

**Managing Prudential Risk in Residential Aged Care  
Discussion Paper**

**Excerpts from the Aged Care Act 1997  
including  
Prudential Standards and Permitted Uses**

The Managing Prudential Risk in Residential Aged Care discussion paper contains references to additional information on prudential and related legislation. To assist the reader, relevant excerpts from the *Aged Care Act 1997* and related Fees and Payment and Accountability Principles have been set out within this document.

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## **Fees and Payments Principles 2014 (No. 2)**

made under section 96-1 of the *Aged Care Act 1997*

### **Compilation No. 3**

**Compilation date:** 13 September 2017

**Includes amendments up to:** F2017L01163

**Registered:** 13 September 2017

### ***Part 5-Prudential Standards***

Division 1—General

#### **41 Purpose of this Part**

- (1) For subsection 52M-1(2) of the Act, this Part sets out Prudential Standards providing for the following:
  - (a) protection of refundable deposit balances, accommodation bond balances and entry contribution balances of care recipients (the Liquidity Standard—see Division 2);
  - (b) sound financial management of approved providers (the Records Standard—see Division 3);
  - (c) arrangements by approved providers for the management of refundable deposit balances and accommodation bond balances (the Governance Standard—see Division 4);
  - (d) provision of information about the financial management of approved providers (the Disclosure Standard—see Division 5).

#### **42 Application of this Part**

This Part applies to an approved provider of a residential care service or a flexible care service:

- (a) if, on or after 1 July 2014, a refundable deposit is paid, wholly or partly as a lump sum, for entry to the service for the provision of residential care or flexible care; or
- (b) if, on or after 1 July 2006, an accommodation bond is, or was, paid, wholly or partly as a lump sum, for entry to the service for the provision of residential care or flexible care; or
- (c) if:
  - (i) before 1 July 2006, an accommodation bond or an entry contribution was paid, wholly or partly as a lump sum, for entry to the service for the provision of residential care or flexible care on or after that date; and
  - (ii) as at 1 July 2006, the accommodation bond balance or entry contribution balance had not been refunded.

## ***Division 2—Liquidity Standard***

### **43 Requirement for sufficient liquidity**

If an approved provider holds one or more refundable deposit balances, accommodation bond balances or entry contribution balances, the approved provider must maintain sufficient liquidity to ensure that the approved provider can refund, in accordance with the Act and these principles, any of those balances that can be expected to fall due in the following 12 months.

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

- (1) An approved provider that holds one or more refundable deposit balances, accommodation bond balances or entry contribution balances must implement and maintain a written liquidity management strategy that sets out:
  - (a) the amount (expressed as an amount of whole dollars) required to ensure that the approved provider has sufficient liquidity for the purposes of section 43 (the *minimum level of liquidity*); and
  - (b) the factors that the approved provider had regard to in determining the minimum level of liquidity; and
  - (c) the form in which the approved provider will maintain the minimum level of liquidity.
- (2) An approved provider must:
  - (a) maintain, in the form specified in the provider's liquidity management strategy, the minimum level of liquidity; and
  - (b) ensure that the provider's liquidity management strategy is kept up-to-date and complies with the requirements set out in subsection (1); and
  - (c) modify, or replace, its liquidity management strategy if the provider becomes aware that the strategy no longer complies with the requirements set out in subsection (1).

## ***Division 3—Records Standard***

### **45 Refundable deposit register**

An approved provider must establish and maintain a register (the *refundable deposit register*) that includes:

- (a) the information in relation to refundable deposits, accommodation bonds and entry contributions as provided by this Division; and
- (b) any other information in relation to refundable deposits, accommodation bonds or entry contributions determined, by legislative instrument, by the Secretary.

## 46 Information about refundable deposits

### *Refundable deposits paid and refundable deposit balances held*

- (1) The refundable deposit register must include, but is not limited to, the following information for each care recipient in respect of whom a refundable deposit is paid to the approved provider, or in respect of whom the approved provider holds a refundable deposit balance:
  - (a) the name of the care recipient;
  - (b) the Resident Identification Number allocated by the Department in respect of the care recipient;
  - (c) the date on which the care recipient entered the aged care service through which the care recipient is provided with care by the approved provider;
  - (d) the date on which the whole or each part of a refundable deposit paid by lump sum was paid for entry to the aged care service referred to in paragraph (c);
  - (e) the amount of each payment referred to in paragraph (d);
  - (f) the amount of any deduction made from the refundable deposit;
  - (g) the date of any deduction referred to in paragraph (f);
  - (h) the reason for any deduction referred to in paragraph (f);
  - (i) the refundable deposit balance as at the end of each calendar month during which the approved provider held a refundable deposit balance in respect of the care recipient;
  - (j) any amount refunded to the care recipient under section 75;
  - (k) the date of any refund under section 75.

### *Refundable deposit balances refunded*

- (2) The refundable deposit register must include, but is not limited to, the following information for each care recipient in respect of whom a refundable deposit balance is refunded:
  - (a) if the refundable deposit balance was refunded because the care recipient died:
    - (i) the date on which the care recipient died; and
    - (ii) if applicable, the date on which the approved provider is shown the probate of the will of the care recipient or letters of administration of the estate of the care recipient;
  - (b) if the refundable deposit balance was refunded because the care recipient ceased to be provided with care through the aged care service—the date on which the care recipient ceased to be provided with that care;
  - (c) if paragraph (b) applies and the care recipient notified the approved provider, before the date referred to in that paragraph, that the care recipient intended to enter another aged care service to receive residential care—the date of the notification;
  - (e) the date on which, or by which, the approved provider was required to refund the refundable deposit balance to the care recipient, worked out in accordance with Division 52P of the Act;
  - (f) the date on which the refundable deposit balance was refunded;

- (g) the amount of the refundable deposit balance refunded;
- (h) the amount (if any) of base interest paid under Division 1 of Part 7 and the date when the interest was paid;
- (i) the amount (if any) of maximum permissible interest paid under Division 1 of Part 7 and the date when the maximum permissible interest was paid.

#### **47 Information about accommodation bonds**

##### *Accommodation bonds paid and accommodation bond balances held*

- (1) The refundable deposit register must include, but is not limited to, the following information for each care recipient in respect of whom an accommodation bond is paid to the approved provider on or after 1 July 2006, or in respect of whom the approved provider holds an accommodation bond balance on or after that date:
  - (a) the name of the care recipient;
  - (b) the Resident Identification Number allocated by the Department in respect of the care recipient;
  - (c) the date on which the care recipient entered the aged care service through which the care recipient is provided with care by the approved provider on or after 1 July 2006;
  - (d) if, immediately before entering the aged care service referred to in paragraph (c), the care recipient was provided with care through an aged care service (the *original aged care service*), and an accommodation bond was paid for the care recipient's entry to the original aged care service—the date on which the care recipient entered the original aged care service;
  - (e) the date on which the whole or each part of an accommodation bond paid by lump sum was paid for entry to the aged care service referred to in paragraph (c);
  - (f) the amount of each payment referred to in paragraph (e);
  - (g) the amount of any deduction made from the accommodation bond on or after 1 July 2006;
  - (h) the date of any deduction referred to in paragraph (g);
  - (i) the reason for any deduction referred to in paragraph (g);
  - (j) the accommodation bond balance as at 1 July 2006 (if applicable);
  - (k) the accommodation bond balance as at the end of each calendar month commencing on or after 1 July 2006 during which the approved provider held an accommodation bond balance in respect of the care recipient.

##### *Accommodation bond balances refunded*

- (2) The refundable deposit register must include, but is not limited to, the following information for each care recipient in respect of whom an accommodation bond balance is refunded on or after 1 July 2006:
  - (a) if the accommodation bond balance was refunded because the care recipient died:
    - (i) the date on which the care recipient died; and

- (ii) if applicable, the date on which the approved provider is shown the probate of the will of the care recipient or letters of administration of the estate of the care recipient;
  - (b) if the accommodation bond balance was refunded because the care recipient ceased to be provided with care through the aged care service—the date on which the care recipient ceased to be provided with that care;
  - (c) if paragraph (b) applies and the care recipient notified the approved provider, before the date referred to in that paragraph, that the care recipient intended to enter another aged care service to receive residential care—the date of the notification;
  - (e) the date on which, or by which, the approved provider was required to refund the accommodation bond balance to the care recipient, worked out, subject to subsection (3), in accordance with Division 52P of the Act;
  - (f) the date on which the accommodation bond balance was refunded;
  - (g) the amount of the accommodation bond balance refunded;
  - (h) the amount (if any) of base interest paid under Division 1 of Part 7 and the date when the interest was paid;
  - (i) the amount (if any) of maximum permissible interest paid under Division 1 of Part 7 and the date when the maximum permissible interest was paid.
- (3) For paragraph (2)(e), if an event referred to in paragraph 57-21(1)(a), (b) or (c) of the Act, as in force immediately before 31 May 2006, occurred before 31 May 2006, the date on which, or by which, the approved provider is required to refund the accommodation bond balance to the care recipient is worked out in accordance with Subdivision 57-G of the Act, as in force immediately before 31 May 2006.

#### **48 Information about entry contributions**

##### *Entry contributions paid and entry contribution balances held*

- (1) The refundable deposit register must include, but is not limited to, the following information for each care recipient in respect of whom the approved provider holds an entry contribution balance on or after 1 July 2006:
- (a) the name of the care recipient;
  - (b) the Resident Identification Number allocated by the Department in respect of the care recipient;
  - (c) the date on which the entry contribution was paid;
  - (d) the amount of the entry contribution;
  - (e) the entry contribution balance as at the end of each calendar month commencing on or after 1 July 2006 during which the approved provider held an entry contribution balance in respect of the care recipient.

##### *Entry contributions balances refunded*

- (2) The refundable deposit register must include, but is not limited to, the following information for each care recipient in respect of whom an entry contribution balance is refunded on or after 1 July 2006:

- (a) the date on which the care recipient ceased to be provided with care through the aged care service;
- (b) the date on which the approved provider was required to refund the entry contribution balance to the care recipient, worked out in accordance with the formal agreement applying in respect of the entry contribution balance;
- (c) the date on which the entry contribution balance was refunded;
- (d) the amount of the entry contribution balance refunded;
- (e) the amount (if any) of maximum permissible interest paid under Division 2 of Part 7 and the date when the maximum permissible interest was paid.

#### ***Division 4—Governance Standard***

##### **49 Requirement for governance system**

- (1) An approved provider that holds one or more refundable deposit balances or accommodation bond balances must implement and maintain a governance system that ensures that those balances:
  - (a) are used only for permitted uses; and
  - (b) are refunded to care recipients in accordance with section 52P-1 of the Act.

Note: See Division 52N of the Act and Part 6 of these principles in relation to permitted uses of refundable deposit balances and accommodation bond balances.

- (2) Without limiting the matters that an approved provider's governance system may deal with, the system must provide for the following:
  - (a) allocating responsibilities to the key personnel of the approved provider in relation to the management of refundable deposit balances or accommodation bond balances held by the provider;
  - (b) monitoring and controlling any delegation or outsourcing of the allocated responsibilities;
  - (c) reporting mechanisms for the allocated responsibilities that ensure that the key personnel who are responsible for the executive decisions of the approved provider can effectively monitor and control the use of refundable deposit balances and accommodation bond balances;
  - (d) ensuring that the key personnel who are allocated responsibilities, and persons to whom responsibilities are delegated or outsourced, are aware of the requirements of the Act and these principles in relation to refundable deposits and accommodation bonds;
  - (e) detecting, recording and responding to any failure to comply with the requirements referred to in paragraph (d).
- (3) An approved provider must:
  - (a) keep written documentation describing the provider's governance system; and
  - (b) ensure that the written documentation of the provider's governance system is up-to-date; and



- (c) modify or replace its governance system if the provider becomes aware that the system no longer complies with the requirements set out in subsections (1) and (2).

## **50 Requirement for investment management strategy**

- (1) This section applies to an approved provider that invests a refundable deposit or an accommodation bond in:
  - (a) a financial product covered by any of paragraphs 52N-1(3)(b) to (e) of the Act;
  - (b) a fund, but not a controlling entity of a fund, listed in item 2 of the first Schedule to Banking exemption No. 1 of 2013 made under the *Banking Act 1959*.

Note: Financial products for paragraph 52N-1(3)(e) of the Act are specified in section 64 of these principles.

- (2) The approved provider must implement and maintain a written investment management strategy that sets out the following:
  - (a) the approved provider's investment objectives;
  - (b) the approved provider's assessment of the level of risk to the provider's ability to refund refundable deposit balances or accommodation bond balances in accordance with the Act;
  - (c) a strategy for achieving the investment objectives while ensuring that the approved provider is able to refund refundable deposit balances and accommodation bond balances in accordance with the Act;
  - (d) the asset classes the approved provider may invest in;
  - (e) investment limits for each asset class that are consistent with the investment objectives;
  - (f) key personnel with appropriate skills and experience who are responsible for implementing the investment management strategy.
- (3) The investment management strategy must be approved by the key personnel who are responsible for the executive decisions of the approved provider.
- (4) The approved provider must:
  - (a) ensure that any investment of refundable deposits or accommodation bonds is in accordance with the provider's investment management strategy; and
  - (b) ensure that the provider's investment management strategy is kept up-to-date and complies with the requirements set out in subsection (2); and
  - (c) modify, or replace, its investment management strategy if the provider becomes aware that the investment management strategy no longer complies with the requirements set out in subsection (2).

## **Division 5—Disclosure Standard**

### **51 Annual prudential compliance statement**

- (1) An approved provider must give the Secretary a statement (the *annual prudential compliance statement*) for a financial year for the approved provider that includes the following:
  - (a) information about refundable deposits and refundable deposit balances referred to in section 52;
  - (b) information about accommodation bonds and accommodation bond balances referred to in section 53;
  - (c) information about entry contributions and entry contribution balances referred to in section 54;
  - (d) the statements and other information referred to in section 55;
  - (e) any other statements and information determined, by legislative instrument, by the Secretary.
  
- (2) An annual prudential compliance statement for a financial year for an approved provider must:
  - (a) be in writing; and
  - (b) be in a form approved by the Secretary; and
  - (c) not contain false or misleading information; and
  - (d) if the approved provider is required to prepare an aged care financial report for the financial year—be included in the aged care financial report for the approved provider for the financial year; and
  - (e) if paragraph (d) does not apply to the approved provider:
    - (i) be signed by a person who is one of the approved provider’s key personnel and is authorised by the approved provider to sign the statement; and
    - (ii) be given to the Secretary within 4 months after the end of the financial year for the approved provider.

### **52 Information about refundable deposits that must be included in annual prudential compliance statement**

The information about refundable deposits and refundable deposit balances that must be included in an approved provider’s annual prudential compliance statement for a financial year is as follows:

- (a) the total number of refundable deposit balances held by the approved provider as at the end of the financial year;
- (b) the total value of refundable deposit balances held by the approved provider as at the end of the financial year;
- (c) the total value of refundable deposits received by the approved provider during the financial year;
- (d) the total amount deducted by the approved provider during the financial year from refundable deposit balances;
- (e) the total amount deducted by the approved provider during the financial year from refundable deposits that were received during the year;

- (f) the total value of refundable deposit balances refunded by the approved provider during the financial year;
- (g) if, during the financial year, refundable deposit balances were not refunded in accordance with subsection 52P-1(4) of the Act (other than a refundable deposit balance in relation to which the approved provider has made an agreement as referred to in subsection 52P-4(2) of the Act)—the following information:
  - (i) the total number of refundable deposit balances that were not refunded in accordance with subsection 52P-1(4) of the Act;
  - (ii) the reason or reasons for the delay in refunding the refundable deposit balances;
  - (iii) in respect of each reason provided—the total number of instances of delay attributable to the reason;
- (h) if, for the whole or a part of the financial year, the approved provider was not permitted to charge a refundable deposit for entry by a care recipient to any aged care service that the approved provider is responsible for operating:
  - (i) the period or periods during which the approved provider was not permitted to charge a refundable deposit; and
  - (ii) the aged care service in respect of which each period specified applies;
- (i) the use of refundable deposits by the approved provider during the financial year;
- (j) whether any use of refundable deposits by the approved provider during the financial year was not permitted under section 52N-1 of the Act;
- (k) the total amount expended by the approved provider (whether or not obtained from refundable deposits) during the financial year on capital expenditure for which use of a refundable deposit was permitted under section 52N-1 of the Act;
- (l) the total amount expended by the approved provider (whether or not obtained from refundable deposits) during the financial year on investment in financial products for which use of a refundable deposit was permitted under section 52N-1 of the Act;
- (m) the total amount expended by the approved provider (whether or not obtained from refundable deposits) during the financial year on loans for which use of a refundable deposit was permitted under section 52N-1 of the Act;
- (n) the total amount expended by the approved provider (whether or not obtained from refundable deposits) during the financial year on repaying debt accrued for the purposes of:
  - (i) capital expenditure of the kind described in paragraph (k); or
  - (ii) refunding refundable deposit balances;
- (o) the total amount expended by the approved provider (whether or not obtained from refundable deposits) during the financial year on repaying debt that accrued before 1 October 2011 if the debt was accrued for the purpose of providing aged care to care recipients;
- (p) the total amount expended by the approved provider (whether or not obtained from refundable deposits) during the financial year on each of

the uses of refundable deposits permitted under section 63 of these principles;

- (q) the amount that has been returned to the approved provider during the financial year from the sale, disposal or redemption of financial products covered by paragraphs 52N-1(3)(b) to (e) of the Act, or paragraph 63(c) of these principles, that the approved provider invested in after 1 October 2011, whether or not the investment was obtained from refundable deposits.

### **53 Information about accommodation bonds that must be included in annual prudential compliance statement**

The information about accommodation bonds and accommodation bond balances that must be included in an approved provider's annual prudential compliance statement for a financial year is as follows:

- (a) the total number of accommodation bond balances held by the approved provider as at the end of the financial year;
- (b) the total value of accommodation bond balances held by the approved provider as at the end of the financial year;
- (c) the total value of accommodation bonds received by the approved provider during the financial year;
- (d) the total amount deducted by the approved provider during the financial year from accommodation bond balances in accordance with section 57-19 of the *Aged Care (Transitional Provisions) Act 1997*;
- (e) the total amount deducted by the approved provider during the financial year, in accordance with section 57-19 of the *Aged Care (Transitional Provisions) Act 1997*, from accommodation bonds that were received during the year;
- (f) the total value of accommodation bond balances refunded by the approved provider during the financial year;
- (g) if, during the financial year, accommodation bond balances were not refunded in accordance with subsection 52P-1(4) of the Act (other than an accommodation bond balance in relation to which the approved provider has made an agreement as referred to in subsection 52P-4(2) of the Act)—the following information:
  - (i) the total number of accommodation bond balances that were not refunded in accordance with subsection 52P-1(4) of the Act;
  - (ii) the reason or reasons for the delay in refunding the accommodation bond balances;
  - (iii) in respect of each reason provided—the total number of instances of delay attributable to the reason;
- (h) if, for the whole or a part of the financial year, the approved provider was not permitted to charge an accommodation bond for entry by a care recipient to any aged care service that the approved provider is responsible for operating:
  - (i) the period or periods during which the approved provider was not permitted to charge an accommodation bond; and

- (ii) the aged care service in respect of which each period specified applies;
- (i) the use of accommodation bonds by the approved provider during the financial year;
- (j) whether any use of accommodation bonds by the approved provider during the financial year was not permitted under section 52N-1 of the Act;
- (k) the total amount expended by the approved provider (whether or not obtained from accommodation bonds) during the financial year on capital expenditure for which use of an accommodation bond was permitted under paragraph 52N-1(2)(a) of the Act;
- (l) the total amount expended by the approved provider (whether or not obtained from accommodation bonds) during the financial year on investment in financial products for which use of an accommodation bond was permitted under paragraph 52N-1(2)(b) of the Act;
- (m) the total amount expended by the approved provider (whether or not obtained from accommodation bonds) during the financial year on loans for which use of an accommodation bond was permitted under paragraph 52N-1(2)(c) of the Act;
- (n) the total amount expended by the approved provider (whether or not obtained from accommodation bonds) during the financial year on repaying debt accrued for the purposes of:
  - (i) capital expenditure of the kind described in paragraph (k); or
  - (ii) refunding accommodation bond balances;
- (o) the total amount expended by the approved provider (whether or not obtained from accommodation bonds) during the financial year on repaying debt that accrued before 1 October 2011 if the debt was accrued for the purpose of providing aged care to care recipients;
- (p) the total amount expended by the approved provider (whether or not obtained from accommodation bonds) during the financial year on each of the uses of accommodation bonds permitted under section 63 of these principles;
- (q) the amount that has been returned to the approved provider during the financial year from the sale, disposal or redemption of financial products covered by paragraphs 52N-1(3)(b) to (e) of the Act, or paragraph 63(c) of these principles, that the approved provider invested in after 1 October 2011, whether or not the investment was obtained from accommodation bonds.

#### **54 Information about entry contributions that must be included in annual prudential compliance statement**

The information about entry contributions and entry contribution balances that must be included in an approved provider's annual prudential compliance statement for a financial year is as follows:

- (a) the total number of entry contribution balances held by the approved provider as at the end of the financial year;

- (b) the total value of entry contribution balances held by the approved provider as at the end of the financial year;
- (c) the total value of entry contribution balances refunded by the approved provider during the financial year;
- (d) if, during the financial year, entry contribution balances were not refunded in accordance with an applicable formal agreement with a care recipient—the following information:
  - (i) the total number of entry contribution balances that were refunded after the last day for the entry contribution balances to be refunded under the formal agreement applying in respect of the relevant entry contribution balance;
  - (ii) the reason or reasons for the delay in refunding the entry contribution balances;
  - (iii) in respect of each reason provided—the total number of instances of delay attributable to the reason.

### **55 Statement and other information that must be included in annual prudential compliance statement**

The statements and other information that must be included in an approved provider's annual prudential compliance statement for a financial year are as follows:

- (a) a statement about whether the approved provider has, during the financial year, complied with the following:
  - (i) the Liquidity Standard in Division 2;
  - (ii) the Records Standard in Division 3;
  - (iii) the Governance Standard in Division 4;
  - (iv) the other provisions of the Disclosure Standard in this Division;
  - (v) paragraph 57-2(1)(e) of the *Aged Care (Transitional Provisions) Act 1997* and subsection 52F-2(1) and sections 52P-1 and 52P-3 of the Act;
  - (vi) Division 1 of Part 4 of these principles (which deals with accommodation agreements);
  - (vii) paragraph 57-2(1)(k) of the *Aged Care (Transitional Provisions) Act 1997* and subsection 52N-1(1) of the Act;
- (b) if the approved provider has not complied with the Records Standard—a statement about why the approved provider has not complied with the Standard;
- (c) if the approved provider has not complied with the Governance Standard—a statement about why the approved provider has not complied with the Standard;
- (d) if the approved provider has not complied with the Disclosure Standard—the following information:
  - (i) the total number of occasions on which the approved provider did not comply with the Standard;
  - (ii) the reason or reasons for the approved provider's failure to comply with the Standard;

- (iii) in respect of each reason provided—the total number of occasions of non-compliance attributable to the reason;
- (e) the amount set out in the approved provider’s liquidity management strategy (implemented under Division 2), as at the end of the financial year, as the minimum level of liquidity;
- (f) an audit opinion, provided by the person who provides the independent audit referred to in section 56, on whether the approved provider has complied with this Part in the financial year.

Note: The annual prudential compliance statement must be supported by an independent audit (see section 56).

## **56 Audit of annual prudential compliance statement**

- (1) An annual prudential compliance statement must be supported by an independent audit provided by:
  - (a) a registered company auditor within the meaning of the *Corporations Act 2001*; or
  - (b) a person approved by the Secretary under subsection (2).
- (2) The Secretary may approve a person to audit an annual prudential compliance statement if the Secretary is satisfied that the person has appropriate qualifications and experience.

## **57 Disclosure to care recipients**

- (1) Within 7 days after an accommodation agreement is entered into between an approved provider of an aged care service and a care recipient, the approved provider must notify the care recipient, in writing, that the approved provider will give the care recipient, within 7 days of a request by the care recipient, the following information and documents:
  - (a) a summary of the permitted uses for which refundable deposits and accommodation bonds have been used by the approved provider during the previous financial year;
  - (b) information about whether the approved provider has, during the previous financial year, complied with sections 52M-1 and 52N-1 of the Act;
  - (c) information about:
    - (i) the number (if any) of refundable deposit balances or accommodation bond balances that, in the previous financial year, were not refunded in accordance with subsection 52P-1(4) of the Act; and
    - (ii) the number (if any) of entry contribution balances that, in the previous financial year, were not refunded in accordance with a formal agreement;
  - (d) if the approved provider is investing refundable deposits or accommodation bonds in financial products covered by any of paragraphs 52N-1(3)(b) to (e) of the Act—the approved provider’s investment objectives and the asset classes the approved provider may invest in, as recorded in the approved provider’s investment management strategy implemented under section 50 of these principles;

- (e) a copy of the audit opinion referred to in paragraph 55(f) for the previous financial year;
  - (f) a copy of either:
    - (i) the most recent statement of the audited accounts in relation to the aged care service; or
    - (ii) if the aged care service is operated as part of a broader organisation—the most recent statement of the audited accounts of the organisation’s aged care component;
  - (g) a copy of the entry in the refundable deposit register that relates to the care recipient, as at the time of the request.
- (2) If a care recipient who has paid a refundable deposit, an accommodation bond or an entry contribution requests the approved provider of the service through which the care recipient is being provided with care to give the care recipient the information and documents referred to in subsection (1), the approved provider must give the care recipient the information and documents requested within 7 days after receiving the request.
- (3) Within 4 months after the end of each financial year for an approved provider, the approved provider must give each care recipient who has paid a refundable deposit, an accommodation bond or an entry contribution to the approved provider for entry to the aged care service operated by the approved provider:
- (a) a copy of the entry in the refundable deposit register that relates to the care recipient as at the end of the financial year; and
  - (b) a written statement that the approved provider will provide, within 7 days of a request by the care recipient, the information and documents referred to in subsection (1).

### **58 Disclosure to prospective care recipients**

Within 7 days of a request from a prospective care recipient (or a prospective care recipient’s representative), an approved provider must give the prospective care recipient (or the representative) the information and documents referred to in paragraphs 57(1)(a) to (f).

### **59 Determination by Secretary of different financial year for approved provider of eligible flexible care service**

- (1) An approved provider of an eligible flexible care service may apply to the Secretary to determine a period of 12 months, other than the period starting on 1 July, to be the approved provider’s financial year.

Note: An approved provider of a residential care service may apply to the Secretary, under section 32 of the *Accountability Principles 2014*, to determine a period of 12 months, other than the period starting on 1 July, to be the approved provider’s financial year.

- (2) If the Secretary receives an application from an approved provider for a determination under subsection (1), the Secretary must:
- (a) make, or refuse to make, the determination; and
  - (b) notify the approved provider, in writing, of the Secretary’s decision:



- (i) within 28 days; or
- (ii) if the Secretary has requested further information in relation to the application—within 28 days, excluding the period within which the information is requested and received.

Note: A decision to refuse to make a determination is a reviewable decision under section 60.

- (3) The Secretary may determine another period to be the approved provider's financial year under subsection (2) only if the Secretary is satisfied, on reasonable grounds, that it would be impracticable for the approved provider to comply with the requirements of this Division in relation to a period of 12 months starting on 1 July.
- (4) If the Secretary's decision is to refuse to make a determination for the approved provider under subsection (2), the Secretary must also give the approved provider a written statement of the reasons for the decision.

### **60 Reviewable decision**

- (1) A decision under subsection 59(2) to refuse to make a determination that a period of 12 months, other than the period starting on 1 July, be an approved provider's financial year is a reviewable decision under section 85-1 of the Act.
- (2) Part 6.1 of the Act applies to a reviewable decision mentioned in subsection (1) as if a reference in that Part to this Act included a reference to these principles.

## ***Part 6—Permitted uses of refundable deposits and accommodation bonds***

### **61 Purpose of this Part**

- (1) For section 52N-1 of the Act, this Part specifies uses for which an approved provider is permitted to use a refundable deposit or an accommodation bond.

### **62 Use for capital expenditure**

For paragraph 52N-1(2)(a) of the Act, a refundable deposit or an accommodation bond is permitted to be used for any of the following kinds of capital expenditure (being expenditure that is reasonable in the circumstances):

- (a) expenditure to acquire land on which are, or are to be built, the premises needed for providing residential care or flexible care;
- (b) expenditure to acquire, erect, extend or significantly alter premises used or proposed to be used for providing residential care or flexible care;
- (c) expenditure to acquire or install furniture, fittings or equipment for premises used or proposed to be used for providing residential care or flexible care, when those premises are initially erected or following an extension, a significant alteration or a significant refurbishment;
- (d) expenditure that is directly attributable to doing a thing referred to in paragraph (a), (b) or (c).

### 63 Additional permitted uses

For paragraph 52N-1(2)(g) of the Act, an approved provider may use a refundable deposit or an accommodation bond for any of the following purposes:

- (a) to meet reasonable business losses that are incurred in the period:
  - (i) beginning when the approved provider begins receiving residential care subsidy in relation to a residential care service or flexible care subsidy in relation to a flexible care service; and
  - (ii) ending 12 months after the approved provider begins to receive the subsidy in relation to that service;
- (b) to make a loan in relation to which the following conditions are satisfied:
  - (i) the loan is not made to an individual;
  - (ii) the loan is made on a commercial basis;
  - (iii) there is a written agreement in relation to the loan;
  - (iv) it is a condition of the agreement that the money loaned will only be used as referred to in paragraph 52N-1(2)(d) or (e) of the Act;
- (c) to invest in a fund, but not a controlling entity of a fund, listed in item 2 of the first Schedule to Banking exemption No. 1 of 2013 made under the *Banking Act 1959*.

### 64 Investment in financial products

- (1) For paragraph 52N-1(3)(e) of the Act, each of the following financial products in relation to an aged care investment scheme is specified:
  - (a) an interest in the scheme;
  - (b) a legal or equitable right or interest in an interest covered by paragraph (a);
  - (c) an option to acquire, by way of issue, an interest or right covered by paragraph (a) or (b).

Note: An approved provider may use a refundable deposit or an accommodation bond to invest in a financial product specified in subsection (1) (see paragraphs 52N-1(2)(b) and (3)(e) of the Act).

- (2) An ***aged care investment scheme*** is a scheme established for the purpose of investment in residential care or flexible care that:
  - (a) is a managed investment scheme within the meaning of the *Corporations Act 2001*; and
  - (b) is not a registered scheme within the meaning of the *Corporations Act 2001*.

## **Excerpts from the Aged Care Act 1997**

No 112, 1997

### **Part 3A.3-Managing refundable deposits, accommodation bonds and entry contributions**

#### **Division 52L—Introduction**

##### **52L-1 What this Part is about**

\*Refundable deposits, \*accommodation bonds and \*entry contributions must be managed in accordance with the prudential requirements made under Division 52M and the rules set out in Division 52N (permitted uses) and Division 52P (refunds).

#### **Table of Divisions**

52 L Introductions

52M Prudential requirements

52N Permitted uses

52P Refunds

#### ***Division 52M—Prudential requirements***

##### **52M-1 Compliance with prudential requirements**

- (1) An \*approved provider must comply with the Prudential Standards.
- (2) The Fees and Payments Principles may set out Prudential Standards providing for:
  - (a) protection of \*refundable deposit balances, \*accommodation bond balances and \*entry contribution balances of care recipients; and
  - (b) sound financial management of approved providers; and
  - (c) provision of information about the financial management of approved providers.

#### ***Division 52N—Permitted uses***

##### **52N-1 Refundable deposits and accommodation bonds to be used only for permitted purposes**

- (1) An approved provider must not use a \*refundable deposit or \*accommodation bond unless the use is permitted.

### **Permitted use—general**

- (2) An approved provider is permitted to use a \*refundable deposit or \*accommodation bond for the following:
- (a) for capital expenditure of a kind specified in the Fees and Payments Principles and in accordance with any requirements specified in those Principles;
  - (b) to invest in a financial product covered by subsection (3);
  - (c) to make a loan in relation to which the following conditions are satisfied:
    - (i) the loan is not made to an individual;
    - (ii) the loan is made on a commercial basis;
    - (iii) there is a written agreement in relation to the loan;
    - (iv) it is a condition of the agreement that the money loaned will only be used as mentioned in paragraph (a) or (b);
    - (v) the agreement includes any other conditions specified in the Fees and Payments Principles;
  - (d) to refund, or to repay debt accrued for the purposes of refunding, \*refundable deposit balances, \*accommodation bond balances or \*entry contribution balances;
  - (e) to repay debt accrued for the purposes of capital expenditure of a kind specified in the Fees and Payments Principles;
  - (f) to repay debt that is accrued before 1 October 2011, if the debt is accrued for the purposes of providing \*aged care to care recipients;
  - (g) for a use permitted by the Fees and Payments Principles.

Note: An approved provider, and the approved provider's key personnel, may commit an offence if the approved provider uses a refundable deposit or accommodation bond otherwise than for a permitted use (see section 52N-2).

### **Permitted use—financial products**

- (3) For the purposes of paragraph (2)(b), the following are financial products (within the meaning of section 764A of the Corporations Act 2001) covered by this subsection:
- (a) any deposit-taking facility made available by an ADI in the course of its banking business (within the meaning of the Banking Act 1959), other than an RSA within the meaning of the Retirement Savings Accounts Act 1997;

Note 1: ADI is short for authorised deposit-taking institution.

Note 2: RSA is short for retirement savings account.

- (b) a debenture, stock or bond issued or proposed to be issued by the Commonwealth, a State or a Territory;
- (c) a security, other than a security of a kind specified in the Fees and Payments Principles;
- (d) any of the following in relation to a registered scheme:
  - (i) an interest in the scheme;
  - (ii) a legal or equitable right or interest in an interest covered by subparagraph (i);
  - (iii) an option to acquire, by way of issue, an interest or right covered by subparagraph (i) or (ii);
- (e) a financial product specified in the Fees and Payments Principles.

### **Permitted uses specified in Fees and Payments Principles**

- (4) Without limiting paragraph (2)(g), the Fees and Payments Principles may specify that a use of a \*refundable deposit or \*accommodation bond is only permitted for the purposes of that paragraph if:
  - (a) specified circumstances apply; or
  - (b) the approved provider complies with conditions specified in, or imposed in accordance with, the Fees and Payments Principles.

Note: For paragraph (4)(a), the Fees and Payments Principles might, for example, specify that the use of a \*refundable deposit is only permitted if the approved provider obtains the prior consent of the Secretary to the use of the deposit.

### ***52N-2 Offences relating to non-permitted use of refundable deposits and accommodation bonds***

#### **Offence for approved provider**

- (1) A \*corporation commits an offence if:
  - (a) the corporation is or has been an approved provider; and
  - (b) the corporation uses a \*refundable deposit or \*accommodation bond; and
  - (c) the use of the deposit or bond is not \*permitted; and
  - (d) both of the following apply at a particular time during the period of 2 years after the use of the deposit or bond:
    - (i) an insolvency event (within the meaning of the Aged Care (Accommodation Payment Security) Act 2006) has occurred in relation to the corporation;
    - (ii) there has been at least one outstanding accommodation payment balance (within the meaning of that Act) for the corporation.

Penalty: 300 penalty units.

Note: The Secretary must make a default event declaration under the *Aged Care (Accommodation Payment Security) Act 2006* in relation to the corporation if paragraph (d) of this subsection applies (see section 10 of that Act).

### **Offence for key personnel**

(2) An individual commits an offence if:

- (a) the individual is one of the \*key personnel of an entity that is or has been an approved provider; and
- (b) the entity uses a \*refundable deposit or \*accommodation bond; and
- (c) the use of the deposit or bond is not \*permitted; and
- (d) the individual knew that, or was reckless or negligent as to whether:
  - (i) the deposit or bond would be used; and
  - (ii) the use of the deposit or bond was not permitted; and
- (e) the individual was in a position to influence the conduct of the entity in relation to the use of the deposit or bond; and
- (f) the individual failed to take all reasonable steps to prevent the use of the deposit or bond; and
- (g) both of the following apply at a particular time during the period of 2 years after the use of the deposit or bond:
  - (i) an insolvency event (within the meaning of the *Aged Care (Accommodation Payment Security) Act 2006* has occurred in relation to the entity;
  - (ii) there has been at least one outstanding accommodation payment balance (within the meaning of that Act) for the entity; and
- (h) at the time the deposit or bond was used, the entity was a \*corporation.

Penalty: Imprisonment for 2 years.

### **Strict liability**

(3) Strict liability applies to paragraphs (1)(d) and (2)(g) and (h).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

## **Division 52P - Refunds**

### **52P-1 Refunding refundable deposit balances**

(1) In this section:

*refundable deposit* includes an \*accommodation bond.

*refundable deposit balance* includes an \*accommodation bond balance.

(2) If a \*refundable deposit is paid for care provided by, or for \*entry to, a residential care service or flexible care service, the \*refundable deposit balance must be refunded if:

(a) the person who paid the deposit (the *care recipient*) dies; or

(b) the care recipient ceases to be provided with:

(i) residential care by the residential care service (other than because the care recipient is on \*leave); or

(ii) flexible care provided in a residential setting by the flexible care service.

(3) The \*refundable deposit balance must be refunded in the way specified in the Fees and Payments Principles.

(4) The \*refundable deposit balance must be refunded:

(a) if the care recipient dies—within 14 days after the day on which the provider is shown the probate of the will of the care recipient or letters of administration of the estate of the care recipient; or

(b) if the care recipient is to \*enter another service to receive residential care:

(i) if the care recipient has notified the provider of the move more than 14 days before the day on which the provider ceased providing care to the care recipient—on the day on which the provider ceased providing that care; or

(ii) if the care recipient so notified the provider within 14 days before the day on which the provider ceased providing that care—within 14 days after the day on which the notice was given; or

(iii) if the care recipient did not notify the provider before the day on which the provider ceased providing that care—within 14 days after the day on which the provider ceased providing that care; or

(c) in any other case—within 14 days after the day on which the event referred to in paragraph (2)(b) happened.

## *Part 2.1 Approval of providers*

### ***Division 9 — What obligations arise from being an approved provider?***

#### **9-1 Obligation to notify certain changes**

(1) An approved provider must notify the Secretary of a change of circumstances that materially affects the approved provider’s suitability to be a provider of \*aged care (see section 8-3). The notification must occur within 28 days after the change occurs.

Note: Approved providers have a responsibility under Part 4.3 to comply with this obligation. Failure to comply with a responsibility can result in a sanction being imposed under Part 4.4.

(2) The notification must be in the form approved by the Secretary.

(3A) For the purposes of this section, if:

(a) a change of circumstances that materially affects the approved provider’s suitability to be a provider of \*aged care involves a change in any of the approved provider’s \*key personnel; and

(b) the change is wholly or partly attributable to the fact that a particular person is, or is about to become, a \*disqualified individual; the approved provider is taken not to notify the change unless the provider’s notification includes the reason why the person is, or is about to become, a disqualified individual.

(4) An approved provider that is a \*corporation commits an offence if the approved provider fails to notify the Secretary of such a change within the 28 day period.

Penalty: 30 penalty units.

(5) Strict liability applies to subsection (4).

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.



Providers registered under the Australian Charities and Not-for-profits Commission Act 2012

## **9-2 Obligation to give information relevant to an approved provider's status when requested**

### **9-3 Obligation to give information relevant to payments**

(1) The Secretary may, at any time, request a person who is or has been an approved provider to give to the Secretary specified information relating to any of the following:

- (a) \*refundable deposits or \*accommodation bonds charged by the person;
- (b) the amount of one or more \*refundable deposit balances or \*accommodation bond balances at a particular time;
- (c) the amount equal to the total of the refundable deposit balances and accommodation bond balances that the person would have had to refund at a specified earlier time if certain assumptions specified in the request were made;
- (d) \*entry contributions given or loaned under a \*formal agreement binding the person;
- (e) the amount of one or more \*entry contribution balances at a particular time;
- (f) the amount equal to the total of the entry contribution balances that the person would have had to refund at a specified earlier time if certain assumptions specified in the request were made;
- (g) \*unregulated lump sums paid to the person;
- (h) the amount of one or more \*unregulated lump sum balances at a particular time.

The request must be in writing.

(2) The person must comply with the request within 28 days after the request was made, or within such shorter period as is specified in the request.

Note: Approved providers have a responsibility under Part 4.3 to comply with this obligation. Failure to comply with a responsibility can result in a sanction being imposed under Part 4.4.

(3) A person commits an offence if:

- (a) the Secretary requests the person to give information under subsection (1); and

(b) the person is required under subsection (2) to comply with the request within a period; and

(c) the person fails to comply with the request within the period; and

(d) the person is a \*corporation.

Penalty: 30 penalty units.

(4) The request must contain a statement setting out the effect of subsections (2) and (3).

### **9-3B Obligation to give information about ability to refund balances**

(1) This section applies if the Secretary believes, on reasonable grounds, that an approved provider:

(a) has not refunded, or is unable or unlikely to be able to refund, a \*refundable deposit balance or an \*accommodation bond balance; or

(b) is experiencing financial difficulties; or

(c) has used a \*refundable deposit or an \*accommodation bond for a use that is not \*permitted.

(2) The Secretary may request the approved provider to give the Secretary information specified in the request relating to any of the following:

(a) the approved provider's suitability to be a provider of \*aged care (see section 8-3);

(b) the approved provider's financial situation;

(c) the amount of one or more \*refundable deposit balances or \*accommodation bond balances at a particular time;

(d) how \*refundable deposits or \*accommodation bonds have been used by the approved provider;

(e) the approved provider's policies and procedures relating to managing, monitoring and controlling the use of refundable deposits and accommodation bonds;

(f) the roles and responsibilities of \*key personnel in relation to managing, monitoring and controlling the use of refundable deposits and accommodation bonds.

The request must be in writing.

- (3) The Secretary may request the approved provider to give the specified information on a periodic basis.
- (4) The approved provider must comply with the request:
- (a) within 28 days after the request was made, or within such shorter period as is specified in the request; or
  - (b) if the information is to be given on a periodic basis—before the time or times worked out in accordance with the request.

Note: Approved providers have a responsibility under Part 4.3 to comply with this obligation. Failure to comply with a responsibility can result in a sanction being imposed under Part 4.4.

- (5) An approved provider commits an offence if:
- (a) the Secretary requests the approved provider to give information under subsection (2); and
  - (b) the approved provider is required under subsection (4) to comply with the request within a period or before a particular time; and
  - (c) the approved provider fails to comply with the request within the period or before the time; and
  - (d) the approved provider is a \*corporation.

Penalty: 30 penalty units.

- (6) The request must contain a statement setting out the effect of subsections (4) and (5).

### *Division 8—How does a person become an approved provider?*

#### **8-1 Approval as a provider of aged care**

#### **8-2 Applications for approval**

#### **8-3 Suitability of people to provide aged care**

- (1) In deciding whether the applicant is suitable to provide \*aged care, the Secretary must consider:
- (a) the applicant's experience in providing aged care or other relevant forms of care; and
  - (b) the applicant's demonstrated understanding of its responsibilities as a provider of the type of care for which approval is sought; and
  - (c) the systems that the applicant has, or proposes to have, in place to meet its responsibilities as a provider of the type of care for which approval is sought; and

Excerpts from key legislation including Prudential Standards and Permitted Uses

(d) the applicant's record of financial management, and the methods that the applicant uses, or proposes to use, in order to ensure sound financial management; and

(e) if the applicant has been a provider of aged care—its conduct as a provider, and its compliance with its responsibilities as a provider and obligations arising from the receipt of any payments from the Commonwealth for providing that aged care; and

(f) any other matters specified in the Approved Provider Principles.

(2) In considering a matter referred to in paragraph (1)(a), (b), (d), (e) or (f), the Secretary may also consider the matter in relation to any or all of the applicant's \*key personnel.

\*\*

(5) The Approved Provider Principles may specify the matters to which the Secretary must have regard in considering any of the matters set out in paragraphs (1)(a) to (f).

(6) The references in paragraphs (1)(a) and (e) to aged care include references to any care for the aged, whether provided before or after the commencement of this section, in respect of which any payment was or is payable under a law of the Commonwealth.

(7) Paragraph 8-1(1)(d) and sections 10A-2, 10A-3 and 63-1A do not limit this section

\*\*NOTE: 3 and 4 currently absent.

## *Chapter 4 – Responsibilities of approved providers*

### *Part 4.3 - Accountability*

#### **Division 63—Accountability etc.**

##### 63-1 Responsibilities of approved providers

(1) The responsibilities of an approved provider in relation to accountability for the \*aged care provided by the approved provider through an \*aged care service are as follows:

(a) to comply with Part 6.3 in relation to keeping and retaining records relating to the service;

(b) to co-operate with any person who is exercising powers under Part 6.4 in relation to the service, and to comply with that Part in relation to the person's exercise of those powers;

(ba) to cooperate with any person who is exercising powers under Division 94B in relation to the service;

(c) to comply with Division 9 in relation to notifying and providing information;

(d) to comply with any conditions to which the allocation of any of the \*places included in the service is subject under section 14-5 or 14-6;

(e) if the approved provider has transferred places to another person—to provide records, or copies of records, to that person in accordance with section 16-11;

(f) if the approved provider has \*relinquished places—to comply with the obligations under subsections 18-2(4) and 18-4(1);

(g) to allow people authorised by the Secretary access to the service, as required under the Accountability Principles, in order to assess, for the purposes of section 22-4, the care needs of any person provided with care through the service;

(h) to conduct in a proper manner any appraisals under section 25-3, or reappraisals under section 27-5, of the care needs of care recipients provided with care through the service;

(i) if the service, or a \*distinct part of the service, has \*extra service status—to comply with any conditions to which the grant of extra service status is subject under section 32-8;

(k) to comply with any agreement the approved provider makes under paragraph 66-2(1)(b), and with any undertaking the approved provider gives for the purposes of section 67-4;

(l) to allow the \*CEO of the Quality Agency to have such access to the service as is specified in the Accountability Principles;

(m) such other responsibilities as are specified in the Accountability Principles.

Note: The Accountability Principles are made by the Minister under section 96-1.

## ***Part 4.4 - Consequences of non-compliance***

### **Division 65 – When can sanctions be imposed?**

#### **65-1 Imposition of sanctions**

The Secretary may impose sanctions (see Division 66) on an approved provider if:

- (a) the approved provider has not complied, or is not complying, with one or more of its responsibilities under Part 4.1, 4.2 or 4.3; and
- (b) the Secretary is satisfied that it is appropriate to impose sanctions on the approved provider (see section 65-2); and
- (c) the Secretary complies with the requirements of Division 67.

Note: Decisions to impose sanctions are reviewable under Part 6.1.

#### **65-1A Information about compliance with responsibilities**

- (1) In deciding whether an approved provider has complied, or is complying, with one or more of its responsibilities under Part 4.1, 4.2 or 4.3, the Secretary may have regard to:
  - (a) any information provided by the \*CEO of the Quality Agency in accordance with the Quality Agency Reporting Principles; and
  - (b) any other relevant information.
- (2) The Quality Agency Reporting Principles may specify the circumstances in which the \*CEO of the Quality Agency must provide information of a kind specified in the Principles to the Secretary for the purposes of this Part.

Note: The Quality Agency Reporting Principles are made by the Minister under section 96-1.

#### **65-2 Appropriateness of imposing sanctions**

- (1) In deciding whether it is appropriate to impose sanctions on an approved provider for non-compliance with one or more of its responsibilities under Part 4.1, 4.2 or 4.3, the Secretary must consider the following:

- (a) whether the non-compliance is of a minor or serious nature;
  - (b) whether the non-compliance has occurred before and, if so, how often;
  - (c) whether the non-compliance threatens the health, welfare or interests of care recipients;
    - (ca) whether the non-compliance would threaten the health, welfare or interests of future care recipients;
  - (d) whether the approved provider has failed to comply with any undertaking to remedy the non-compliance;
    - (da) the desirability of deterring future non-compliance;
  - (e) any other matters specified in the Sanctions Principles.
- (2) However, whether the non-compliance threatens or would threaten the health, welfare or interests of current and future care recipients is to be the Secretary's paramount consideration.

## **Division 66 – What sanctions can be imposed?**

### **66-1 Sanctions that may be imposed**

The Secretary may, by notice under section 67-5, impose one or more of the following sanctions on an approved provider that has not complied, or is not complying, with one or more of its responsibilities under Part 4.1, 4.2 or 4.3:

- (a) revoking or suspending the approved provider's approval under Part 2.1 as a provider of \*aged care services;
- (b) restricting the approved provider's approval under Part 2.1 as a provider of aged care services to aged care services that are being conducted by the approved provider at the \*section 67-5 notice time;
- (c) restricting the payment of \*subsidy to the provision of care to either:
  - (i) care recipients to whom the approved provider is providing care at the section 67-5 notice time; or
  - (ii) care recipients other than those to whom the approved provider commenced providing care, through one or more specified aged care services, after the section 67-5 notice time;
- (d) revoking or suspending the allocation of some or all of the \*places allocated to the approved provider under Part 2.2;
- (e) varying the conditions to which the allocation of some or all of those places is subject under section 14-5;
- (f) prohibiting the further allocation of places under Part 2.2 to the approved provider;
- (g) revoking or suspending the \*extra service status of a residential care service, or a \*distinct part of a residential care service, conducted by the approved provider;
- (h) prohibiting the granting of extra service status in respect of residential care services, or distinct parts of residential care services, conducted by the approved provider;

- (ia) prohibiting the charging of \*accommodation payments or \*accommodation contributions for:
  - (i) one or more specified residential care services; or
  - (ii) all residential care services; or
  - (iii) one or more specified flexible care services; or
  - (iv) all flexible care services;
 conducted by the approved provider;
- (j) prohibiting the charging of \*accommodation bonds, or the accrual of \*accommodation charges, for the \*entry of care recipients to:
  - (i) one or more specified residential care services; or
  - (ii) all residential care services; or
  - (iii) one or more specified flexible care services; or
  - (iv) all flexible care services;
 conducted by the approved provider;
- (ja) if the approved provider has charged a care recipient an amount of accommodation payment or accommodation contribution (the *excess*) that is more than the amount permitted under Division 52G—requiring the provider to refund to the care recipient an amount equal to the excess (together with an amount representing interest worked out in accordance with the Fees and Payments Principles) within the period specified in the notice;
- (jb) if the approved provider has not refunded a \*refundable deposit balance, an \*accommodation bond balance or an \*entry contribution balance to a care recipient as required under Division 52P—requiring the provider to refund to the care recipient an amount equal to the balance (together with an amount representing interest worked out in accordance with the Fees and Payments Principles) within the period specified in the notice;
- (jc) restricting, during the period specified in the notice, the use of a refundable deposit balance, an accommodation bond balance or an entry contribution balance paid to the approved provider to one or more uses permitted under Division 52N;
- (k) requiring repayment of some or all of any grants paid to the approved provider under Chapter 5 in respect of an aged care service in respect of which the approved provider has not complied with its responsibilities;
- (l) such other sanctions as are specified in the Sanctions Principles.

**66-2 Agreement to certain matters in lieu of revocation of approved provider status**



- (1) If revocation of the approved provider's approval under Part 2.1 as a provider of \*aged care services is imposed as a sanction, the revocation does not take effect if:
- (a) the Secretary specifies, in the notice of imposition of the sanction under section 67-5, that the revocation will not take effect if, within the period specified in the notice, the approved provider agrees to whichever one or more of the following is specified in the notice:
    - (i) providing, at its expense, such training as is specified in the notice for its officers, employees and agents;
    - (ii) providing such security as is specified in the notice for any debts owed by the approved provider to the Commonwealth;
    - (iii) appointment by the approved provider, in accordance with the Sanctions Principles, and in accordance with section 66A-2, of an adviser to assist the approved provider to comply with its responsibilities in relation to care and services;
    - (iv) appointment by the approved provider, in accordance with the Sanctions Principles, and in accordance with section 66A-3 of an administrator to assist the approved provider to comply with its responsibilities in relation to governance and business operations;
    - (v) transferring some or all of the \*places allocated to the approved provider under Part 2.2 to another approved provider;
    - (vi) such other matters as are specified in the Sanctions Principles; and
  - (b) within that period, the approved provider agrees accordingly.

Note: Approved providers have a responsibility under paragraph 63-1(1)(k) to comply with an agreement. Failure to comply with this responsibility can result in a further sanction being imposed under this Part.

- (2) The reference in subparagraph (1)(a)(iii) to appointment of an adviser does not include appointment of the Commonwealth, or a Commonwealth officer or employee, as an adviser.
- (3) The reference in subparagraph (1)(a)(iv) to appointment of an administrator does not include appointment of the Commonwealth, or a Commonwealth officer or employee, as an administrator.

## Accountability Principles 2014

made under section 96-1 of the *Aged Care Act 1997*

### Compilation No.6

**Compilation date:** 13 September 2017  
**Includes amendments up to:** F2017L01163  
**Registered:** 13 September 2017

#### *Part 4-Aged care financial report*

##### **Division 1—Preliminary**

##### **31 Purpose of this Part**

For paragraph 63-1(1)(m) of the Act, this Part:

- (a) specifies financial reporting responsibilities of approved providers described in any of paragraphs 31A(a), (b) and (c); and
- (b) provides for the period that is a financial year for those approved providers.

##### **31A Application of this Part**

This Part applies to an approved provider if the approved provider is:

- (a) an approved provider of a residential care service; or
- (b) an approved provider of a home care service; or
- (c) an approved provider of a flexible care service through which short-term restorative care is provided.

##### **32 What is an approved provider's financial year**

- (1) A *financial year* for an approved provider is:
  - (a) a period of 12 months beginning on 1 July; or
  - (b) if, under subsection (3), the Secretary determines another period of 12 months (being a period that begins on the first day of a month)—that other period.
- (2) An approved provider may apply to the Secretary to determine a period of 12 months, other than the period starting on 1 July, to be the approved provider's financial year.
- (3) If the Secretary receives an application from an approved provider for a determination under subsection (2), the Secretary must:
  - (a) make, or refuse to make, the determination; and
  - (b) notify the approved provider, in writing, of the Secretary's decision:
    - (i) within 28 days; or

- (ii) if the Secretary has requested further information in relation to the application—within 28 days, excluding the period within which the information is requested and received.

Note: A decision to refuse to make a determination is a reviewable decision under section 33.

- (4) The Secretary may determine another period to be the approved provider's financial year under subsection (3) only if the Secretary is satisfied, on reasonable grounds that it would be impracticable for the approved provider to comply with the requirements of Division 2 in relation to a period of 12 months starting on 1 July.
- (5) If the Secretary's decision is to refuse to make a determination for the approved provider under subsection (3), the Secretary must also give the approved provider a written statement of the reasons for the decision.

### **33 Reviewable decision**

- (1) A decision under subsection 32(3) to refuse to make a determination that a period of 12 months, other than the period starting on 1 July, be an approved provider's financial year is a reviewable decision under section 85-1 of the Act.
- (2) Part 6.1 of the Act applies to a reviewable decision mentioned in subsection (1) as if a reference in that Part to this Act included a reference to these principles.

## **Division 2—Responsibilities of approved providers**

### **34 Purpose of this Division**

This Division specifies responsibilities in relation to financial reporting of an approved provider.

### **35 Aged care financial reports—general**

- (1) An approved provider must prepare in accordance with this section a report for a financial year for the approved provider (the *aged care financial report*).

Note: The aged care financial report prepared by an approved provider that provides services mentioned in 2 or more subsections of this section must be prepared in accordance with each of those subsections.

Aged care financial report to be signed by authorised key personnel

- (2) The aged care financial report must be signed by one of the approved provider's key personnel who is authorised by the provider to sign the report.

Residential care services—providers generally

- (3) If the approved provider is an approved provider of one or more residential care services, the aged care financial report must include information about the matters mentioned in paragraphs 63-2(2)(ca), (cb), (d) and (f) of the Act, in a form approved by the Secretary.

Note 1: This information is information that the Minister needs to prepare a report under section 63-2 of the Act.

Note 2: The aged care financial report of an approved provider of a residential care service must also include the approved provider's annual prudential compliance statement required to be given under section 51 of the *Fees and Payments Principles 2014 (No. 2)*—see paragraph 51(2)(d) of those principles.

#### Residential care services—non-government providers

- (4) If the approved provider is an approved provider of one or more residential care services, and is not a State, a Territory, an authority of a State or Territory or a local government authority, the aged care financial report must:
- (a) be in a form approved by the Secretary (subject to subsection (5)); and
  - (b) be accompanied by a copy of each general purpose financial report relating to any of those services for the approved provider for the financial year that has been audited in accordance with section 36; and
  - (c) be accompanied by a copy of each audit opinion obtained in accordance with section 36 about such a general purpose financial report.
- (5) The information required by the form about a residential care service need not be included in the aged care financial report if that information is included in one of those general purpose financial reports.

#### Residential care services—government providers

- (6) If the approved provider is an approved provider of one or more residential care services, and is a State, a Territory, an authority of a State or Territory or a local government authority, the aged care financial report must include a financial report relating to those services for the financial year, in a form approved by the Secretary.

#### Home care services

- (7) If the approved provider is an approved provider of one or more home care services, the aged care financial report must include a financial report relating to those services for the financial year, in a form approved by the Secretary.

#### Flexible care services involving short-term restorative care

- (8) If the approved provider is an approved provider of one or more flexible care services through which the approved provider provides short-term restorative care, the aged care financial report must include a financial report relating to those services for the financial year, in a form approved by the Secretary.

### **35A General purpose financial reports for non-government approved providers of residential care services**

- (1) An approved provider mentioned in subsection 35(4) must prepare in accordance with this section one or more reports for a financial year for the approved provider (each of which is a *general purpose financial report*). Together those reports must deal with all the residential care services provided by the provider in the financial year (whether or not any of those reports also deals with other matters).
- (2) Each general purpose financial report must:
  - (a) be a general purpose financial report within the meaning given by section 6 of the Statement of Accounting Concepts SAC 1; and
  - (b) be in accordance with the Australian accounting standards in force at the time the report is prepared; and
  - (c) give a true and fair view of the financial position and performance of the approved provider for the financial year in relation to one or more residential care services provided by the provider during the financial year (whether or not the report also deals with other matters); and
  - (d) be written as if the approved provider were, so far as it provided those services, a distinct reporting entity within the meaning of the Statement of Accounting Concepts SAC 1.
- (3) If a general purpose financial report deals with a matter other than a residential care service provided by the provider in the financial year, the report must be prepared as if the residential care provided through the residential care services it relates to were a reportable segment for the purposes of the Australian accounting standards relating to segment reporting in force at the time the report is prepared.
- (4) Despite subsections (2) and (3), if all the information about a residential care service that is required by the form mentioned in paragraph 35(4)(a) is included in the approved provider's aged care financial report for the financial year, none of that information need be included in a general purpose financial report of the approved provider for the financial year.

Note: The general purpose financial report must accompany the aged care financial report when it is given to the Secretary—see paragraph 35(4)(b) (and section 37 for giving the aged care financial report to the Secretary).

### **36 Auditing of general purpose financial reports—non-government approved providers**

- (1) An approved provider that prepared a general purpose financial report must have it audited by:
  - (a) a registered company auditor within the meaning of the *Corporations Act 2001*; or
  - (b) a person approved by the Secretary under subsection (3).

- (2) The approved provider must obtain an audit opinion about the general purpose financial report from a registered company auditor or a person approved under subsection (3) that includes a statement as to whether the report complies with paragraphs 35A(2)(b) and (c).
- (3) The Secretary may approve a person to audit a general purpose financial report if the Secretary is satisfied that the person has appropriate qualifications and experience.
- (4) The Secretary may revoke an approval of a person under subsection (3) if the Secretary is satisfied that the person is no longer a fit and proper person to audit a general purpose financial report.
- (5) A decision under subsection (4) is a decision reviewable under section 85-1 of the Act.
- (6) Part 6.1 of the Act applies to a reviewable decision mentioned in subsection (5) as if a reference in that Part to this Act included a reference to these principles.

### **37 Provision of aged care financial report to Secretary—general**

An approved provider must give the aged care financial report for a financial year for the approved provider to the Secretary within 4 months after the end of the financial year.

### **37A Provision of general purpose financial report to care recipients etc. by non-government approved providers**

An approved provider must give a copy of its most recently audited general purpose financial report relating to a residential care service to each person who asks for a copy and is:

- (a) a care recipient of the residential care service; or
- (b) approved as a recipient of residential care and considering receiving residential care through the residential care service; or
- (c) a representative of a person covered by paragraph (a) or (b).

### **38 Circumstances in which approved provider is taken to have complied with this Division**

If an approved provider of an aged care service was responsible for the operations of the service during part only of a financial year for the approved provider, the approved provider is taken to have complied with this Division in relation to the service for the financial year if the approved provider complied with those sections in relation to the service and that part of the financial year.