



# Annual Prudential Compliance Statement (APCS) Guidelines

**Important:** Please read before completing the APCS Section of the ACFR portal to ensure your compliance with the legislative requirements.

On 1 January 2020, the regulatory functions of the Department of Health (the Department), transferred to the Aged Care Quality and Safety Commission (the Commission). As part of its Aged Care Financial Report (ACFR), an approved provider will submit its Annual Prudential Compliance Statement to the Secretary of the Department. A provider's prudential compliance, will be assessed by the Commission.

## Purpose of this guide

This guide is to help you complete your Annual Prudential Compliance Statement (APCS).

Significant legislative change occurred on 1 July 2014. As such, a reference to 'the Act' should be taken as a reference to the *Aged Care Act 1997* in force from 1 July 2014. On 1 July 2014 the Disclosure Standard moved from the *User Rights Principles 1997* (the User Rights Principles) to the *Fees and Payments Principles 2014 (No.2)* (the Principles).

## Completing the APCS

Please take care to ensure that the information you provide is complete and accurate.

This guide has been written in plain English based on provisions of the *Aged Care Act 1997* (the Act), the Principles and the *Accountability Principles 2014*. Some aspects of the legislation have been simplified in the guide. The guide is general in nature and does not constitute legal advice. In cases of discrepancy between the guide and the legislation, the Act and the Principles are the source documents setting out provider responsibilities.

A provider may be asked at any time to demonstrate its compliance as reported in the APCS.

## Consequences of Non-Compliance

You are required by section 52M-1 of the Act to comply with the Prudential Standards. The requirement to submit the APCS is one of the requirements of the Disclosure Standard.

Failure to comply with the Disclosure Standard may lead to action being taken under the Act, including giving a Non Compliance Notice or imposing Sanctions.

Your compliance with the Disclosure Standard is a matter that may be taken into consideration in future decisions where a provider's record of compliance with its responsibilities is relevant.

Providing false or misleading information is an offence.

## REFUNDABLE ACCOMMODATION PAYMENTS

### Bond meaning

- **accommodation bond (Bond)**, in relation to a person who first entered care before 1 July 2014, means an amount of money that does not accrue daily and is paid or payable to a 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 provider, and in respect of which the provider holds an allocation of places.

### Entry Contribution meaning

- **entry contribution (EC)** relating to a care recipient, means any payment, made before 1 October 1997, of money or other valuable consideration required by an operator to be given or loaned in return for, or in contemplation of, entry of the care recipient to a hostel (within the meaning of the *Aged or Disabled Persons Care Act 1954*).

**Note:** ECs are not to be confused with Refundable Accommodation Contributions (RAC) – ECs are similar to a bond and were received prior to 1997.

### Deposit means the following

- **refundable accommodation deposit (RAD)** in relation to care recipients who first entered care on or after 1 July 2014, means a payment for accommodation provided with residential care or flexible care that does not accrue daily, and is paid as a lump sum. This is the price for a room, in lump sum form, that residents have agreed with their aged care home to pay, and or a;
- **refundable accommodation contribution (RAC)** – in relation to care recipients who first entered care on or after 1 July 2014, just like a RAD. The difference between a RAC and a RAD is that a RAC is the term used when a person who is receiving Government assistance with their accommodation costs makes a 'contribution' towards their accommodation costs (with the Australian Government also making a contribution on their behalf).

### Refundable accommodation payment balances

- in relation to lump sum payments for **EC, Bond** and **Refundable deposits** is, at a particular time, an amount equal to the difference between:
  - the amount of the EC, Bond, RAD or RAC, and
  - any amounts that have been, or are permitted to be, deducted under the Act as at that time of the resident's agreement.

### Do you need to complete an APCS?

If you held any EC, Bond, RAD or RAC balances at any time during your financial year you are required to answer **'Yes'** and proceed to the next question.

If you answered **'Yes'** you are required to complete information on **Refundable Accommodation Payments Held**. This has been pre-populated for your convenience by identifying service names and residential aged care service identification number/s for each provider (RACS).

**Do not include any agreements that you may have entered into but have not received any payment for.**

Information relating to refundable deposits and bond balances must be entered in columns C and D. Please ensure that you provide a total for each column at the bottom of the table.

Information relating to EC balances must be entered in columns E and F of the table. Please ensure that you provide a total for each column at the bottom of the table. Do not include

Refundable Accommodation Contribution (RAC) in columns E & F (see above on where to include these amounts) – only enter information relating to the Pre 1997 Entry Contributions (EC).

If you have not reported EC before, then enter a zero (0). EC balances cannot increase from last year. If you did not hold any refundable accommodation balances at all during the financial year, you can answer '**No**' and this completes the APCS component of the Aged Care Financial Report (ACFR). **You must have someone who is key personnel (someone who is an executive decision maker) sign the ACFR form and submit it online through the ACFR portal.**

### Total value of refundable accommodation payments received in the financial year

You are required to enter a figure that represents the full value (before deductions) of refundable accommodation payments (also referred to as lump sum payments) received by you during the financial year regardless of when you entered into the agreement.

*\*This information should be contained in your refundable deposit register.*

*Do not include agreements that have been entered into, but you have not received any payment for.*

### What are allowable deductions from refundable accommodation balances?

A provider to whom a refundable deposit or bond was paid by a care recipient may deduct from the refundable accommodation payment. The type of deduction may be:

- interest on an unpaid bond or deposit,
- extra services drawn from the bond or deposit,
- fees that the resident has agreed should be paid from the bond or deposit,
- retention amounts (only for bonds as retention amounts are not charged for refundable deposits), or
- any other deduction authorised under the Act.

The provider must not deduct any other amounts from the refundable accommodation balance.

### Your response in the APCS

You are required to report allowable deductions from **ALL** refundable accommodation balances held during your financial year (regardless of when the agreement was entered into).

## COMPLIANCE WITH THE PRUDENTIAL STANDARDS

### COMPLIANCE WITH THE LIQUIDITY STANDARD

Any provider holding at least one refundable deposit or bond balance (including entry contributions) during the financial year must comply with the Liquidity Standard, which requires providers to:

- maintain sufficient liquidity to ensure that they can refund (in accordance with the Act and the Fees and Payments Principles) refundable deposit balances and bond balances (including entry contributions) that can be expected to fall due in the following 12 months (see section 43, Fees and Payments Principles), and

Implement and maintain a written Liquidity Management Strategy (LMS), which identifies:

- the amount expressed as an amount of **whole dollars** required to ensure that the provider has sufficient liquidity to refund bond balances and refundable deposits (including entry contributions) as they fall due, and

- the factors that the provider considered in determining the minimum level of liquidity, and
- the form in which the provider will maintain the minimum level of liquidity (see section 44(1), Fees and Payments Principles).

The provider must then:

- maintain the minimum level of liquidity in the form specified in the LMS, and
- ensure that the LMS is kept up-to-date, and
- ensure that it complies with the requirements of the Liquidity Standard.

A provider must modify or replace its LMS if the provider becomes aware that it no longer meets the requirements of the Liquidity Standard.

At any point in time, a provider must meet the requirements of the Liquidity Standard (see section 42, Fees and Payments Principles).

The provider must maintain the minimum level of liquidity identified in the LMS necessary to meet refunds over the following 12 months (see section 43, Fees and Payments Principles).

**Reference:** Fees and Payments Principles section 42, section 43 and section 44.

### Determining the minimum level of liquidity

Each provider should identify and assess the factors used in determining its minimum level of liquidity, based on their individual circumstances and experiences.

While some factors might be common to many providers, their relative importance can differ for individual providers. Factors that providers could consider in determining their minimum level of liquidity include:

- cash requirements for operating and capital expenditure,
- their historical pattern of refundable deposits and bond balance refunds,
- characteristics of the residents in their care, such as Aged Care Funding Instrument (ACFI) categories, ages, genders and length of time spent in care, which can affect the timing of refundable deposits and bond balance refunds,
- the average value of refundable deposits and bond balances held,
- the average time taken to replace departing residents,
- the expected number and amount of refundable deposits and bonds that will be paid by new residents, and
- the time taken for new residents to make refundable deposits and bond payments.

A provider should consider a range of different approaches in assessing their liquidity requirements, to determine the most appropriate approach for their circumstances. Possible approaches that providers could consider include the following:

- in some cases, the minimum level of funding which is readily accessible may be the difference between the expected refundable deposits and bond balance refunds and the expected deposits and bond payments over the next 12 months,
- the need to refund several of its largest deposits and bonds in the next 12 months,
- for its minimum level of liquidity, a provider could use the likely value of refundable deposits and bond balance refunds that will be required over the coming 12 months, by identifying residents who are likely to leave the service in the coming 12 months and the size of their refundable deposits and bonds. For example, a provider could decide to maintain as its minimum level of liquidity the total value of refundable deposits and bonds held on behalf of residents with a greater than 50 per cent likelihood of leaving, less expected payments from new residents. This may be appropriate for providers that have a

significant proportion of residents with characteristics, such as age or Aged Care Funding Instrument (ACFI) category, which may mean they are more likely to leave the service over the coming 12 months.

A provider can also maintain a prudent margin to provide a buffer against unexpected developments. A prudent margin could be incorporated into the minimum level of liquidity in various ways. For example, providers may choose to adopt conservative estimates for key parameters or include an explicit additional buffer to their level of liquidity.

Factors that could be considered include conservative assumptions for:

- the average size of payments expected to be received from new residents in the region given market conditions, and
- the rate of replacement of exiting residents.

### **Identifying forms in which the minimum level of liquidity is maintained**

To ensure that a provider can refund refundable deposits and bond balances as they fall due, it is important that the minimum level of liquidity for a provider is maintained in readily accessible forms.

It is the responsibility of the provider to determine the appropriate form(s) in which their minimum level of liquidity will be maintained. Many financial instruments have a high level of liquidity, including:

- cash,
- bank bills,
- stand-by lines of credit, and
- guarantees.

Letters of comfort do not provide a form of liquidity suitable to meet the liquidity standard.

In considering the form(s) in which they hold their minimum level of liquidity, providers may also wish to consider cost issues. The cost to providers could be considered in terms of both the actual cost of accessing the funds (that is, the actual cost of the transaction) and the economic cost (the difference between the purchase price and the price realised on disposal). For example, liquid instruments such as cash and financial products like term deposits have relatively low costs as the fee for accessing them is not significant and they can be redeemed at their face value.

### **Review of Liquidity Management Strategy (LMS)**

The Liquidity Standard requires providers to:

- ensure that the LMS remains up-to-date and complies with the requirements of the Liquidity Standard, and

Providers should review the LMS at least annually. This review should include an assessment of whether the factors used to determine the minimum level of liquidity are still appropriate.

Providers should consider:

- whether changes in services they operate or the profile of their residents require variations to the factors included in the LMS,
- whether parameters or assumptions such as the size of refundable deposits and bonds received from new residents should be adjusted,
- whether to include events in the LMS that would trigger a review outside of an annual review cycle. These events may increase the risk that they would not have the liquidity to meet refundable deposits and bond balance refunds over the coming 12 months. They include:
  - the acquisition or divestment of residential services,

- a significant change in the allocated places within a residential service,
- a significant change in the profile of residents,
- a significant change in the size of refundable deposits and bonds received,
- changes in legislative requirements, and
- changes in the corporate structure of the provider.

### Things you need to know

The approach to documenting the LMS is a matter for individual providers. In determining their approach, providers should consider:

- that they must be able to demonstrate their compliance with the Liquidity Standard to their auditor, and
- that the provider may be requested to provide its LMS for monitoring and compliance purposes at any time.

### Your response in the APCS

After considering the information provided under Compliance with the Liquidity Standard, did you comply with the liquidity standard for the full financial year?

Respond Yes or No.

If you have answered 'NO' you must submit a separate statement explaining why you have not complied with the Standard.

If you have answered 'YES' or 'NO', what was the last date your Liquidity Management Strategy was reviewed? Please note the date of the last review.

### Minimum Liquidity Level

Enter the dollar amount that you have identified in your liquidity management strategy as being the minimum amount of liquidity that you are required to maintain over the next 12 months.

### COMPLIANCE WITH THE RECORDS STANDARD

The Records Standard is designed to ensure that accurate, comprehensive and up-to-date information on bond holdings, entry contributions and refundable deposits is collected and maintained.

An accurate record of these payments will help providers to refund balances within required timeframes once a resident leaves a service.

Under the Records Standard, all providers holding bonds, entry contributions or refundable deposits must establish and maintain a refundable deposit register:

- The register may be maintained at a service level or at provider level. However, for the Annual Prudential Compliance Statement, providers must report at provider level, referring to the name and number of services covered by the statement,
- If a resident has paid partly by lump sum and partly by daily accommodation payments or periodic payments, an entry on the register, including all of the information detailed below, must be made for the lump sum component of the bond/deposit. A provider might also voluntarily include additional information in the register about the periodic payments,
- The register may be kept in hard copy or electronic form. The register will contain personal information that should be protected by the provider (see section 45, Fees and Payments Principles),

- Historical bond register entries should be kept for a minimum of three years, after the 30 June of the year in which the record was made, as should other records detailed in section 88-1, the Act and in the Records Principles 2014.

**Reference:** The Act section 88-1, Fees and Payments Principles and section 45 *Records Principles 2014*

### Information to be included in the refundable deposit register

The refundable deposit register (register) must include:

- resident name and resident ID number;
- bond details,
- refundable deposit details,
- the date the resident entered the service,
- if a resident is transferring from another service, the date the resident entered the original aged care service. This information is useful so that the current provider knows the period over which retention amounts may continue to be drawn. If a resident has moved a number of times, providers may wish to record any other relevant details that will enable them to determine when retention amounts should cease being drawn,
- the date the bond/deposit was paid by the resident. If a resident pays a bond/refundable deposit in more than one instalment, each date must be entered, and
- the amount paid by the resident. If an amount has been paid in more than one instalment this figure must reflect the amount of each instalment and the total paid.

A provider can include additional information in this part of the refundable deposit register. For example, they might want to include a resident's RCS/ACFI category.

### Deductions

The register should include the following information about deductions:

- the amount of bond balance as at 1 July 2006 (for bond balances held prior to 1 July 2006),
- the date, amount and reason for each deduction taken from a bond balance (from 1 July 2006). The type of deduction may be interest on an unpaid bond or deposit, extra services drawn from bond, fees that the resident has agreed should be paid from the bond or deposit, retention amounts (only for bonds as retention amounts are not charged for refundable deposits), or any other deduction authorised under the Act, and
- the bond or refundable deposit balance at the end of each calendar month. A provider should update the register on a monthly basis. During any month there may be one or more deductions and these deductions may have been made on one or more dates. One of the purposes of the register is to ensure that all providers retain a record of the details of all deductions made (date, amount and type of deduction) from 1 July 2006.

### Refund of bonds and refundable deposits

The register should include the following information about the refund of a bond and or refundable deposit:

- date of refund event and other relevant dates including, where appropriate:
  - the date the resident died and the date probate or letters of administration were shown to the provider,
  - the date the resident left the service, and if notice was provided, the date the notice was provided, or
  - the date the service ceased to be certified,
- date the bond or deposit is due to be refunded in accordance with the requirements under section 52P of the Act,
- date the bond or deposit was actually refunded,

- amount of bond or deposit refunded,
- have interest paid and the date paid, and
- maximum permissible interest paid and the date paid.

The refund event is the initial trigger for determining when the bond or deposit refund is due. The refund event may be the death of the resident or the departure of the resident from the service.

The date that the resident left the service should be the date on which the resident was formally discharged from the service. Residents may enter hospital on hospital leave and then transfer to another service without returning to the original service, but the date to be recorded will be the date that the resident was discharged, not the date they went on leave.

**Reference:** The Act section 52P

### Entry Contributions (pre 1997)

The register must include the following information about entry contributions:

- resident details including the resident's name and resident ID number,
- the date the entry contribution was paid,
- the amount of the original entry contribution,
- the date the resident left the facility,
- the date the entry contribution is due to be repaid in accordance with the formal agreement,
- the date the entry contribution was refunded,
- the amount of entry contribution balance refunded, and
- maximum permissible interest paid and the date paid.

### Things you need to know

The approach to presenting the refundable deposit register is a matter for individual providers. In determining their approach, providers should consider:

- that they must be able to demonstrate their compliance with the Records Standard to their auditor, and
- that the provider could be asked to provide its refundable deposit register for one or more residents, that are currently in care or have left the providers care, for monitoring and compliance purposes.

### Your response in the APCS

After considering the information provided under Compliance with the Records Standard did you comply with the records standard for the full financial year?

Respond Yes or No.

If you answer 'NO' you must submit a separate statement explaining why you have not complied with the Standard.



## COMPLIANCE WITH THE GOVERNANCE STANDARD

The Governance Standard is designed to help providers develop sound governance systems to ensure refundable deposits and bonds are only used for permitted uses and are refunded to residents as, and when, they fall due as required by the Act.

The Governance Standard promotes sound business practices by requiring governance arrangements in line with the size and complexity of a provider's business (see Part 5, Division 4, Fees and Payments Principles).

The Governance Standard requires providers that hold refundable deposits or bonds to have a governance system in place to manage refundable deposits and bonds.

The governance system must ensure that refundable deposits and bonds are only used for permitted uses and that refundable deposit balances and bond balances are refunded to residents in accordance with the Act. Providers are also required to implement and maintain a written investment management strategy (IMS) if they propose to invest refundable deposits or bonds in financial products specified in section 52N-1(3)(b)-(e), of the Act or in a Religious Charitable Development Fund (see section 63(c), Fees and Payments Principles).

The Governance Standard does not prescribe the particular type of system. Instead, it describes the key features that need to be incorporated. This allows providers the flexibility to implement a governance system that suits their particular size and corporate structure and that is appropriate for prudent and accountable management of the refundable deposits and bonds they hold, regardless of when the refundable deposits and bonds were charged.

**Reference:** The Act section 52N-1 and Fees and Payments Principles section 63 and Part 5 Division 4

### Requirements of the Governance Standard

The purpose of the Governance Standard is to ensure that, where a provider holds refundable deposits or bonds, there is an appropriate system in place to ensure that the provider complies with their prudential responsibilities in relation to refundable deposits and bonds.

The Governance Standard only applies to the management of refundable deposits and bonds. Broader corporate governance is a matter for commercial judgement, taking into account wider statutory requirements such as the legislation under which the provider is incorporated and best practice resources such as voluntary national standards.

To comply with the Governance Standard, providers that hold refundable deposits or bonds must implement and maintain a documented governance system that:

- allocates responsibilities to key personnel for managing refundable deposits and bonds held by the provider,
- monitors and controls any delegation or outsourcing of these responsibilities,
- ensures relevant key personnel, and anyone to whom responsibilities are delegated or outsourced, are aware of the legal requirements for refundable deposits and bonds,
- has reporting mechanisms to ensure responsible key personnel can monitor and control the use of refundable deposits and bonds, and
- detects, records and addresses any instances of non-compliance (see section 49(1) and (2), Fees and Payments Principles)

Providers need to keep written documentation describing their governance system and ensure this documentation is kept up-to-date (see section 49(3)(a) and (b), Fees and Payments Principles).

If a provider becomes aware that their governance system no longer complies with these requirements, they need to modify or replace it with a system that does comply (see section 49(3)(c), Fees and Payments Principles).

**Reference:** Fees and Payments Principles section 49

## Allocating responsibilities to key personnel

A provider's key personnel are defined by the roles and functions that person may perform, in the context of the Governance Standard, key personnel are people who have authority or responsibility for (or significant influence over) planning, directing or controlling the management of refundable deposits and bonds.

It is important for providers to clearly define the person or position that has responsibility for managing refundable deposits or bonds, and what those responsibilities are. This ensures that people with responsibilities for refundable deposits or bonds are aware of their role and that the giving of responsibility for the management of refundable deposits or bonds is conscious and documented. This will also assist the Commission in managing any compliance issues.

The key personnel responsible for refundable deposits or bonds will vary depending on the corporate complexity of the provider. For a small provider with a single service, the key personnel may, for example, be the Director of the provider entity. For more complex providers, the key personnel may, for example, be the Chief Financial Officer and the members of the governing board, or the Executive.

**Reference:** The Act, section 8-3A

## Monitoring and controlling delegations

Key personnel responsible for managing refundable deposits or bonds, and staff with delegated responsibilities for managing refundable deposits or bonds should have their responsibilities documented as part of their position descriptions. Responsibilities that might be delegated by key personnel to staff include calculating and processing refundable deposit balance refunds or bond balance refunds, monitoring the allocation and use of refundable deposits or bonds, updating the refundable deposit register and responding to requests for information.

Through trend analysis of the APCS, it has been identified that late refunds of accommodation deposits or bonds are often due to inadequate administrative controls over the refund processes or a lack of knowledge by staff of refund obligations.

The governance system must ensure that key personnel responsible for managing refundable deposits and/or bonds, and staff or other people who have a role in managing refundable deposits and/or bonds, are aware of the legal requirements for refundable deposits and bonds. This should include ensuring that a provider plans for when these staff are on leave or unexpectedly absent. Such leave or absence does not in any way affect a provider's obligations to refund refundable deposit balances or bond balances when they fall due.

## Reporting mechanisms

The reporting mechanisms a provider may have in place to ensure that responsible key personnel can monitor and control the use of refundable deposits or bonds will depend on the size and complexity of the provider and the sophistication of the management of refundable deposits or bonds. For example, a small provider with a single service may deposit all of its refundable deposits or bonds into a banking account with an authorised deposit-taking institution (ADI) and use that account to refund refundable deposit balances or bond balances. In this case, the reporting mechanism may be as simple as ensuring periodic review of the refundable deposit register and statements for the banking account. Larger and more complex businesses will require more sophisticated monitoring and control of the use of refundable deposits and bonds.

## Detecting, recording and addressing non-compliance

Providers holding refundable deposits or bonds must ensure that their governance system has mechanisms for detecting, recording and addressing non-compliance with the requirements for refundable deposits and bonds. It is important to ensure that the key personnel and other persons

with responsibility for refundable deposits or bonds are aware of the requirements of the Act and the Fees and Payments Principles in relation to refundable deposits and bonds.

Providers should establish, for example, mechanisms to identify and address the late repayment of refundable deposit balances or bond balances, insufficient liquidity to pay refundable deposit balances or bond balances, non-compliance with requests for information from care recipients, and non-compliance with permitted use requirements.

Providers may experience changes to their business which may require updating their documented governance system, including:

- changes to key personnel,
- changes to corporate structure,
- changes to outsourcing of responsibilities for managing refundable deposits or bonds, and
- acquisition or divestment of aged care services.

Where a provider detects non-compliance with the requirements for refundable deposits or bonds, the governance system should be reviewed.

### **Can the requirements of the Governance Standard be incorporated into existing corporate governance documents?**

The requirements of the Governance Standard can be included in broader corporate documents of the provider. However, providers must clearly identify where the governance arrangements relate to the management of refundable deposits or bonds in order to demonstrate their compliance with the prudential requirements to their auditor.

### **Investment Management Strategy**

Where refundable deposits and bonds are not immediately required for other permitted uses, providers may choose to invest them in order to generate additional income. The Act allows for refundable deposits and bonds to be invested in a broad range of financial products and in Religious Charitable Development Funds (RCDFs). This enables providers to manage their financial investments in line with their broader business model and corporate capabilities and provides an additional source of income (see section 63(c), Fees and Payments Principles).

While investment in particular financial products and RCDFs is a permitted use for refundable deposits and bonds, these investments bring with them a range of risks that need to be recognised and appropriately managed. If investing bonds or refundable deposits in financial products other than a deposit facility (made available by an authorised deposit-taking institution (ADI) in the course of its banking business) or in a RCDF, providers must implement and maintain an Investment Management Strategy (IMS), (see section 50, Fees and Payments Principles).

If a provider invests bonds and refundable deposits solely in a deposit taking facility provided by an ADI, then the provider is not required to implement an IMS. A list of ADIs is located at [www.apra.gov.au/adi/pages/adilist.aspx](http://www.apra.gov.au/adi/pages/adilist.aspx).

The aim of an IMS is to ensure that providers have arrangements in place to make informed and prudent decisions on the investment of refundable deposits or bonds, to assess the risks of financial investments, including to their liquidity and obligation to refund refundable deposits or bond balances, and respond to changing risk. This approach ensures that regulation targets the main risks arising from providers investing refundable deposits or bonds, while minimising the regulation of low risk investments.

The requirement for an IMS ensures that the executive decision makers of providers have considered and addressed the prudential and other risks that these investments may pose.

**Reference:** Fees and Payments Principles section 50 and section 63

## Requirements of an Investment Management System

At a minimum, an Investment Management Strategy (IMS) must:

- set out the provider's investment objectives,
- set out the provider's assessment of the level of risk to the provider's ability to refund refundable deposit balances or bond balances in accordance with the Act,
- detail a strategy to achieve the provider's investment objectives whilst ensuring that the provider is able to refund refundable deposit balances and bond balances in accordance with the Act,
- specify the asset classes the provider may invest in and the investment limits for each asset class that are consistent with the investment objectives, and
- detail key personnel with appropriate skills and experience who are responsible for implementing the IMS.

The IMS must be approved by the key personnel who are responsible for the provider's executive decisions.

Providers must ensure that any investment of refundable deposits or bonds is in accordance with the IMS.

Providers are responsible for keeping their IMS up-to-date and in compliance with the requirements listed above, and for modifying or replacing the IMS if the provider becomes aware that it no longer complies with the requirements (see section 50, Fees and Payments Principles).

**Reference:** Fees and Payments Principles section 50

## Considerations for an Investment Management Strategy

Where refundable deposits or bonds are not immediately required for other permitted uses, it is a legitimate use to generate assets by investing them. Investment in financial products and RCDFs must not be undertaken in such a way that the provider might not be able to refund them when they fall due. Providers should not invest refundable deposits or bonds in financial products which may adversely affect the requirement to maintain sufficient liquidity to repay refundable deposit balances or bond balances.

The investment management strategy (IMS) requires providers to carefully consider their approach to investing refundable deposits or bonds in financial products and RCDFs. This should be undertaken considering a wide range of factors including the nature and complexity of their business, the availability of surplus funds, any existing investments and access to skills and advice to determine and manage their investments.

Providers must analyse the risk of any investment under consideration for its effect on the ability to refund refundable deposit balances or bond balances when they fall due. Providers may wish to seek professional advice when considering these risks.

Providers that invest refundable deposits or bonds in financial products (other than deposits with authorised deposit-taking institutions (ADIs) made available in the course of their banking business) or RCDFs must document a strategy for achieving the investment objectives and ensuring that they are able to repay refundable deposits or bonds when they fall due. This strategy should include triggers for disposing of the investment and making up any losses incurred.

The IMS must document the asset classes (i.e. the permitted financial products, and any sub-groups of those products) and the limits of investments in those classes that the provider considers to be prudent.

Providers must ensure that only key personnel with appropriate skills and experience are responsible for implementing the IMS. These key personnel must ensure that the investment of refundable deposits or bonds in financial products or RCDFs is undertaken in accordance with the

IMS. Refundable deposits or bonds should not be invested in financial products requiring an IMS if the key personnel of the provider are not suitably skilled and experienced in making financial investments.

The IMS must be documented and approved by those key personnel who have responsibilities for executive decisions of the provider. Depending on the size and complexity of the provider, these may or may not be the same key personnel with allocated responsibilities for managing refundable deposits or bonds as identified through documenting the governance system.

As a minimum, the IMS should be reviewed when:

- there is a change in executive decision makers,
- there is a change in key personnel with responsibilities for managing refundable deposits or bonds,
- there is a change in the objectives of the investments, and
- there is a significant devaluation of any of the financial products invested in.

**Reference:** The Act section 8-3A, section 52N-1, section 88-1, The *Corporations Act 2001*, Fees and Payments Principles section 49, section 50, section 63 and the *Records Principles 2014*.

### Things you need to know

The approach to documenting the governance system and IMS (if required) is a matter for individual providers. In determining their approach, providers should consider:

- that they must be able to demonstrate their compliance with the Governance Standard to their auditor;
- that investing any product that is not available through an ADI (bank) you need to have an IMS in place; and
- that the provider could be requested to provide a copy of its governance system and and/or IMS for monitoring and compliance purposes at any time.

### Your response in the APCS

After considering the information provided under Compliance with the Governance Standard did you comply with the Governance Standard for the full financial year?

Respond Yes or No.

If you answer 'NO' you must submit a separate statement explaining why you have not complied with the Standard.

### COMPLIANCE WITH THE DISCLOSURE STANDARD

The Disclosure Standard requires providers holding refundable deposits and bonds (including entry contributions) to give the Secretary, residents, prospective residents and their representatives information on their compliance with the Liquidity, Governance, Records and Disclosure Standards, and information on their financial standing.

**Reference:** Fees and Payments Principles Division 5, Part 5

### Disclosure to care recipients

Providers have responsibilities for information that must be provided to care recipients (or their representatives).

### Copy of accommodation agreement

Within seven days after an accommodation agreement is entered into, providers must notify the care recipient, in writing, that the provider will give the care recipient, within 7 days of a request

by the care recipient, the information and documents set out in section 57 of the Fees and Payments Principles which include:

- a summary of the permitted uses that refundable deposits and bonds have been used for in the previous financial year,
- if refundable deposits and bonds have been invested in financial products other than through an authorised deposit-taking institution (ADI), a statement explaining the provider's investment objectives and the asset classes they may invest in,
- information about whether the provider has complied with the prudential requirements and permitted uses for refundable deposits and bonds,
- a copy of the independent audit opinion of the APCS from the previous financial year,
- information about the number of refundable deposit balances and bond balances that were not refunded in accordance with the Act or, for entry contributions, a formal agreement,
- the provider's most recent audited accounts or, if the service is part of a broader organisation, the statement relating to the aged care component, and
- a copy of the resident's entry in the refundable deposit register, current at the time of the request.

**Reference:** Fees and Payments Principles section 57

### **Routine provision of information at the end of each financial year**

Within four months after the end of each financial year, providers are required to provide care recipients who have paid a refundable deposit, a bond or an entry contribution with the following information:

- a copy of the resident's entry in the refundable deposit register, as at the end of the financial year (assuming that the resident had paid a refundable deposit or an bond prior to the end of the financial year), and
- a written statement that the provider will provide, within seven days of request, the information and documents specified in section 57(1)(a)-(g) - (3), Fees and Payments Principles.

**Reference:** Fees and Payments Principles section 57

### **Routine provision of information at any other time**

If a care recipient who has paid a refundable deposit, a bond or entry contribution requests the information and documents set out in section 57(1)(a)-(g) - (3), a provider must provide it within seven days. That information includes the following:

- a summary of the permitted uses that refundable deposits and bonds have been used for in the previous financial year,
- if refundable deposits and bonds have been invested in financial products other than through an ADI, a statement explaining the provider's investment objectives and the asset classes they may invest in,
- information about whether the provider has complied with the prudential requirements and permitted uses for refundable deposits and bonds,
- a copy of the independent audit opinion of the APCS from the previous financial year,
- information about the number of refundable deposit balances and bond balances that were not refunded in accordance with the Act or, for entry contributions, a formal agreement,
- the provider's most recent audited accounts or, if the service is part of a broader organisation, the statement relating to the aged care component, and
- a copy of the resident's entry in the refundable deposit register, current at the time of the request.

**Reference:** Fees and Payments Principles section 57

## Keeping records of disclosure to residents

Providers must demonstrate their compliance with the Disclosure Standard on an annual basis, as part of their APCS. To do this, and to provide evidence of compliance if requested, providers should keep records of the following types of information:

- number of requests made, and
- whether the information was provided within seven days.

A provider may want to suggest that information requests be made in writing for ease of processing. If a request is made in writing, a provider should keep a copy of it. If the request is not in writing, a provider may wish to make a note of the date the request was made, the type of information requested and the date the information was provided.

**Reference:** Fees and Payments Principles section 55

## Disclosure to prospective care recipients

A prospective care recipient is a person approved as a recipient of residential care and who is considering receiving residential care through that service. In the case of residential aged care services, a prospective care recipient is someone who is approved by an Aged Care Assessment Team (ACAT or Aged Care Assessment Service (ACAS) in Victoria). A provider might want to confirm that somebody is a prospective care recipient if that person requests information.

Prospective care recipients (or their representatives) can request the information at section 57(1)(a)-(f), of the Principles.

If a prospective care recipient (or their representative) requests any of the above information then the provider must give the information to the prospective care recipient within seven days of the request. This does not limit the information that a provider may voluntarily choose to give a prospective care recipient.

As detailed in the previous section, providers will be required to attest to their compliance with the Disclosure Standard on an annual basis, as part of their Annual Prudential Compliance Statement (APCS). Providers will therefore need to keep records in order to be able to demonstrate their compliance with the requirement to provide information to prospective care recipients (or their representatives).

**Reference:** Fees and Payments Principles section 57

## Example of a Disclosure Statement

This statement is taken to be a statement that complies with section 57(3)(b) and section 15(a) of the Fees and Payments Principles. This statement is provided as a guide only. Providers may draft their own statements.

**Reference:** Fees and Payments Principles section 15, section 57

See the Example below.

## **DISCLOSURE STATEMENT** (Information you are entitled to know).

[insert provider's name] is the provider for [insert the name of the service]. Under the *Aged Care Act 1997* (the Act), care recipients and prospective care recipients or their representatives are entitled to receive particular information from their provider on request.

This includes, in relation to the previous financial year:

- a summary of the permitted uses for which we have used refundable deposits and bonds,
- information about whether we complied with the requirements for permitted uses of refundable deposits and bonds and with the prudential requirements for these payments,
- information about the number of refundable deposit balances and bond balances (if any) that were not refunded in accordance with the timeframes set by the Act. For entry contributions (payable before 1997), information about the number (if any) that were not refunded in accordance with the entry contribution agreement,
- a copy of the independent audit opinion on our compliance with the prudential requirements for bonds and refundable deposits,
- our most recent statement of audited accounts, and
- if we invest refundable deposits and bonds in particular kinds of permitted financial products, our investment objectives and the asset classes we may invest in.

We must also provide:

- if you have already paid a bond or a refundable deposit, a copy of your entry in the refundable deposit register.

Care recipients, prospective care recipients or their representatives may request any or all of the above information. A provider must provide the information within seven days of the request, and the information must be correct at the time of the request.

**Reference:** *Fees and Payments Principles 2014 (No.2)* section 57, section 58

### **Things you need to know**

The approach to recording the disclosure information is a matter for individual providers. In determining their approach, providers should consider:

- that they must be able to demonstrate their compliance with the Disclosure Standard to their auditor;
- that the Commission monitors submission dates of the previous year's APCS; and
- that the provider could be requested to provide its disclosure records for monitoring and compliance purposes at any time.

### **Your response in the APCS**

After considering the information provided under Compliance with the Disclosure Standard did you comply with the Disclosure Standard for the full year?

Respond Yes or No.

If you answer 'NO' you must submit a separate statement explaining why you have not complied with the Standard; the reason or reasons for your failure to comply with the Standard; and in respect to each reason provided – the total number of occasions of non-compliance attributable to the reason.



## COMPLIANCE WITH REFUNDABLE ACCOMMODATION PAYMENT RESPONSIBILITIES

### COMPLIANCE WITH RULES AROUND CHARGING REFUNDABLE DEPOSITS AND/OR BONDS

If at any time during the financial year you were not permitted to charge refundable accommodation payments for entry into one of your services, due to compliance action taken by the Department (pre 1 January 2020) or the Commission (post 1 January 2020), you must report the details of the service and the time period involved.

#### Your response in the APCS

After considering the information provided under charging responsibilities respond Yes or No.

If you answer 'YES' you must submit a statement explaining:

- the period or periods during which you were not permitted to charge a RAD and/or Bond
- the aged care service in respect of which each period specified applies.

### COMPLIANCE WITH RULES AROUND BONDS

#### (FOR RESIDENTS THAT FIRST ENTERED CARE BEFORE 1 JULY 2014 THAT HAVE OPTED TO KEEP THEIR EXISTING BOND AGREEMENT)

A provider has a responsibility with a residential or bond agreement to:

- offer to enter into a resident agreement with the care recipient, and, if the care recipient wishes, to enter into such an agreement section 56-1(g) of the Act; and
- have entered into a bond agreement with the care recipient before, or within 21 days after, the care recipient entered the service section 57-2(1)(e) of the Act.
- The bond agreement can be a separate document or it can be incorporated into the resident agreement section 57-10 of the Act, within 21 days of the resident entering the service.
- After you have entered into an agreement with the resident or their representative, you then have 7 days to give the resident an agreement to sign.

#### Things to you need to know

- Providers must be able to demonstrate compliance with the bond agreement requirements to their auditor.
- The provider could be requested to provide records for monitoring and compliance purposes at any time.

#### Your response in the APCS

After considering the information provided under bond agreements, respond Yes, No or N/A.

Only answer N/A if you have not entered into any Bond agreements.

## COMPLIANCE WITH RULES AROUND CHARGING REFUNDABLE ACCOMMODATION PAYMENTS (FOR RESIDENTS WHO FIRST ENTERED CARE ON OR AFTER 1 JULY 2014)

### Published maximum accommodation prices

Providers are required to publish the maximum prices and a description of the key features of their residential aged care accommodation.

- Providers need to publish their maximum accommodation prices as both refundable deposit and daily payment amounts, and include an example of a combination payment. They must provide a description of the key features of each type of room, and an explanation of residents' payment options.
- This information must be published on the My Aged Care website, providers' websites (if they have one) and in relevant materials given to prospective residents and their families.
- Providers are able to set the accommodation prices for different kinds of rooms, up to a refundable deposit of \$550,000 or equivalent daily payment. Accommodation prices above this amount will need to be approved by the Aged Care Pricing Commissioner. For more information please visit the Aged Care Pricing Commissioner's website.
- The published information must include the maximum accommodation price quoted as both refundable deposit and equivalent daily payment amounts, and include an example of a combination payment. The final accommodation price you charge for any room may be less than the published amount; you can negotiate this, along with any extra services or amenities with the resident, as part of their accommodation agreement. However, you will not be able to charge a resident an accommodation payment for a room if you have not published the maximum price and accompanying information for that type of room.

### Things you need to know

- Providers must be able to demonstrate compliance with published price requirements to their auditor.
- The provider could be asked to provide records for monitoring and compliance purposes at any time.

### Your response in the APCS

Did you make publicly available information about rooms in your services including key accommodation features, extra service fees, and pricing of the maximum accommodation payment amount as a refundable deposit amount, equivalent daily accommodation payment and as a combination payment by:

- providing to the Secretary to publish on the My Aged Care website;
- in written materials given to prospective residents; and
- publishing on your own website, if relevant.

If the provider charged refundable deposits for a room, was the price published before doing so and was the resident charged, if so, did you only charge the amount published for that room on that day? Respond Yes, No or N/A.

Only answer N/A if you have not or do not intend to charge accommodation payments.

If you answered NO you must provide a separate statement with details:

- What dates did you not comply with this rule i.e. My Aged Care Website, written material for prospective residents and/or Approved Provider website.
- The reason or reasons for failure to comply with this rule.
- What processes are now in place to ensure future compliance?

## COMPLIANCE WITH REFUNDABLE DEPOSIT AGREEMENTS

All people moving into an aged care home must be offered a resident agreement with their provider. This agreement covers items like services, fees, and rights and responsibilities. It is a legal agreement between the resident and the provider. Information to be provided before a person enters residential care service or eligible flexible care service in writing include:

- a statement that, if the person pays part or all of his or her accommodation payment or accommodation contribution by refundable deposit, the provider will, within 7 days of receiving a request from the person, give the person the information and documents referred to under the Disclosure Statement;
- information about the interest rate payable if there is a delay in the payment of daily accommodation payments or daily accommodation contributions;
- the method and timing by which any overpaid accommodation payments or accommodation contributions will be refunded to the person;
- information about refund arrangements for refundable accommodation deposits and refundable accommodation contributions;
- the prudential arrangements applying to refundable accommodation deposits and refundable accommodation contributions.

Other matters that must be set out in an accommodation agreement between the providers of a residential care service can be at <https://www.legislation.gov.au/Details/F2018C00751>

**Reference:** The Act Division 52F, Fees and Payments Principles section 17

The resident must have 28 days from the day of entry to indicate their preferred payment method.

### Things you need to know

- Providers must be able to demonstrate compliance with accommodation agreements requirements to their auditor.
- The provider could be requested to provide records for monitoring and compliance purposes at any time.

### Your response in the APCS

- After reading section 17 of the Principles, then consider if the provider met the requirements. Respond Yes or No.
- For each agreement entered into, did you agree on the maximum amount that would be payable with the resident before entry in writing. Respond Yes or No.
- Were all agreements entered into before or within 28 days from date of resident entry? Respond Yes or No.

## COMPLIANCE WITH THE PROVISION OF OTHER CARE AND SERVICES FEES

The Act and the *Aged Care (Transitional Provisions) Act 1997* (the Transitional Provisions Act) provide a complete scheme of fees that aged care providers can charge to residents. Relevant provisions are found in Division 52C and Division 56 of the Act and Division 58 and Division 57 of the Transitional Provisions Act.

It is a provider's responsibility to ensure that any fees they charge to residents are consistent with aged care legislation.

### What types of services cannot attract additional fees?

Additional fees cannot be charged where they do not provide a direct benefit to the individual or the resident cannot take up or make use of the services, or where the activities or services subject

to the fee are part of the normal operation of an aged care home and fall within the scope of specified care and services.

#### **Providers cannot charge additional fees for:**

- items listed in Schedule 1 of the Principles Specified Care and services (some exceptions apply for items in Part 3); or
- other services or activities that would form part of the general operation of the aged care home; or
- services that are required to be delivered as part of a provider's responsibilities.

Examples of 'other care and services' for which charging of additional fees to residents is not permitted include, but are not limited to:

- maintenance inside and outside the aged care home;
- any repairs or replacements necessary because of normal wear and tear;
- general refurbishment of the resident's room after they have left the aged care home;
- services or activities that would form part of the general operation of the aged care home, or are required in order to deliver residential care to the individual;
- employment of administration staff where the staff member is primarily undertaking activities related to the general operation of the aged care home; and
- capital costs, asset management or replacement.

'Asset replacement charges', 'capital refurbishment fees', 'security deposits' and similar fees are not permitted by aged care legislation. Providers are not permitted to charge fees other than those set out by the legislation.

It is a provider's responsibility to obtain agreement from residents before delivering any care or services for which you propose to charge additional fees. If fees for additional services are not included in the resident agreement, then providers should ensure that residents are given a list or schedule of the services available and the cost of each item. It is a provider's responsibility to provide residents with an itemised account and this should be provided for each period (e.g. month) in which the resident purchased goods or accessed services.

Providers are not permitted to charge fees above the maximum amount worked out under the Act and Transitional Provisions Act for services or activities that are part of the normal operation of an aged care home, or are required to be delivered as part of a provider's responsibilities. In some circumstances providers may charge additional fees for 'other care or services' where the resident receives a direct benefit or has the capacity to take up or make use of the services. This differs from extra service fees that are charged for rooms within aged care homes (either individual rooms or across the home) that have been granted extra service status by the Department. Extra service fees are for higher standards of food, accommodation and hotel-type services but not for care.

#### **What does this mean practically?**

A provider cannot charge a resident for:

- registering the resident for a place on a waiting list
- preparing the resident agreement
- preparing invoices and statements for the resident's care
- Residents Handbook
- informing the resident of meetings
- booking fees,
  - excludes recipients of residential respite care

- translated material in the resident’s preferred language explaining basic matters such as resident rights and responsibilities, complaints processes, food menus, and daily activity program.

A provider can charge a resident for:

- management of a resident trust account where such arrangements are voluntary but the resident must have the choice to handle their finances without placing their money in a trust account with the provider.

### Maintenance of buildings and grounds

A provider cannot charge a resident for:

- gardening
- maintenance inside and outside the residential care service
- any repairs and replacements necessary because of normal wear and tear
  - excludes repairs and replacements necessary because of intentional damage.

### Utilities such as electricity and water

A provider cannot charge a resident for:

- inspection of the provider’s electrical equipment for work health and safety purposes
  - includes testing and tagging of electrical equipment
- telephone sockets
- access to a pay telephone
- heating and cooling the residential care service to provide a comfortable environment for residents
  - excludes running costs of personal heating or cooling units provided and operated by the resident in addition to an effective heating or cooling system provided by the residential care service
- moving a resident from one bed or room to another within the residential care service when the move is not at the resident’s request.

*Conditions apply to moving a resident within the residential care service – see section 10 of the User Rights Principles 2014 and section 17 of the Principles for details.*

### Furnishings

Bedside lockers, chairs with arms, containers for personal laundry, dining, lounge and recreational furnishings, draw-screens (for shared rooms), wardrobe space and towel rails.

- Excludes furnishings a care recipient chooses to provide.

A provider cannot charge a resident for:

- a chair with arms to meet the resident’s care, safety and comfort needs
- if the resident is unable to walk or move about independently and cannot use a conventional arm chair, includes an arm chair with particular features to meet the resident’s needs, such as an air, water or gel chair.

### Bedding

Beds and mattresses, bed linen, blankets, and absorbent or waterproof sheeting.

A provider cannot charge a resident for:

- a bed, a mattress and pillows that meet the resident’s care, safety and comfort needs
  - includes as required a bed with particular features that meets the resident’s needs, for example to accommodate the resident’s height or weight.

## Cleaning services, goods and facilities

Cleanliness and tidiness of the entire residential care service.

- Excludes a care recipient's personal area if the care recipient chooses and is able to maintain this himself or herself.

A provider cannot charge a resident for:

- cleaning the resident's room and ensuite
- includes any cleaning materials for the use of the resident if the resident chooses to maintain their personal area
- cleaning floor coverings, includes carpets.

## Waste disposal - Safe disposal of organic and inorganic waste material

A provider cannot charge a resident for:

- safe disposal of sharps and contaminated waste.

## General laundry

Heavy laundry facilities and services, and personal laundry services, including laundering of clothing that can be machine washed.

- Excludes cleaning of clothing requiring dry cleaning or another special cleaning process, and personal laundry if a care recipient chooses and is able to do this himself or herself.

A provider cannot charge a resident for:

- general laundry, including washing and ironing clothing that can be machine washed (excludes hand-washing items of the resident's clothing)
- a system to identify the resident's laundry items (excludes an effective alternative system of the resident's own choice)
  - for example, a provider may charge a resident additional fees if the resident requests use of woven name tapes when the provider normally uses a laundry marking pen to ensure identification of residents' laundry.

## Toiletry goods

Bath towels, face washers, soap, toilet paper, tissues, toothpaste, toothbrushes, denture cleaning preparations, mouthwashes, moisturiser, shampoo, conditioner, shaving cream, disposable razors and deodorant.

A provider cannot charge a resident for:

- suitable soap, or soap substitute, if the resident's care needs mean the resident cannot use the soap normally provided
- denture cleaning products
- excludes personal denture containers.

## Meals and refreshments

- Meals of adequate variety, quality and quantity for each care recipient, served each day at times generally acceptable to both care recipients and management, and generally consisting of 3 meals per day plus morning tea, afternoon tea and supper;
- Special dietary requirements, having regard to either medical need or religious or cultural observance;
- Food, including fruit of adequate variety, quality and quantity, and non-alcoholic beverages, including fruit juice.

A provider cannot charge a resident for:

- quality food in accordance with the resident’s individual nutritional needs
  - includes consultation with residents in menu planning
- special dietary items to meet the resident’s individual medical, cultural or religious needs
  - includes, for example, vegetarian, kosher, halal food to meet cultural or religious needs
  - includes gluten free food, low fat food and thickened drinks to meet medical needs
  - includes nutritional supplements, if the resident is assessed by an appropriate health practitioner as requiring a special dietary supplement to ensure their adequate nutrition and hydration.

### Care recipient social activities

A provider cannot charge a resident for:

- developing and delivering social activity programs in accordance with the resident’s needs, wishes and abilities
  - includes consultation with the resident and/or their representative in program planning
  - excludes outing costs, for example transport, entry fees and purchased food.

The above is not an exhaustive list of what can or cannot be charged. It is only a guide.

### Things you need to know

- Providers must ensure that all residents, upon entry to a facility, are assessed against all the additional services listed in their agreement for which there is a fee and the services, if any, that provide a direct benefit to and can be used by the resident are identified.
- Providers must ensure that residents, upon entry to a facility, are only charged a fee for agreed additional services that have been identified as providing a direct benefit to the resident and are capable of being used by the resident.
- Providers must have systems in place to continue to monitor and assess its residents to determine their capacity to utilise and benefit from the agreed additional services.
- Providers must be able to demonstrate compliance with the charging of other care or services fees, including providing residents with an itemised account, to their auditor.
- The provider could be requested to provide records for monitoring and compliance purposes at any time.

### Your response in the APCS

After considering the above guidance, regarding fees and charges, respond Yes or No.

If you have answered ‘YES’ you must submit a separate statement with the following details:

- The total value of each such fees or charges received during the financial year
- What each fee and charge purports to cover
- The reason for charging or the intended use of these fees or charges
- What steps have you taken or are taking to refund these fees and charges
- What processes are now in place to ensure future compliance

Please note that the total value of each such fee received during the financial year is not to be completed at the resident level (i.e. Mrs Smith \$500, Mr Jones \$1,000) but at fee type level (i.e. 1. Asset Replacement Charge: \$500,000, 2. Documents Completion Fee: \$50,000).

## COMPLIANCE WITH REFUNDING OF REFUNDABLE ACCOMMODATION PAYMENTS

### Refundable Accommodation Payments – refund periods

The refundable deposit and bond balances must be refunded if the care recipient dies or ceases to be provided with residential care or flexible care. There are time limits for refunds of refundable deposits to the resident.

#### **If the care recipient dies,**

- the provider may wait for probate or letters of administration before refunding the refundable deposit or bond balance, the balance must be refunded within 14 days of sighting probate or letters of administration; or
- the provider may make a refund at any time (which must be in the name of the former resident) without evidence of probate or letters of administration if they are sufficiently confident that the person receiving the payment may deal with it.

#### **If the care recipient is moving to another provider,** the refundable deposit must be paid:

- if 14 days notice or more of the move was given, on the date the person ceases being provided care;
- if less than 14 days notice of the move was given, 14 days after the notice was given; or
- if no notice was given, 14 days after the person ceased being provided care.

In any other case, the refundable deposit is to be paid within 14 days of the care recipient ceasing to be provided with residential care or flexible care.

**Reference:** Act section 52P-1

### Payment of Interest – accommodation payment refunds

Providers pay interest to residents at two different rates. Interest must be paid to the resident on the same day that the refundable deposit balance, bond balance or entry contribution is refunded.

Providers pay interest with respect to refundable deposits and bonds:

- at the base interest rate (BIR) for refundable deposit and bond balances, whichever of the following periods comes first:
  - between the day after the resident dies or leaves the provider's service and the date the refundable deposit or bond balance is refunded, or
  - between the day after the resident dies or leaves the provider's service and the end of the legislated timeframe for refund of the refundable deposit or bond balance,
- at the maximum permissible interest rate (MPIR) between the end of the legislated timeframe for refund of the refundable deposit or bond balance is actually repaid. Note that any repayment of refundable deposits or bonds after the legislative timeframe may be subject to compliance action.

#### **Providers pay interest with respect to entry contributions:**

- the MPIR for entry contributions refunded from the day after the refund date (in accordance with the formal agreement) and ending on the day the entry contribution balance is refunded.

**Reference:** Act section 52P-3, and Division 1, Part 7, Fees and Payments Principles



## Application of Interest

### If the care recipient dies

BIR begins to accrue from the day after the day on which the resident dies. The rate of BIR is the BIR applicable on the day after probate or letters of administration are shown to the provider.

If the provider refunds the refundable deposit or bond balance before the end of 14 days after the provider has been shown probate or letters of administration, then the provider pays BIR for the period commencing on the day after the resident died and finishing on the day the refundable deposit or bond balance is actually refunded.

No MPIR is payable as the provider has refunded the refundable deposit or bond balance within the legislated timeframe.

If the provider does not refund the refundable deposit balance or bond balance within 14 days after being shown probate or letters of administration, then the provider must pay:

- BIR for the period from the day after the resident died to the end of 14 days after being shown probate or letters of administration; and
- MPIR for the period commencing on the day after the refundable deposit or bond balance should have been refunded and finishing on the day the refundable deposit or bond balance is actually refunded.

A provider can also decide to refund a refundable deposit or bond balance before being shown probate or letters of administration.

**Example:** Paula died on 5 July 2019 and probate was shown to the provider on 20 August 2019. The refundable deposit balance was due to be refunded by 3 September 2019, 14 days after probate was shown.

- If the provider refunds the refundable deposit balance on 2 September 2019, then BIR is payable for the period 6 July-2 September 2019, at the BIR rate current at 21 August 2019.
- If the provider refunds the refundable deposit balance on 10 September 2019, BIR is payable for the period 6 July-3 September 2019 and MPIR is payable 4-10 September 2019.

### More than 14 days' notice given

If the resident gives more than 14 days' notice of moving to another service, then the refundable deposit or bond balance is due to be refunded on the day that the resident leaves the service.

If the provider refunds the refundable deposit or bond balance on the day the resident leaves the service, then they will not have to pay any interest.

If the provider does not refund the refundable deposit or bond balance by the time the resident leaves the service, then the provider must pay the interest calculated at the MPIR for the period starting the day after the resident leaves the service, and ending on the day the refundable deposit or bond balance is actually refunded.

**Example:** On 1 August 2019, John told Scott's Aged Care Service that he would move to Andy's Aged Care Service on 16 August 2019. He moves on 16 August 2019. If Scott's Aged Care Service gave the bond balance to John on:

- 16 August 2019, then no interest would be payable,
- 25 August 2019, then MPIR is payable for the period 17-25 August 2019 - i.e. from the day after John left the service until the bond balance is refunded.

## Resident Gives Less than 14 days' notice

If the resident provides notice within 14 days before leaving the service, then the refundable deposit or bond balance must be refunded within 14 days after the day on which notice was given. If the refundable deposit or bond balance is refunded within 14 days, then BIR is payable from the day after the resident leaves the service until the end of 14 days after the resident provided notice or until the refundable deposit or bond balance is paid.

If the provider does not refund the refundable deposit or bond balance within 14 days of when the notice was given, then the provider must pay the MPIR for the period commencing on the day after 14 days' notice was given and ending on the day the refundable deposit or bond balance is actually refunded.

**Example:** On 10 August 2019, Fred told Georgie's Aged Care Service that he was moving to Sunset Aged Care Service on 15 August 2019. He moves on 15 August 2019. If Georgie's Aged Care Service gave the bond balance to Fred on:

- 15 August 2019, then no interest is payable,
- 18 August 2019, then BIR is payable for 3 days,
- 28 August 2019, then BIR is payable for the period 16-24 August 2019 and MPIR is payable for the period 25-28 August 2019.

## No notice given by resident

Accrual of interest - resident leaves service to move to another service without giving any notice (applicable since 1 July 2006).

The refundable deposit or bond balance must be refunded within 14 days of the day after the resident leaves the service. If the refundable deposit or bond balance is refunded within the 14 days, then the provider pays BIR for the period commencing the day after the resident left the service and finishing on the day the provider actually refunded the refundable deposit or bond balance.

If the provider does not refund the refundable deposit or bond balance within the 14 day period, then the provider pays BIR for the period from the day after the resident left the service to the expiration of 14 days and MPIR for the period commencing on the day after the refundable deposit or bond balance should have been refunded and finishing on the day the refundable deposit or bond balance is actually refunded.

**Example:** Bob left Rosie's Aged Care Service on 10 July 2019 to move to another service and did not provide any notice. If the bond balance was refunded on:

- 15 July 2019, then BIR is payable from 11 July 2019 until the bond balance was actually refunded on 15 July 2019.
- 28 July 2019, then BIR is payable for the period 11-24 July 2019 and MPIR is payable for the period 25-28 July 2019.

All interest owed (Base and/or Maximum Permissible Interest) to the resident must be refunded at the same time the refundable accommodation payment balance is refunded.

**Did you know that** Interest is applicable from the day after you cease to provide care until the day you refund? Interest rates for Probate or letters of administration are the relevant interest rate on the day you sight probate for both BIR and MPIR, and you can refund without sighting probate if you choose to.

## Things you need to know

- Providers must be able to demonstrate compliance with refunding responsibilities requirements to their auditor.

- The provider could be requested to provide records for monitoring and compliance purposes at any time.

### Your response in the APCS

After considering the information provided for refunding responsibility timeframes, respond Yes, No or N/A.

Only answer N/A if refundable deposits or bonds were not required to be refunded.

If you have answered 'NO' you must submit a separate statement with the following details:

- Client Number
- Care Recipient Name
- Reason for refund i.e. death, transfer or left services
- Date refund was due
- Date of refund
- The reason or reasons for failure to comply
- When was the noted non-compliance remedied
- What processes are in place to ensure future compliance?

### Things you need to know

All interest owed (BIR/MPIR) to the resident must be refunded at the same time the refundable accommodation payment balance is refunded. If you do not refund all applicable interest to the resident the day you refund the balance you must provide details.

### Your response in the APCS

After considering the information provided for refunding responsibilities around interest, respond Yes, No or N/A.

Only answer N/A if refundable deposits or bonds did not require interest to be paid. If you have answered 'NO' you must submit a separate statement with the following details:

- Client Number
- Care Recipient Name
- Reason for refund i.e. death, transfer or left services
- Date refund was due
- Date of refund
- The reason or reasons for failure to comply
- When was the noted non-compliance remedied
- What processes are in place to ensure future compliance?

### Entry Contribution refund periods

The refund day for entry contribution refunds should be set out in the formal agreement.

### Things you need to know

Based interest is not applicable to entry contributions, but the interest will jump to the applicable MPIR if the entry contribution was not refunded in the agreed period. MPIR should be calculated from the day after the entry contribution was due to be refunded, up to and including the day of refund.

## Your response in the APCS

After considering the information provided for refunding entry contribution responsibilities around interest, respond Yes, No or N/A.

Only answer N/A if refundable deposits or bonds did not require interest to be paid.

If you have answered 'NO' you must submit a separate statement with the following details:

- Client Number
- Care Recipient Name
- Reason for refund i.e. death, transfer or left services
- Date refund was due
- Date of refund
- The reason or reasons for failure to comply
- When was the noted non-compliance remedied
- What processes are in place to ensure future compliance?

## COMPLIANCE WITH PERMITTED USES FOR ACCOMMODATION PAYMENTS

### Permitted uses of refundable accommodation deposits

What are the permitted uses for refundable deposits and bonds?

**Permitted uses are limited to:**

- capital expenditure for residential or flexible care that is reasonable in the circumstances,
- investment in particular financial products,
- loans for:
  - capital expenditure,
  - investments in particular financial products,
- refunding refundable deposits, bond balances or entry contributions, and
- repaying debt accrued for the purposes of capital expenditure or for refunding bond balances.
- refunds of refundable deposits, bonds or entry contribution balances,
- repayment of debt accrued for the purposes of capital expenditure or for refunding refundable deposits or bond balances,
- repayment of debt that accrued before 1 October 2011 if accrued for the purposes of providing aged care to residents,
- reasonable business losses during the first 12 months that the provider operates a residential or flexible aged care service,
- investments of refundable deposits or bonds into Religious Charitable Development Funds (RCDFs) (see section 52N-1, Act).

**Reference:** Act section 52N-1

## APPLICATION OF EXPENDITURE ON PERMITTED USES

### Capital expenditure

The primary policy intent of refundable deposits and bonds is to provide providers with a source of capital funding for investment in residential and flexible aged care infrastructure. Capital expenditure improves services for residents and provides asset backing to support the refund of refundable deposits and bond balances. Capital expenditure is broadly defined and includes ancillary expenses directly linked to capital expenditure.

Providers may use refundable deposits or bonds, if it is reasonable under the circumstances, for expenditure to:

- acquire land on which an existing residential or flexible aged care service is built,
- acquire land for building residential care services or flexible care services,
- acquire, build or significantly alter premises for providing residential care or flexible care,
- acquire or install furniture, fittings or equipment used in providing residential care or flexible care. This is a permitted use where the premises are initially erected or following an extension, a significant alteration or significant refurbishment, or
- pay for costs that are directly attributable to the above expenditure (see section 52N-1(2), Act, and Part 6, Fees and Payments Principles.

In administering and enforcing the permitted use requirements, the Commission will principally focus on the primary use or purpose of the capital expenditure. In order to meet the requirements, the primary use or purpose of the capital expenditure must be for the delivery of residential or flexible care services.

The use of infrastructure funded by refundable deposits or bonds for non-residential or flexible care services would be acceptable provided it is an incidental or ancillary use.

The use of refundable deposits or bonds for capital expenditure is only permitted if it is reasonable under the circumstances. The inclusion of this 'reasonableness test' (which is commonly used in legislation and readily interpreted by courts) is to avoid providers using refundable deposits or bonds for other than their intended purposes. It also affords protection against paying above market rates for capital items and other associated costs.

For example, providers are able to use refundable deposits or bonds to acquire land on which premises for providing residential or flexible care services are to be built, and expenditure directly attributable to such an acquisition, if the expenditure is reasonable. In order for this reasonableness to be demonstrated, the provider may be requested to provide documented evidence to demonstrate the intention to use the land for building premises for providing residential or flexible care such as development approvals, evidence of land zoning, architects plans, feasibility studies and contracts of sale. The provider might also be requested to provide evidence of the market value of the land at the time of purchase.

Refundable deposits or bonds must not be used for paying unreasonable fees to building contractors or others. For example, it is expected that any architects fees would be directly attributable to the erection or significant alteration of an aged care service. However, in order for refundable deposits or bonds to be used to meet such an expense, the fees must be reasonable in the circumstances, i.e. they must be charged at commercial, arms' length rates. It would be unreasonable for a provider to pay inflated fees to related parties who may provide services to the provider (for example, partners or family members who are also builders or architects).

**Example:** A provider with three residential aged care services intends to build another residential aged care service nearby. The following are examples of what would constitute permitted capital expenditure of refundable deposits or bonds:

- the initial purchase of the land,
- architect and other professional fees,
- council fees,
- site remediation,
- foundation works,
- construction of the service, and
- installation and purchase of furniture, fittings and equipment.

During the design of the building, the provider asks their architect and construction team to add an additional room, for use as a General Practitioner/Nurse Practitioner/allied health professional consultation room for residents. Since the primary purpose of the building is for the provision of

residential aged care, the provider may use refundable deposits or bonds to pay for the capital works associated with the General Practitioner/Nurse Practitioner/allied health professional consultation room.

**Example:** A provider would like to significantly refurbish its service. The provider has arranged for all residents to move temporarily to other services during the refurbishment. A supermarket and restaurant have approached the provider and offered to rent the ground floor space, which would also be refurbished. The provider is permitted to use refundable deposits or bonds to pay for the significant refurbishment of premises used to provide residential aged care. However, it would not be permitted to use refundable deposits or bonds to pay for the refurbishment of the space used by the supermarket and restaurant.

**Example:** A provider enters into a lease arrangement for an old building where the provider plans to operate a residential aged care service. The provider has approval to significantly alter the premises by adding a new wing to the service as well as refurbishing the entire building. These would all be permitted uses of refundable deposits or bonds.

**Example:** A provider wants to use refundable deposits or bonds to purchase the land and buildings of an existing aged care service from another provider. This would be a permitted use of refundable deposits or bonds.

**Reference:** Act 1997 section 52N-1, Fees and Payments Principles Part 6

### What is not capital expenditure?

Except for reasonable business losses in the first 12 months of operating a service (see section 61, Fees and Payments Principles), refundable deposits or bonds must not be used for routine repairs or maintenance such as painting, plumbing, electrical work, gardening or vehicle leasing. Refundable deposits or bonds must not be used to cover the normal day to day costs of operating a service such as staff wages or the purchase of consumables.

Refundable deposits or bonds must not be used for routine replacement of furniture items such as wardrobes or lounges. It is expected that providers would use operational budgets to replace worn furniture. By contrast, if a significant refurbishment is planned whereby, for example, all furniture is removed and replaced, this would constitute a significant refurbishment and refundable deposits or bonds could be used for this purpose (as it is improving the capital value of the service). Similarly, if a provider were to repair an existing call bell system this would not be capital expenditure for which refundable deposits or bonds can be used. However, if the provider were to replace the call bell system with an entirely new and improved system and this represented a significant capital outlay then refundable deposits or bonds could be used for this purpose.

In determining whether or not expenditure is significant, the Commission will take into account the circumstances of the investment and whether or not the expenditure was reasonable in the circumstances.

**Example:** A provider wants to replace one lifting device in one of its residential aged care services. It would be expected that the provider would use its operational budget to replace this piece of equipment. By contrast, if the provider was to replace all lifting devices as part of a significant refurbishment or alteration, refundable deposits or bonds could be used for this purpose.

**Example:** A provider wishes to replace the bus used for the transport of residents to social events and appointments. As this bus is not furniture, fittings or equipment for premises used or proposed to be used for providing residential care or flexible care, and could not be considered to be purchased following a significant alteration or a significant refurbishment of a premises used for providing care, its purchase or leasing is not a permitted use. Sources of funding other than refundable accommodation payment bonds are available for the purchase or leasing of a facility

bus. Such funding includes accommodation charges, retention amounts and interest earned on the investment of refundable deposits or bonds.

**Example:** A provider wishes to construct independent living units adjacent to one of its residential aged care services. As independent living units are not used in providing residential or flexible care, using refundable deposits or bonds for this purpose is not permitted. Independent living units do not fall within the definition of capital expenditure at section 52N-1(2) of the Act as they are not premises for providing residential care or flexible care.

**Reference:** Aged Care Act 1997 section 52N-1, Fees and Payments Principles section 61

## Investment in Financial Products

Where refundable deposits or bonds are not immediately required for other permitted uses, providers may choose to invest them in order to generate additional income. Providers are able to invest refundable deposits or bonds in a broad range of permitted financial products.

### What financial products can providers invest in?

Where refundable deposits or bonds are not immediately required for other permitted uses, investing the refundable deposits or bonds to generate additional income is a legitimate use. Refundable deposits or bonds may be invested in a broad range of financial products, subject to the provider being able to demonstrate it has an appropriate level of risk management in place. The use of the profit from these investments is not regulated by the Act.

Given that refundable deposit and balances must be refunded within statutory timeframes, a provider must consider the impact of investment risks on its ability to refund refundable deposits or bond balances as they become due.

When deciding whether or not to invest in financial products, and the classes of financial products to invest in, providers should consider their business model, their liquidity needs, and the risks of such investments to their liquidity and capacity to meet refundable deposit or bond balance refunds as, and when, they become due.

Permitted financial products are (within the meaning of section 764A, *Corporations Act 2001*):

- deposits with an authorised deposit-taking institution (ADI) made available in the course of its banking business (e.g. **deposits in bank accounts and term deposits**),
- debentures, stocks or bonds issued by the Commonwealth, states or territories,
- securities (other than a security of kind specified in the User Rights Principles. As at 1 August 2013 there are no securities specified in the Principles),
- registered managed investment schemes, and
- unregistered managed investment schemes established for the purpose of investment in residential or flexible aged care.

Where a provider invests refundable deposits or bonds in investments other than deposits with an authorised deposit-taking institution made available in the course of its banking business, then investment risk must be assessed and managed through the Governance Standard, including an Investment Management Strategy (IMS) (see section 52N1-2(b), and section 52N-1(3), Aged Care Act).

Financial products are listed in section 764A of the Corporations Act. Not all financial products listed in section 764A of the Corporations Act are permitted uses of refundable deposits or bonds. For example, investment in derivatives is not a permitted use of refundable deposits or bonds. Providers may wish to seek their own professional advice if unsure whether a financial product is a permitted use for refundable deposits or bonds.

Providers investing refundable deposits or bonds in financial products, other than a deposit with an ADI, are required to have in place an IMS prior to making such investments. An IMS is also

required where a provider invests in Religious Charitable Development Funds (see section on Investments of refundable deposits or bonds into Religious Charitable Development Funds (RCDFs) further in this chapter.

**Example:** Provider ACMI Pty Ltd is in negotiations with provider ACE Pty Ltd to fully acquire ACE Pty Ltd. ACE Pty Ltd is registered under the Corporations Act and has 100 issued shares. ACMI Pty Ltd may use refundable deposits or bonds to purchase the issued shares in ACE Pty Ltd at an agreed price.

**Example:** A provider has taken \$5 million in bonds since 1 October 2011. Their normal business practice is to place a portion of their bonds into a bank account to ensure they have sufficient liquidity to refund bonds as they fall due. They would also like to invest \$500,000 in shares in a blue chip company, and a further \$500,000 in an unregistered managed investment scheme that complies with the requirements for such schemes in the Corporations Act, and was established for the purpose of investment in residential aged care services.

In doing so this provider will have invested their bonds in permitted financial products.

Since the provider has invested in financial products other than deposits with an ADI, it will need to implement an IMS prior to making such investments.

**Example:** The executive decision makers of a provider wish to invest in an unregistered managed investment scheme established for the purpose of providing capital for the development of retirement villages. Investing bonds in such an unregistered managed investment scheme would not be a permitted use, as a retirement village is not a residential or flexible aged care service.

**Reference:** Act section 52N-1 and *Corporations Act 2001* s 764A

## Amounts Returned From the Sale, Disposal or Redemption of Permitted Financial Products

When refundable deposits or bonds have been invested in permitted financial products and the products are sold, disposed of or redeemed, the provider must use the original amount invested from refundable deposits or bonds for permitted uses. There are no restrictions on the profit made from investment in permitted financial products. The requirements regarding the permitted uses of refundable deposits or bonds continue to apply regardless of how many investments are made using the same refundable deposit or bond amount.

**Example:** In accordance with their IMS, a provider has invested \$20 million of refundable deposits or bonds in shares in blue chip companies. The executive decision makers of the provider decide to sell the shares for \$22 million. The \$2 million profit can be used at the provider's discretion. However, the principal amount of \$20 million (the refundable deposit/ bond amount invested) must only be used for permitted uses.

## Using Refundable Deposits or Bonds to Make Loans

The permitted use arrangements recognise the diversity of providers and the wide range of corporate structures that are utilised within the aged care sector. The arrangements ensure that there is flexibility to move refundable deposits or bonds between different entities, provided appropriate safeguards are in place.

Providers may use refundable deposits or bonds to make a loan that meets the following conditions:

- the loan is not made to an individual

**Example:** Provider ACMI Pty Ltd wants to use refundable deposits or bonds to make a loan to ACE, a partnership operated by a number of individuals. The loan would be made on a commercial basis



and covered by a written agreement, with the ultimate use of refundable deposits or bonds being for the construction of another residential aged care facility to be operated by the provider.

The provider is permitted to use refundable deposits or bonds to fund a loan made for the construction of a new residential aged care facility whereby that loan is made on a commercial basis and covered by a written agreement. However, a provider is not permitted to use refundable deposits or bonds to make a loan to an individual. A partnership is not a separate legal entity from the individuals who form it; rather the term describes the legal relationship between those individuals. If ACMI Pty Ltd was to make a loan to ACE, the legal entities to whom the loan would be given would be those individuals in the partnership. As such, ACMI Pty Ltd cannot lend the money to ACE.

- the loan is made on a commercial basis,

**Explanation:** A loan is made on a commercial basis if the borrower and the lender, even if they are related parties, deal with one another at arm's length, i.e. in a way that independent parties would normally deal with one another. The written loan agreement will include a legal requirement to repay the loan within a specified period, a method for working out the interest payable on the loan and an appropriate guarantor or other security. An interest free loan, or a loan with no security or backed only by a letter of comfort, or a loan for an indefinite period would not be a loan made on a normal commercial basis.

- there is a written agreement in relation to the loan,
- it is a condition of the written agreement that the money loaned will only be used for:
  - capital expenditure as defined by the Fees and Payments Principles,
  - investment in financial products defined by section 52N-1 of the Aged Care Act,
  - refunding refundable deposits/ bond balances or entry contribution balances,
  - repaying debt that is accrued for the purposes of capital expenditure (as defined by section 52N-1, Act) or refunding refundable deposits or bond balances.
- the agreement includes any other conditions specified in the Fees and Payments Principles (see section 52N-1(2)(c), Act).

**Reference:** Act 1997 section 52N-1

### **Refunding Refundable Deposits and Bonds**

It is a permitted use for refundable deposits or bonds to be used to refund refundable deposits or bond balances or entry contribution balances.

### **Repayment of debt accrued for the purposes of capital expenditure or refunding of refundable deposits or bonds**

If a provider accrues debt from capital expenditure (see above section for what constitutes capital expenditure) or from refunding refundable deposits or bond balances, it is a permitted use for refundable deposits or bonds to be used to repay this debt.

### **Repayment of debt accrued before 1 October 2011 for the purposes of providing aged care to residents**

If a provider has accrued debt before 1 October 2011 incurred for the purpose of providing aged care, it is a permitted use for bonds to be used to repay this debt.

### **Investments of Bonds into Religious Charitable Development Funds (RCDFs)**

RCDFs are established by religious and charitable organisations for the purpose of seeking investments from the public to help further the funds' religious and charitable goals and objectives. This fundraising activity meets the definition of banking business under the *Banking Act 1959*. The Australian Prudential Regulation Authority has exempted RCDFs from the requirement

to be authorised under the Banking Act where specified conditions are met. RCDFs that refundable deposits or bonds may be invested into are listed in Schedule 1 of the *Banking Exemption No 1 of 2017*. The deposit of refundable deposits or bonds into RCDFs is a permitted use only when covered by an Investment Management Strategy (IMS). For further information about an Investment Management Strategy, see section on Investment Management Strategy further in this chapter.

**Reference:** *Banking Act 1959*

### Reasonable Business Losses during the First 12 Months of a Provider Operating a Service

The permitted use requirements reflect the intended purposes for refundable deposits or bonds, i.e. to provide a source of capital funding for investment in aged care infrastructure (not operational costs). However, recognising that the construction of a new aged care service or the acquisition of an existing aged care service may involve losses in the initial stages of operation, and that these losses are closely related to the capital investment, a time limited capacity to use refundable deposits or bonds to support operational costs is available.

Business losses may be incurred during the start-up of a residential or flexible care service, including where a new service opens or where a provider makes changes to the business operations of a newly purchased existing service. It is permitted for a provider to use refundable deposits or bonds to meet reasonable business losses of that service for the first 12 months of that service beginning to be operated by the new provider. If using refundable deposits or bonds to meet reasonable business losses, the provider must ensure that they have sufficient liquidity to repay refundable deposits or bond balances as, and when, they fall due.

**Example:** On 9 March 2018, a provider opens a new residential care service. The executive decision makers of the provider wish to use refundable deposits or bonds to pay for the recruitment, training and retention of staff in anticipation of projected occupancy. The provider may use refundable deposits or bonds to meet such operational losses up to and including 8 March 2019.

**Example:** On 25 January 2018, provider Acme Pty Ltd purchases the existing residential care service from provider Ace Pty Ltd who is experiencing financial difficulty. Acme Pty Ltd can use refundable deposits or bonds to purchase the land and buildings and fund costs directly attributable to purchasing the residential care service. The executive decision makers of Acme Pty Ltd also want to use refundable deposits or bonds to improve the business operations of the purchased service. Acme Pty Ltd may use refundable deposits or bonds to establish new record keeping systems and to cover other operational losses up to and including 24 January 2019.

**Reference:** Act 1997 section 52N-1, *Corporations Act 2001* section 764A, *Banking Act 1959*, *Retirement Savings Accounts Act 1997*, Fees and Payments Principles

### Offences Relating to Non-Permitted Use of Refundable Deposits and Bonds

Criminal offences for serious non-compliance are intended to discourage providers from using refundable deposits and bonds for purposes that are not permitted and to build consumer confidence in paying refundable deposits and bonds. It clearly reinforces the importance of appropriately managing refundable deposit and bond funds (see section 52N-2, Act).

Providers commit a criminal offence if they misuse refundable deposits or bonds and, within two years of the misuse occurring, both suffer an insolvency event and owe refundable deposit/bond balance refunds. Offences apply to both providers and to key personnel who knew about the misuse, or were reckless or negligent as to whether the refundable deposits or bonds were being misused, if they could have taken steps to prevent the misuse but failed to do so.

The offences are intended to reinforce the significance of providers' obligations to their residents in dealing appropriately with residents' funds and ensuring that refund obligations are met. They are not intended to be used in circumstances where a breach has been minor and unintentional. Rather, they are structured to ensure that they only become available in the most extreme of circumstances - where a provider has failed to comply with their statutory obligations on the use of refundable deposits or bonds and they have not met their refund obligations to residents.

It is not necessary that the non-permitted use of the refundable deposit or bond can be shown to have actually caused the provider's insolvency, but simply that there was a non-permitted use and there was also an insolvency event (and failure to repay one or more refundable deposits or bonds) within two years.

The penalties can only apply to key personnel where they have known that refundable deposits or bonds are being used for non-permitted purposes, they have not taken reasonable steps to prevent the misuse of refundable deposits or bonds and, within two years of the misuse, the provider has been placed into liquidation while owing refunds of refundable deposits or bonds.

An individual commits an offence (punishable by up to two years imprisonment) if:

- the individual is one of the key personnel of a provider or former provider (noting that key personnel is defined by a person's role and not through notifying the Commission of their key personnel status),
- the provider or former provider uses a refundable deposit or bond for a non-permitted use,
- the individual knew that, or was reckless or negligent as to whether, the refundable deposit or bond would be used for a purpose that was not permitted. Strict liability applies to this element of the offence,
- the individual was in a position to influence the conduct of the entity in relation to the use of the refundable deposit or bond,
- the individual failed to take all reasonable steps to prevent the misuse of the refundable deposit or bond,
- within two years of the non-permitted use of the refundable deposit or bond, the Refundable Deposit/Bond Guarantee Scheme was triggered. In other words, an insolvency event (within the meaning of the [Aged Care \(Accommodation Payment Security\) Act 2006](#)) has occurred in relation to the provider or former provider and there is at least one outstanding refundable deposit/bond balance. Strict liability applies to this element of the offence, or
- at the time that the refundable deposits or bonds was used for the non-permitted use, the provider (or former provider) was a corporation. Strict liability also applies to this element of the offence.

An individual convicted of such an offence would automatically become a disqualified individual for the purposes of the Act and would be unable to be one of the key personnel of any other provider.

Providers can avoid potential liability for an offence by using refundable deposits and bonds for permitted uses only.

Regardless of whether or not a provider has failed financially, sanctions can be imposed if providers do not comply with one or more of their prudential obligations.

**Reference:** Act section 52N-2, *Aged Care (Accommodation Payment Security) Act 2006*

## Things you need to know

- Providers must be able to demonstrate compliance with permitted uses requirements to their auditor.
- The provider could be requested provide records for monitoring and compliance purposes at any time.

## Your response in the APCS

The APCS requires you to disclose whether or not you complied with the requirement to use refundable accommodation payments (deposits, accommodation bonds or entry contributions) only for permitted uses.

- After considering the information provided for compliance with permitted uses, respond Yes or No.
- Please mark only the boxes the provider has expended refundable deposits or bonds for during the financial year.

**Note:** all tick boxes require a corresponding dollar (\$) value.

## Permitted Use Expenditure

**This item** is designed to capture all expenditure on anything allowable as a permitted use. **This** is the only place in the APCS where the questions are not based purely on refundable deposits or bonds.

Contrary to popular belief, providers are required to report expenditure from ALL sources of funding. The information **recorded here** is about your expenditure on uses for which refundable accommodation payment deposits are permitted by the Act.

This information assists to identify which providers may have spent less on permitted uses than they received in refundable accommodation payment deposits and therefore may have spent refundable accommodation payment deposits on uses, other than permitted.

This information provides indicators of providers that may not have complied with their refundable deposit or bond use responsibilities, but does not by itself demonstrate non-compliance. Where it appears that a provider may not have complied with their responsibilities around permitted uses, further information will be sought from the provider to establish what has happened.

Providers are not expected to reconcile their refundable accommodation payment income against their permitted use expenditure.

## Refunds of refundable accommodation payment deposits and entry contribution balances

If any time through the year you refunded an refundable accommodation payment balance or entry contribution balance, you are required to report the total value of the refundable accommodation payment balances and or entry contributions balances that were refunded. Do not include any base or maximum permissible interest that was owed to the residents at the time of refund. (**Balances only** are reported).

**Remember providers need to report the amount refunded to former residents even if the money used was not from refundable accommodation payment balances.**

If you did not refund any accommodation payment balances or entry contribution balances, enter zero or leave blank, the first box.

## Capital expenditure

If during the financial year you have used funds on:

- expenditure to acquire land on which are, or are to be built, the premises needed for providing residential care or flexible care; or
- expenditure to acquire, erect, extend or significantly alter premises used or proposed to be used for providing residential care or flexible care; or
- 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; or
- any expenditure directly attributable to the capital expenditure above.

Please report the total value spent on Capital expenditure in the box.

**Remember providers need to report the amount paid on capital even if the money used was not from refundable accommodation balances.**

## Authorised deposit-taking institutions

If during the financial year you have banked any funds or invested any funds in any deposit-taking facility made available by an ADI (e.g. bank, building society) in the course of its normal banking business, you are required to report the increase or the decrease in money in the accounts at the beginning and end of the year - the net movement of funds for the year.

**What does this mean?** It means take all of your account/s balance as at the start of your financial year that are used by the provider and then subtract the balance as at the end of your financial year. Enter the difference in the ADI box. This can be a positive or negative figure. A negative figure should be in brackets.

**Remember you need to report on all accounts used to conduct your business. If this box is left blank the form will be returned for completion and will require someone who is key personnel to date and initial the change. It is expected that all providers have movement in either ADI or RCDF, if you have not entered a value in either field, you will be contacted and asked to complete this information.**

## Other financial products

If during the financial year you have expended funds on investments in the financial products listed below total value should be reported:

- debentures, stocks or bonds issued by the Commonwealth, States or Territories;
- securities;
- registered managed investment schemes; and
- unregistered managed investment schemes established for the purpose of investment in residential care or flexible care.

You are required to report the value of investments in the 'other financial products' box.

An Investment Management Strategy must be in place if using bonds for these investments.

**Remember providers need to report the amount invested in financial product even if the money used was not from refundable accommodation payment balances.**

## Religious Charitable Development Funds

If you invested in a Religious Charitable Development Fund (RCDF), you are required to report the total amount deposited/banked or invested with your preferred religious charity in the Religious Charitable Development Fund box when you are accounting for your expenditure during the financial year. An Investment Management Strategy must be in place if using refundable accommodation payments for these investments. Any withdrawals from the RCDF need to be reported in the returned amount from financial investments box.

**Remember providers need to report the amount invested in financial products, even if the money used was not from refundable accommodation payment balances.**

## Loans

If during the financial year the provider has lent funds to another party for capital works, investments in financial products, refunding of accommodation payment balances, entry contribution balances or repaying debt accrued for the purposes of capital expenditure or repaying refundable accommodation balances that are:

- not to an individual;
- on a commercial basis; and
- by written agreement.

Report the total value that you have lent under the above requirements in the loans box.

**Remember providers need to report the amount loaned, even if the money used was not from refundable accommodation payment balances.**

## Debt repayment

If during the financial year you have used any funds to repay debt that you may have for capital expenditure or to refund refundable accommodation balances or entry contribution balances, you are required to report the total value you have repaid for the year, not the actual loan amount itself at the repaid debt box.

**Remember providers need to report the amount repaid, even if the money used was not from refundable accommodation payment balances.**

## Reasonable business losses

If during the financial year the provider expended funds to meet reasonable business losses during the first 12 months of operation of a residential or flexible care service, you are required to report the value expended to cover the losses in the reasonable business losses.

**Remember providers need to report the amount paid to cover the business losses, even if the money used was not from refundable accommodation payment balances. 1 October 2011**

If during the financial year you have used any funds to make payments off a loan that you accrued before 1 October 2011 for the purposes of providing aged care to care recipients, you are required to report the total value you have repaid off the loan for the year, not the actual loan amount itself.

**Remember providers need to report the amount repaid off the loan, even if the money used was not from refundable accommodation payment balances.**

### Returned funds from the sale, disposal or redemption of financial products

If you have invested any funds in financial products other than in a banking account made available by your authorised deposit-taking institution in the course of its banking business during the financial year, and you sold, disposed of or redeemed any of those investments, you are required to report the value that you received from the sale disposal or redemption of those investments in the amount returned from financial products box. RCDF withdrawals should be entered here. Do not include:

- withdrawals from bank accounts etc.; or
- interest on bank accounts.

**Remember providers need to report the amount redeemed, even if the original investment money used was not from refundable accommodation payment balances.**