Refundable deposits for aged care providers

What you need to know about the new compliance requirements

Recent legislative amendments have strengthened protections for aged care residents and the Australian Government in relation to Refundable Deposits, but what does this mean for providers?

Refundable Deposits generally fund a significant portion of providers' total assets, and impact upon providers' financial viability. Under the Aged Care Accommodation Payment Guarantee Scheme, the Australian Government repays outstanding accommodation payment balances to aged care residents if a provider becomes insolvent or bankrupt, and is unable to repay such balances.

Accordingly, the financial viability of providers poses a significant prudential risk to the Australian Government that (as at 30 June 2022) accounted for a maximum contingent liability of $35.5 billion (in the unlikely event that all providers defaulted). For example, the Scheme was activated twice during the 2021-22 financial year at a total (including interest) of $64.8 million.

The recent amendments provide increased oversight for Government of the use of Refundable Deposits, and mitigate the risk of Refundable Deposits being used for non-permitted purposes and providers' becoming insolvent while owing residents money.

Background

A key theme identified in the Royal Commission into Aged Care Quality and Safety was the need to strengthen prudential regulation and financial oversight in the aged care sector. The Royal Commission acknowledged prior reviews of the prudential regulatory function, and concluded that there is a need for:

- more comprehensive financial reporting
- more regular and timely reporting
- liquidity and capital adequacy standards
- improved capacity within the regulator to use the information effectively.

Consistent with the Royal Commission, the Australian Government is in the process of implementing a new Financial and Prudential Monitoring, Compliance and Intervention Framework. The Framework will implement recommendations of the Royal Commission and aims to enable more effective financial monitoring of the aged care sector and reduce the risk of provider insolvency or non-compliance.

Increased oversight of Refundable Deposits

The Framework has already overseen the introduction of new requirements for approved providers, including legislative changes to protect Refundable Deposits paid by residents.

For example, under the changes, the the Aged Care Quality and Safety Commission is now empowered to request extensive information or documents from providers experiencing financial difficulties relating to the use of a Refundable Deposit to make a loan. Similarly, the Commission can request information and documents from persons to whom a provider has used a Refundable Deposit to make a loan.

Against this backdrop, the Commission conducted targeted reviews of approved providers' compliance with the Prudential Standards in April 2023. A key aim of this review was to increase protection of residents' Refundable Deposits.

It is expected that the Commission will continue to direct regulatory action toward provider compliance with the Prudential Standards. Particular scrutiny is likely for providers with more complex and opaque corporate structures and operating models, such as those forming part of a group, and or with significant intra-group or related party transactions.

This is not to say that it is unlawful for providers to sit within more complex corporate structures, but rather that the Commission's new powers to access information or documents from providers or borrowers of loans should prompt providers to carefully consider existing loan arrangements to ensure compliance with the Prudential Standards.

In the present economic environment, the StewartBrown Aged Care Financial Performance Survey (December 2022) tells us that providers are facing concerns over financial sustainability and sustained financial operating losses.

The recent legislative amendments expanding the Commission's powers in relation to the use of Refundable Deposits to make loans improve the Commission's visibility of the uses of Refundable Deposits by providers. In turn, these amendments directly address the risk of provider insolvency which – in a sector facing considerable financial and economic challenges – is ever present.

What next?

Providers should familiarise themselves with the recent changes introduced by the Framework, and stay abreast of phase 3 of the Framework. Phase 3 of the Framework will start with the introduction of the new Aged Care Act, and will include legislative arrangements around minimum liquidity and capital adequacy requirements for providers.

As foreshadowed by the Royal Commission, this will empower the Commission to identify and manage risks relating to providers that hold Refundable Deposits, to ensure that providers are able to repay those Refundable Deposits promptly as and when required. This will add another layer of oversight for the Commission in respect of the use of Refundable Deposits.

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