Prudential Standards

Permitted uses of Refundable Accommodation Deposits

This fact sheet collectively refers to refundable accommodation deposits, refundable accommodation bonds and entry contributions as refundable deposits.

Key Points

Refundable deposits are available for you to generate additional income, so you can improve services for consumers and ease growing inflationary and expenditure pressures. You must ensure that refundable deposits are only used for permitted uses in accordance with the *Aged Care Act 1997* and the *Fees and Payments Principles 2014 (No.2)*.

The investment of refundable deposits must be managed through effective governance systems with proper reporting and controls.

Background

Approved providers of residential aged care or flexible care services who hold refundable deposits can use these refundable deposits for permitted uses set out under section 52N-1 of the *Aged Care Act 1997* (Aged Care Act). Section 52M-1(1) of the Aged Care Act requires approved providers who hold refundable deposits to comply with the Prudential Standards (Part 5 of the *Fees and Payments Principles 2014 (No.2)* (Fees and Payments Principles)). The Prudential Standards are the:

- Liquidity Standard
- Records Standard
- Governance Standard
- Disclosure Standard.

The permitted uses of refundable deposits

Permitted uses of refundable deposits include:

- capital expenditure as specified in section 62 of the Fees and Payments Principles
- to repay debt accrued for capital expenditure as specified in section 62 in the Fees and Payments Principles

- investments in certain financial products and/or Religious Charitable Development Funds (RCDFs)
- to make a loan where the following conditions are satisfied:
  - the loan is not made to an individual
  - the loan is made on a commercial basis
  - it is a condition of the agreement that the money loaned will only be used for capital expenditure or investing in financial products
  - the agreement includes any other conditions specified in the Fees and Payments Principles.
- to refund refundable deposit balances
- to repay debt accrued from refunding refundable deposits
- to repay debt that was accrued before 1 October 2011, if the debt was accrued for the purposes of providing aged care to consumers
- to meet reasonable business losses that are incurred during the first 12 months that the approved provider receives residential care subsidy.

Benefits of using refundable deposits for permitted uses

Refundable deposits provide a source of investment capital for you to generate additional income for your business, which in turn benefits consumers. So, when you correctly invest and manage refundable deposits, it ensures that investment in aged-care infrastructure is maintained. Income generated through investing refundable deposits in permitted uses can be reinvested or spent for any purpose within your business.

Effective management of refundable deposits can ease growing inflationary and expenditure pressures on businesses as the additional income generated provides you with greater liquidity.

Importance of sound prudential governance

The prudential governance standard requires you to implement and maintain a written governance system to manage refundable deposits. Your governance system must help you ensure refundable deposits are only used for permitted uses and are refunded to consumers when due. Poor governance and oversight creates a risk that refundable deposits may be used for uses that are not permitted by the Aged Care Act.

The factors that often lead to provider non-compliance, compliance action and in the worst-case scenario, provider failure include:

- a lack of board capability and control
- poor governance and reporting
- poor financial systems and controls
- too much authority vested in one or two key individuals without accountability
- lack of understanding of provider responsibilities
- inability to adequately plan
- diversification to non-aged care business lines – such as retirement ventures and independent living units.

Non-permitted uses of refundable deposits and consequences

Refundable deposits must not be used to pay for the day-to-day costs of operating a service such as staff wages or the purchase of consumables.

Consumers are entitled to have confidence when they pay a refundable deposit that this money will be well managed and only used for those uses that are set out in the Aged Care Act and Fees and Payments Principles.

Criminal offences that relate to the misuse of refundable deposits help provide confidence to consumers and remind providers and their key personnel that they must take the management of refundable deposits seriously. The offences are intended to reinforce the significance of your obligations to your consumers in dealing appropriately with their 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, the offences 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 and they have not met their refund obligations to consumers.

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 for a non-permitted use
- the individual knew that, or was reckless or negligent as to whether, the refundable deposit 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
- the individual failed to take all reasonable steps to prevent the misuse of the refundable deposit
- within five years of the non-permitted use of the refundable deposit, the Accommodation Payment 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 balance. Strict liability applies to this element of the offence
- at the time the refundable deposits was used for the non-permitted use, the provider (or former provider) was a corporation. Strict liability 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 Aged Care Act and would be unable to be one of the key personnel of any other provider.

Regardless of whether you have failed financially, sanctions can be imposed if you do not comply with one or more of your prudential obligations.

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

Further information

Annual Prudential Compliance Statement (APCS) Guidelines

Governance Standard (fact sheet)

Introduction into permitted uses (video)

Provider obligations for permitted uses (video)

Investment Management (fact sheet)

Need to know more?

If you have any questions or feedback on this fact sheet, contact the Prudential Compliance Section by email on:

prudential@agedcarequality.gov.au

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The Aged Care Quality and Safety Commission acknowledges the Traditional Owners of country throughout Australia, and their continuing connection to land, sea and community. We pay our respects to them and their cultures, and to Elders both past and present.

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