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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES/SENATE

AGED CARE (BOND SECURITY) AMENDMENT BILL 2013

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Mental Health and Ageing,
the Hon Mark Butler MP)

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OUTLINE

Currently under the *Aged Care Act 1997* certain residential aged care services and flexible aged care services may charge care recipients accommodation bonds for entry into the aged care service. These accommodation bonds (less any allowable deductions made by the approved provider) are required to be refunded to care recipients when they leave the aged care service.

If an approved provider becomes insolvent and is unable to refund the accommodation bond balances that are owing to the care recipients, the *Aged Care (Bond Security) Act 2006* provides a mechanism by which the Commonwealth may repay the outstanding bond balances to the care recipients. This scheme is known as the Accommodation Bond Guarantee Scheme (Guarantee Scheme).

The *Aged Care (Bond Security) Levy Act 2006* enables the Commonwealth to recover the costs of refunding these bond balances (along with administrative costs) from approved providers, via a levy.

This Bill amends the *Aged Care (Bond Security) Act 2006* (the Act) as part of a suite of Bills giving effect to the *Living Longer Living Better* aged care reform package.

In the context of the current Act, 'bond' refers to an accommodation bond, entry contribution or unregulated lump sum. These are different types of lump sum payments that may be paid by care recipients to providers of residential care and providers of certain types of flexible care.

Amongst other things, the *Aged Care (Living Longer Living Better) Bill 2013* describes new ways for care recipients who enter residential care or certain flexible care on, or after, 1 July 2014 to contribute to the cost of their accommodation. The Bill enables care recipients to elect to pay for their accommodation by periodic payment, lump sum or by a combination of both.

If a care recipient elects to pay by lump sum, this lump sum will be required to be refunded to the care recipient (less any allowable deductions) when the care recipient leaves the residential aged care service or flexible aged care service.

In order to ensure that the same protections exist for care recipients who pay these new lump sums and those that paid accommodation bonds under the existing arrangements, amendments are required to both the *Aged Care (Bond Security) Act 2006* and the *Aged Care (Bond Security) Levy Act 2006* to extend the operation of the Guarantee Scheme to care recipients who enter care on or after 1 July 2014 and pay lump sums (known as refundable accommodation deposits or refundable accommodation contributions).

This Bill amends the existing Act to:

- change the name of the Act to the *Aged Care (Accommodation Payment Security) Act 2006*; and

- extend the existing Guarantee Scheme for bond balances to refundable accommodation deposits and refundable accommodation contributions, which will be new types of lump sum accommodation payments payable by care recipients who enter residential care (and certain flexible care services) from 1 July 2014. This ensures protection for all lump sum payments made by care recipients, regardless of whether the lump sum payment was made before or after 1 July 2014.

Financial Impact Statement

There will be no cost to approved providers unless a provider becomes bankrupt or insolvent, the Commonwealth has to pay outstanding accommodation payment balances owed to residents and the Commonwealth decides to recover the costs of refunding these balances from all approved providers via a levy.

In this situation, the magnitude of costs that would flow to approved providers of residential aged care would be determined by the monetary value of the outstanding accommodation payment balances (including interest) repaid by the Commonwealth on behalf of the defaulting approved provider, whether any part of this cost could be recovered from the defaulting approved provider and the costs incurred by the Commonwealth in administering the default event (including the repayment of the accommodation payment balances).

In the event that an approved provider becomes bankrupt or insolvent and defaults on their obligation to repay care recipients' accommodation payment balances, the Commonwealth will assess the impact of recovering costs from all approved providers that held the accommodation payment balances ten days before the default event declaration was made. The Commonwealth has the legislative capacity to recover costs from approved providers in instalments over a number of years. This would minimise the potential impact on approved providers.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Australian Aged Care (Bond Security) Amendment Bill 2013

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Bill

The Australian Aged Care (Bond Security) Amendment Bill 2013 amends the existing bond security legislation to extend the guarantee scheme for accommodation bonds to cover two new types of accommodation payments, refundable accommodation deposits and refundable accommodation contributions. These new types of accommodation payments are provided for in the Aged Care (Living Longer Living Better) Bill 2013. Existing accommodation bonds will continue to be protected by the guarantee scheme.

Human Rights Implications

The proposed amendments do not limit any human rights, nor propose any offences or penalties.

Conclusion

This Bill is therefore compatible with human rights because it does not engage any of the applicable rights or freedoms.

The Hon Mark Butler MP, Minister for Mental Health and Ageing

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NOTES ON CLAUSES

Clause 1 – Short Title

This is a formal provision which provides that the Bill, once enacted, can be cited as the *Aged Care (Bond Security) Amendment Act 2013*.

Clause 2 – Commencement

This clause provides that the Act commences on 1 July 2014.

Clause 3 – Schedule(s)

This clause provides that each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item has effect according to its terms.

SCHEDULE 1 – AMENDMENTS

Item 1

This item amends the long title of the *Aged Care (Bond Security) Act 2006*. Currently the long title describes the Act as ‘An Act to guarantee the refund of certain bond balances, and for related purposes’. This item amends this long title to read: ‘An Act to guarantee the refund of certain accommodation payment balances, and for related purposes’.

This reflects the new scope of the Act which extends not just to bond balances but also to refundable accommodation deposits and refundable accommodation contributions. The collective term for all lump sum payments to which the Act applies is ‘accommodation payments’.

Item 2

This item amends the name of the *Aged Care (Bond Security) Act 2006* so that, from 1 July 2014, it will be called the *Aged Care (Accommodation Payment Security) Act 2006*. This new title reflects the fact that the amended Act extends to all accommodation payments (a term which is defined to include both bonds and new types of lump sum payments that will be payable from 1 July 2014).

A note to be inserted under section 1 reminds the reader of the operation of section 10 of the *Acts Interpretation Act 1901*. The effect of this is that if another amendment of the Act is described by reference to the Act’s previous short title (that is, the *Aged Care (Bond Security) Act 2006*), that other amendment has effect, from 1 July 2014, as an amendment of the Act in accordance with its new short title (*the Aged Care (Accommodation Payment Security) Act 2006*).

Items 3 and 4

Section 3 provides a simplified outline of the Act. These items amend section 3 to ensure that the simplified outline reflects the new and extended scope of the Act. To this end, item 3 replaces the reference to ‘bond’ with a reference to ‘an

accommodation payment’ and item 4 replaces the reference to ‘*Bond*’ with a reference to ‘*Accommodation Payment*’

Item 5

This item inserts two new definitions into the Act, namely definitions for ‘accommodation bond balance’ and ‘accommodation payment balance’.

An ‘accommodation bond balance’ is defined within the meaning of the *Aged Care Act 1997* (that is, an accommodation bond less amounts that have been, or are permitted to be, deducted by an approved provider).

An accommodation payment balance is the collective term used in the Act to describe:

- a refundable deposit balance. This term is further defined in the *Aged Care Act 1997* and means both a refundable accommodation deposit and a refundable accommodation contribution;
- an accommodation bond balance;
- an entry contribution balance; and
- an unregulated lump sum balance.

Item 6

In summary, subsection 6(1) currently defines ‘administrative costs’ as those administrative costs that are incurred by the Commonwealth in association with a default event. These costs are then recoverable by the Commonwealth by imposing a levy under the *Aged Care (Bond Security) Levy Act 2006*. Within the current definition of administrative costs (at paragraph (i)) there is a reference to the *Aged Care (Bond Security) Levy Act 2006*. This item amends this reference so that it refers to the new name of that Act – the *Aged Care (Accommodation Payment) Levy Act 2006*.

Item 7

This item repeals the definitions of ‘bond’ and ‘bond balance’ within subsection 6(1) as this terminology has been replaced with a new reference to ‘accommodation payment balance’.

Item 8

This item inserts a definition for ‘entry contribution balance’ which has the meaning given by the Dictionary in Schedule 1 to the *Aged Care Act 1997*. An ‘entry contribution balance’ is an entry contribution less amounts that have been, or are permitted to be, deducted under a formal agreement between the care recipient and an approved provider.

Items 9 and 10

Item 10 repeals the definition of ‘outstanding bond balance’ and item 9 replaces it with a new definition of ‘outstanding accommodation payment balance’. ‘Outstanding accommodation payment balance’ has the meaning given by subsection 6(2).

Item 11

This item repeals the definition of ‘operator’ because this word is not used in the Act.

Item 12

This item inserts a new definition in section 6(1) – a definition for refundable deposit balance. A refundable deposit balance has the meaning given by the Dictionary in Schedule 1 to the *Aged Care Act 1997*. That Act provides that a refundable deposit balance is an amount equal to the difference between the amount of the refundable deposit and any amounts that have been, or are permitted to be, deducted from the refundable deposit.

Items 13 to 21

Subsection 6(2) of the Act currently defines outstanding bond balance for the purposes of the Act. In summary an outstanding bond balance is a bond balance that has not been refunded within the timeframe required in the *Aged Care Act 1997*, Principles or, in some cases a formal agreement.

These items amend subsection 6(2) to provide that an accommodation payment balance is an outstanding accommodation payment balance at a particular time if, at that time all, or part, of the accommodation payment balance has not been refunded and:

- in relation to a refundable deposit balance - that time is later than the time required for payment of the balance to be refunded by the person under Division 52P of the *Aged Care Act 1997*. This is a new paragraph which has been inserted to deal with refundable accommodation deposits;
- in relation to an accommodation bond balance or entry contribution balance - that time is later than the time required for the balance to be refunded by the person under:
 - Subdivision 57-G of the *Aged Care (Transitional Provisions) Act 1997* or the *Aged Care (Transitional Provisions) Principles* made under the *Aged Care (Transitional Provisions) Act 1997*; or
 - a formal agreement applying in respect of the balance. These changes reflect the fact that all of the rules relating to repayment of accommodation bond balances and entry contribution balances will be dealt with in the new *Aged Care (Transitional Provisions) Act 1997* and related Principles; and
- in relation to an unregulated lump sum - that time is later than the earlier of the following:
 - the day that the person holding the lump sum is obliged under an agreement to refund the amount or part of the amount; or
 - after 14 days from when the care recipient ceased to be provided with care.

Item 22

This item repeals section 6A of the Act. This section described transitional arrangements relating to amendments that were made to the Act in 2008. As these are no longer operating, the opportunity is being taken to repeal this redundant provision.

Items 23 to 28, 30, 31, 32 and 34

These items replace the word ‘bond’ with the word ‘accommodation payment’ throughout the Act. The word is replaced in:

- paragraphs 7(1)(b), 9(2)(c), 10(1)(b), 10(2)(c), 11(1)(b), 12(3)(a), 13(2)(b), 13A(2)(b), 13A(3)(b); and
- subsections 12(1), 12(2), 13(1), 13A(2) and 13A(3).

This change results from the extension of the guarantee scheme from bonds (which currently include entry contributions and unregulated lump sums) to refundable accommodation deposits and refundable accommodation contributions.

Item 29

Currently section 12 provides that if the Secretary has made a default event declaration (that is, if the Guarantee Scheme has been triggered) the Secretary must determine a range of matters in relation to each bond balance. For example, the Secretary must determine the date on which the bond balance became outstanding, the amount that is payable to the care recipient and any interest owing to the care recipient. The Secretary determines the interest amount based on the rules applying in the User Rights Principles that are made under section 96-1 of the *Aged Care Act 1997*.

This item changes the reference to the User Rights Principles to a reference to the Fees and Payments Principles. This is consequential to changes being made through the Aged Care (Living Longer Living Better) Bill 2013 whereby, from 1 July 2014, all matters relating to fees and payments are dealt with in the one set of Principles – the Fees and Payments Principles.

This is a consequential change only and it is not intended that there be any changes to the circumstances in which interest accrues and the way it is worked out.

Item 33

Currently section 13A describes the requirements relating to the making, by the Secretary, of additional refund declarations where any refund of a bond balance that is made by the approved provider or former approved provider is determined to be void or voidable. If the payment is void or voidable, the amount paid to the care recipient may be ‘clawed back’ by creditors and the care recipient would lose the bond balance that was refunded by the approved provider. To avoid the care recipient losing their refund, this section enables the Commonwealth to refund the care recipient in these circumstances.

This item makes minor consequential changes to paragraphs 13A(1)(a) and (b) so that the section applies in relation to accommodation payment balances rather than bond balances. This reflects the expanded scope of the Guarantee Scheme.

Item 35

Paragraphs 19(3)(b) and 22(1)(c) currently refer to the *Aged Care (Bond Security) Levy Act 2006*. These items amend these references to reflect the new title of the Act – the *Aged Care (Accommodation Payment Security) Levy Act 2006*.

Item 36

This item ensures that, despite the amendments made, the Act as in force immediately before 1 July 2014 continues to apply after that date in relation to insolvency events that occur before 1 July 2014.