

Important changes affecting aged care providers who hold accommodation bonds

There are a number of new requirements affecting residential aged care providers who hold accommodation bonds. These new requirements have been introduced following amendments to the *Aged Care Act 1997* ("the Act") and the *User Rights Principles 1997*. These changes include:

- Accommodation bonds must only be used for permitted uses as defined in the Act;
- The introduction of a new Governance Standard to manage bonds;
- Additional disclosure to the Department regarding annual prudential compliance including preparation of a cash flow statement of bonds received and expenditure (from any source) on permitted uses; and
- Criminal penalties for approved providers and key personnel that misuse bonds and/or fail to meet their refund obligations to residents.

New rules for uses of bonds

The new rules for permitted uses of bonds apply to bonds charged on or after 1 October 2011. Broadly, permitted uses of bonds include:

- 'Capital expenditure' to acquire land, premises (including an extension, a significant alteration or a significant refurbishment), furniture, fittings or equipment for premises used for providing residential aged care or flexible care;
- Investment in a 'financial product' covered by the Act;
- Making a loan, provided the loan is made to a non-individual on a commercial basis in written form and the funds are used only for 'capital expenditure' or invested in financial products, and the agreement also includes any other conditions specified in the User Rights Principles;
- Refund of accommodation bond balances;
- Repayment of debts for the purpose of 'capital expenditure'; or
- Other uses as permitted by the User Rights Principles.

It should be noted that repairs and maintenance of premises do not constitute permitted uses under the legislation.

The new arrangements take effect on 1 October 2011. A two year transition period is in place to assist approved providers to adjust to the permitted use arrangements.

Governance standard

A new prudential standard known as the Governance Standard has been introduced. The Governance Standard requires approved providers who hold bonds to have in place a governance system for bonds. The new requirements are effective from 1 February 2012.

To comply with the Standard, approved providers need to:

- Allocate responsibilities to the key personnel responsible for managing bonds held;
- Monitor and control any delegation of these responsibilities;
- Ensure responsible key personnel are aware of the legal requirements in relation to bonds;
- Have reporting mechanisms to ensure responsible key personnel can monitor and control the use of bonds;
- Detect, record, and address any non-compliance.

Approved providers are required to document their governance system and ensure this documentation is kept up-to-date.

Investment management strategy

Where an approved provider invests bonds received in financial products, other than a deposit with an authorised deposit-taking institution, the Governance Standard requires the approved provider to implement and maintain a documented investment management strategy that:

- Sets out the approved provider's investment objectives;
- Assesses the level of risk to the approved provider's ability to refund bonds;
- Details a strategy to achieve these objectives while ensuring bonds can be refunded in accordance with the Act;
- Specifies the asset classes the approved provider may invest in and the investment limits for each asset class; and
- Details key personnel with appropriate skills and experience who are responsible for implementing the investment management strategy.

Additional disclosure requirements

From 2012, an approved provider is required to report additional information in its Annual Prudential Compliance Statement including:

- A cash flow statement of bonds received, deductions, refunds, and amounts (whether or not obtained from bonds) spent on permitted uses as defined in the Act;
- Information about compliance with the Governance Standard;
- Reporting on minimum amount assessed as required to maintain liquidity.

Actions required

Approved providers should ensure that they have a good understanding of all the new requirements and at the same time conduct an in-depth review of their current systems and processes in relation to accommodation bonds to ensure compliance with the new requirements. These would include:

- Implementation and maintenance of a governance system for bonds, including documentation requirements of the governance system
- An in-depth review of your current systems and processes in relation to accommodation bonds to ensure that your systems and processes can keep track of and report on all the required information in relation to bonds including, in particular:
 - Each of the permitted uses of bonds during the financial year to enable a cash flow statement of uses of bonds for annual prudential compliance to be produced;
 - Monitoring of the minimum amount assessed as required to maintain liquidity; and
 - Information about compliance with the Governance Standard.

If you have used bonds to make a loan to an entity, it is important to ensure that the loan meets the new rules for permitted uses. In addition, the new rules require that the loan is on a commercial basis for the purposes of the Act. An interest free loan, or a loan without security, would not be a loan made on a normal commercial basis.

Please note that the above is for general information only and you should refer to the relevant legislation for further details.

For more information, please do not hesitate to contact us.