



Fees and Payments Principles 2014 (No. 2)

I, Mitch Fifield, Assistant Minister for Social Services, make the following principles.

Dated 24 June 2014

Mitch Fifield
Assistant Minister for Social Services

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Part 1—Preliminary

1 Name of principles

These principles are the *Fees and Payments Principles 2014 (No. 2)*.

2 Commencement

These principles commence on 1 July 2014.

3 Authority

These principles are made under section 96-1 of the *Aged Care Act 1997*.

4 Definitions

In these principles:

Act means the *Aged Care Act 1997*.

annual prudential compliance statement, of an approved provider, means the annual prudential compliance statement required to be given under section 51.

approval day, for a Pricing Commissioner approved amount, means the later of:

- (a) 1 July 2014; and
- (b) the day on which the approval of the amount takes effect.

approval year, for a Pricing Commissioner approved amount, means the period of 1 year beginning on:

- (a) the approval day for the Pricing Commissioner approved amount; or
- (b) any later anniversary of that day.

base interest rate means a rate that:

- (a) is the sum of the below threshold rate and 2%, expressed as a percentage; and
- (b) takes effect on the first day of the month following the day when the below threshold rate is determined.

below threshold rate means the below threshold rate determined under subsection 1082(1) of the *Social Security Act 1991*.

entry day, for a person who is being provided with residential care through a residential care service or an eligible flexible care service, means:

- (a) the day when the person starts to be provided with care through the service; or
- (b) if the person is transferred from respite care to permanent accommodation—the day of the transfer.

essential expenses has the meaning given by section 39.

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financial hardship determination, in relation to a person, means a determination made in relation to the person under subsection 52K-1(1) of the Act.

financial year:

- (a) for an approved provider of a residential care service, means:
 - (i) a period of 12 months commencing on 1 July; or
 - (ii) if another period of 12 months has been determined by the Secretary for the approved provider under section 32 of the *Accountability Principles 2014*—that other period; or
- (b) for an approved provider of an eligible flexible care service, means:
 - (i) a period of 12 months commencing on 1 July; or
 - (ii) if another period of 12 months has been determined by the Secretary for the approved provider under section 59 of these principles—that other period.

index number, for a quarter, means the All Groups Consumer Price Index number, being the weighted average of the 8 capital cities, published by the Australian Statistician in respect of that quarter.

maximum permissible interest rate, for a day, means the maximum permissible interest rate for that day worked out in accordance with the calculator in section 6.

Minister's maximum accommodation payment amount means the maximum amount of accommodation payment determined by the Minister under section 52G-3 of the Act.

multi-purpose service has the same meaning as in the *Subsidy Principles 2014*.

part, of a room that is intended to provide accommodation for 2 or more persons, means an area of the room that is intended to be occupied as personal space by an individual person.

price agreement day, for a person and a residential care service or an eligible flexible care service, means:

- (a) the day on which the person and the approved provider of the service agree, under paragraph 52F-1(1)(b) of the Act, about the maximum amount that would be payable if the person paid an accommodation payment for the service; or
- (b) if the accommodation agreement with the person is varied because the person proposes to move to a new room, or a new part of a room, in the service, and the proposed move is voluntary—the day on which the accommodation agreement is varied; or
- (c) if the person is notified that the person is to be moved to a new room, or a new part of a room, in the service for 28 days or longer, and the proposed move is not voluntary—the day on which the notice is given.

Note: Subsections 17(3) and (5) deal with other matters relating to moves by a person within a service.

Pricing Commissioner approved amount means a higher maximum amount of accommodation payment (expressed as a refundable accommodation deposit

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amount) approved by the Aged Care Pricing Commissioner under subsection 52G-4(5) of the Act.

Note: See also Division 3 of Part 4 of these principles.

quarter means a period of 3 months commencing on 1 January, 1 April, 1 July or 1 October of a year.

refundable deposit register, of an approved provider, means the register established and maintained by the approved provider in accordance with Division 3 of Part 5.

refund day, in relation to the refund of an entry contribution balance, means the last day for the entry contribution balance to be refunded by the approved provider under a formal agreement applying in respect of the entry contribution balance.

refunding event means an event referred to in paragraph 52P-1(2)(a) or (b) of the Act.

refund period means the period specified in paragraph 52P-1(4)(a), subparagraph 52P-1(4)(b)(ii) or (iii) or paragraph 52P-1(4)(c) of the Act within which a refundable deposit balance must be refunded.

remote area has the meaning given by subsection 14(1) of the Social Security Act.

Social Security Act means the *Social Security Act 1991*.

transfer, of a care recipient from respite care to permanent accommodation, means the entry by the care recipient to the residential care service concerned on a permanent basis after having received respite care.

unrealisable asset, of a care recipient, has the meaning given by subsections 11(12) and (13) of the Social Security Act.

Note: A number of expressions used in these principles are defined in the Act, including the following:

- (a) accommodation payment;
- (b) Aged Care Pricing Commissioner;
- (c) daily accommodation payment;
- (d) refundable accommodation deposit;
- (e) refundable deposit;
- (f) refundable deposit balance.

5 Eligible flexible care services

For subsection 52F-1(2) of the Act, a flexible care service is permitted to charge accommodation payments if the service is a multi-purpose service.

Note: A flexible care service that is permitted, under these principles, to charge accommodation payments is an **eligible flexible care service** (see subsection 52F-1(2) of the Act).

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6 Maximum permissible interest rate

The *maximum permissible interest rate* for a day (the *relevant day*) is worked out as follows:

Maximum permissible interest rate calculator

- Step 1. Work out the general interest charge rate for the relevant day under section 8AAD of the *Taxation Administration Act 1953*.
- Step 2. Multiply the rate worked out at step 1 by the number of days in the calendar year in which the relevant day falls.
- Step 3. Subtract 3 percentage points from the amount worked out at step 2.

The result is the *maximum permissible interest rate* for the relevant day.

Part 2—Resident fees

7 Purpose of this Part

- (1) For Division 52C of the Act, this Part makes provision in relation to additional amounts that may be included in resident fees that may be charged to a care recipient for, or in connection with, residential care provided to the care recipient through a residential care service.
- (2) This Part also specifies, for Division 56 of the Act, additional responsibilities of an approved provider of a residential care service in relation to:
 - (a) booking fees for respite care; and
 - (b) refunding overpaid resident fees.

8 Additional amount for residential care service in remote area

- (1) For subparagraph 52C-2(2)(a)(ii) of the Act, this section specifies an amount that may be added to the maximum daily amount of resident fees, worked out under section 52C-3 of the Act, for residential care provided through a residential care service that is located in a remote area.
- (2) The additional amount is the amount worked out in accordance with the following formula:

$$\frac{\text{Remote area amount} - 0.70}{14} \times \frac{85}{100}$$

where:

remote area amount means the amount referred to in column 4 (basic allowance per fortnight) of table item 1 (person whose family situation is not a member of a couple) of Table H—Remote area allowance set out in section 1064-H2 of the Social Security Act.

Note: Paragraph 52C-2(2)(a) of the Act refers to the resident fee in respect of any day, and the remote area amount is a fortnightly amount. The amount worked out using the above formula is an amount equal to 85% of the daily equivalent of the fortnightly amount of remote area allowance at the rate in force immediately before the commencement of the *A New Tax System (Compensation Measures Legislation Amendment) Act 1999*.

9 Additional amount may be agreed by care recipient in unfunded place

- (1) This section specifies the circumstances in which an amount (an **additional amount**), agreed between a care recipient and the approved provider of the residential care service through which the care recipient is being provided with residential care, may be included at step 5 of the resident fee calculator set out in subsection 52C-3(1) of the Act in working out the maximum daily amount of resident fees for the care recipient.

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- (2) The maximum daily amount of resident fees (the **maximum daily fee**) payable by the care recipient for a day (the **relevant day**) may include an additional amount agreed between the care recipient and the approved provider if:
- (a) before entering into the agreement with the care recipient, the approved provider has informed the care recipient, in writing, that the proposed maximum daily fee is more than the maximum daily amount that would have been payable if the care recipient's place were funded; and
 - (b) the care recipient agrees to pay the amount before it is incurred; and
 - (c) on the relevant day:
 - (i) the care recipient is approved under Part 2.3 of the Act as a recipient of residential care; and
 - (ii) the care recipient's place in the service is unfunded.
- (3) For this section:
- (a) a care recipient's place in a residential care service is **funded** if residential care subsidy is payable under Chapter 3 of the Act for the provision of care to the care recipient through the service; and
 - (b) a care recipient's place in a residential care service is **unfunded** if residential care subsidy otherwise payable under Chapter 3 of the Act for the provision of care to the care recipient through the service is not payable because of paragraph 42-1(2)(a) of the Act.

Note: Under paragraph 42-1(2)(a) of the Act, an approved provider is not eligible for residential care subsidy in respect of a care recipient if residential care provided to the care recipient is excluded (see section 42-7 of the Act because the approved provider exceeds the approved provider's allocation of places for residential care subsidy).

10 Booking fee for respite care

- (1) For paragraph 56-1(d) of the Act, this section specifies responsibilities of an approved provider of a residential care service in relation to a booking fee that may be charged by the approved provider for respite care provided to a care recipient through the service.
- (2) The booking fee must not exceed the lesser of:
- (a) 1 week's fee for the respite care; and
 - (b) 25% of the fee for the proposed period of respite care.
- (3) The booking fee must be deducted from the fee for the respite care.
- (4) The booking fee must be refunded if the care recipient enters hospital or dies:
- (a) before entering the residential care service for the provision of the respite care; or
 - (b) after entering the residential care service for the provision of the respite care and before the end of the booked period.
- (5) If the care recipient cancels a booking for respite care more than 7 days before the proposed day for entry into the residential care service for the provision of the respite care, the booking fee must be refunded within 14 days after the approved provider was notified that the care recipient cancelled the booking.
- (6) If:

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- (a) the care recipient cancels a booking for respite care within 7 days before the proposed day for entry into the residential care service for the provision of the respite care; and
 - (b) the reason for the cancellation is other than the care recipient entering hospital or the death of the care recipient before that day;
- the whole or part of the booking fee may be retained.
- (7) The booking fee must also be refunded if the approved provider requires the care recipient to leave the residential care service where the respite care is being provided before the end of the booked period.
 - (8) If the care recipient chooses to leave the residential care service where the respite care is being provided before the end of the booked period, the whole or part of the fee for the unused part of the booked period may be taken from the booking fee.

11 Refund of overpaid resident fees

For paragraph 56-1(n) of the Act, if the amount of resident fees referred to in section 52C-2 of the Act paid by a care recipient to an approved provider is higher than the amount of resident fees that was properly payable, the approved provider must refund to the care recipient the difference between the amount of resident fees that was properly payable and the amount of resident fees that was paid.

Part 3—Home care fees

12 Purpose of this Part

This Part specifies, for paragraph 56-2(1) of the Act, an additional responsibility of an approved provider of a home care service in relation to refunding overpaid home care fees.

13 Refund of overpaid home care fees

If the amount of home care fees referred to in section 52D-1 of the Act paid by a care recipient to an approved provider is higher than the amount of home care fees that was properly payable, the approved provider must refund to the care recipient the difference between the amount of home care fees that was properly payable and the amount of home care fees that was paid.

Part 4—Accommodation payments and accommodation contributions

Division 1—Accommodation agreements

14 Purpose of this Division

For Division 52F of the Act, this Division specifies:

- (a) other information that an approved provider of a residential care service or an eligible flexible care service must give a person before the person enters the service; and
- (b) matters that the Secretary must have regard to in considering whether to extend the period within which an approved provider of a residential care service or an eligible flexible care service must enter into an accommodation agreement with a person; and
- (c) other matters that must be set out in an accommodation agreement.

15 Information to be given before person enters residential care service or eligible flexible care service

For subparagraph 52F-1(1)(a)(ii) of the Act, the approved provider of a residential care service or an eligible flexible care service must give the following information, in writing, to a person before the person enters the service:

- (a) a statement that, if the person pays part or all of his or her accommodation payment or accommodation contribution by refundable deposit, the approved provider will, within 7 days of receiving a request from the person, give the person the information and documents referred to in subsection 57(1);
- (b) information about the interest rate payable if there is a delay in the payment of daily accommodation payments or daily accommodation contributions;
- (c) the method and timing by which any overpaid accommodation payments or accommodation contributions will be refunded to the person;
- (d) information about refund arrangements for refundable accommodation deposits and refundable accommodation contributions;
- (e) the prudential arrangements applying to refundable accommodation deposits and refundable accommodation contributions.

16 Extension of time for entering into accommodation agreement

For subsection 52F-2(2) of the Act, in considering the period by which the time for entering into an accommodation agreement is to be extended, the Secretary may have regard to any matter that the Secretary considers relevant.

17 Content of accommodation agreements

- (1) For paragraph 52F-3(1)(k) of the Act, this section specifies other matters that must be set out in an accommodation agreement between the approved provider

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of a residential care service or an eligible flexible care service and a person who will be paying an accommodation payment for the service.

General matters

- (2) The accommodation agreement must set out the following:
- (a) the specific accommodation that the accommodation payment entitles the person to be provided with;
 - (b) any services that the accommodation payment entitles the person to be provided with;
 - (c) that, if the approved provider or the person applies to the Secretary for a financial hardship determination to be made in relation to the person, the accommodation payment is still payable if:
 - (i) the Secretary refuses to make the determination; or
 - (ii) the determination is made but later ceases to be in force;
 - (d) that, if the person moves to another room (the **new room**), or to another part (the **new part**) of a room, in the service on a day:
 - (i) the person is not taken to have entered the service on that day; and
 - (ii) the Act (in particular paragraph 52F-3(1)(e) and section 52J-5 of the Act) continues to apply in relation to the person by reference to the person's entry day to the service.

Additional matters in relation to voluntary moves within the service

- (3) The accommodation agreement must set out that, if the person proposes to move to a new room, or to a new part of a room, in the service, and the move is voluntary:
- (a) the accommodation agreement must be varied, before the move occurs, to specify the new room or the new part of the room; and
 - (b) the day on which the agreement is varied will become the price agreement day for the person; and
 - (c) the person may be charged an accommodation payment amount, after the move, that is higher or lower than the accommodation payment amount the person is paying before the move, but the person must not be charged an accommodation payment amount that is higher than the maximum accommodation payment amount that was made publicly available by the approved provider under section 19 for the person's new price agreement day and the new room or the new part of the room; and
 - (d) if the person is to be charged a higher accommodation payment amount for the new room or the new part of the room—the person may choose to pay the additional accommodation payment amount by:
 - (i) daily payments; or
 - (ii) refundable deposit; or
 - (iii) a combination of refundable deposit and daily payments.

Additional matters in relation to non-voluntary moves within the service

- (4) The accommodation agreement must set out that, if the person is to be moved to a new room, or to a new part of a room, in the service for less than 28 days, and the move is not voluntary:

- (a) the approved provider must, before the move occurs, notify the person, in writing, of the new room or the new part of the room; and
 - (b) there will be no change to the person's price agreement day; and
 - (c) the person will continue to be charged the same accommodation payment amount that the person is paying before the move.
- (5) The accommodation agreement must set out that, if the person is to be moved to a new room, or to a new part of a room, in the service for 28 days or longer, and the move is not voluntary:
 - (a) the approved provider must, before the move occurs, notify the person, in writing, of the new room or the new part of the room; and
 - (b) the day on which the notice is given will become the price agreement day for the person; and
 - (c) the person must not be charged:
 - (i) an accommodation payment amount that is higher than the accommodation payment amount the person is paying before the move; or
 - (ii) if the maximum accommodation payment amount (the ***provider's published maximum accommodation payment amount***) that was made publicly available by the approved provider under section 19 for the person's new price agreement day and the new room, or the new part of the room, is lower than the amount the person is paying before the move—an accommodation payment amount that is higher than the provider's published maximum accommodation payment amount.
- (6) For subsections (4) and (5), a move by a person to a new room, or to a new part of a room, in a residential care service or an eligible flexible care service is not voluntary if:
 - (a) the move is necessary on genuine medical grounds as assessed by:
 - (i) an aged care assessment team; or
 - (ii) at least 2 medical or other health practitioners who meet the criteria mentioned in subsection (7); or
 - (b) the place occupied by the person becomes an extra service place and the person elects not to pay the extra service fee; or
 - (c) the move is necessary to carry out repairs or improvements to the premises of the service.
- (7) For subparagraph (6)(a)(ii), the criteria are:
 - (a) one practitioner must be independent of the approved provider and the residential care service or eligible flexible care service, and must be chosen by the person; and
 - (b) both practitioners must be competent to assess the aged care needs of the person.

Division 2—Rules about charging accommodation payments

18 Purpose of this Division

For subparagraph 52G-2(e)(ii) of the Act, this Division specifies rules about charging accommodation payments that must be complied with by an approved provider of a residential care service or an eligible flexible care service.

Note: The approved provider must also comply with the other rules set out in section 52G-2 of the Act.

19 Approved provider must publish information about maximum accommodation payment amount etc.

- (1) If an approved provider of a residential care service or an eligible flexible care service proposes to charge an accommodation payment for a room, or a part of a room, in the service, the approved provider must make the following information publicly available in relation to the room or the part of a room:
 - (a) a statement (including the information referred to in subsection (2)) describing the key accommodation features of the room or the part of the room;
 - (b) the maximum accommodation payment amount (expressed as a refundable accommodation deposit amount, and as a daily accommodation payment amount worked out in accordance with section 20) that the provider could charge a person on a day for the room, or a part of the room, if the person made an agreement with the provider under paragraph 52F-1(1)(b) of the Act on that day;
 - (c) information explaining the options (as provided in paragraph 52F-3(1)(e) of the Act) for paying the accommodation payment for the room or the part of the room;
 - (d) at least one example of the daily accommodation payment amount (worked out in accordance with section 20) that would be payable for the room, or the part of the room, if the accommodation payment were paid by a combination of refundable accommodation deposit and daily accommodation payments.
- (2) For paragraph (1)(a), the statement describing the key accommodation features of a room, or a part of a room, in the service must:
 - (a) state the location of the service; and
 - (b) include a description of the quality, condition, size and amenity of the room or the part of the room; and
 - (c) include information about the number of persons who may be provided with accommodation in the room; and
 - (d) state whether the room has access to a shared bathroom or has a private ensuite; and
 - (e) include a description of the quality, condition, size and amenity of the common areas in the service that would be accessible to a person being provided with accommodation in the room; and
 - (f) include a description of any specific accommodation or design features in the room or the part of the room; and

- (g) include a description of any specific accommodation or design features provided by the service that would be accessible to a person being provided with accommodation in the room; and
 - (h) include information about any additional care or services (other than care and services specified in the *Quality of Care Principles 2014* for the purposes of subsection 54-1(1) of the Act) included in the accommodation payment amount and offered at no additional cost to a person being provided with accommodation in the room or the part of the room; and
 - (i) state any extra service fee associated with the room or the part of the room, and describe the services offered for that fee.
- (3) The information referred to in subsection (1) must:
- (a) be published on the approved provider's website (if it has one); and
 - (b) be given to the Secretary for publication by the Secretary; and
 - (c) be included in written material to be given to prospective care recipients by the approved provider.

20 Equivalence between provider's refundable accommodation deposit amount and daily accommodation payment amount—general

- (1) For paragraph 19(1)(b), the approved provider of a residential care service or an eligible flexible care service must ensure that there is equivalence between:
- (a) the refundable accommodation deposit amount; and
 - (b) the daily accommodation payment amount;
- that are made publicly available, under that paragraph, for a day (the **relevant day**) and a room, or a part of a room, in the service.
- (2) For the purpose of complying with subsection (1), the **daily accommodation payment amount** for the relevant day for the room, or the part of the room, must be the amount worked out as follows:

Daily accommodation payment amount calculator

- Step 1. Work out the maximum permissible interest rate for the relevant day using the calculator in section 6.
- Step 2. Multiply the rate worked out at step 1 by the refundable accommodation deposit amount referred to in paragraph (1)(a).
- Step 3. Divide the amount worked out at step 2 by 365.

The result is the **daily accommodation payment amount** for the relevant day for the room or the part of the room.

- (3) For paragraph 19(1)(d), the daily accommodation payment amount that would be payable for the room, or the part of the room, if the accommodation payment were paid by a combination of refundable accommodation deposit and daily accommodation payments must be the amount worked out in accordance with subsection (2), as if the reference in step 2 to the refundable accommodation

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deposit amount were a reference to that amount as reduced by the amount of refundable accommodation deposit that would be paid.

21 Approved provider must not charge more than provider's published maximum accommodation payment amount

An approved provider of a residential care service or an eligible flexible care service must not charge a person an amount of accommodation payment on a day for a room, or a part of a room, in the service that is higher than the maximum accommodation payment amount that was made publicly available by the provider under section 19 for the person's price agreement day and the room or the part of the room.

- Note 1: The approved provider must not charge a person an amount of accommodation payment for a room, or a part of a room, in the service that is higher than:
- (a) the Minister's maximum accommodation payment amount; or
 - (b) if the Aged Care Pricing Commissioner has approved a higher maximum amount of accommodation payment for the room, or the part of the room, under subsection 52G-4(5) of the Act—the Pricing Commissioner approved amount.

See paragraph 52G-2(c) of the Act and Division 3 of this Part.

- Note 2: An approved provider must not accept a payment that would result in a person paying an amount of accommodation payment that is greater than the amount set out in the person's accommodation agreement (see section 52G-5 of the Act).

22 Equivalence between provider's refundable accommodation deposit amount and daily accommodation payment amount—for a particular person

- (1) This section applies in relation to a person with whom the approved provider of a residential care service or an eligible flexible care service has made an agreement under paragraph 52F-1(1)(b) of the Act about the maximum amount that would be payable for a room, or a part of a room, in the service if the person paid an accommodation payment for the room or the part of the room.
- (2) The approved provider must ensure that there is equivalence between:
 - (a) the refundable accommodation deposit amount that the provider could charge the person on a day (the **relevant day**) for the room or the part of the room; and
 - (b) the daily accommodation payment amount that the provider could charge the person on the relevant day for the room or the part of the room.
- (3) For the purpose of complying with subsection (2), the **daily accommodation payment amount** that the approved provider could charge the person on the relevant day for the room, or the part of the room, must be the amount worked out as follows:

Daily accommodation payment amount calculator

- Step 1. Work out the maximum permissible interest rate for the person's price agreement day using the calculator in section 6.
- Step 2. Work out the amount that is the difference between:

- (a) the accommodation payment (expressed as a refundable accommodation deposit amount) agreed with the person under paragraph 52F-1(1)(b) of the Act for the room or the part of the room; and
- (b) the amount (if any) of that refundable accommodation deposit amount paid by the person on or before the relevant day for the room or the part of the room.

Step 3. Multiply the rate worked out at step 1 by the amount worked out at step 2.

Step 4. Divide the amount worked out at step 3 by 365.

The result is the **daily accommodation payment amount** that the approved provider could charge the person on the relevant day for the room or the part of the room.

Note: **Price agreement day**, for a person, is defined in section 4.

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Division 3—Approval of higher maximum accommodation payment amount

23 Purpose of this Division

For section 52G-4 of the Act, this Division:

- (a) sets out requirements for an application to the Aged Care Pricing Commissioner by an approved provider of a residential care service or an eligible flexible care service for approval to charge an accommodation payment for a room, or a part of a room, in the service that is higher than the Minister's maximum accommodation payment amount; and
- (b) specifies the period within which such an application must not be made; and
- (c) sets out matters relating to the Aged Care Pricing Commissioner's decision whether to approve a higher maximum accommodation payment amount; and
- (d) sets out other matters relating to an approval of a higher maximum accommodation payment amount.

24 Interpretation

In this Division:

- (a) a reference to a residential care service or an eligible flexible care service includes a reference to a proposed residential care service or a proposed eligible flexible care service; and
- (b) a reference to a room in a residential care service or an eligible flexible care service includes a reference to a proposed room in the service; and
- (c) a reference to a part of a room in a residential care service or an eligible flexible care service includes a reference to a proposed part of a room in the service.

25 Applications for approval to charge higher maximum accommodation payment amount

Requirements for applications

- (1) For paragraph 52G-4(2)(a) of the Act, subsections (2) to (5) set out requirements for an application by an approved provider of a residential care service or an eligible flexible care service, under subsection 52G-4(1) of the Act, for approval to charge an accommodation payment for a room, or a part of a room, in the service that is higher than the Minister's maximum accommodation payment amount.

Note: The higher maximum accommodation payment amount must be expressed as a refundable accommodation deposit amount (see paragraph (4)(b) of this section).

- (2) An application must:
 - (a) be in writing; and
 - (b) be in a form approved by the Aged Care Pricing Commissioner; and

(c) be accompanied by any information or documents specified by the approved form.

- (3) An application may relate to one or more of any of the following:
- (a) a room that is intended to provide accommodation for one individual person;
 - (b) a part of a room that is intended to provide accommodation for 2 or more persons.

However, an application must not relate to more than one service.

- (4) An application must specify:
- (a) each room, or each part of a room, in the residential care service or eligible flexible care service for which approval to charge a higher maximum accommodation payment amount is sought; and
 - (b) the higher maximum accommodation payment amount (expressed as a refundable accommodation deposit amount) that the approved provider is seeking approval to charge for the room or the part of the room.

- (5) A different higher maximum accommodation payment amount may be specified under subsection (4) for different rooms, or different parts of a room, in the service.

Note: The Aged Care Pricing Commissioner may require an approved provider to give the Commissioner further information in relation to an application made under subsection 52G-4(1) of the Act. The application is taken to have been withdrawn if the information is not given within the required time (see subsections 52G-4(3) and (4) of the Act).

Period within which application must not be made

- (6) For subparagraph 52G-4(2)(b)(i) of the Act, the period of 4 months is specified.

Note: The effect of subsection (6) is that an application for approval to charge a higher maximum accommodation payment amount for a room, or a part of a room, in a residential care service or an eligible flexible care service must not be made within 4 months after the Aged Care Pricing Commissioner last made a decision under subsection 52G-4(5) of the Act in relation to that room or that part of the room. However, this restriction does not prevent an application being made in relation to another room, or another part of a room, in the service.

26 Decision by Aged Care Pricing Commissioner

- (1) For subsection 52G-4(5) of the Act, this section applies in relation to an application to the Aged Care Pricing Commissioner by an approved provider of a residential care service or an eligible flexible care service, under subsection 52G-4(1) of the Act, for approval to charge an accommodation payment for a room, or a part of a room, in the service that is higher than the Minister's maximum accommodation payment amount.

Factors to be considered

- (2) In deciding whether to approve the higher maximum accommodation payment amount for the room, or the part of the room, in the service, the Aged Care Pricing Commissioner:
- (a) must consider the following:

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- (i) the proposed higher maximum accommodation payment amount;
 - (ii) the location of the service;
 - (iii) the quality, condition, size and amenity of the room or the part of the room;
 - (iv) the number of persons who may be provided with accommodation in the room;
 - (v) whether the room has access to a shared bathroom or has a private ensuite;
 - (vi) the quality, condition, size and amenity of the common areas in the service that would be accessible to a person being provided with accommodation in the room;
 - (vii) whether the room, or the part of the room, has any specific accommodation or design features;
 - (viii) whether the service has any specific accommodation or design features that would be accessible to a person being provided with accommodation in the room;
 - (ix) any additional care or services (other than care and services specified in the *Quality of Care Principles 2014* for the purposes of subsection 54-1(1) of the Act) included in the accommodation payment amount and offered at no additional cost to a person being provided with accommodation in the room or the part of the room; and
- (b) may consider:
- (i) the cost of providing the accommodation; and
 - (ii) any other relevant matter.

Note: In considering the cost of providing the accommodation in relation to an application that relates to a proposed room, or a proposed part of a room, the Aged Care Pricing Commissioner may consider the proposed cost of construction or refurbishment.

Approval in relation to proposed room etc. may be given subject to conditions

- (3) If the application relates to a proposed room, or a proposed part of a room, in the residential care service or eligible flexible care service, the Aged Care Pricing Commissioner may approve the higher maximum accommodation payment amount for the room, or the part of the room, subject to the condition that the approval does not take effect unless:
- (a) the approved provider gives the following information to the Aged Care Pricing Commissioner, in writing:
 - (i) information showing that the construction or refurbishment of the room, or the part of the room, has been completed and that the completed or refurbished room, or part of the room, is equivalent to or better than the proposal described in the application;
 - (ii) the total actual cost (the **actual cost**) of the completed construction or refurbishment; and
 - (b) the Aged Care Pricing Commissioner notifies the approved provider under paragraph (4)(b) that he or she is satisfied, having regard to the information given under paragraph (a), that the requirements referred to in subparagraph (a)(i) have been met in relation to the room, or the part of the room, and that:

- (i) the actual cost of the completed construction or refurbishment is not significantly lower than the proposed cost of the construction or refurbishment; or
 - (ii) if the actual cost of the completed construction or refurbishment is significantly lower than the proposed cost of the construction or refurbishment and if the lower actual cost had been provided to the Aged Care Pricing Commissioner with the application as the proposed cost—the Aged Care Pricing Commissioner would still have approved the higher maximum accommodation payment amount applied for.
- (4) The Aged Care Pricing Commissioner must, within 28 days after receiving information in relation to a proposed room, or a proposed part of a room, under paragraph (3)(a):
 - (a) decide whether, having regard to the information, the Aged Care Pricing Commissioner is satisfied as referred to in paragraph (3)(b) in relation to the room or the part of the room; and
 - (b) notify the approved provider, in writing, of the Aged Care Pricing Commissioner's decision.
- (5) If the Aged Care Pricing Commissioner is satisfied as referred to in paragraph (3)(b) in relation to the room or the part of the room, the notice given under paragraph (4)(b) must specify the date on which the approval of the higher maximum accommodation payment amount for the room, or the part of the room, is to take effect.

Review of decision

- (6) A decision under paragraph (4)(a) that the Aged Care Pricing Commissioner is not satisfied as referred to in paragraph (3)(b) in relation to a proposed room, or a proposed part of a room, is a reviewable decision under section 85-1 of the Act.
- (7) Part 6.1 of the Act applies to a reviewable decision referred to in subsection (6) as if a reference in that Part to this Act included a reference to these principles.

27 Notification of Aged Care Pricing Commissioner's decision

- (1) The Aged Care Pricing Commissioner must notify, in writing, an approved provider who made an application, under subsection 52G-4(1) of the Act, for approval to charge a higher maximum accommodation payment amount for a room, or a part of a room, in a residential care service or an eligible flexible care service:
 - (a) whether or not the higher amount is approved; and
 - (b) if the higher amount is approved and the approval is not subject to the condition referred to in subsection 26(3)—of the date on which the approval is to take effect.

Note 1: A decision not to approve a higher maximum accommodation payment amount is reviewable under Part 6.1 of the Act.

Note 2: If a higher maximum accommodation payment amount is approved, the amount applies only in relation to a person:

- (a) who at the date of approval has not entered into an accommodation agreement with the approved provider; and
- (b) whose entry to the service occurs on or after the date of the approval.

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See subsection 52G-4(6) of the Act.

- (2) If the higher maximum accommodation payment amount is approved subject to the condition referred to in subsection 26(3), the notice must include a statement setting out the condition.
- (3) The notice must be given within 60 days after the Aged Care Pricing Commissioner received the application.
- (4) If the Aged Care Pricing Commissioner requested further information under subsection 52G-4(3) of the Act to determine the application, the 60 day period referred to in subsection (3) does not include the period beginning on the day the request was made and ending on the day the information was received.

28 Duration of approval

An approval given under subsection 52G-4(5) of the Act to charge a higher maximum accommodation payment amount for a room, or a part of a room, in a residential care service or an eligible flexible care service ceases to have effect:

- (a) if there is a change in the location at which residential care is provided through the service; or
- (b) in any other case—at the end of 4 years beginning on the approval day.

29 Indexation of Pricing Commissioner approved amount

- (1) A Pricing Commissioner approved amount that may be charged by an approved provider (the **relevant approved provider**) may be indexed by the approved provider on the first day of the second, or a later, approval year (the **current approval year**) for the amount, by multiplying the amount by the indexation factor worked out using the formula:

$$\frac{\text{Most recent index number}}{\text{Previous index number}}$$

where:

most recent index number means the index number for the most recent quarter ending before the first day of the current approval year.

previous index number means the index number for the most recent quarter ending before the first day of the previous approval year.

Note: The following terms are defined in section 4: approval year; index number; Pricing Commissioner approved amount; quarter.

- (2) If a Pricing Commissioner approved amount is indexed under this section, the Act and these principles have effect as if the indexed amount were substituted for the Pricing Commissioner approved amount.
- (3) If a Pricing Commissioner approved amount is indexed on a day under this section, the indexed amount applies only in relation to a person:
 - (a) who, before that day, has not entered into an accommodation agreement with the relevant approved provider; and

- (b) whose entry to the residential care service or eligible flexible care service occurs on or after that day.
- (4) If, apart from this subsection, a Pricing Commissioner approved amount indexed under this section would be an amount of dollars and cents:
 - (a) the amount is to be rounded to the nearest whole dollar; and
 - (b) if the amount to be rounded is 50 cents, the amount is to be rounded down.
- (5) If, at any time (whether before or after the commencement of these principles), the Australian Statistician publishes an index number for a quarter in substitution for an index number previously published by the Australian Statistician for that quarter, the publication of the later index number is to be disregarded for this section.
- (6) If, at any time (whether before or after the commencement of these principles), the Australian Statistician changes the index reference period for the Consumer Price Index, then, in applying this section after the change is made, regard is to be had only to index numbers published in terms of the new index reference period.

Division 4—Rules about charging accommodation contributions

30 Purpose of this Division

For subparagraph 52G-6(e)(ii) of the Act, this Division specifies rules about charging accommodation contributions that must be complied with by an approved provider of a residential care service.

Note: The approved provider must also comply with the other rules set out in section 52G-6 of the Act.

31 Equivalence between care recipient's daily accommodation contribution amount and refundable accommodation contribution amount

- (1) The approved provider of a residential care service must ensure that there is equivalence between:
 - (a) a care recipient's daily accommodation contribution amount; and
 - (b) the maximum refundable accommodation contribution amount that the care recipient may be charged;on a day (the *relevant day*) for the service.
- (2) For the purpose of complying with subsection (1), the *maximum refundable accommodation contribution amount* that the approved provider could charge the care recipient on the relevant day for the service must be the amount worked out as follows:

Maximum refundable accommodation contribution amount calculator

Step 1. Work out the maximum daily accommodation contribution amount for the care recipient for the relevant day.

Note: Section 52G-6 of the Act sets out rules about the amount of accommodation contribution that a person may be charged for a day.

Step 2. Multiply the amount worked out at step 1 by 365.

Step 3. Divide the amount worked out at step 2 by the maximum permissible interest rate for the care recipient's entry day using the calculator in section 6.

The result is the *maximum refundable accommodation contribution amount* that the approved provider could charge the care recipient on the relevant day for the service.

32 Additional daily accommodation contribution amount payable if part of accommodation contribution paid by refundable accommodation contribution

- (1) This section applies in relation to a care recipient who:
 - (a) may be charged an accommodation contribution for a residential care service; and

- (b) has paid part of the accommodation contribution for the service by refundable accommodation contribution.

Note: A care recipient must not be charged an accommodation contribution for a residential care service unless the care recipient's means tested amount, at the date the care recipient enters the service, is less than the maximum accommodation supplement amount for that day (see subsection 44-21(6) and paragraph 52G-6(a) of the Act).

- (2) The daily accommodation contribution amount (the ***additional daily accommodation contribution amount***) that the approved provider of the service could charge the care recipient on a day (the ***relevant day***) for the service, in addition to the refundable accommodation contribution amount already paid by the care recipient, must be the amount worked out as follows:

Additional daily accommodation contribution amount calculator

- Step 1. Work out the maximum permissible interest rate for the care recipient's entry day using the calculator in section 6.
- Step 2. Work out the amount that is the difference between:
- (a) the maximum refundable accommodation contribution amount for the care recipient for the relevant day worked out using the calculator in section 31; and
 - (b) the refundable accommodation contribution balance for the care recipient on the relevant day.
- Step 3. Multiply the rate worked out at step 1 by the amount worked out at step 2.
- Step 4. Divide the amount worked out at step 3 by 365.

The result is the ***additional maximum daily accommodation contribution amount*** that the approved provider could charge the care recipient on the relevant day for the service.

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Division 5—Rules about daily payments

33 Purpose of this Division

For paragraph 52H-4(a) of the Act, this Division specifies rules about when daily payments are to be made.

Note: The rules in this Division are in addition to the rules set out in Division 52H of the Act.

34 Frequency of daily payments

If a care recipient is required to make daily payments, the approved provider of the aged care service through which the care recipient is being provided with care must agree with the care recipient on the frequency of the daily payments.

Division 6—Rules about refundable deposits

35 Purpose of this Division

For Division 52J of the Act, this Division specifies how a choice to pay a refundable deposit is to be made.

36 Choice to pay refundable deposit

For paragraph 52J-3(a) of the Act, a choice about how to pay a refundable deposit must be recorded in writing.

Division 7—Financial hardship

37 Purpose of this Division

For Division 52K of the Act, this Division specifies:

- (a) matters to which the Secretary must have regard in deciding whether to make a financial hardship determination in relation to a person who may be charged an accommodation payment or accommodation contribution; and
- (b) circumstances in which the Secretary may revoke a financial hardship determination in relation to a person.

Note: See Subdivision B of Division 5 of Part 3 of Chapter 2 of the *Subsidy Principles 2014* in relation to determining whether a care recipient is eligible for a hardship supplement in relation to residential care subsidy and Subdivision A of Division 4 of Part 2 of Chapter 3 of those Principles in relation to determining whether a care recipient is eligible for a hardship supplement in relation to home care subsidy.

38 Matters to which Secretary must have regard in deciding whether to make financial hardship determination

- (1) For section 52K-1 of the Act, this section sets out matters to which the Secretary must have regard in deciding whether to make a financial hardship determination in relation to a person.
- (2) The Secretary must not make a financial hardship determination in relation to a person if:
 - (a) the person's means have not been assessed in accordance with the Act; or
 - (b) the value of the person's assets (worked out under section 44-26A of the Act and section 47 of the *Subsidy Principles 2014*) is more than 1.5 times the sum of the annual amount of the following (worked out under the Social Security Act):
 - (i) the basic age pension amount;
 - (ii) the pension supplement amount;
 - (iii) the clean energy supplement; or
 - (c) the person has gifted:
 - (i) more than \$10 000 in the previous 12 months; or
 - (ii) more than \$30 000 in the previous 5 years.

Note: **Basic age pension amount** is defined in clause 1 to Schedule 1 to the Act.

- (3) In determining the value of a person's assets for paragraph (2)(b), unrealisable assets are not to be included.

Note: **Unrealisable asset** is defined in section 4.

- (4) In deciding whether to make a financial hardship determination in relation to a person, the Secretary may have regard to the following matters:
 - (a) the person's total assessable income (worked out under section 44-24 of the Act and section 41 of the *Subsidy Principles 2014*);
 - (b) whether the amount of income available to the person after expenditure on essential expenses is less than 15% of the basic age pension amount;
 - (c) the person's financial arrangements;

- (d) the person's entitlement to income support:
 - (i) under the Social Security Act; or
 - (ii) under the *Veterans' Entitlements Act 1986*; or
 - (iii) from any other source;
- (e) whether the person has taken steps to obtain information about his or her entitlement to a pension, benefit or other income support payment;
- (f) whether the person has access to financial assistance:
 - (i) under section 1129 of the Social Security Act (relating to access to financial hardship rules for pensions); or
 - (ii) under the pension loans scheme under Division 4 of Part 3.12 of the Social Security Act; or
 - (iii) from any other source;
- (g) whether any income of the person is income that he or she does not reasonably have access to;
- (h) whether there is a charge on the person's income over which the payment of an accommodation payment or accommodation contribution cannot practically take precedence;
- (i) whether the person is in Australia on a temporary basis;
- (j) any other matters the Secretary considers relevant.

Note: *Essential expenses* is defined in section 39.

- (5) A financial hardship determination may be expressed to take effect from a date before it is made.

39 Meaning of *essential expenses*

- (1) *Essential expenses*, in relation to a person, include expenditure on any of the following:
 - (a) resident fees;
 - (b) if the person has a partner or dependent child living at the person's principal home—rent or mortgage payments for the principal home;
 - (c) private health insurance;
 - (d) ambulance cover;
 - (e) medical expenses including expenses incurred under a health professional's direction;
 - (f) transport costs to attend medical appointments;
 - (g) dental care;
 - (h) prescription glasses (one pair per year) or contact lenses;
 - (i) artificial limbs, eyes or hearing aids for amounts that are not already covered by other government schemes or programs;
 - (j) wheelchair or mobility aids;
 - (k) if the person is paying a funeral plan on a periodic basis—the funeral plan.
- (2) However, *essential expenses*, in relation to a person, do not include expenditure on any of the following:
 - (a) extra service fees for a place in a residential care service that has extra service status;

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- (b) amounts paid for additional care and services agreed as mentioned in paragraph 56-1(e) of the Act;
- (c) amounts spent by someone else, authorised to act on the person's behalf, other than for the benefit of the person.

40 Circumstances in which Secretary may revoke financial hardship determination

For subsection 52K-2(1) of the Act, the Secretary may revoke a financial hardship determination in relation to a person if:

- (a) the circumstances of the person have changed; and
- (b) the Secretary is satisfied that paying an accommodation payment or accommodation contribution that is more than the amount specified in the determination would not cause the person financial hardship.

Example: For paragraph (a), a person's circumstances may change if assets of the person that were unrealisable assets are no longer assets of that kind.

Part 5—Prudential Standards

Division 1—General

41 Purpose of this Part

- (1) For subsection 52M-1(2) of the Act, this Part sets out Prudential Standards providing for the following:
 - (a) protection of refundable deposit balances, accommodation bond balances and entry contribution balances of care recipients (the Liquidity Standard—see Division 2);
 - (b) sound financial management of approved providers (the Records Standard—see Division 3);
 - (c) arrangements by approved providers for the management of refundable deposit balances and accommodation bond balances (the Governance Standard—see Division 4);
 - (d) provision of information about the financial management of approved providers (the Disclosure Standard—see Division 5).
- (2) This Part also specifies, for paragraphs 56-1(n) and 56-3(m) of the Act, an additional responsibility of an approved provider to which this Part applies to comply with the Prudential Standards.

42 Application of this Part

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

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

42A Responsibilities of approved providers

For paragraphs 56-1(n) and 56-3(m) of the Act, an approved provider to which this Part applies must comply with the Prudential Standards set out in Divisions 2 to 5 of this Part.

Section 43

Division 2—Liquidity Standard

43 Requirement for sufficient liquidity

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

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

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

Division 3—Records Standard

45 Refundable deposit register

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

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

46 Information about refundable deposits

Refundable deposits paid and refundable deposit balances held

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

Refundable deposit balances refunded

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

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- (ii) if applicable, the date on which the approved provider is shown the probate of the will of the care recipient or letters of administration of the estate of the care recipient;
- (b) if the refundable deposit balance was refunded because the care recipient ceased to be provided with care through the aged care service—the date on which the care recipient ceased to be provided with that care;
- (c) if paragraph (b) applies and the care recipient notified the approved provider, before the date referred to in that paragraph, that the care recipient intended to enter another aged care service to receive residential care—the date of the notification;
- (d) if the refundable deposit was paid for entry to a residential care service, and the refundable deposit balance was refunded because the residential care service ceased to be certified—the date the residential care service ceased to be certified;
- (e) the date on which, or by which, the approved provider was required to refund the refundable deposit balance to the care recipient, worked out in accordance with Division 52P of the Act;
- (f) the date on which the refundable deposit balance was refunded;
- (g) the amount of the refundable deposit balance refunded;
- (h) the amount (if any) of base interest paid under Division 1 of Part 7 and the date when the interest was paid;
- (i) the amount (if any) of maximum permissible interest paid under Division 1 of Part 7 and the date when the maximum permissible interest was paid.

47 Information about accommodation bonds

Accommodation bonds paid and accommodation bond balances held

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

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- (g) the amount of any deduction made from the accommodation bond on or after 1 July 2006;
- (h) the date of any deduction referred to in paragraph (g);
- (i) the reason for any deduction referred to in paragraph (g);
- (j) the accommodation bond balance as at 1 July 2006 (if applicable);
- (k) the accommodation bond balance as at the end of each calendar month commencing on or after 1 July 2006 during which the approved provider held an accommodation bond balance in respect of the care recipient.

Accommodation bond balances refunded

- (2) The refundable deposit register must include, but is not limited to, the following information for each care recipient in respect of whom an accommodation bond balance is refunded on or after 1 July 2006:
 - (a) if the accommodation bond balance was refunded because the care recipient died:
 - (i) the date on which the care recipient died; and
 - (ii) if applicable, the date on which the approved provider is shown the probate of the will of the care recipient or letters of administration of the estate of the care recipient;
 - (b) if the accommodation bond balance was refunded because the care recipient ceased to be provided with care through the aged care service—the date on which the care recipient ceased to be provided with that care;
 - (c) if paragraph (b) applies and the care recipient notified the approved provider, before the date referred to in that paragraph, that the care recipient intended to enter another aged care service to receive residential care—the date of the notification;
 - (d) if the accommodation bond was paid for entry to a residential care service, and the accommodation bond balance was refunded because the residential care service ceased to be certified—the date the residential care service ceased to be certified;
 - (e) the date on which, or by which, the approved provider was required to refund the accommodation bond balance to the care recipient, worked out, subject to subsection (3), in accordance with Division 52P of the Act;
 - (f) the date on which the accommodation bond balance was refunded;
 - (g) the amount of the accommodation bond balance refunded;
 - (h) the amount (if any) of base interest paid under Division 1 of Part 7 and the date when the interest was paid;
 - (i) the amount (if any) of maximum permissible interest paid under Division 1 of Part 7 and the date when the maximum permissible interest was paid.
- (3) For paragraph (2)(e), if an event referred to in paragraph 57-21(1)(a), (b) or (c) of the Act, as in force immediately before 31 May 2006, occurred before 31 May 2006, the date on which, or by which, the approved provider is required to refund the accommodation bond balance to the care recipient is worked out in accordance with Subdivision 57-G of the Act, as in force immediately before 31 May 2006.

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48 Information about entry contributions

Entry contributions paid and entry contribution balances held

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

Entry contributions balances refunded

- (2) The refundable deposit register must include, but is not limited to, the following information for each care recipient in respect of whom an entry contribution balance is refunded on or after 1 July 2006:
- (a) the date on which the care recipient ceased to be provided with care through the aged care service;
 - (b) the date on which the approved provider was required to refund the entry contribution balance to the care recipient, worked out in accordance with the formal agreement applying in respect of the entry contribution balance;
 - (c) the date on which the entry contribution balance was refunded;
 - (d) the amount of the entry contribution balance refunded;
 - (e) the amount (if any) of maximum permissible interest paid under Division 2 of Part 7 and the date when the maximum permissible interest was paid.

Division 4—Governance Standard

49 Requirement for governance system

- (1) An approved provider that holds one or more refundable deposit balances or accommodation bond balances must implement and maintain a governance system that ensures that those balances:

- (a) are used only for permitted uses; and
- (b) are refunded to care recipients in accordance with section 52P-1 of the Act.

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

- (2) Without limiting the matters that an approved provider's governance system may deal with, the system must provide for the following:

- (a) allocating responsibilities to the key personnel of the approved provider in relation to the management of refundable deposit balances or accommodation bond balances held by the provider;
- (b) monitoring and controlling any delegation or outsourcing of the allocated responsibilities;
- (c) reporting mechanisms for the allocated responsibilities that ensure that the key personnel who are responsible for the executive decisions of the approved provider can effectively monitor and control the use of refundable deposit balances and accommodation bond balances;
- (d) ensuring that the key personnel who are allocated responsibilities, and persons to whom responsibilities are delegated or outsourced, are aware of the requirements of the Act and these principles in relation to refundable deposits and accommodation bonds;
- (e) detecting, recording and responding to any failure to comply with the requirements referred to in paragraph (d).

- (3) An approved provider must:

- (a) keep written documentation describing the provider's governance system; and
- (b) ensure that the written documentation of the provider's governance system is up-to-date; and
- (c) modify or replace its governance system if the provider becomes aware that the system no longer complies with the requirements set out in subsections (1) and (2).

50 Requirement for investment management strategy

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

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

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

Division 5—Disclosure Standard

51 Annual prudential compliance statement

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

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

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

- (a) the total number of refundable deposit balances held by the approved provider as at the end of the financial year;
- (b) the total value of refundable deposit balances held by the approved provider as at the end of the financial year;
- (c) the total value of refundable deposits received by the approved provider during the financial year;
- (d) the total amount deducted by the approved provider during the financial year from refundable deposit balances;
- (e) the total amount deducted by the approved provider during the financial year from refundable deposits that were received during the year;
- (f) the total value of refundable deposit balances refunded by the approved provider during the financial year;
- (g) if, during the financial year, refundable deposit balances were not refunded in accordance with subsection 52P-1(4) of the Act (other than a refundable deposit balance in relation to which the approved provider has made an agreement as referred to in subsection 52P-4(2) of the Act)—the following information:

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- (i) the total number of refundable deposit balances that were not refunded in accordance with subsection 52P-1(4) of the Act;
 - (ii) the reason or reasons for the delay in refunding the refundable deposit balances;
 - (iii) in respect of each reason provided—the total number of instances of delay attributable to the reason;
- (h) if, for the whole or a part of the financial year, the approved provider was not permitted to charge a refundable deposit for entry by a care recipient to any aged care service that the approved provider is responsible for operating:
 - (i) the period or periods during which the approved provider was not permitted to charge a refundable deposit; and
 - (ii) the aged care service in respect of which each period specified applies;
- (i) the use of refundable deposits by the approved provider during the financial year;
- (j) whether any use of refundable deposits by the approved provider during the financial year was not permitted under section 52N-1 of the Act;
- (k) the total amount expended by the approved provider (whether or not obtained from refundable deposits) during the financial year on capital expenditure for which use of a refundable deposit was permitted under section 52N-1 of the Act;
- (l) the total amount expended by the approved provider (whether or not obtained from refundable deposits) during the financial year on investment in financial products for which use of a refundable deposit was permitted under section 52N-1 of the Act;
- (m) the total amount expended by the approved provider (whether or not obtained from refundable deposits) during the financial year on loans for which use of a refundable deposit was permitted under section 52N-1 of the Act;
- (n) the total amount expended by the approved provider (whether or not obtained from refundable deposits) during the financial year on repaying debt accrued for the purposes of:
 - (i) capital expenditure of the kind described in paragraph (k); or
 - (ii) refunding refundable deposit balances;
- (o) the total amount expended by the approved provider (whether or not obtained from refundable deposits) during the financial year on repaying debt that accrued before 1 October 2011 if the debt was accrued for the purpose of providing aged care to care recipients;
- (p) the total amount expended by the approved provider (whether or not obtained from refundable deposits) during the financial year on each of the uses of refundable deposits permitted under section 63 of these principles;
- (q) the amount that has been returned to the approved provider during the financial year from the sale, disposal or redemption of financial products covered by paragraphs 52N-1(3)(b) to (e) of the Act, or paragraph 63(c) of these principles, that the approved provider invested in after 1 October 2011, whether or not the investment was obtained from refundable deposits.

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

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

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

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

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

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

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

- (iii) in respect of each reason provided—the total number of instances of delay attributable to the reason.

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

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

- (a) a statement about whether the approved provider has, during the financial year, complied with the following:
 - (i) the Liquidity Standard in Division 2;
 - (ii) the Records Standard in Division 3;
 - (iii) the Governance Standard in Division 4;
 - (iv) the other provisions of the Disclosure Standard in this Division;
 - (v) paragraph 57-2(1)(e) of the *Aged Care (Transitional Provisions) Act 1997* and subsection 52F-2(1) and sections 52P-1 and 52P-3 of the Act;
 - (vi) Division 1 of Part 4 of these principles (which deals with accommodation agreements);
 - (vii) paragraph 57-2(1)(k) of the *Aged Care (Transitional Provisions) Act 1997* and subsection 52N-1(1) of the Act;
- (b) if the approved provider has not complied with the Records Standard—a statement about why the approved provider has not complied with the Standard;
- (c) if the approved provider has not complied with the Governance Standard—a statement about why the approved provider has not complied with the Standard;
- (d) if the approved provider has not complied with the Disclosure Standard—the following information:
 - (i) the total number of occasions on which the approved provider did not comply with the Standard;
 - (ii) the reason or reasons for the approved provider's failure to comply with the Standard;
 - (iii) in respect of each reason provided—the total number of occasions of non-compliance attributable to the reason;
- (e) the amount set out in the approved provider's liquidity management strategy (implemented under Division 2), as at the end of the financial year, as the minimum level of liquidity;
- (f) an audit opinion, provided by the person who provides the independent audit referred to in section 56, on whether the approved provider has complied with this Part in the financial year.

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

56 Audit of annual prudential compliance statement

- (1) An annual prudential compliance statement must be supported by an independent audit provided by:

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

57 Disclosure to care recipients

- (1) Within 7 days after an accommodation agreement is entered into between an approved provider of an aged care service and a care recipient, the approved provider must notify the care recipient, in writing, that the approved provider will give the care recipient, within 7 days of a request by the care recipient, the following information and documents:
 - (a) a summary of the permitted uses for which refundable deposits and accommodation bonds have been used by the approved provider during the previous financial year;
 - (b) information about whether the approved provider has, during the previous financial year, complied with sections 52M-1 and 52N-1 of the Act;
 - (c) information about:
 - (i) the number (if any) of refundable deposit balances or accommodation bond balances that, in the previous financial year, were not refunded in accordance with subsection 52P-1(4) of the Act; and
 - (ii) the number (if any) of entry contribution balances that, in the previous financial year, were not refunded in accordance with a formal agreement;
 - (d) if the approved provider is investing refundable deposits or accommodation bonds in financial products covered by any of paragraphs 52N-1(3)(b) to (e) of the Act—the approved provider’s investment objectives and the asset classes the approved provider may invest in, as recorded in the approved provider’s investment management strategy implemented under section 50 of these principles;
 - (e) a copy of the audit opinion referred to in paragraph 55(f) for the previous financial year;
 - (f) a copy of either:
 - (i) the most recent statement of the audited accounts in relation to the aged care service; or
 - (ii) if the aged care service is operated as part of a broader organisation—the most recent statement of the audited accounts of the organisation’s aged care component;
 - (g) a copy of the entry in the refundable deposit register that relates to the care recipient, as at the time of the request.
- (2) If a care recipient who has paid a refundable deposit, an accommodation bond or an entry contribution requests the approved provider of the service through which the care recipient is being provided with care to give the care recipient the information and documents referred to in subsection (1), the approved provider must give the care recipient the information and documents requested within 7 days after receiving the request.

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- (3) Within 4 months after the end of each financial year for an approved provider, the approved provider must give each care recipient who has paid a refundable deposit, an accommodation bond or an entry contribution to the approved provider for entry to the aged care service operated by the approved provider:
 - (a) a copy of the entry in the refundable deposit register that relates to the care recipient as at the end of the financial year; and
 - (b) a written statement that the approved provider will provide, within 7 days of a request by the care recipient, the information and documents referred to in subsection (1).

58 Disclosure to prospective care recipients

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

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

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

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

- (2) If the Secretary receives an application from an approved provider for a determination under subsection (1), the Secretary must:
 - (a) make, or refuse to make, the determination; and
 - (b) notify the approved provider, in writing, of the Secretary's decision:
 - (i) within 28 days; or
 - (ii) if the Secretary has requested further information in relation to the application—within 28 days, excluding the period within which the information is requested and received.

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

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

Section 60

60 Reviewable decision

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

Part 6—Permitted uses of refundable deposits and accommodation bonds

61 Purpose of this Part

- (1) For section 52N-1 of the Act, this Part specifies uses for which an approved provider is permitted to use a refundable deposit or an accommodation bond.
- (2) This Part also specifies, for paragraphs 56-1(n) and 56-3(m) of the Act, an additional responsibility of an approved provider of a residential care service or a flexible care service in relation to the use of refundable deposits or accommodation bonds.

61A Responsibilities of approved providers

- (1) For paragraph 56-1(n) of the Act, an approved provider of a residential care service must not use a refundable deposit or an accommodation bond unless the use is permitted under Division 52N of the Act or this Part.
- (2) For paragraph 56-3(m) of the Act, an approved provider of a flexible care service must not use a refundable deposit or an accommodation bond unless the use is permitted under Division 52N of the Act or this Part.

62 Use for capital expenditure

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

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

63 Additional permitted uses

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

- (a) to meet reasonable business losses that are incurred in the period:
 - (i) beginning when the approved provider begins receiving residential care subsidy in relation to a residential care service or flexible care subsidy in relation to a flexible care service; and

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

64 Investment in financial products

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

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

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

Part 7—Refunds

Division 1—Payment of interest on refund of refundable deposit balance or accommodation bond balance

65 Purpose of this Division

For section 52P-3 of the Act, this Division:

- (a) specifies circumstances in which interest is to be paid in relation to the refund of a refundable deposit balance or an accommodation bond balance; and
- (b) sets out the method for working out the amount of the interest.

66 Definitions

In this Division:

approved provider includes a former approved provider (within the meaning of section 52P-2 of the Act).

67 Application of this Division

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

- (a) the approved provider is required under Division 52P of the Act to refund a refundable deposit balance or an accommodation bond balance to a care recipient; and
- (b) either:
 - (i) the approved provider has not made an agreement with the care recipient as referred to in subsection 52P-4(2) of the Act; or
 - (ii) such an agreement was made, but has ceased to be in effect between the approved provider and the care recipient.

68 The person to whom, and the way in which, amounts of interest are to be paid

An approved provider must pay an amount of interest relating to a refund of refundable deposit balance or accommodation bond balance, worked out in accordance with section 69, to a care recipient on the day on which the approved provider refunds the refundable deposit balance or accommodation bond balance to the care recipient.

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69 Working out of amount of interest on refundable deposit balance or accommodation bond balance

Amount of base interest—balance refunded on or before last day of refund period

- (1) If the approved provider refunds the refundable deposit balance or accommodation bond balance on or before the last day of the refund period, the amount of base interest on the refundable deposit balance or accommodation bond balance is the amount worked out in accordance with the following formula:

$$\frac{BIR \times RDB \times ND}{365}$$

where:

BIR is the base interest rate, calculated on the first day of the refund period.

ND is the number of days in the period beginning on the day after the day on which the refunding event occurred and ending on the day on which the refundable deposit balance or accommodation bond balance is refunded.

RDB is the amount of the refundable deposit balance or accommodation bond balance.

Note: Subsection (1) does not apply in the situation described in subparagraph 52P-1(4)(b)(i) of the Act because that subparagraph does not specify a refund period.

Amount of base interest plus maximum permissible interest—balance refunded after last day of refund period

- (2) If the approved provider refunds the refundable deposit balance or accommodation bond balance after the last day of the refund period, or after the day referred to in subparagraph 52P-1(4)(b)(i) of the Act (as applicable), the amount of interest on the refundable deposit balance or accommodation bond balance is the amount worked out in accordance with the following formula:

$$\left(\frac{BIR \times RDB \times ND(RP)}{365} \right) + \left(\frac{MPIR \times RDB \times ND(PP)}{365} \right)$$

where:

BIR is the base interest rate, calculated on the first day of the refund period.

MPIR is the maximum permissible interest rate, worked out using the calculator in section 6, for:

- (a) if paragraph 52P-1(4)(a), subparagraph 52P-1(4)(b)(ii) or (iii) or paragraph 52P-1(4)(c) of the Act applies—the day after the last day in the refund period; or
- (b) if subparagraph 52P-1(4)(b)(i) of the Act applies—the day after the day referred to in that subparagraph.

ND(PP) is the number of days in the period:

- (a) beginning on:
 - (i) if paragraph 52P-1(4)(a), subparagraph 52P-1(4)(b)(ii) or (iii) or paragraph 52P-1(4)(c) of the Act applies—the day after the last day of the refund period; or
 - (ii) if subparagraph 52P-1(4)(b)(i) of the Act applies—the day after the day referred to in that subparagraph; and
- (b) ending on the day on which the refundable deposit balance or accommodation bond balance is refunded.

ND(RP) is equal to:

- (a) if paragraph 52P-1(4)(a), subparagraph 52P-1(4)(b)(ii) or (iii) or paragraph 52P-1(4)(c) of the Act applies—the number of days in the period beginning on the day after the day on which the refunding event occurred and ending on the last day of the refund period; or
- (b) if subparagraph 52P-1(4)(b)(i) of the Act applies—zero.

RDB is the amount of the refundable deposit balance or accommodation bond balance.

Division 2—Payment of interest on refund of entry contribution balance

70 Purpose of this Division

For section 52P-3 of the Act, this Division:

- (a) specifies circumstances in which interest is to be paid in relation to the refund of an entry contribution balance; and
- (b) sets out the method for working out the amount of the interest.

71 Definition

In this Division:

approved provider includes a former approved provider (within the meaning of section 52P-2 of the Act).

72 Application

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

- (a) the approved provider is required under a formal agreement to refund an entry contribution balance to a care recipient; and
- (b) either:
 - (i) the approved provider has not made an agreement with the care recipient to delay refunding the balance to secure re-entry to the service; or
 - (ii) such an agreement was made, but has ceased to be in effect between the approved provider and the care recipient.

73 The person to whom, and the way in which, amounts of interest are to be paid

An approved provider must pay an amount of interest relating to a refund of an entry contribution balance, worked out in accordance with section 74, to a care recipient on the day on which the approved provider refunds the entry contribution balance to the care recipient.

74 Working out of amounts of interest on entry contribution balances

- (1) If the approved provider refunds the entry contribution balance after the refund day, the amount representing interest on the entry contribution balance is the amount worked out in accordance with the following formula:

$$\frac{\text{MPIR} \times \text{ECB} \times \text{ND(PP)}}{365}$$

where:

ECB is the amount of the entry contribution balance.

MPIR is the maximum permissible interest rate for the day after the refund day, worked out using the calculator in section 6.

ND(PP) is the number of days in the period:

- (a) beginning on the day after the refund day; and
- (b) ending on the day on which the entry contribution balance is refunded.

(2) If the conditions set out in subsection (3) are satisfied in relation to the approved provider, subsection (1) applies as if the reference in paragraph (a) of the definition of ***ND(PP)*** to the day after the refund day were a reference to the day after the day on which probate of the will of the care recipient is, or letters of administration of the estate of the care recipient are, shown to the approved provider.

(3) For subsection (2), the conditions are as follows:

- (a) the approved provider is required, under the formal agreement, to refund the entry contribution balance because the care recipient in relation to whom the entry contribution was paid has died;
- (b) the entry contribution balance is refunded after the refund day;
- (c) the reason that the entry contribution balance is refunded after the refund day is that neither the probate of the will of the care recipient, nor letters of administration of the estate of the care recipient, were shown to the approved provider before the refund day.

Division 3—Additional responsibilities of approved providers in relation to refunds

74A Purpose of this Division

This Division specifies, for paragraphs 56-1(n) and 56-3(m) of the Act, additional responsibilities of certain approved providers in relation to:

- (a) the refund of an overpaid amount of accommodation payment or accommodation contribution; and
- (b) the refund of a refundable deposit balance, an accommodation bond balance or an entry contribution balance.

75 Refund of overpaid accommodation payment or accommodation contribution

- (1) This section applies if a care recipient who is, or was, being provided with residential care through a residential care service or an eligible flexible care service has paid a higher amount of accommodation payment or accommodation contribution than was properly payable.
- (2) The approved provider of the service must refund to the care recipient the difference (the **overpaid amount**) between the amount of accommodation payment or accommodation contribution that was properly payable and the amount of accommodation payment or accommodation contribution that was paid.
- (3) The care recipient may request the approved provider, in writing, to refund the overpaid amount to the care recipient.
- (4) If the approved provider does not refund the overpaid amount to the care recipient within 28 days after the earlier of:
 - (a) the day the approved provider becomes aware of the overpaid amount; and
 - (b) if the care recipient makes a request under subsection (3)—the day the approved provider receives the request;the approved provider must pay an amount of interest relating to the overpaid amount, worked out in accordance with the following formula:

$$\frac{\text{MPIR} \times \text{OA} \times \text{ND(PP)}}{365}$$

where:

MPIR is the maximum permissible interest rate for the day that is 28 days after the day referred to in paragraph (a) or (b) (as the case requires) of this subsection, worked out using the calculator in section 6.

ND(PP) is the number of days in the period:

- (a) beginning on the day that is 28 days after the day referred to in paragraph (a) or (b) (as the case requires) of this subsection; and
- (b) ending on the day on which the overpaid amount is refunded.

OA is the overpaid amount.

75A Refund of refundable deposit balance, accommodation bond balance or entry contribution balance

- (1) An approved provider to which Division 1 of this Part applies must comply with Division 52P of the Act and Division 1 of this Part in relation to the refund of a refundable deposit balance or an accommodation bond balance.
- (2) An approved provider to which Division 2 of this Part applies must comply with that Division in relation to the refund of an entry contribution balance.

Part 8—Miscellaneous

76 Choice to be covered by Chapters 3 and 3A of the Act if moving to another aged care service—approved form

- (1) For subparagraph (b)(ii) of the definition of *continuing flexible care recipient* in clause 1 of Schedule 1 to the Act, a choice referred to in that subparagraph must be made in a form approved by the Secretary.
- (2) For subparagraph (b)(ii) of the definition of *continuing home care recipient* in clause 1 of Schedule 1 to the Act, a choice referred to in that subparagraph must be made in a form approved by the Secretary.
- (3) For subparagraph (b)(ii) of the definition of *continuing residential care recipient* in clause 1 of Schedule 1 to the Act, a choice referred to in that subparagraph must be made in a form approved by the Secretary.