AGED CARE AMENDMENT (OMNIBUS) BILL 1999

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Aged Care, the Hon. Bronwyn Bishop, MP)
AGED CARE AMENDMENT (OMNIBUS) BILL 1999
OUTLINE

This Bill amends the Aged Care Act 1997 (the Act) and the Aged Care (Consequential Provisions) Act 1997 by introducing a number of fine-tuning measures to the aged care structural reforms and addressing some administrative and procedural issues that have become apparent since the commencement of most of the new legislation on 1 October 1997.

This Bill also implements the 1999 Budget initiative to exempt from paying an accommodation charge those nursing home residents who were in care at the commencement of the Aged Care Act 1997 and who would otherwise be liable to pay an accommodation charge on moving to another aged care service.

The Bill formally introduces a range of resident protection measures relating to accommodation charges, for care recipients requiring high level residential care (nursing home). However, the nature and level of the charge introduced on 6 November 1997 under subordinate legislation will not change under the proposed amendments. For example, the charge will be continue to be capped and payable for a maximum of five years. The amendments contained in the Bill do, however, introduce a number of resident protections in line with those for accommodation bonds.

This Bill ensures that concessional resident status applies to a person who has a determination in place that the payment of an accommodation charge would cause financial hardship. This status currently only applies to a person for whom a determination is in place for a waiver of accommodation bond due to financial hardship.

Complementing this change will be amendments to the Social Security Act 1991 and the Veterans’ Entitlement Act 1986. These amendments will ensure that rental income will be excluded from the pension income test, and the value of the home will be exempted from the pension assets test where the former home is being rented to pay the accommodation charge.

Residents can be asked to pay an accommodation bond or charge when they enter residential care, if they have sufficient assets. The resident’s home can be excluded from the asset test in certain circumstances. The Bill reduces the period for which a carer must have lived in the family home before the home is excluded from the asset test from 5 to 2 years.

Other important resident protection measures are introduced to provide greater protections for residents who are unable to enter agreements due to incapacity. Concessional resident status is extended to cover residents whose home is occupied by dependent grandchildren and residents are protected from being charged for pre entry leave fees prior to their agreement to enter a service.

The Bill also addresses anomalies in the Act in relation to the revocation of approved provider status and the imposition of sanctions for breaches of provider responsibilities under previous aged care legislation. The Bill introduces provisions that will enable the Commonwealth to more easily take action against such providers, for example, where they have been convicted of serious crimes such as abuse of residents or fraud.

Lastly, the Bill makes minor amendments to the Veterans' Affairs Legislation Amendment (Budget & Simplification Measures) Act 1997 to correct cross referencing anomalies between this legislation and the Aged Care Act 1997.
FINANCIAL IMPACT

The amendments have financial implications to departmental costs for the Department of Health and Aged Care as a result of new systems that will need to be implemented to administer the new arrangements.

The Departments of Health and Aged Care and Veteran’s Affairs will have additional administered costs for charge exempt supplement payments.

The Department of Family and Community Services will have additional administered costs as a result of increased pension payments, primarily due to the exclusion of rental income and the value of the home from the income and assets test where a person rents their home to pay an accommodation charge.

Centrelink will have departmental costs to administer the new arrangements to pensioners. These are yet to be agreed between the Minister for Finance and Administration and the Minister for Family and Community Services.

The administered costs and departmental costs for the next four years for each agency are shown below.

**Budget Measures – Charge Exempt Residents**

<table>
<thead>
<tr>
<th>Year</th>
<th>Health and Aged Care</th>
<th>Veteran’s Affairs</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Administered</td>
<td>Administered</td>
</tr>
<tr>
<td>99/00</td>
<td>$3.8m</td>
<td>$0.4m</td>
</tr>
<tr>
<td>00/01</td>
<td>$2.6m</td>
<td>$0.3m</td>
</tr>
<tr>
<td>01/02</td>
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</tr>
<tr>
<td>02/03</td>
<td>$3.0m</td>
<td>$0.3m</td>
</tr>
</tbody>
</table>

(Residents in nursing home care on implementation of the *Aged Care Act 1997*)

**Quarantining Pensions**

<table>
<thead>
<tr>
<th>Year</th>
<th>Family and Community Services</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Administered</td>
</tr>
<tr>
<td>99/00</td>
<td>$3.835m</td>
</tr>
<tr>
<td>00/01</td>
<td>$9.510m</td>
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<tr>
<td>01/02</td>
<td>$12.726m</td>
</tr>
<tr>
<td>02/03</td>
<td>$14.618m</td>
</tr>
</tbody>
</table>

Yet to be agreed between the Minister for Finance and Administration and the Minister for Family and Community Services.
REGULATION IMPACT STATEMENT

Introduction

The Aged Care Act 1997 established, from 1 October 1997, the broad framework for the operation of the aged care structural reforms which ensure that older people have equitable access to aged care services that provide high quality standards of care and accommodation.

The Aged Care Amendment (Omnibus) Bill 1999 (the Bill) amends the Aged Care Act 1997 and the Aged Care (Consequential Provisions) Act 1997 as a result of announcements made by the Government.

It was announced that care recipients requiring a high level of residential care who could afford to do so would pay a daily accommodation charge instead of the accommodation bond. The introduction of an accommodation charge for high level care residents was implemented through the User Rights Principles on 6 November 1997. This Bill introduces formal provisions relating to the accommodation charge into legislation.

In the 1999 Budget, the government announced that people residing in nursing homes when the Aged Care Act 1997 was introduced, who would be liable to pay an accommodation charge on moving to another service, would be exempted from paying the charge.

The Bill also amends the Social Security Act 1991, the Veterans' Entitlement Act 1986 and the Veterans' Affairs Legislation Amendment (Budget and Simplification Measures) Act 1997, however, these amendments relate to the pension income and assets tests and do not impact on business.

The Changes and Their Impact

i Pre-entry Leave

Problem: It has come to the Government’s attention that the potential exists for aged care providers to charge residents extra amounts that are contrary to the intention of the Aged Care Act 1997. For example, the potential exist for providers to charge fees of intending residents once the person has been notified of a vacancy but before the person has formally agreed to take up a place.

Objective: to clarify pre-entry leave provision and prevent inappropriate charges being levied.

The Bill will clarify the provisions in the Aged Care Act 1997 that relate to pre-entry leave that is available to intending residents before they enter a service. This type of leave is designed so that people can make the necessary arrangements to enter a service without fear of losing their place as the provider receives Commonwealth subsidy for the days of pre-entry leave taken.
The Government has become aware that the potential exists for misuse of these provisions through providers claiming Commonwealth subsidy and charging intending residents fees even where a resident has not agreed to enter the service.

Pre-entry leave will now only be available where a resident has actually agreed to enter a service to provide greater certainty to residents and to end the misuse of these provisions by providers.

Options:
1. do not legislate, and retain the current provisions; or
2. legislate to ensure that inappropriate fees are not able to be charged of frail and aged Australians who are awaiting a place in residential care.

Recommendation: Option 2. The objective cannot be achieved without legislation.

Impact:
1. elderly people in the community are protected from being charged fees before accepting a place in residential care;
2. care providers will be advantaged through greater certainty regarding pre entry leave provisions;
3. there will be no impact on government.

ii. **New provisions to facilitate revocation of approved provider status where the approved provider is no longer considered suitable**

Problem: Since the introduction of the *Aged Care Act 1997* and the *Aged Care (Consequential Provisions) Act 1997* on 1 October 1997 it has become apparent that the current legislation has been drafted in a way that unintentionally made it difficult in a practical sense to impose sanctions or to revoke the approval of a provider for breaches of responsibilities that occurred prior to 1 October 1997. This is because the relevant provisions of the preceding legislation, *the National Health Act 1953* and the *Aged or Disabled Persons Care Act 1954*, have been repealed.

The Government is strongly committed to ensuring that only people who meet stringent suitability requirements are able to enter and remain in the aged care industry to ensure that only high quality care is provided to older Australians. Similarly, the Government maintains its commitment to take firm and decisive action against those providers who breach their responsibilities to either consumers or the Commonwealth.

Objective: to facilitate revocation of approved provider status where the provider is no longer considered suitable.

There are currently provisions in the *Aged Care Act 1997* which allow the Secretary to revoke the approval of a provider where there is evidence that the provider is no longer suitable to provider care to older Australians. This would occur, for example, where the provider has been convicted of a serious crime such as abuse of residents or fraud.
The new provisions will rectify an unintended constraint on the Secretary in the current legislation which makes it difficult to take any revocation action in these circumstances, due to the need to find alternative accommodation for all residents before the revocation takes place. This may impose a practical difficulty where it is necessary to identify alternative accommodation for a large number of residents at the same time. The new provisions will allow the Secretary to determine when a revocation takes effect and to allow for revocation to be undertaken in stages as alternative care arrangements are made progressively for care recipients.

This will impact on the very small number of providers who are no longer considered to be suitable to be aged care providers by removing their approval to operate aged care services in a staged way.

The amendment confirms the stand that only people who meet stringent suitability requirements are able to provide services to frail, older Australians in order to ensure that the best possible services are provided.

Options:
1. do not legislate, and retain the current provisions; or
2. legislate to ensure that only suitable people are able to provide residential care to the frail and aged Australians who require such care.

Recommendation: Option 2. The objective cannot be achieved without legislation.

Impact:
1. care recipients will be advantaged, as unsuitable providers are removed from the industry, thereby increasing the protections for care recipients; and
2. suitable care providers will be advantaged through taking up places vacated by unsuitable providers, and by the transfer of residents from their facilities;
3. there will be negligible enforcement costs for government.

The Bill also introduces the following resident protection measures:

iii. **Accommodation charge for high level (nursing home) residents and related matters**

Issue in the current system: There is a need to formalise the accommodation charge in principal legislation and to implement resident protection measures that are similar to those in place for residents who pay the accommodation bond. The Government undertook to do this at the time it announced the introduction of the charge.

Objective: to formalise accommodation charges in principal legislation and introduce resident protections and compensation for providers where charge hardship waivers are approved.

The Government announced that from 6 November 1997, the accommodation bond was replaced with a daily accommodation charge for people entering high level
residential care, who can afford to pay the charge. However, people requiring a high level of care who enter an extra service place can be asked to pay a bond. The amendments do not affect the quantum or the basic nature of the charge that was introduced on 6 November 1997 through subordinate legislation.

The amendments also introduce a number of resident protection measures. The Bill extends the same kinds of resident protections to payments of accommodation charges as the Aged Care Act 1997 currently contains for the payment of accommodation bonds. For example, providers and residents will be required to enter into agreements about the accommodation charge just as they currently do for accommodation bond payments.

The Bill ensures that providers will receive payment of concessional resident supplement for successful charge hardship applicants, and will be able to count these residents towards their concessional resident ratio enabling some providers to access the highest level of concessional resident funding. This is the same arrangement that currently exists for successful bond hardship applicants.

Options:
1. do not legislate, and leave the User Rights Principles in the existing state; or
2. legislate, to provide sufficient protections for residents and care providers regarding accommodation charges. Legal advice was received that the necessary changes to implement the protections could not be done via the Principles.

Recommendation: Option 2. The objective cannot be achieved without legislation.

Impacts
1. the basic mechanisms of the accommodation charge would remain, without some desirable formal protections for residents; and
2. care providers could be disadvantaged without the amendments. Currently, providers are technically unable to receive concessional resident supplement for charge hardship waiver residents, or to count these residents towards the concessional resident ratio; and
3. care recipients could be disadvantaged through not having formalised protections in principal legislation as currently apply to residents who pay accommodation bonds; and
4. there is negligible impact on government as these measures have been operating for the last 18 months through subordinate legislation or through administrative means.

iv. The qualifying period of co-residence for carers will be reduced from 5 years to 2 years.

Issue in the Current System: The Government undertook to reduce the period of carer co-residence to two years in order to protect the home for bond/charge purposes. This has been implemented in an interim way through subordinate legislation. To remove the possibility of legal challenge the Act needs to be amended.
Objective: to formalise current arrangements and remove the possibility of legal challenges.

This change will impact on older Australians by enabling a larger group of people to qualify as concessional residents and for hardship determinations in relation to paying an accommodation bond or accommodation charge.

This change will also impact on providers of residential aged care by enabling them to receive increased payments of concessional resident supplement in lieu of income that would have been derived from the payment of accommodation bonds and charges.

Options:
1. do not legislate, and leave the reference in the Act to 5 years; or
2. legislate to implement the Government’s announcement that the period of co-residence is 2 years.

Recommendation: Option 2. The objective cannot be achieved without legislation.

Impact:
1. care recipients will be advantaged, as a wider group of care recipients will qualify as concessional residents and not be required to pay accommodation charges/bonds;
2. care providers will not be disadvantaged, as the greater number of concessional residents will increase the concessional resident ratio, entitling providers to increased amounts of concessional resident supplement.
3. the impact on government will be small in terms of meeting the additional costs of paying concessional or assisted resident supplement. This can be met through the special appropriation for which monies under the Act are appropriated.

v. Refunds and Rollovers

Issue in the current System: to preserve the current flexibility that exists in subordinate legislation that allows rollovers of accommodation bonds where a resident moves from a hostel to a nursing home. This is necessary due to the introduction of substantive provisions about the charge into the Act.

Objective: to provide authority in principal legislation for those residents who wish to rollover a previously paid bond when entering a nursing home instead of paying an accommodation charge. This will continue to provide residents with the option of arranging this outcome.

The Bill will provides flexibility for those residents who have already paid an accommodation bond in a hostel and move to a nursing home, to choose to either pay another bond of no more than the remaining bond balance or an accommodation charge based on their level of assets at the time of the move.
Options:
1. do not legislate, and retain the current provisions; or
2. legislate to ensure that residents who move from one type of residential care to another have the same choice as currently on the type of payment they may choose to make.

Recommendation: Option 2. The objective cannot be achieved without legislation.

Impact:
1. care recipients will be advantaged, as those care recipients who have paid a bond and do not wish to change their financial arrangements to pay a daily charge, will be able to negotiate to roll over the bond;
2. those care providers will have the authority in principal legislation to agree to this.
3. there is no impact on Government.

vi. Agreements where a person has a mental impairment

Issue in the current system: The Government has become aware that issues can arise in relation to entering into either resident or accommodation payment agreements where a resident is unable to sign the agreement within 7 days of entry because of a mental incapacity.

In cases where the resident does not already have a legally appointed financial administrator the 7 day requirement is impossible to meet as it currently takes several months to have an administrator appointed through State and Territory Guardianship Boards. The 7 day rule will therefore be qualified so that an agreement must be entered into within 7 days of a financial administrator being appointed where the resident has a mental incapacity.

The Bill will also extend the ability to appoint a legal representative to those residents with a lesser mental impairment, such as dementia. The new 7 day rule will also apply to this group of people.

Objective: to ensure that care recipients with a mental impairment are not disadvantaged and that care providers are not deprived of an accommodation payment through failure to enter resident or accommodation payment agreements.

Options:
1. do not legislate, and retain the current provisions. This leaves potential uncertainty in relation to payments from people with mental impairments; or
2. legislate to ensure that suitable protections for both care residents and providers operate in this situation.

Recommendation: Option 2. The objective cannot be achieved without legislation.

Impact:
1. care recipients will be advantaged, as they will have greater certainty as afforded under the Agreements;
2. care providers will be advantaged through being able to charge accommodation bonds or charges when a guardian is able to sign an agreement, even where a resident was unable to sign an agreement on entry.

3. there is no impact on government.

vii. Extending Definitions

Issue in the current system: Currently the definition of ‘close relation’ does not include grandchildren. This unfairly disadvantages the small number of residents whose grandchildren remain in their homes when they enter care as the house is not protected for bond/charge purposes. The definition of ‘dependent child’ also unfairly disadvantages the small number of residents who have a financial responsibility for children even though they do not have daily care of the child for bond/charge purposes. This can be addressed under the hardship provisions but it is preferable to include a provision in the Act to clarify this issue and define these people as a class through the definitions of concessional and assisted residents.

Objective: to recognise the responsibilities of non-custodian care recipients who have financial responsibilities to children, to dependent grandchildren residing in the care recipient’s home.

The definitions used for ‘concessional resident’ and ‘assisted resident’ will be expanded. Where residents fall within these definitions providers will receive greater amounts of Commonwealth subsidy in lieu of payment of income tested fees or accommodation payments they would otherwise have received.

A ‘grandchild’ will be included in the definition of ‘close relation’ which forms part of the definition of a concessional and assisted resident, and will impact on the method used under section 44-10 for calculating the value of a person’s assets. Where a ‘close relation’ has lived in the resident’s house for 5 years or more the resident’s home will not be included in the asset test to determine if the resident will be able to qualify as a concessional or assisted resident.

The ‘dependent child’ component of the definitions of concessional and assisted residents and asset value calculations under section 44-10, will be expanded to include the situation where a person has a legally based financial responsibility for a child without having actual daily care of the child, for example, where there is a commitment to pay child support.

Options:
1. do not legislate, and retain the current provisions; or
2. legislate to ensure that suitable protections for both care recipients and providers operate in this situation.

Recommendation: Option 2. The objective cannot be achieved without legislation.

Impact:
1. care recipients will be advantaged, as a wider group of care recipients will qualify as concessional residents and not be required to pay accommodation charges/bonds;
2. care providers will be advantaged, as the greater number of concessional residents will increase the concessional resident ratio, entitling providers to increased amounts of concessional resident supplement.
3. the impact on government will be small in terms of meeting the additional costs of paying concessional or assisted resident supplement. This can be met through the special appropriation for which monies under the Act are appropriated.

viii. Amendments to the Aged Care (Consequential Provisions) Act 1997

The Bill also introduces some amendments to the Aged Care (Consequential Provisions) Act 1997 as follows:

a. Sanctions for pre 1 October 1997 breaches of responsibility

Problem: there is currently no mechanism to apply sanctions to providers who have breached their responsibilities under former legislation where these breaches come to light post 1 October 1997.

Objective: to facilitate imposition of sanctions where the provider has breached responsibilities under former legislation.

The Department is currently unable to impose sanctions in cases where a condition of approval was breached under previous aged care legislation and action was not taken before the new Act commenced due to the repeal of the preceding legislation.

The Government has maintained its stated policy to take firm action against those providers who breach their responsibilities in relation to care recipients.

The Bill will amend the Aged Care (Consequential Provisions) Act 1997 to enable the Department to take action to impose sanctions under the Aged Care Act 1997 where an approved provider did not comply with a condition of approval as an approved operator under either the National Health Act 1953 or with the standards of care under the Aged or Disabled Persons Care Act 1954.

These amendments will ensure the provision of quality care to older Australians by taking action against those providers who breach the responsibilities that they have either to consumers or to the Commonwealth.

Options:
1. do not legislate, and retain the current provisions; or
2. legislate to ensure that only suitable people are able to provide residential care to the frail and aged Australians who require such care.
Recommendation: Option 2. The objective cannot be achieved without legislation.

Impact:
1. care recipients will be advantaged, as unsuitable providers are placed under sanction or removed from the industry, thereby increasing the protections for residents;
2. suitable care providers will be advantaged through taking up places vacated by unsuitable providers, and by the transfer of residents from their facilities;
3. there are minor costs to Government in additional enforcement costs.

b Additional Recurrent Funding

Problem: provisions allowing the extension of approvals in principle for additional recurrent funding were inadvertently repealed.

Objective: to extend the period of approval-in-principal as appropriate, to ensure continued funding to providers.

The Bill will allow for the extension of approvals-in-principle (AIPs) for additional recurrent funding for new and rebuilt and upgraded facilities defined as nursing homes as defined under the National Health Act 1953.

Currently no extensions can be granted to providers where construction has not yet been completed. The commitments the Commonwealth has in relation to these payments would lapse even if it were considered appropriate to allow the provider extra time to complete construction.

Options:
1. do not legislate, and retain the current provisions; or
2. legislate to ensure that the Government’s announced protections are implemented

Recommendation: Option 2. The objective cannot be achieved without legislation.
Impact:
1. care residents will be advantaged, due to the higher standard of facilities;
2. care providers will be advantaged, as they have further time to complete their work without loss of funding.
3. there is no cost to Government.

Consultation

The Government has consulted widely during the development of the Act and the Principles, and subsequently during their operation. The consumer protection mechanisms that are proposed in this Bill have resulted from views expressed to the Government either directly or through the complaints units that have been established under the Aged Care Act 1997.

Industry representatives (providers, consumers, etc) were consulted about the changes through the Aged Care Working Group, and its predecessor, the Funding and other Issues Working Group.

Most amendments have been in operation for the last 18 months through subordinate legislation so they are commonly known in the industry and by consumers. Most of the contents of this Bill (except the 1999 Budget initiative) were tabled in the House of Representatives in early 1998. This provided the opportunity for comment to be made.

Monitoring and Review of the Reforms

While the Government has taken action in these areas, the importance of ongoing review of the reforms to residential aged care is recognised. The Government's commitment to monitoring the reforms will remain.

The Minister for Aged Care is required to report annually to Parliament on the operation of the Aged Care Act 1997 on issues such as unmet demand for places, adequacy of subsidies, compliance of providers with the legislation, amounts of accommodation bonds charged and imposition of sanctions for non-compliance.

There is also an ongoing, independent review of the reforms being conducted over two years. While the review is investigating a similar range of issues as the annual report it has a broader role, including the consideration of overall policy and its implementation. The terms of reference encompass a diverse range of issues such as access, affordability, adequacy of funding, quality of care, complaints mechanisms and impact on other services such as community care.
NOTES ON CLAUSES

CLAUSE 1 - SHORT TITLE

This Clause provides that this Bill may be cited as the Aged Care Amendment (Omnibus) Act 1999.

CLAUSE 2 - COMMENCEMENT

This Clause provides that the Act will commence on proclamation, or if it has not commenced within 6 months of receiving Royal Assent, it commences on the first day after that time, except that:

1. Schedule 4 is taken to have commenced immediately after the commencement of Schedule 2 to the Veterans’ Affairs Legislation Amendment (Budget and Simplification Measures) Act 1997. This will ensure that the technical amendment provided for in Schedule 4 is taken to have been operating since 1 January 1998, as was the original intention; and

2. Items 3 and 4 of Schedule 5 are taken to have commenced immediately after the commencement of Schedule 1 to the Aged Care (Consequential Provisions) Act 1997. This ensures that an unintended anomaly relating to Additional Recurrent Funding is removed. It ensures that approvals-in-principle for additional recurrent funding can be extended in appropriate circumstances, so that approved providers are not prevented from receiving their capital funding where, for legitimate reasons, construction has not been completed within the agreed time frame.

CLAUSE 3 - SCHEDULES

This Clause provides that, subject to the commencement provisions in Clause 2, each Act specified in a Schedule to this Bill is amended or repealed as set out in the relevant items and any other item has effect according to its terms.
SCHEDULE 1 - AGED CARE ACT 1997

SUMMARY

This Schedule amends the Aged Care Act 1997 to make provision for the payment of accommodation charges as announced by the Government on 5 November 1997. These provisions were contained in subordinate legislation and it is now proposed that they will be included in the Bill. The Bill also makes consequential changes to some of the rules about payment of accommodation bonds. It also provides for clarification and changes required as a result of experience of the operation of the Act since 1 October 1997. It also implements the 1999 Budget initiative to exempt people who were residing in nursing homes when the Aged Care Act 1997 was introduced from paying an accommodation charge on moving to another service.

ITEM 1

This Item adds a reference to charging an accommodation charge if a service is certified under Chapter 2, which deals with a range of prerequisites for paying subsidy.

ITEM 2

This Item repeals Subsection 10-3(2) which requires revocation of approved provider status not to take effect until alternative care has been arranged for all the care recipients. This protection is now covered in Item 4, where revocation can be undertaken in a staged process. Staged revocation is required so that more time and flexibility is available to make alternative care arrangements for residents.

ITEM 3

This Item amends Paragraph 10-3(3)(c) and in conjunction with Item 4 provides greater flexibility in the timing of revocation where no submission has been made in response to a notice to the approved provider of the Secretary's intention to revoke approved provider status. The previous provision required revocation to take effect on the day after the end of the period for making submissions, if there was no submission. This amendment now provides that an approved provider is notified that revocation may take effect at any time provided there is at least 7 days between the end of the period for making submissions against revocation and the day when revocation takes effect.

ITEM 4

This item allows revocation of approved provider status to occur in a managed way in recognition that many providers operate a number of services providing care to large numbers of care recipients, and that arrangements must be made to ensure current care recipients continue to receive appropriate care. The item also allows for revocation to take effect without a gradual limitation on approvals, for example, where all care recipients in a residential aged care service can be found alternative accommodation at the same time.
This Item repeals Subsection 10-3(7) which gave effect to revocation as a single action. It is replaced with a provision allowing the Secretary to give the provider notices specifying limitations of approval in the move to final revocation. These notices may limit the provider’s approval to provide one or more types of aged care (e.g. residential care or community care), to provide one or more services if the provider operates several, or to provide care to particular classes of care recipient. Examples of the limitation might include any combination of:

. care recipients receiving a particular level of care;

. a particular type of care recipient, such as concessional or assisted residents or those in residence on a particular day (thus limiting the provider’s ability to take in new care recipients); or

. care recipients in the service at, before or after a specified event or time.

The Subclause provides that notices of such limitation of approval can be given at different times.

This provision also allows the Secretary to give notice of revocation of approval without imposing any limitations.

Subclause 7A specifies that the notice takes effect on the day stated in the notice, which must be at least 7 days after the day the notice is given.

Subclause 7B picks up, for this staged process, the requirement repealed by Item 2. It ensures that a notice of the effect of the revocation of approval cannot be given until the Secretary is satisfied appropriate arrangements for care are in place for the care recipients who will be affected.

Subclause 7C requires that where the Secretary has imposed any limitation of approval, the approval of the provider must eventually be revoked.

**ITEM 5**

This Item adds a reference to accommodation charges to the existing reference to bonds, to the description of what this part is about. It sets out that bonds or charges can only be levied where a service is certified.

**ITEM 6**

This Item adds to Paragraph 38-6(2)(d) the requirement to notify of the responsibilities relating to accommodation charges as well as accommodation bonds.
ITEMS 7, 8 AND 9

These Items amend Subsections 42-2(2) and (3) to provide that “hospital leave” covered by Subsection (2) can only be taken after a resident has entered a service. In combination with section 42-3, the effect of these items is that a person can be in a hospital and on leave for up to 7 days before they enter a service, but that leave will be taken out of the 52 days of leave for other purposes covered by Subsection (3).

ITEM 10

This Item adds to Subsection 42-3(3) a requirement that, for leave to be taken before a person enters a service, the person must not only be advised that there is a vacancy, but must also have agreed to enter the service. This is to prevent providers charging residents fees where they have only been notified of a place and have not actually agreed to enter.

ITEM 11

This Item introduces the charge exempt resident supplement as a primary supplement payable in respect of a care recipient who is a charge exempt resident (as defined under Item 19). This ensures that providers will be compensated for not receiving an accommodation charge from a charge exempt resident.

ITEM 12

This Item amends the note in that not all primary supplements are taken into account for the purposes of the income test under Subdivision 44-E.

ITEM 13

This Item adds a reference to the accommodation charge as a matter based on which the Minister may determine different amounts of concessional resident supplement.

ITEM 14

This Item reduces from 5 years to 2 years the time during which a resident's carer must have been occupying the resident's home in order for that home not counted in the value of the resident's assets for the purpose of determining status as a concessional resident. This provision was originally included in subordinate legislation and it is now proposed that it be included in the Bill. The period of co-residence of a close relation for the home to be excluded as an asset is 5 years.

ITEM 15

This Item expands the Note to Subsection 44-7(1) to make clear that a concessional resident cannot be required to pay an accommodation charge.

ITEM 16
This Item includes in subsection 44-7(3) a reference to accommodation charge hardship determinations. This ensures that where an accommodation charge is waived on the grounds of financial hardship, the resident is considered to be a concessional resident. This allows providers to then be compensated through receiving concessional resident supplement paid by the Commonwealth. This amendment ensures consistency with waivers of accommodation bonds due to financial hardship.

ITEM 17

This item reduces from 5 years to 2 years the length of time during which a resident's carer must have been occupying the resident's home in order for that home not to count in the value of the resident's assets when determining status as an assisted resident. This provision was originally included in subordinate legislation and it is now proposed that it be included in the Bill. The period of co-residence of a close relation for the home to be excluded as an asset is 5 years.

ITEM 18

This Item adds to the Note to Subsection 44-8(1) a reference to the fact that an assisted resident can be required to pay an accommodation charge.

ITEM 19

The matters dealt with in Item 19 are summarised below.

This Item provides for the creation of a charge exempt resident supplement, to compensate providers for not receiving an accommodation charge from charge exempt residents in permanent residential care. A charge exempt resident is a person who was in an approved bed in an approved nursing home on 30 September 1997 (under s40AA of the former legislation – the *National Health Act 1953*). The person must have been receiving either permanent or respite care, who then subsequently moves to a high care place (nursing home place equivalent) after that date, and is otherwise eligible to be charged an accommodation charge on entry to the relevant aged care service.

The item provides that a charge exempt resident is also someone who would not otherwise be a concessional resident on entry to the new aged care service. If a charge exempt resident enters an extra service place, the resident can continue to pay a bond in that extra service place.

The supplement is payable in respect of a charge exempt resident, either before or after the introduction of this Bill, for any day on which the charge exempt resident was receiving permanent care that is not extra service care and the service is certified and thus able to levy an accommodation charge. This provision will allow the subsidy to be paid even if the resident has not been classified (for example where an assessment under the Resident Classification Scale has not been received on time), or in respect of a charge exempt resident who entered the service before it gained certification and then commenced paying the charge on certification.
The amount of the charge exempt resident supplement is $12.17 per day unless another amount is determined by the Minister. This is equivalent to the current maximum rate of concessional resident supplement. Providers will receive this current maximum rate for the period between 1 October 1997 and 30 June 1998 when the then maximum concessional supplement rate was $12, and the maximum rate of charge payable by a resident was $12 per day. In these circumstances, the payment of $12.17 per day in charge exempt resident supplement therefore represents a small gain for providers, and avoids disadvantaging providers.

The Minister may determine other amounts including nil amounts, based on the maximum rate of concessional resident supplement when it rises from current levels, or on whether the assisted resident supplement was already paid in respect of the care recipient.

The Minister may also determine that a nil amount of charge exempt resident supplement is payable to the provider (who will then retain accommodation charges paid by the resident). This could include, for example, where the provider cannot locate the resident or there is no estate, legal representative or other specified person to whom the repayment can be made. In these cases the Secretary must use her or his best endeavours to find the resident, legal representative or other person to whom the repayment should be made. If the Secretary’s best endeavours are unsuccessful in finding the care resident, a legal representative, or other person as specified, no refund will occur and the Commonwealth’s liability for repayment will cease at that point.

The Minister may also determine other amounts based on matters in the Residential Care Subsidy Principles. This provides the flexibility for the Minister to specify other relevant matters such as classes of people for whom a different rate may be payable.

The matters to be specified in the Residential Care Subsidy Principles may include where the Secretary determines that an amount of charge exempt supplement should not be paid to the provider in respect of a charge exempt resident. This covers circumstances where a care recipient may have left the service or died and the provider is unable to locate the person or make the necessary repayments. This enables the Secretary to make any repayments of accommodation charges previously paid directly to the care recipient or the care recipient’s legal representative or an estate.

**ITEM 20**

This Item reduces from 5 years to 2 years the period during which the resident's home must have been occupied by their carer in order for that home not to count in working out the value of their assets at the date of entry to the residential aged care service. This provision was originally included in subordinate legislation and it is now proposed that it be included in the Bill. However, the period of co-residence of a close relation for the home to be excluded as an asset remains at 5 years.

**ITEM 21**

This Item adds ‘grandchild’ to the definition of “close relation” that appears in the definition of concessional and assisted resident and in the method of calculating the value of a person’s assets.

ITEM 22

This Item widens the definition of “dependent child” to include a person who may not actually be caring for the young person but is under a legal obligation to provide financial support, for example, through Child Support. This impacts on the definition of concessional and assisted resident and on the method for calculating the value of a person’s assets.

ITEM 23

This item ensures that no care recipient is asked to pay income tested fees as a result of being classed as a charge exempt resident. No subsidy is payable for residents with a Resident Classification Scale (RCS) of 8, where no RCS was received, or following long hospital stays when the RCS defaults to 8 under the current legislation. These residents are not asked to pay an income tested fee because under step 4 of the income tested fee calculator, there is no Commonwealth subsidy payable that could be reduced by the amount of any income tested reduction.

A care recipient for whom no other supplement had been payable and who was not charged income tested fees, could become eligible to pay income tested fees under paragraph 44-21(c) of the Act as a result of the Commonwealth paying a primary supplement (charge exempt supplement). This item protects charge exempt residents whose only eligibility for income tested fees would result through the payment of charge exempt resident supplement.

ITEM 24

This item adds compliance with the rules relating to accommodation charges to the list of responsibilities of approved providers of residential care.

ITEM 25

This Item adds a new responsibility to the existing approved providers’ responsibilities, that is to take reasonable steps to find any charge exempt resident who had paid an accommodation charge and left the service or, if the care recipient has died, to make reasonable efforts to find a legal representative or other specified person and to make repayments of the charges as directed by the Secretary. This ensures that charge exempt residents will be repaid for any accommodation charges that they already paid to the provider.

This item allows flexibility for no direction to be given to a provider to repay where a repayment is more appropriately made directly to the care recipient or the care recipient’s estate, legal representative or other appropriate person by the Department.
ITEM 26

This item adds compliance with any rules under the Act relating to the charging of accommodation charges to the existing responsibilities of a provider of flexible care.

ITEM 27

This Item adds a new responsibility for an approved flexible care provider to take reasonable steps to find any charge exempt resident who had paid an accommodation charge and left the service or, if the care recipient has died, to make reasonable efforts to find a legal representative or other specified person, and to make repayments of the charges as directed by the Secretary. This ensures that charge exempt residents will be repaid for any accommodation charges that they have already paid to the provider.

This allows flexibility for no direction to be given to a provider where a repayment is more appropriately made directly to the care recipient, the care recipient’s estate or legal representative by the Department.

ITEM 28

This Item adds a rule about when accommodation bonds are payable. This is a responsibility with which providers must comply. The rule is that, at the time the person enters the service, at least one of the following must be true in order for an accommodation bond to be charged:

1. the person is not eligible to pay an accommodation charge (that is, the person does not require a high level of care);
2. the service, or the distinct part of the service, where the care recipient is to live, must have extra service status; or
3. section 57-23 allows the provider to charge a bond in circumstances where an accommodation charge would normally be payable. This will be in the case where a care recipient has moved from one service to another (where an accommodation charge would otherwise be payable) and the care recipient has agreed with the second provider to pay an accommodation bond. In this case, the maximum bond which can be paid is the balance received from the first service.
4. the person is not a charge exempt resident.

The note to the section explains that a concessional resident cannot be required to pay an accommodation bond.

ITEM 29

This Item adds a Note to Paragraph 57-2(e) which refers to another provision that deals with the timing of accommodation bond agreements. The Note explains that the time limit is extended if certain legal processes relating to the resident’s mental impairment are in progress.
ITEM 30

This Item adds another reference in Paragraph 57-2(g) to include reference to Section 57-23 which deals with additional rules about accommodation bonds on transfer between services where an accommodation charge is otherwise payable.

ITEM 31

This Item adds a provision to extend the time allowed for making an accommodation bond agreement where it has been delayed because there is no legally authorised person so far appointed to sign on behalf of a resident with a mental impairment. The Item provides that, where the 7 days allowed has expired, but a process is in progress for a legally authorised representative (other than the approved provider) to be appointed for a resident with a mental impairment, the 7 day time limit is extended until 7 days after:

. the appointment is made; or
. a decision is made not to make the appointment; or
. the process ends for some other reason.

The time limit in this case can also be extended for any further period allowed by the Secretary, taking into consideration any matters specified in the User Rights Principles.

ITEM 32

This Item amends Note 2 to Subsection 57-16(2) to make allowance for the extra time in the situations described in Item 31.

ITEM 33

This Item adds a new Subdivision 57-H - Charging an accommodation bond instead of an accommodation charge.

Clause 57-23 Charging an accommodation bond instead of an accommodation charge

This provision applies where a person:

(a) agreed to pay an accommodation bond to a residential care service;
(b) left that service and within 28 days moved into another where an accommodation charge would be payable, and
(c) the resident and the provider agreed before the resident entered the second service that an accommodation bond would be payable instead.

In this case, the second service provider can charge an accommodation bond even though in any other circumstances they would only be able to charge that resident an accommodation charge. The maximum bond that can be charged in this situation is either the balance refunded or payable in accordance with Section 57-21, or the bond amount agreed less any retention amounts if the accommodation bond has not been paid fully as a lump sum.
ITEM 34

This Item inserts a new Division 57A - What are the responsibilities relating to accommodation charges?

Clause 57A-1 What this Division is about

This Clause explains the effect of the new Division 57-A.

Subdivision 57A-A - The basic rules

Clause 57A-2 Basic rules about accommodation charges

Subclause (1) lists the basic rules applying to charging an accommodation charge for a care recipient’s entry to a residential care service as follows:

(a) At the time of entry all the following must be true:
   . the care recipient requires a high level of residential care;
   . at the time of the care recipient’s entry to the service, the care recipient’s approval under section 22-2 is not limited to a low level of care;
   . the service or distinct part of the service where the care recipient has a place does not have extra service status; and
   . the application of Section 57-23 does not allow the provider to charge an accommodation bond.

The Note to this item explains that a concessional resident cannot be required to pay an accommodation charge.

(b) No accommodation charge can be charged if the person is a charge exempt resident.

(c) No accommodation charge can be charged if the person enters to receive respite care only.

(d) Before the care recipient enters the service, the provider must supply any information about the accommodation charge which is specified in the User Rights Principles.

(e) The care recipient and the provider must sign an accommodation charge agreement within 7 days of the care recipient's entry. A Note explains that this time limit is extended in some cases of mental impairment referred to in Subsection (2).

(f) Another person must not be required to pay the accommodation charge as a condition of the care recipient's entry.
(g) The daily amount of the charge must not exceed the maximum set in Section 57A-6 and the care recipient must not be asked to pay more than one accommodation charge for entering the service.

(h) The accommodation charge cannot accrue for a total of days in excess of 5 years as set out in Section 57A-7, or in contravention of Section 57A-8 which deals with certification of the service.

(i) An accommodation charge must not be charged if there is a hardship determination in force under Section 57A-9.

(j) The approved provider must comply with the requirements of Section 57A-11 which relates to not requiring payment more than a month in advance.

(k) The care recipient may be required to pay interest on late payment of the charge in accordance with Section 57A-12.

(l) The provider must use the money from the accommodation charge to meet capital works costs related to residential care, to retire debt relating to residential care, or, where no capital expenditure is reasonably required in relation to certification and accreditation purposes, to improve the quality and range of aged care services.

(m) The approved provider must not charge an accommodation charge if prohibited by a sanction under Part 4.4.

(n) Any other rules specified in the User Rights Principles.

The note after subsection 57A-2 explains that a concessional resident cannot be required to pay an accommodation charge.

Subclause (2) extends the 7 day time limit imposed by paragraph (1)(e) for signing accommodation charge agreements, in certain circumstances. These are where the care recipient has a mental impairment and a process is in progress to appoint a legally authorised representative (other than the provider). The time limit is extended until:

. 7 days after the appointment is made or a decision is made not to make the appointment or the process ends for any other reason; or

. for a further period which the Secretary allows, having considered any matters specified in the User Rights Principles.
Subdivision 57A-B Accommodation charge agreements

Clause 57A-3 Contents of Accommodation charge agreements

Subsection (1) provides that an agreement between a provider and a resident or intending care recipient of a residential care service is an accommodation charge agreement if it sets out the following:

(a) the amount of the accommodation charge which accrues for each day, including days of leave;
(b) the date, or proposed date of entry;
(c) how the accommodation charge is to be paid;
(d) when the accommodation charge is payable;
(e) whether payment of the charge entitles the resident to specific accommodation or additional services;
(f) any financial hardship provisions that apply to the resident;
(g) any other matters specified in the User Rights Principles.

Subsection (2) provides that the User Rights Principles may specify, but are not limited to, matters relating to:

(a) specific entitlements of a care recipient which arise from signing an accommodation charge agreement;
(b) provision of information to others about accommodation charges and related matters;
(c) a care recipient’s obligations;
(d) alleviating financial hardship.

Clause 57A-4 Accommodation charge agreements may be incorporated into other agreements

This Clause has the effect that, if the content requirements are met under clause 57A-3, an accommodation charge agreement can be incorporated in another agreement (for example, a resident agreement).

Clause 57A-5 Agreements cannot affect requirements of this Division

This Clause ensures that the requirements of this Division apply, despite any provisions to the contrary in any agreement.
**Subdivision 57A-C  Daily accrual amounts of accommodation charges**

**Clause 57A-6 - Maximum daily accrual amount of accommodation charge**

This sub-clause provides that the maximum daily accrual amount of an accommodation charge is the lowest of the following:

(a) the daily accrued amount stated in the accommodation charge agreement;

(b) the value of the resident's assets at entry, minus the minimum permissible asset value under Subsection 57-12(3), and then that figure divided by 1,825 (5 years worth of days);

(c) an amount specified in, or worked out in accordance with, the User Rights Principles.

Subclause (2) provides that, if a resident does not give asset information to the provider to work out the value of their assets at entry, paragraph (b) in Subclause (1) above is not considered for working out maximum daily amount of accommodation charge.

Subclause (3) provides that the value of the resident's assets is worked out according to Section 44-10, that is, in the same way as for concessional and assisted resident status.

**Clause 57A-7  Maximum period of daily accrual of accommodation charge**

This Clause provides that an accommodation charge cannot continue for any days after the resident leaves the service or dies. In any case, the accommodation charge can only accrue for a maximum of 5 years in a service, starting on the later of the entry day or the date of certification. Because of the effect of section 57A-8, where a resident enters an uncertified service and agrees to pay an accommodation charge, that charge cannot begin to accrue until the service becomes certified.

The 5 years total includes all days of leave, but no day when the resident was not in a residential care service. The period of 5 years during which the charge can accrue in any service is reduced by the number of days a charge has already accrued in another service.

**Clause 57A-8  Accommodation charge not to accrue while residential service not certified**

This Clause provides that an accommodation charge cannot accrue for any day on which a service was not certified. This will apply whether the day in question is a day at the beginning of a care recipient’s residence or during the course of the residence.

**Clause 57A-9  Accommodation charge not payable in cases of financial hardship**

This Clause provides that the Secretary may determine, in accordance with the User Rights Principles, that a person must not be charged an accommodation charge because its payment would cause financial hardship. A Note explains that a refusal to make such a determination
is reviewable. Circumstances constituting financial hardship include, but are not limited to, any specified in the User Rights Principles.

Subsection (3) provides that determinations end at a time or on the occurrence of an event, if this is specified in the determination. A Note states that such inclusions in the determination are reviewable. The resident or the service provider can apply, in a form approved by the Secretary, for a hardship determination. If the Secretary needs more information to make the determination, this may be requested in a notice. The information must be supplied within 28 days of the notice or another time specified in the notice. The notice must also advise that the application will be taken to be withdrawn if the information is not supplied in the time. A notice of the Secretary's decision must be given to the resident and the provider within 28 days of the application or of receiving further requested information. If the determination is made, the notice must contain any time or event after which it will cease to be in force.

**Clause 57A-10 Revocations of determinations of financial hardship**

This Clause provides that, in accordance with the User Rights Principles, the Secretary may revoke a hardship determination. A Note states that this decision is reviewable. Before revoking the determination, the Secretary must give the resident and the provider a written notice stating that revocation is being considered. The notice must invite submissions within 28 days of receiving the notice and inform recipients that, if no submission is received within that period, revocation will occur on the day after the end of the period for making submissions. The Secretary must consider any submissions in making the decision and the decision must be made within 28 days of the end of the submission period.

The Secretary must give written notice of the decision to the resident and the provider within 28 days of the end of the submission period and if no notice is given the Secretary is taken to have decided not to revoke the determination. The revocation takes effect on the day after the resident and the provider have both received their notices.

**Subdivision 57A-D Payment of accommodation charges**

**Clause 57A-11 Accommodation charges may be payable not more than one month in advance**

An accommodation charge can be paid up to one month before it accrues, but, if it does not in fact accrue, any advance payments must be refunded, for example, where a care recipient does not in fact enter care.

**Clause 57A-12 Approved provider may charge interest for late payment**

This Clause provides that if, under an accommodation charge agreement, a resident is required to pay an accommodation charge and the resident does not pay some or all of the charge until more than one month until after the charge accrued, the resident may be required to pay interest on the outstanding balance. However, such interest can only be charged if it is specified in the accommodation charge agreement. The rate of interest must not exceed that specified in the User Rights Principles.
ITEM 35

This Item adds a reference to an accommodation charge agreement to the Note at the end of Subsection 59-1(3), mentioning that a charge agreement can be incorporated into other agreements (for example, a resident agreement).

ITEM 36

This Item amends paragraph 62-1(b)(ii) to allow for disclosure of personal information in limited circumstances. This is to allow one provider to provide information to another provider on how much of the 5 years maximum possible accrual of the accommodation charge is left where a care recipient is moving to a new service.

ITEM 37

This Item amends Paragraph 63-2(2)(d) to include information about amounts of accommodation charges in the information to be included in the annual report to Parliament on the operation of the Act.

ITEM 38

This Item amends Paragraph 66-1(j) to add to the list of sanctions that may be imposed on approved providers. Sanctions will include the prohibition of charging of accommodation charges. A similar sanction currently exists in relation to prohibiting the charging of accommodation bonds.

ITEM 39

This Item amends the table in Section 85-1 to provide that the following decisions under the following provisions of the Act are reviewable decisions:

. subsection 57A-9(1) - that paying an accommodation charge would not cause financial hardship;

. subsection 57A-9(3) - that a hardship determination will cease at a specified time or on the occurrence of a specified event; and

. subsection 57A-10(1) - to revoke a determination that paying an accommodation charge would cause financial hardship.

ITEM 40

This Item amends Paragraph 86-9(1)(e) to add information about accommodation charges to the list of information which the Secretary can make freely available about a service.

ITEM 41
This Item adds records about accommodation charges to the list of examples of types of records the retaining of which may be required in the Principles.

ITEM 42

This Item amends Paragraph 96-5(b), in line with the provisions in this Bill extending the time for signing accommodation bond or accommodation charge agreements in certain cases of mental impairment. It replaces the concept of mental incapacity with that of mental impairment, to cover cases where residents may have a lower level of mental deficiency than is implied by incapacity, but nevertheless are not in a position to make their own decisions about signing agreements. It also covers circumstances where residents are physically unable to enter agreements.

ITEM 43

This Item amends the Note to Section 96-5 to include accommodation charge agreements in the range of agreements that a person representing the care recipient can enter on the care recipients behalf where that person is unable to enter into the agreement.

ITEM 44

This Item ensures that funds appropriated under Chapter 3 of the Act can be directed to either approved providers, the care recipient, the care recipient’s estate or legal representative where funds are paid as charge exempt resident supplement.

ITEM 45

This Item amends the definition of accommodation bond in Clause 1 of Schedule 1 of the Act to make clear that, in contrast to an accommodation charge, an accommodation bond does not accrue daily.

ITEM 46

This Item amends Clause 1 of Schedule 1 of the Act to include a definition of ‘accommodation charge’.

ITEM 47

This Item amends Clause 1 of Schedule 1 to the Act by adding a definition of ‘accommodation charge agreement’.
ITEM 48

This Item amends Clause 1 of Schedule 1 to the Act by adding a definition of ‘charge exempt resident’.

ITEM 49

This Item amends Clause 1 of Schedule 1 to the Act by adding a definition of “low level of residential care”.

ITEM 1

This Item amends section 3 (index of definitions) to include a reference to the new definition of "accommodation charge", that is being inserted in subsection 11(1) by clause 4 below, and a new definition of “charge exempt resident”.

ITEM 2

This Item makes a consequential amendment to a note to provide that exempt bond amounts and amounts refunded to charge exempt residents do not count as income.

ITEM 3

This Item inserts a new paragraph 8(8)(zn). Subsection 8(8) provides for certain amounts to be excluded from the income test.

New paragraph 8(8)(zn) provides that rental income from a person's principal home is to be excluded from the social security income test:

- while the person is accruing an accommodation charge; and
- while the person, or the person's partner, receives rent from a third person in respect of their principal home.

The new provision provides that any rental income exempted under the income test will be exempt for both the person liable to pay the accommodation charge and the person's partner (if applicable) while the person is or would be liable to pay a charge.

Note 1 to the new paragraph refers the reader to the definition of "rent" in subsection 13(2) of the Social Security Act.

Note 2 advises the reader that a home may be deemed to be a principal home under subsections 11(6A) and 11(7), notwithstanding that the person liable to pay an accommodation charge (and the person's partner, if applicable) is residing in another place.

ITEM 4

This Item provides a definition of "accommodation charge". The new definition will be the same as that used in the Aged Care Act 1997. That Act defines an "accommodation charge" as follows:

accommodation charge, in relation to a person, means an amount of money that accrues daily and is paid or payable to an approved provider by the person for the person's entry to a residential care service or flexible care service through which care is, or is to be, provided by the approved provider.
ITEM 5

This item provides a definition of “charge exempt resident” which is the same as that used in the Aged Care Act 1997.

ITEM 6

This Item amends subsection 11(1) to provide for the new subsection 11(6A) in the definition of "principal home".

ITEM 7

This Item inserts a new subsection 11(6A) to extend the existing provisions that provide for a residence to be deemed to be a person's "principal home" even though a person is absent from the home.

New subsection 11(6A) provides that a residence is taken to be a person's principal home if the Secretary is satisfied that the person left his or her principal home for the purpose of going into a "care situation" and for the period which:

- the person is liable to pay an accommodation charge for the care (or would be liable except for the fact that the care provider's right to charge an accommodation charge has been temporarily withdrawn because of a sanction imposed under Part 4.4 of the Aged Care Act 1997); and
- the person or the person's partner is receiving rent from the premises from a third party.

New subsection 11(6A) provides that, if a premises is deemed to be a person's principal home because of the operation of subsection 11(6A), the premises is also deemed to be the principal home of the person's partner.

Subsection 11(6A) will only apply if the person left the person's principal home to go into a "care situation" (which is defined in subsection 13(9) and includes the case where a person receives, or is likely to receive care in a private residence for at least 14 days).

This amendment means that persons who rent out their principal home and pay an accommodation charge will not have their home assessed under the assets test.

A note to the provision also clarifies that a person, and the person's partner cannot have more than one principal home at any one time. That is, only one residence can be the principal home of a person and the person's partner.
ITEMS 8 to 12

These Items update various sections to provide for the new subsection 11(6A) that has been inserted in the definition of "principal home".

ITEM 13

This Item inserts a new Division 1D which inserts new sections 1099E to 1099H and a new division 1E which inserts new sections 1099 J to M.

New section 1099E sets out an overview of the Division. The new Division will apply to two classes of people.

The first class are those people who became liable to pay for an accommodation bond between 1 October 1997 and 5 November 1997, would have been liable to pay an accommodation charge had that been in place, or who would have been charge exempt residents had that been in place, and who subsequently agreed to switch to an accommodation charge.

The accommodation bond scheme was abolished from 6 November 1997 and was replaced with the accommodation charge scheme. If a person paid an accommodation bond, the person or the person's partner can request that the nursing home refund the bond. If the bond is refunded, the person would then, in lieu of the accommodation bond, pay an accommodation charge. To ensure that persons who paid an accommodation bond are not disadvantaged, the refunded bond will be exempted from the income and assets test.

The second class of people are those people who either sold their home, or became liable to sell their home (that is, there was an exchange of contracts), prior to 6 November 1997, and the Secretary is satisfied that the home was sold to pay an accommodation bond, or if the Secretary is satisfied the person would have been a charge exempt resident. This amendment will ensure that a person is not penalised by having income assessed against their social security payments if the person invests the refunded bond or the proceeds of sale.

It is intended that the beneficial income treatment will also cover the partners of the recipient.

Subsections 1099E(1) and (2) provide that the Division applies to a person including one who is a charge exempt resident who:

- between 1 October 1997 and 5 November 1997 became liable to pay an accommodation bond and the person later made an agreement to replace the liability for the accommodation bond with a liability to pay an accommodation charge and an accommodation charge would have been payable for the entry had the person entered residential care after 5 November 1997; or

- on or before 5 November 1997, sold his or her "principal home" (as defined in subsection 11(7)) for the sole or principal purpose of raising money to pay an accommodation bond.
and an accommodation charge would have been payable for the entry had the person entered residential care after 5 November 1997.

The requirement that an accommodation charge would have been payable, had the person entered residential care after 5 November 1997 ensures that the provision applies only to those persons who paid an accommodation bond to enter a nursing home level of care.

New subsection 1099E(3) provides that the Division applies to partners of a person who sold a home or purchased an accommodation bond in the above circumstances, even if the person is deceased. This subsection reflects the fact that the partner was also likely to be disadvantaged by the above situations.

New subsection 1099E(4) provides that a person is taken to have sold his or her home if the person had entered into a legal obligation to sell the home as at 5 November 1997. That is, if contracts had been exchanged as at 5 November 1997, the person would be obligated to continue the sale despite the fact that accommodation bonds may have been abolished at the date that settlement occurs. This subsection ensures that persons who had entered into a binding agreement to sell for proper consideration are not disadvantaged.

New section 1099F provides that a person's "exempt bond amount" (which is calculated in section 1099H) does not count as income for the purposes of the Act.

New section 1099G provides that a person's income will be reduced by an amount that could subsequently be derived from the refunded bond or the proceeds of sale of a home as if the amount were a financial asset of the person. This will ensure that persons are not penalised by having their social security payments reduced if the person banks or invests the refunded bond or the proceeds of sale. The reduction will occur until the death of the recipient (or the death of the recipient's partner), whichever is later.

That is, section 1099G provides that a person’s (and the person's partner's) income will be reduced by an amount equal to the income that would be calculated if the social security deeming rules were applied to a capital amount equal to the amount of the refunded bond (or the proceeds of sale of the home, if relevant).

New section 1099H provides a method for calculating the reduction in a person's income and assets (the exempt bond amount) where:

· a person receives a refunded accommodation bond or proceeds from the sale of a house; and

· the person satisfies the criteria in section 1099E (see above).

Subsection 1099H(2) provides for a situation where a person is covered by subsection 1099E(1) only. That is, the situation where a person:

· became liable to pay an accommodation bond during the period 1 October 1997 until the end of 5 November 1997; and
would have been liable to pay an accommodation charge had the person entered residential care after 5 November 1997; and

later entered into an agreement to exchange the bond for an accommodation charge.

In this case, the person's exempt bond amount is equal to the amount of the accommodation bond that is refunded to the person under the agreement.

Subsection 1099H(3) provides for the situation where a person is covered by subsection 1099E(2) only. That is, the situation where the Secretary is satisfied that a person sold his or her home for the sole or principal purpose of raising money to pay for an accommodation charge and an accommodation charge would have been payable had the person entered residential care after 5 November 1997.

In this case the person's exempt bond amount is equal to the net proceeds of the sale of the house. That is, the gross proceeds of the sale less any costs associated with the sale and less any mortgage that the person or the person's partner had over the house at the time of settlement.

Subsection 1099H(4) provides that if both subsections 1099H(2) and 1099H(3) apply to a person, then the person's exempt bond amount is equal to the greater of the two amounts. This subsection will ensure that no person is disadvantaged against other persons covered by subsections (2) and (3).

Subsection 1099H(5) provides that, if a person has an exempt bond amount, then the partner also has an exempt bond amount.

Subsection 1099H(6) provides that, if the person is a member of a couple and is not deceased then the amount of the person (and the person's partner's) exempt bond amount is equal to half of the exempt bond amount. This subsection will ensure that if, for example, the amount assessed under subsection 1099G(3) is equal to $10,000, then $5,000 is assessed against the person and $5,000 is assessed against the person's partner. It is not appropriate, of course, to assess $10,000 against the person and $10,000 against the person's partner, as this would result in a doubling up of exempt bond amounts.

If a person is single (including a person whose partner was a member of a couple but the partner is now deceased), then the person would have the full amount of the exempt bond amount attributed to the person.

DIVISION 1E

This division applies to refunds made to a charge exempt resident for accommodation charges paid to a care service. It ensures that these refunds do not affect pension payments. The Division provides that, for the purposes of the Act, the receipt of a refund is not counted as income. The Division also provides that the refunds cannot affect future pension payments.
This is achieved by:

- exempting forever deemed income based on the amount of the refund from the income test; and
- exempting forever the amount of the refund from the asset test.

This applies in relation to a person who was a charge exempt resident before or after the commencement of this Division. This Division does not apply to refunds made to the charge exempt resident’s estate or to another person.

ITEM 14

This Item amends note 2 to subsection 1118(1) to provide for the new subsection 11(6A) that has been inserted into the definition of "principal home".

ITEM 15

This item inserts a new section 1118AB.

New section 1118AB provides that, if a person has an exempt bond amount (as calculated under section 1099H), then the person's assets are to be reduced by an amount equal to the exempt bond amount. If a person disposes of the exempt bond amount, the deprivation provisions will apply to the disposal. The application of the deprivation provisions may mean that the deprived amount may be included in the person's assets, which means that the deprived amount will be offset against the continued asset reduction under section 1118AB.

The new section 1118AC states that the value of the person’s assets is reduced by the refunded amount if the person is a charge exempt resident.

ITEM 16

This item inserts a transitional provision for charge exempt residents who would otherwise have received income and asset test concessions under items 3 and 7 of this Schedule. Charge exempt residents no longer satisfy the requirements of these items because of the removal of accommodation charge liability. Where a charge exempt resident has been renting their former home since before 1 July 1999 they will continue to qualify for these concessions while rental income continues.
SCHEDULE 3 - VETERANS’ ENTITLEMENTS ACT 1986

Schedule 3 makes consequential amendments to the Veterans’ Entitlements Act 1986 (the VEA) arising from amendments to the Aged Care Act 1997 and related policy changes. These amendments mirror the amendments to the Social Security Act 1991 in Schedule 2 to ensure consistency of assessment of income and assets tests of people who enter an aged care facility that is approved under the Aged Care Act 1997. The amendments propose to:

A. exempt the former home (principal home) of an aged care resident from the assets test where he or she is paying an accommodation charge and is renting their former home (principal home) to a third party (see Item 12);

B. exempt the former home (principal home) of a charge exempt resident who became a charge exempt resident before 1 July 1999 from the assets test where that person is renting their former home to a third party (see Item 21, new clause 17A); and

C. provide for exemptions under the income and assets tests to:

1. exempt the amount of a refunded aged care accommodation bond (or the proceeds of sale of a resident’s former home (principal home) in certain circumstances), where the bond was paid from 1 October until 5 November 1997 by a person receiving high level aged care (see Item 21, new clauses 12-16);

2. exempt the amount of a refunded aged care accommodation charge where the refund is made to a charge exempt resident. (This term applies to a person who, having been a nursing home resident at the end of 30 September 1997 and therefore not required to pay an accommodation bond or charge, subsequently moves to another facility. If, as a result, apart from paragraph 57A-2(1)(b) of the Aged Care Act 1997, the person would then have been required to pay an accommodation charge for entry to the new facility, that person is a charge exempt resident. (See Item 6, and Item 21, new clauses 17B - 17E.)

3. exempt from the income test any amounts that could subsequently be derived from those amounts (in accordance with the deeming provisions), if the capital amount was invested (see Item 21, new clauses 14 and 17C);

4. exempt any rental income that a person (or the person's partner) is receiving from their former home (principal home) if the person (or the person's partner) is paying an accommodation charge (see Item 5);

5. exempt any rental income that a person who became a charge exempt resident before 1 July 1999 (or that person's partner) is receiving from their former home (principal home). (See Item 21, new clause 17A.)
ITEMS 1, 8, 13, 14, 15, 16 and 17

These items all make minor amendments to references in the VEA to the definition of “principal home”, as a consequence of the new subsection being added by Item 12.

ITEM 2  Section 5 (index)

This item adds “accommodation bond” “accommodation charge” and "exempt lump sum" to the defined terms listed in the index of definitions.

ITEM 3 Subsection 5H(1) (at the end of the definition of ordinary income)

This item amends the definition of "ordinary income" by excluding an exempt lump sum from the definition (see item 6 below).

ITEM 4 Subsection 5H(1) (at the end of note 1 to the definition of ordinary income

This item inserts a cross-reference to the new definition of "exempt lump sum".

ITEM 5 After Paragraph 5H(8)(nb)

This item inserts a new paragraph 5H(8)(nc) to provide that any rental income from a person’s principal home is to be excluded from the service pension and income support supplement income tests (and hence the income test applicable to aged fees under the Aged Care Act 1997) if:

- the person or the person's partner is accruing a liability to pay an accommodation charge; and
- the person, or the person's partner, receives rent from a third person in respect of their principal home.

This new paragraph provides that any rental income exempted from the income test will be exempt for both the person liable to pay the accommodation charge and the person's partner (if applicable). The exemption of the rental income will cease when the person ceases to be liable to pay an accommodation charge.

This amendment, together with the new subsection 5L(6A) (item 12 below), allows pensioners flexibility in how they arrange their affairs to pay an accommodation charge and ensures that these arrangements neither reduce their income support payments nor increase their daily fees.

ITEM 6 At the end of section 5H

This item introduces a new provision that will allow the Repatriation Commission to determine that certain one-off payments are exempt from the income test. Such a determination may be made with respect to individual amounts or in relation to classes of amounts, but not if the amount is a periodic amount of maintenance income (subsection...
5K(1A) of the VEA refers), nor if the amount is income from remunerative work undertaken by that person. This will allow the Commission to declare that refunded accommodation bonds and accommodation charges and, in some cases, the proceeds of the sale of a person's principal home are exempt lump sums. In other words, it will allow the Commission to declare that the refunded exempt bond amount, as defined in new clause 16 of Schedule 5 or a refunded accommodation charge is exempt from the income test. It will also allow determinations to be made in relation to other lump sum payments, such as lottery wins and one-off gifts. This provision mirrors a provision (subsection 8(11)) in the Social Security Act 1991.

ITEMS 7 & 11

These items draw the reader’s attention to the new location of the definitions of an accommodation bond and an accommodation charge.

ITEMS 9 & 10 Subsection 5L(1)

These items insert definitions for “accommodation bond” and “accommodation charge” in the subsection 5L(1) of the VEA. Both terms have the same meaning as within the Aged Care Act 1997: "Accommodation bond" is presently defined in that Act and a definition for "accommodation charge" will be inserted into that Act by Schedule 1 of this Bill.

ITEM 12 After subsection 5L(6)

This item inserts a new subsection 5L(6A) to extend the existing provisions that provide for a residence to be deemed to be a person’s "principal home" even though a person is absent from the home.

The former home of an aged care resident is taken to be the person's principal home under the VEA (and therefore not assessed under the assets test) for a period of two years, from the date the person started to be either an aged care resident or in a care situation (such as community care): subsection 5L(7) of the VEA refers. These provisions will continue to apply where appropriate.

New subsection 5L(6A) provides that the former home of a person will be taken to be the principal home of the person and the person’s partner during any period where:

- the person left that residence to go into a care situation or to be an aged care resident (defined in section 5NC of the VEA); and

- the person is accruing a liability to pay an accommodation charge because they are receiving high level (nursing home) care, or would be accruing such a liability except for the imposition of sanctions on the provider; and

- is receiving rent for their former home (principal home) from a third party.

Unlike subsection 5L(7), this subsection does not require continuity from when the person left his or her principal home and when he or she became liable to pay an accommodation
charge. If a person leaves their principal home and does not move immediately into high
level aged care, but rather moves into some other form of care situation, then under this new
subsection, the previous residence will regain the status of principal home when the person
becomes liable to pay an accommodation charge (or would be liable except for sanctions) and
is receiving rental income from that property. It is therefore possible that:

. the principal home status of a former residence may overlap under subsections 5L(7)
   and 5L(6A); or

. there may be a period between the application of the 2 year principal home status
   under subsection 5L(7) and the application of subsection 5L(6A) when the former
   residence does not have principal home status and therefore is not exempt from the
   pension assets test.

The element of continuity in subsection 5L(6A) is that the person must have continued in
some form of care arrangement after leaving his or her principal home, up until he or she
became liable to pay the accommodation charge (or would be liable except for sanctions),
and is receiving rent from the former home (principal home). Generally this special principal
home status for the former residence will extend for as long as a person is liable to pay an
accommodation charge under the Aged Care Act (Division 57A to be inserted by Schedule 1
of this Bill). Typically, this will be for five years since the charge is payable for that period.

New paragraph 5L(6A)(b) provides that, if a premises is taken to be a person's principal
home because of the operation of paragraph 5L(6A)(a), the premises is also taken to be the
principal home of the person’s partner.

This subsection is not intended to provide a person, or the person’s partner, with more than
one principal home at the same time.

ITEM 18 After subparagraph 46A(b)(ii)

This item includes in the list of exemptions from the payments covered by section 46A any
amounts determined to be an exempt lump sum under the new subsection 5(12), being added
by Item 6. This means that the amount of the exempt lump sum is not taken to be a person’s
income for the 12 months from the day the person became entitled to receive the amount.

ITEM 19 At the end of section 52

This item adds a note to section 52, which deals with certain assets to be disregarded in
calculating the value of a person’s assets, to inform the reader that the total value of the
person’s assets may be reduced if the person has an exempt bond amount under the new
clause 15 of Schedule 5 or a refunded amount under the new clause 17D of Schedule 5 (to be
inserted by item 20 of this Schedule).
ITEM 20 Before clause 1 of Schedule 5

This item inserts a sub-heading, Part 1, into Schedule 5 under which clauses 1 to 11 in Schedule 5 will be grouped. This is a minor technical amendment to improve the structure of this Schedule.

ITEM 21 Before Part 3 of Schedule 5

This item inserts new Parts 2 and 2A, into Schedule 5 of the VEA, Saving and Transitional Provisions, to provide special provisions for:

- aged care residents who entered high level (nursing home) care in the period 1 October to 5 November 1997 and who paid an accommodation bond or sold their principal home on or before 5 November 1997 in order to be able to pay an accommodation bond. (On 6th November 1997 the accommodation bond scheme was abolished for aged care residents in high level care and replaced with an accommodation charge); and

- those residents who occupied an approved nursing home bed in a nursing home on 30 September 1997, who subsequently moved to another nursing home and started paying an accommodation charge. Charge exempt residents (see new section 44-8B of the Aged Care Act 1997), will no longer be required to pay an accommodation charge and any accommodation charges which have been paid will be refunded.

New Clause 12 of Schedule 5 sets out an overview of new Part 2. The new Part will apply to two classes of people.

The first class are those people who became liable to pay for an accommodation bond between 1 October 1997 and 5 November 1997, would have been liable to pay an accommodation charge had that been in place, and who subsequently agreed to switch to an accommodation charge.

The accommodation bond scheme was abolished from 6 November 1997 and was replaced with the accommodation charge scheme. If a person paid an accommodation bond, the person or the person’s partner can request that the nursing home refund the bond. If the bond is refunded, the person would then, in lieu of the accommodation bond, pay an accommodation charge. To ensure that persons who purchased an accommodation bond are not disadvantaged, the refunded bond will be exempted from the income and assets test.

The second class of people are those people who either sold their home, or became liable to sell their home (that is, there was an exchange of contracts), prior to 6 November 1997, and the Commission is satisfied that the home was sold to purchase an accommodation bond.

This amendment will ensure that certain amounts relating to the amount of the bond refunded or the proceeds of the sale are excluded from the income and assets tests applied to the assessment of the person's (and the person's partner's) service pension or income support supplement.
It is intended that the beneficial income treatment will also cover the partners of the recipient.

New Clause 13 of Schedule 5 sets out the scope of new Part 2.

New subclauses 13(1) and (2) provide that the Part applies to a person who:

- between 1 October 1997 and 5 November 1997 became liable to pay an accommodation bond and the person later made an agreement to replace the liability for the accommodation bond with a liability to pay an accommodation charge and an accommodation charge would have been payable for the entry had the person entered residential care after 5 November 1997; or

- on or before 5 November 1997, sold his or her "principal home" (as defined in subsection 5L(7)) for the sole or principal purpose of raising money to pay an accommodation bond and an accommodation charge would have been payable for the entry had the person entered residential care after 5 November 1997.

The requirement that an accommodation charge would have been payable, had the person entered residential care after 5 November 1997, ensures that the provision applies only to those persons who paid an accommodation bond to enter a nursing home level of care.

New subclause 13(3) provides that the Division applies to the partner of a person who sold a home or purchased an accommodation bond in the above circumstances, even if the person is now deceased. This subsection reflects the fact that the partner was also likely to be affected by the above situations.

New subclause 13(4) clarifies at what point in time a person is taken to have sold his or her home. That time is when the person is under a legal obligation to transfer the title of the property to the buyer. That is, if contracts had been exchanged as at 5 November 1997, the person would be obligated to continue the sale.

New clause 14 provides for a person's ordinary income, for the purposes of the income test, to be reduced by an amount that could subsequently be deemed from the refunded bond or the proceeds of sale of a home if the amount were a financial asset of the person. This will ensure that a person is not penalised by having the service pension or income support supplement payment reduced because of deemed income from a banked or invested refunded bond or proceeds of sale. New clause 14 achieves this result by providing that a person's (and the person's partner's) ordinary income will be reduced by an amount equal to the amount of income that would be calculated if the deeming rules were applied to a capital amount equal to the amount of the refunded bond (or the proceeds of sale of the home, if relevant).

New clause 15 provides that, if a person has an exempt bond amount (as calculated under new clause 16), then the person's assets are to be reduced by an amount equal to the exempt bond amount. If a person disposes of the exempt bond amount for no or inadequate consideration, the usual provisions relating to deprivation of assets will apply.
New clause 16 provides a method for calculating the reduction in a person's income and assets (the *exempt bond amount*) where:

- a person receives a refunded accommodation bond or proceeds from the sale of a house; and
- the person satisfies the criteria in clause 13 (see above).

New subclause 16(2) provides for a situation where a person is covered by subclause 13(1) only. That is, the situation where a person:

- became liable to pay an accommodation bond during the period 1 October 1997 until the end of 5 November 1997; and
- later entered into an agreement to exchange the bond for an accommodation charge; and
- would have been liable to pay an accommodation charge had the person entered residential care after 5 November 1997.

In this case, the person's *exempt bond amount* is equal to the amount of the accommodation bond that is refunded to the person under that agreement.

New subclause 16(3) provides for the situation where a person is covered by subclause 13(2) only. That is, the situation where the Commission is satisfied that a person sold his or her home for the sole or principal purpose of raising money to pay for an accommodation charge and an accommodation charge would have been payable had the person entered residential care after 5 November 1997.

In this case the person's *exempt bond amount* is equal to the net proceeds of the sale of the house. That is, the gross proceeds of the sale less any costs associated with the sale and less debt of the person or the person's partner that was secured by mortgage over the property at the time of sale.

New subclause 16(4) provides that if both subclauses 13(1) and 13(2) apply to a person, then the person's *exempt bond amount* is equal to the greater of the two amounts. This subsection will ensure that the person gains the maximum benefit.

New subclause 16(5) provides that a partner of a person to whom subclause 13(1) or 13(2) applies, or to whom either provision applied before the person died, has an *exempt bond amount*, of the same value as the *exempt bond amount* worked out for the person under subclause 16(2), 16(3) or 16(4). This ensures that the exemption continue to apply to the assessment of the income support payments to the partner after the person has died. If the person is not deceased, then new subclause will operate.

New subclause 16(6) provides that, if the person is a member of a couple and is not deceased then the amount of the person (and the person's partner's) *exempt bond amount* is half of what it otherwise would be. This provision means that the value of the exemption is evenly divided between each member of a couple. The effect of this subclause is consistent with the
usual apportionment of assets between each member of a couple - see point SCH6-F2 of the VEA. It will mean that if, for example, a person has an *exempt bond amount* of $10 000, new subclause 16(5) will attribute the person's partner with an *exempt bond amount* of $10 000 and new subclause 16(6) will operate to halve each of these amounts to $5 000.

If a person is single (including a person whose partner is now deceased), then the person would have the full amount of the *exempt bond amount* assessed against the value of their assets.

New Part 2A will apply to charge exempt residents. A *charge exempt resident* is a person who, having been the occupier of an approved nursing home bed at the end of 30 September 1997 and therefore not required to pay an accommodation bond or charge, subsequently moves to another facility and, as a result, apart from paragraph 57A-2(1)(b) of the *Aged Care Act 1997*, the person would then have been required to pay an accommodation charge for entry to the new facility.

New clause 17 specifies that the term *charge exempt resident* as used in Part 2A has the same meaning as in the *Aged Care Act 1997*.

New subclause 17A(1) specifies that clause 17A only applies if a person first became a *charge exempt resident* before 1 July 1999.

New subclause 17A(2) provides that if, between the time this person first became a *charge exempt resident* and 1 July 1999, that person (or the person's partner) earned, derived or received any rent from his or her principal home, then while he or she is a *charge exempt resident*, the amount of that rent is to be excluded from income used to assess service pension or income support supplement of the person, or the person's partner. This exemption of rental income will cease when the person ceases to be a *charge exempt resident*.

New subclause 17A(3) relates to the principal home, for the purposes of the VEA, of a person who first became a *charge exempt resident* before 1 July 1999. If the Repatriation Commission is satisfied that this person left his or her principal home for the purpose of going into a care situation or to becoming an aged care resident, and if at any time between the time of leaving the residence and 1 July 1999 the person (or the person's partner) received rent from another person for the residence, then the residence continues to be the person's principal home during any period the person is both a *charge exempt resident* and receiving that rent.

New paragraph (b) provides that whenever paragraph (a) operates in relation to a person, then the residence can also be taken to be the principal home of the partner of that person.

New clause 17B prevents any flow-on effect on the income or assets tests from a refunded accommodation charge. This result is achieved through the operation of new clauses 17C and 17D.

New clause 17C operates to reduce the income deemed from a person's financial assets in respect of refunded accommodation charges in the same way new clause 14 (described above) operates in respect of an *exempt bond amount*.
New clause 17D operates to reduce the total value of a person's assets by the amount of the refunded accommodation charge in the same way as new clause 15 (described above) applies in respect of an exempt bond amount.

New subclause 17B(3) explains that new clauses 17C and 17D do not apply to refunds of accommodation charge if the refunds were paid to the person's estate or to any other person; the beneficial arrangements are not transferable.

New clause 17E specifies that new Part 2A applies to a person who is a charge exempt resident at any time, irrespective of whether they are a charge exempt resident before or after the commencement of this Part.
ITEMS 1 to 4

Items 1 to 4 of Schedule 2 of the Veterans’ Affairs Legislation Amendment (Budget & Simplification Measures) Act 1997 attempted to amend references in the Aged Care Act 1997 to Rate Calculators in the Veterans’ Entitlements Act 1986, in order to reflect the new location of those Rate Calculators from 1 January 1998. The amendments in the Veterans’ Affairs Legislation Amendment (Budget & Simplification Measures) Act 1997 were unsuccessful because they referred to the wrong subsections in the Aged Care Act 1997.

These Items are minor technical amendment to rectify the misdescribed amendments and ensure the correct references are contained in the Aged Care Act 1997.
SCHEDULE 5 - AGED CARE (CONSEQUENTIAL PROVISIONS) ACT 1997

This Schedule amends the Aged Care (Consequential Provisions) Act 1997 to remedy unintended effects and oversights in that Act.

ITEMS 1 and 2

These Items add new Clauses 78A and 81A at the end of Division 1 and Division 2 of Part 4.4, covering consequences of non-compliance. These Clauses provide that where a provider of a nursing home or hostel has failed to comply with conditions prior to the commencement of the Aged Care Act 1997 but no declaration against that failure had been made, then action can now be taken under Part 4.4 of the Aged Care Act 1997. It has always been the stated policy intention to take firm action against those providers who do not meet their obligations and responsibilities and this provision remedies a technical deficit.

ITEMS 3 AND 4

These Items add new Clauses 45A and 49A to Schedule 1. These clauses address an unintended consequence of the transitional provisions relating to additional recurrent funding for new and rebuilt and upgraded nursing homes.

Effectively these clauses reverse the repeal of Subsection 52C(3) and Subsection 58CA(3) of the National Health Act 1953. This will restore the power to extend the time for approvals-in-principle for additional recurrent funding where construction has not been commenced within the time. The withdrawal of this power was never intended and would have had unfair consequences.