquidity Standard*); and
    - (ii) Subdivision 3.3 of Division 3 of Part 4 of these Principles (the *Records Standard*); and
    - (iii) Subdivision 3.4 of Division 3 of Part 4 of these Principles (the *Disclosure Standard*); and
    - (iv) paragraph 57-2 (1) (e) and section 57-21 of the Act; and
    - (v) Divisions 2 and 5 of Part 4 of these Principles; and
  - (c) if the approved provider has not complied with the Records Standard — a statement about why the approved provider has not complied with the Standard; and
  - (d) if the approved provider has not complied with the Disclosure Standard — the information specified in subsection (3); and
  - (e) an audit opinion, provided by the person who provides the independent audit mentioned in section 23.41, on whether the approved provider has complied with this Division in the relevant financial year.

*Note 1* For **bond balance** — see subsection 23.3 (1).

*Note 2* The annual prudential compliance statement must be supported by an independent audit — see section 23.41.

- (2) For subparagraph (1) (a) (iii), the approved provider must include the following information in the annual prudential compliance statement:
  - (a) the total number of accommodation bond balances (if any) not refunded in accordance with subsection 57-21 (3) of the Act;
  - (b) the total number of entry contribution balances (if any) refunded after the last day for the entry contribution balance to be refunded under the formal agreement applying in respect of the entry contribution balance;
  - (c) the reason or reasons for the delay in refunding the bond balances;
  - (d) in respect of each reason provided — the total number of instances of delay attributable to the reason.

*Note* For **bond balance** — see subsection 23.3 (1).

- (3) For paragraph (1) (d), the approved provider must include the following information in the annual prudential compliance statement:
  - (a) the total number of occasions on which the approved provider did not comply with the Disclosure Standard;
  - (b) the reason or reasons for the approved provider's failure to comply with the Disclosure Standard;
  - (c) in respect of each reason provided — the total number of occasions of non-compliance attributable to the reason.

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**23.41 Audit of annual prudential compliance statement**

An annual prudential compliance statement must be supported by an independent audit provided by:

- (a) a registered company auditor within the meaning of the *Corporations Act 2001*; or
- (b) a person approved by the Secretary under subsection 21.26F (6) of the *Residential Care Subsidy Principles 1997*.

**23.42 Disclosure to care recipients**

- (1) Within 7 days of an accommodation bond agreement being entered into between an approved provider and a care recipient, the approved provider must give the care recipient (or the care recipient's representative):
  - (a) a copy of the agreement; and
  - (b) if an accommodation bond has been paid, or will be paid, for the care recipient's entry into the aged care service operated by the approved provider — a copy of the written guarantee of refund of the accommodation bond balance.
- (2) Within 4 months after the end of each financial year for an approved provider, the approved provider must give to each care recipient (or to the care recipient's representative) in respect of whom a bond has been paid for entry to the aged care service operated by the approved provider a written statement that includes:
  - (a) information about the number of bond balances that, in the financial year, were not refunded in accordance with subsection 57-21 (3) of the Act or a formal agreement; and
  - (b) a statement about whether the approved provider complied with this Division in the financial year; and
  - (c) a copy of:
    - (i) the entry in the bond register that relates to the care recipient, as at the end of the financial year (if applicable); and
    - (ii) the audit opinion mentioned in paragraph 23.40 (1) (e), in respect of the financial year.

*Note* For **bond** and **bond balance** — see subsection 23.3 (1).

- (3) The approved provider must, if requested by a care recipient in respect of whom a bond has been paid for entry to the aged care service operated by the approved provider, or by the care recipient's representative, give the care recipient (or the representative), within 7 days of the request being made, a copy of:
  - (a) the entry in the bond register that relates to the care recipient, as at the time of the request; and
  - (b) either:
    - (i) the most recent statement of the aged care service's audited accounts; or

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- (ii) if the aged care service is operated as part of a broader organisation — the most recent statement of the audited accounts of the organisation's aged care component.

*Note* For **bond** — see subsection 23.3 (1).

### **23.43 Disclosure to prospective care recipients**

The approved provider must, if requested by a prospective care recipient or a prospective care recipient's representative, give the prospective care recipient (or the representative), within 7 days of the request being made:

- (a) the following information in relation to the preceding financial year:
  - (i) the number of bond balances that, in the financial year, were not refunded in accordance with subsection 57-21 (3) of the Act or a formal agreement;
  - (ii) whether the approved provider complied with this Division in the financial year; and
- (b) a copy of:
  - (i) the audit opinion mentioned in paragraph 23.40 (1) (e), in respect of the preceding financial year; and
  - (ii) either:
    - (A) the most recent statement of the aged care service's audited accounts; or
    - (B) if the aged care service is operated as part of a broader organisation — the most recent statement of the audited accounts of the organisation's aged care component.

*Note* For **bond balance** — see subsection 23.3 (1).

## **[14] Schedule 2**

*omit*

## Schedule 2 Amendments commencing on 1 July 2006

(section 3)

### [1] Section 23.13

*omit*

residential care.

*insert*

residential care or, for section 23.17, flexible care through a multi-purpose service in a residential setting.

### [2] Section 23.17

*substitute*

#### 23.17 Statement of audited accounts

- (1) An approved provider that is responsible for the operation of an aged care service that is a residential care service or a flexible care service (other than an approved provider to whom Division 3 of Part 4 of these Principles applies) must, if asked, give a care recipient (or the care recipient's representative) a copy of:
  - (a) the most recent statement of the service's audited accounts; or
  - (b) if the service is operated as part of a broader organisation — the most recent statement of the audited accounts of the organisation's aged care component.

*Note* For the disclosure requirements applying to an approved provider to whom Division 3 of Part 4 of these Principles applies, see Subdivision 3.4 of Part 4.

- (2) An approved provider to whom Division 4 of Part 10 of the *Residential Care Subsidy Principles 1997* applies is taken to have satisfied the requirement in subsection (1) if the approved provider gives the care recipient (or the care recipient's representative) a copy of the most recent audited financial report prepared under section 21.26F of those Principles.

### [3] Section 23.27

*omit*

residential care service.

*insert*

residential care service or flexible care service.

**[4] Subsection 23.28 (1)***omit*

residential care service

*insert*

residential care service or flexible care service

**[5] Subsection 23.28 (2)***omit*

residential care service

*insert*

service

**[6] After subsection 23.28 (2)***insert*

- (3) The approved provider must give each care recipient who has paid the provider an accommodation bond a written guarantee that the accommodation bond balance will be refunded to the care recipient (or his or her representative) in accordance with the Act.

**[7] Subparagraph 23.40 (1) (b) (v)***substitute*

- (v) subsection 23.28 (3), and Divisions 2 and 5 of Part 4, of these Principles; and

**[8] After Part 4, Division 13***insert*

## **Division 14            Payment of interest on accommodation bond balance**

### **23.79A Purpose of Division (Act, s 57-21A)**

This Division:

- (a) provides the method for working out amounts representing interest on the accommodation bond balance that an approved provider must pay a care recipient; and
- (b) specifies the circumstances in which, and the way in which, the approved provider must pay that amount.

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**23.79B Definitions**

In this Division:

**base interest rate** means a rate, expressed as a percentage, that is the sum of the below threshold rate and 2%.

**below threshold rate** means the below threshold rate determined by the Minister for Family and Community Services under subsection 1082 (1) of the *Social Security Act 1991*.

**refunding event** means:

- (a) an event mentioned in paragraph 57-21 (1) (a), (b) or (c) of the Act that occurred on or after 31 May 2006; or
- (b) an event mentioned in paragraph 57-21 (1) (a), (b) or (c) of the Act as in force immediately before 31 May 2006 that occurred before 31 May 2006.

**refund period** means:

- (a) in relation to a refunding event that occurred on or after 31 May 2006 — the period specified in paragraph 57-21 (3) (aa) or (b), or subparagraph 57-21 (3) (a) (ii) or (iii), of the Act within which the accommodation bond balance must be refunded; or
- (b) in relation to a refunding event that occurred before 31 May 2006 — the period specified in subparagraph 57-21 (3) (a) (ii) or (iii) or paragraph 57-21 (3) (b) of the Act as in force immediately before 31 May 2006 within which the accommodation bond balance must be refunded.

**23.79C Application**

- (1) This Division applies to an approved provider responsible for the operation of an aged care service if:
  - (a) on or after 1 July 2006, the approved provider is required under Subdivision 57-G of the Act to refund an accommodation bond balance to a care recipient; and
  - (b) either:
    - (i) the approved provider has not made an agreement with the care recipient as mentioned in subsection 57-22 (1) of the Act; or
    - (ii) such an agreement has ceased to be in effect between the approved provider and the care recipient.
- (2) If this Division applies to an approved provider in relation to a refunding event that occurred on or after 31 May 2006 and before 1 July 2006, this Division applies to the approved provider as if the refunding event had occurred on 1 July 2006.



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- (3) Subject to subsection (4), if this Division applies to an approved provider in relation to a refunding event that occurred before 31 May 2006 and to which subsection 57-21 (3) of the Act as in force immediately before 31 May 2006 applies, section 23.79D applies to the approved provider as if:
- (a) a reference in that section to subparagraph 57-21 (3) (a) (i), (ii) or (iii) or paragraph 57-21 (3) (b) of the Act were a reference to that provision as in force immediately before 31 May 2006; and
  - (b) each reference to paragraph 57-21 (3) (aa) of the Act were omitted; and
  - (c) the refunding event had occurred on 1 July 2006.
- (4) If this Division applies to an approved provider in relation to a refunding event mentioned in paragraph 57-21 (1) (a) of the Act as in force before 31 May 2006 and the conditions set out in subsection (5) are satisfied:
- (a) the amount representing interest on the accommodation bond balance is worked out:
    - (i) in accordance with the formula set out in subsection 23.79D (1); and
    - (ii) as if the refunding event had occurred on 1 July 2006; and
  - (b) subsection 23.79D (2) does not apply to the approved provider.
- (5) For subsection (4), the conditions that must be satisfied are the following:
- (a) the refunding event mentioned in subsection (4) occurred before 31 May 2006;
  - (b) the accommodation bond balance is refunded to the care recipient after the last day in the refund period;
  - (c) the reason that the accommodation bond balance is refunded to the care recipient after the last day in the refund period is that neither the probate of the will of the care recipient, nor letters of administration of the estate of the care recipient, were shown to the approved provider before the last day of the refund period.

### **23.79D Working out of amounts of interest on accommodation bond balances**

*Amount of interest (base interest) — balance refunded on or before last day of refund period*

- (1) If the approved provider refunds the accommodation bond balance on or before the last day of the refund period, the amount representing interest on the accommodation bond balance is the amount worked out in accordance with the following formula:

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

where:

**BIR** is the base interest rate.

**ABB** is the amount of the accommodation bond balance.

**ND** is the number of days in the period 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 refunded.

*Note* Subsection (1) does not apply in the situation described in subparagraph 57-21 (3) (a) (i) of the Act because that subparagraph does not specify a refund period.

*Amount of interest (base interest plus maximum permissible interest) — balance refunded after last day of refund period*

- (2) If the approved provider refunds the accommodation bond balance after the last day of the refund period, or after the day mentioned in subparagraph 57-21 (3) (a) (i) of the Act, as applicable, the amount representing interest on the accommodation bond balance is the amount worked out in accordance with the following formula:

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

where:

**BIR** is the base interest rate.

**ABB** is the amount of the accommodation bond balance.

**ND(RP)** is equal to:

(a) the number of days in the period beginning on the day after the day on which the refunding event occurred and ending on the last day of the refund period, if:

- (i) paragraph 57-21 (3) (aa) of the Act applies and the last day of the refund period occurred on or after 1 July 2006; or
- (ii) paragraph 57-21 (3) (b) or subparagraph 57-21 (3) (a) (ii) or (iii) of the Act applies; or

(b) 0, if:

- (i) paragraph 57-21 (3) (aa) of the Act applies and the last day of the refund period occurred before 1 July 2006; or
- (ii) subparagraph 57-21 (3) (a) (i) of the Act applies.

**MPIR** is the maximum permissible interest rate worked out under subsection 23.3 (2) as if a reference to 'entry day' in that subsection were a reference to:

- (a) if paragraph 57-21 (3) (aa) or (b), or subparagraph 57-21 (3) (a) (ii) or (iii) of the Act applies — the day after the last day in the refund period; or
- (b) if subparagraph 57-21 (3) (a) (i) of the Act applies — the day after the day mentioned in that subparagraph.

*ND(PP)* is the number of days in the period:

(a) beginning on:

(i) if paragraph 57-21 (3) (aa) or (b), or subparagraph 57-21 (3) (a) (ii) or (iii) of the Act applies — either:

(A) the day after the last day of the refund period; or

(B) 1 July 2006;

whichever occurs later; or

(ii) if subparagraph 57-21 (3) (a) (i) of the Act applies — either:

(A) the day after the day mentioned in that subparagraph; or

(B) 1 July 2006;

whichever occurs later; and

(b) ending on the day on which the accommodation bond balance is refunded.

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

An approved provider must pay an amount of interest worked out in accordance with section 23.79D to a care recipient on the day on which the approved provider refunds the accommodation bond balance to the care recipient.

## **Division 15 Payment of interest on entry contribution balance**

### **23.80A Purpose of Division (Act, s 57-21B)**

This Division:

(a) provides the method for working out amounts representing interest on the entry contribution balance that an approved provider must pay a care recipient; and

(b) specifies the circumstances in which, and the way in which, the approved provider must pay that amount.

### **23.80B Definition**

In this Division:

*refund day* means the last day for the entry contribution balance to be refunded by the approved provider under a formal agreement applying in respect of the entry contribution balance.

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### 23.80C Application

- (1) This Division applies to an approved provider responsible for the operation of a residential care service or a flexible care service if:
  - (a) on or after 1 July 2006, the approved provider is required under a formal agreement to refund an entry contribution balance to a care recipient; and
  - (b) either:
    - (i) the approved provider has not made an agreement with the care recipient to delay refunding the balance to secure re-entry to the service; or
    - (ii) such an agreement has ceased to be in effect between the approved provider and the care recipient.
- (2) If this Division applies to an approved provider and the conditions set out in subsection (3) are satisfied, section 23.80D applies to the approved provider as if a reference in subparagraph (a) (i) of the definition of *ND(PP)* in that section to ‘the day after the refund day’ is a reference to ‘the day after the day on which probate of the will of the care recipient is, or letters of administration of the estate of the care recipient are, shown to the approved provider’.
- (3) For subsection (2), the conditions that must be satisfied are the following:
  - (a) the approved provider is required, under the formal agreement, to refund the entry contribution balance because the care recipient in relation to whom the entry contribution was paid has died;
  - (b) the entry contribution balance is refunded after the refund day;
  - (c) the reason that the entry contribution balance is refunded after the refund day is that neither the probate of the will of the care recipient, nor letters of administration of the estate of the care recipient, were shown to the approved provider before the refund day.

### 23.80D Working out of amounts of interest on entry contribution balances

If the approved provider refunds the entry contribution balance after the refund day, the amount representing interest on the entry contribution balance is the amount worked out in accordance with the following formula:

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

where:

*MPIR* is the maximum permissible interest rate worked out under subsection 23.3 (2) as if a reference to ‘entry day’ in that subsection were a reference to the day after the refund day.

*ECB* is the amount of the entry contribution balance.

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*ND(PP)* is the number of days in the period:

- (a) beginning on:
- (i) the day after the refund day; or
  - (ii) 1 July 2006;
- whichever occurs later; and
- (b) ending on the day on which the entry contribution balance is refunded.

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

An approved provider must pay an amount of interest worked out in accordance with section 23.80D to a care recipient on the day on which the approved provider refunds the entry contribution balance to the care recipient.

**[9] Section 23.81Y**

*omit*

determined under subsection 1082 (1) of the *Social Security Act 1991*.

*insert*

determined by the Minister for Family and Community Services under subsection 1082 (1) of the *Social Security Act 1991*.