

Department of Health:

Review of Aged Care  
legislation which provides for  
the regulation and protection  
of Refundable Accommodation  
Payments in Residential Aged  
Care

26 May 2017

Lisa McGlynn  
Assistant Secretary  
Prudential and Approved Provider Regulation Branch  
Department of Health  
Sirius Building  
Woden, ACT, 2606

26 May 2017

Provision of Consultancy Services to conduct a review of Aged Care legislation which provides for the regulation and protection of Refundable Accommodation Payments in Residential Aged Care

Dear Lisa,

We are pleased to present to the Department of Health (Department) our report on the review of Aged Care legislation which provides for the regulation and protection of Refundable Accommodation Payments in Residential Aged Care. This report reflects the work that we were asked to do under the Deed of Standing Offer (Head Agreement for Services) - Standing Order SON2647271.

We have conducted a Desktop Review, consulted with stakeholders and members of the Department's Prudential Regulation Compliance Section to develop a number of Recommendations to amend the Prudential Standards in respect of Refundable Accommodation Payments. To support the recommended amendments to the Fees and Payment Principles we have also recommended adjustments to the PRCS's operating and compliance functions.

We understand that the Department will consider our report with ACFA's [Accommodation Payment Guarantee Scheme](#) review, David Tune's [Aged Care legislation](#) review, the Aged Care Financial Reporting review being undertaken by Stewart Brown and potentially other reviews of ACFI. We understand that the purpose of this is for the Department to determine which proposals should be progressed, require further investigation and what legislative amendments are required.

Please contact Stuart Painter (03 9288 8622) or Amber Cerny (02 8295 6307) if you have any queries regarding this report.

Yours sincerely



Stuart Painter  
Partner

# Disclaimer

Ernst & Young (EY) was engaged on the instructions of the Department of Health (Department) to conduct a review of Aged Care legislation which provides for the regulation and protection of Accommodation Payments in Residential Aged Care (Project), in accordance with the Deed of Standing Offer (Head Agreement for Services) – Standing Order SON2647271 (the Engagement Agreement).

The results of the EY's work, including the assumptions and qualifications made in preparing the report, are set out in this report dated 26 May 2017 ("Report"). You should read the Report in its entirety including any disclaimers and attachments. A reference to the Report includes any part of the Report. No further work has been undertaken by the EY since the date of the Report to update it.

Unless otherwise agreed in writing with EY, access to the Report is made only on the following basis and in either accessing the Report or obtaining a copy of the Report the recipient agrees to the following terms.

1. Subject to the provisions of this notice, the Report has been prepared for the Department and may not be disclosed to any other party or used by any other party or relied upon by any other party without the prior written consent of EY. We understand that this report will be reviewed by the Department in conjunction with reports from ACFA's *Accommodation Payment Guarantee Scheme* review, David Tune's *Aged Care legislation* review, the Aged Care Financial Reporting review being undertaken by Stewart Brown and potentially other reviews of ACFI. We understand that the purpose of this is for the Department to determine which proposals should be progressed, require further investigation and what legislative amendments are required. EY consents to the disclosure of the Report as an annexure to the David Tune aged care legislation review.
2. EY disclaims all liability in relation to any other party who seeks to rely upon the Report or any of its contents.
3. EY has acted in accordance with the instructions of the Department in conducting its work and preparing the Report, and, in doing so, has prepared the Report for the benefit of the Department, and has considered only the interests of the Department. EY has not been engaged to act, and has not acted, as advisor to any other party. Accordingly, EY makes no representations as to the appropriateness, accuracy or completeness of the Report for any other party's purposes.
4. The Report has been constructed based on information current as of 26 May 2017 and provided to EY by the Department. Material events may have occurred since this date which are not reflected in the Report.
5. No reliance may be placed upon the Report or any of its contents by any recipient of the Report (other than the Department) for any purpose and any party receiving a copy of the Report must make and rely on their own enquiries in relation to the issues to which the Report relates, the contents of the Report and all matters arising from or relating to or in any way connected with the Report or its contents.
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8. No claim or demand or any actions or proceedings may be brought against EY arising from or connected with the contents of the Report or the provision of the Report to any recipient. EY will be released and forever discharged from any such claims, demands, actions or proceedings.
9. EY has proposed a number of recommendations in this Report which are designed to assist in the protection of RAP monies. No system, or process can, however, guarantee that RAP defaults will not occur. Accordingly, EY expresses no opinion that by adoption these recommendations there will be no future drawdown on the Scheme.

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# Executive summary

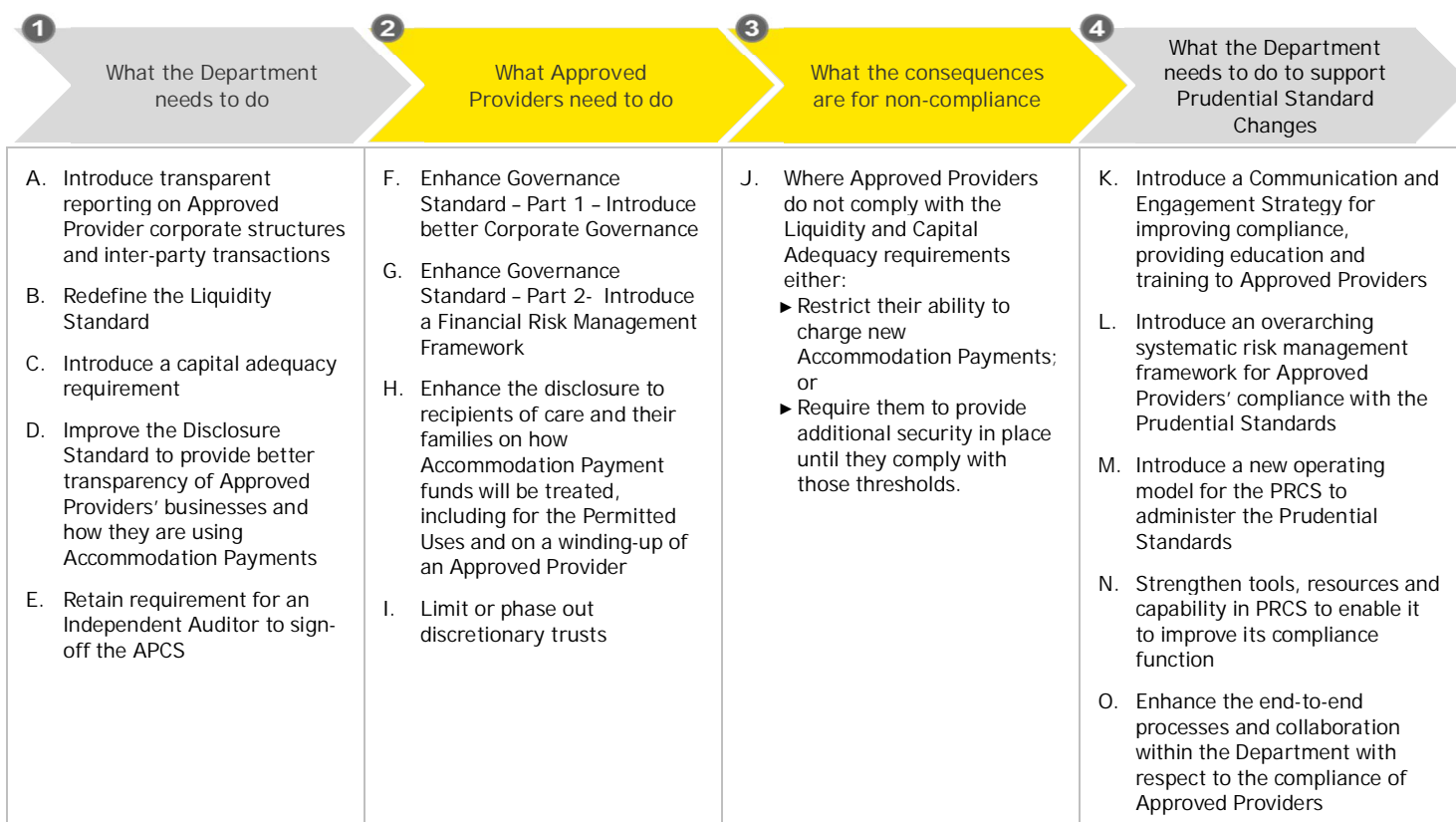
The Department of Health (the Department) engaged EY to provide an independent study of the legislative, business and operational framework for Refundable Accommodation Payments (Accommodation Payments), which includes Refundable Accommodation Deposits (RADs), Accommodation Bonds and Entry Contributions in residential aged care, to strengthen the current legislative and prudential standards that strike the right balance in protecting the interest of care recipients, minimising the risk to the Commonwealth in underwriting the refundable accommodation payments and fostering the stability and financial sustainability of the aged care industry.

The aged care sector is experiencing fundamental change as residents/consumers, providers and funders all grapple with the impacts of an ageing population, increases in chronic disease, consumer directed care and financial sustainability. In this context, the existing capital funding regime needs to be improved to ensure that residents/consumers are protected, Approved Providers and their investors have policy clarity and that the Government operates an equitable, well-regulated and transparent scheme.

In 2015-2016, the number of Accommodation Payments deposited was approximately \$22 billion and the Government had paid approximately \$43 million to residents from the Accommodation Payment Guarantee Scheme (the Scheme) over the life of the Scheme.

With an increasing demand for residential aged care accommodation and the increasing calls on the Scheme, the Department asked EY to examine the Prudential Standards that govern how Accommodation Payments are used and protected by Approved Providers to see if any improvements could be made.

We recommend changes to the Prudential Standards and to the Department’s compliance functions to support those changes as follows:



# Our Review and Findings

## Structure of the Review

Our review was split into five phases including: *Mobilisation, Desktop Review, Options Prioritisation, Consultation and Final Report.*

We started our work on 8 December 2016 and our final draft report was presented to the Department on 6 April 2017. This final report is dated on the cover page and reflects the feedback from the Department following the presentation of our findings on 6 April 2017.

We based our review of the Prudential Standards and the Department's operating practices on the following four principles:

- ▶ the protection of residents
- ▶ the protection of the Government; both reputationally when an Approved Provider is non-compliant; and to reduce the reliance on and use of the Scheme
- ▶ to limit the compliance burden on Approved Providers
- ▶ to support the long term financial sustainability of the sector

## Phase 2 - Desktop Review

Our Desktop Review consisted of a standalone review of the Prudential Standards and PRCS's compliance functions in respect of those standards. We were asked not to conduct a data analysis of the Scheme or the use of the Scheme as this work is being done as part of the other reviews commissioned by the Department. We have compared the Prudential Standards against prudential regulation frameworks of other industries, most specifically the financial services industry, given that Accommodation Payments are akin to financial instruments and the regulatory framework to support Approved Providers' compliance is also similar to the financial services regulatory framework.

The information that we have reviewed is set out in Appendix G.

The primary finding from our Desktop Review was that the data that the Department is given is inadequate for it to assess whether or not Approved Providers comply with the Prudential Standards. As a consequence of the data deficit, further deficiencies were discovered in the Liquidity Standard and the Disclosure Standard.

## Key findings



### Data Deficit

The data that the Department is given is inadequate for it to assess whether or not Approved Providers comply with the Prudential Standards. This data deficit occurs in the following four areas:

- the information that the Department requests
- the quality of the information submitted
- the timeliness of that information when it is received
- the frequency in which the information is provided.



### Deficiencies in the Liquidity Standard

Gaps in the legislation and the Department's powers have a compounding effect on how the Department is able to assess and measure whether Approved Providers have sufficient funds available to repay the Accommodation Payments. This has a compounding effect on how the Department is able to obtain information and assess Approved Providers' compliance with the Liquidity Standard and the Prudential Requirements overall.



### Deficiencies in the Disclosure Standard

Gaps in the legislation and the Department's powers have a compounding effect on how the Department is able to obtain information and assess Approved Providers' compliance with the Disclosure Standard and the Prudential Requirements overall.

A further finding from our review was:



**Limited Resources:** The PRCS has limited resources to adequately review and assess Approved Providers' compliance with the Prudential Standards. These resource deficiencies include IT systems and other tools as well as people with the requisite skills and experience to assess the Approved Providers' compliance with the Prudential Standards.

Appendix D sets out the detailed findings and recommendations from our Desktop Review. Not all of the Desktop Review findings were relevant for the consultation with the aged care industry participants as they relate to the Department's internal processes and resources.

### Phase 3 – Options Prioritisation

Following the Desktop Review, we developed ten proposals to amend the Prudential Standards to enhance regulatory efficacy and improve the monitoring of Approved Providers and Accommodation Payments appropriately.

The proposals were discussed with the Department as part of a workshop and refined prior to the industry consultation.

### Phase 4 - Consultation

- ▶ The ten proposals, as listed in Table 1, were taken to consultation with 27 residential aged care industry stakeholders listed in Table 2 below. The purpose of the consultation was to obtain feedback on the proposals; to identify key risks and consequences associated with the changes; and to gain insights into the impact on the aged care industry. The list of stakeholders consulted was created to include a widespread and mixed group of small to larger Approved Providers in the government, Not-for-Profit and For-Profit sectors in locations across the country regulators, peak bodies, investors and financiers in the aged care sector.

<b>A</b>	<b>Approved Provider Reporting Entities</b>
<b>B</b>	<b>Limit or phase out discretionary trusts</b>
<b>C</b>	<b>Redefine the liquidity standard framework</b>
<b>D</b>	<b>Capital adequacy requirements and disclosure</b>
<b>E</b>	<b>Enhance disclosure standard</b>
<b>F</b>	<b>Auditor sign APCS</b>
<b>G</b>	<b>Enhance Governance Standard – Part 1 Corporate Governance</b>
<b>H</b>	<b>Enhance Governance Standard – Part 2 Risk Management Framework</b>
<b>I</b>	<b>Increase ranking of RADs on a winding-up</b>
<b>J</b>	<b>Compliance education and training</b>

Table 1: The ten proposals that were taken out to industry consultations

The Department’s scope of work included a list of regulators and peak bodies to be consulted. The initial list of Approved Provider stakeholders was compiled by EY. The final list was reviewed and confirmed by the Department.

The consultations with the residential aged care industry stakeholders showed that our proposals were significantly supported by the sector.

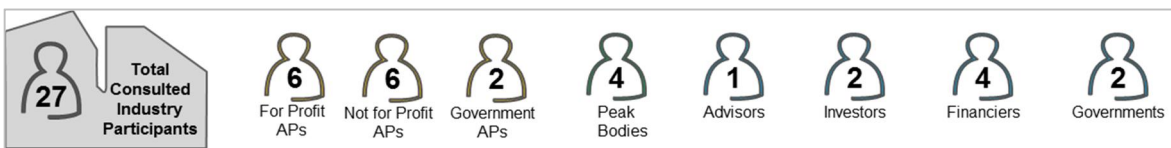


Table 2: Overview of consulted stakeholder groups

### Phase 5 –Final Report

In light of the consultations and further discussions with the Department, we have developed our final list of recommendations. However, the principles underpinning our recommendations and our proposals have remained consistent. Where recommendations have changed during the review, we have included additional commentary to explain the change.

Our report is structured as follows:

- ▶ Part 1 sets out the Recommendations in detail
- ▶ Part 2 sets out our evaluation of the Recommendations and suggests a timetable and priority for their implementation
- ▶ The Appendices include our scope, detailed findings and material that we have relied on in conducting our review and developing our proposals and recommendations.





# Part 1 - Recommendations

## Background

Australia is experiencing an increasingly ageing population as a result of declining fertility rates since 1960s and increasing longevity due to advances in medical technology and public health initiatives. As a result, the Government needs to prepare for the provision of additional aged care services to meet the growing needs of the population. The Government has launched a number of reforms to support the aged care sector. A key reform has been the *Living Longer Living Better* aged care package launched on 20 April 2012.

On 1 July 2014, the Government introduced RADs and DAPs, as part of the *Living Longer Living Better* reforms, to promote means testing of Government support for residential aged care services and as a source of capital to Approved Providers who provide residential accommodation aged care services.

These reforms created by *Living Longer Living Better* has meant that a resident entering into residential accommodation is required to contribute to the residential accommodation costs through a choice of one of the following:

- ▶ Paying a lump-sum payment for the accommodation in the form of a RAD
- ▶ A daily payment for accommodation made on a regular basis (e.g. a month in advance) in the form of a DAP
- ▶ A combination of a RAD and DAP

The present day Accommodation Payments were created by the amendments to the Act by the *Aged Care (Living Longer Living Better) Bill 2013*. The Fees and Payments Principles, issued on 28 January 2014 under the Act, set out the rules (such as those relating to record keeping, governance, minimum liquidity levels) and restrictions on the use of Accommodation Payments.

The Fees and Payments Principles and section 52N of the Act impose limitations on the use of Accommodation Payments to protect residents' savings and prevent the misuse of these funds. Permitted uses of Accommodation Payments are limited to capital expenditure for residential care (i.e. land, buildings, fixtures, equipment, furniture and associated costs incurred for the purpose of providing aged care), investment in particular financial products, specified loans, refunds of deposits, investment and repayment of debt. Division 67 of the Act provides the Department's Secretary with the power to impose sanctions for non-compliance.

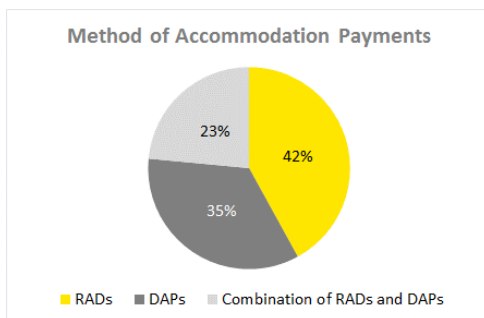


Figure 1: Method of refundable accommodation payments

The choice of accommodation payment method for residential care continues to favour Accommodation Payments with 42 % of all residential care payments being made in 2016 opting for this method.<sup>1</sup> In addition, in 2016-17 the Government is expected to spend around \$17.4 billion on aged care. The majority of this expenditure, around 69%, is incurred in residential care and in total constitutes the vast majority of all payments being made to residential aged care providers (over 90%).

The Government provides a guarantee for the Accommodation Payments under the Scheme. A prudential scheme to protect residential care accommodation bonds was first established through the Act in 1997. In 2006, the Government established the Scheme to strengthen existing prudential regulations. The purpose of the Scheme is to protect every aged care resident's Accommodation Payment in the event of the bankruptcy or insolvency of an Approved Provider. The Scheme's legislation, *Aged Care (Bond Security) Levy Act 2006*, has provisions to ensure that the Government

can impose a levy on Approved Providers to recover the cost of any defaults, but to date this has not been exercised. The restrictions imposed on the use of the Accommodation Payments were intended to ensure that residential aged care Approved Providers engage in low risk activities with the money from Accommodation Payments and as a result reduce the risk posed to the Scheme.

<sup>1</sup> Refer to the Fourth Report on the Funding and Financing of the Aged Care Sector, July 2016

[https://agedcare.health.gov.au/sites/g/files/net1426/f/documents/10\\_2016/acfa\\_annual\\_report\\_on\\_funding\\_and\\_financing\\_of\\_the\\_aged\\_care\\_industry\\_2016.pdf](https://agedcare.health.gov.au/sites/g/files/net1426/f/documents/10_2016/acfa_annual_report_on_funding_and_financing_of_the_aged_care_industry_2016.pdf)

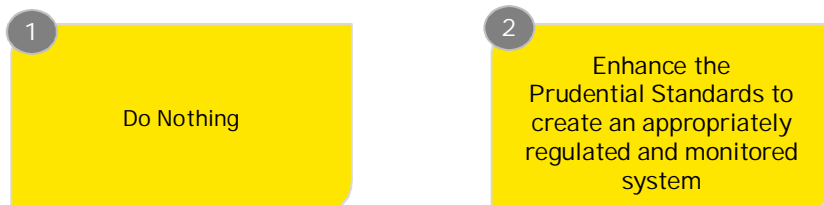
Provision of Consultancy Services to conduct a review of Aged Care legislation which provides for the regulation and protection of Accommodation Payments in Residential Aged Care - Final Report

With Accommodation Payments continuing to grow significantly (for example, the Accommodation Payment pool was approximately \$22 billion in 2015-2016) and as the Scheme has been called on 10 times for a total of approximately \$43 million since the Scheme's inception, combined with the result of inquiries conducted by the Productivity Commission in 2011 and the National Commission of Audit in 2014, the four other reviews and this review have been commissioned.

In light of the background above and the findings from our Desktop Review, we recommend that the Prudential Standards and the PRCS's operating practices and resources to administer them be amended.

## Recommendations

In terms of our review, the Department has two options that it can consider:



On the basis of our Desktop Review and Consultations with the Department and stakeholders in the Aged Care industry, we recommend option 2.

### Consideration of the options

Option 1 is not appropriate as the risk to the Government is increasing. This is due to the increasing number of Accommodation Payments being deposited and value of the Accommodation Payment pool. Further, our Desktop Review findings show that the current Prudential Standards are inadequate for providing the requisite protection to residents and the Government. A benefit of this option is that the regulatory framework would remain unchanged. However, the consequences of this option are that the risk of the Scheme being called on is increased. While the compliance burden for Approved Providers would not change, this option also may not support the long term financial sustainability of the aged care sector.

Option 2 is the most appropriate option and the proposals made below to support its implementation are consistent with the treatment of financial instruments in the financial services industry, while still meeting the underlying policy objective that Accommodation Payments continue to be a source of capital for Approved Providers to increase capacity of residential accommodation places.

### Further consideration of Option 2

There are two parts to the recommendations for changing the Prudential Standards. Firstly, amending the legislation; and secondly, changing how the Department performs its compliance functions.

### Changing the Prudential Standards

Our Recommendations are consistent with the wider trends across Government for agencies to proactively regulate the industries that they are responsible for.

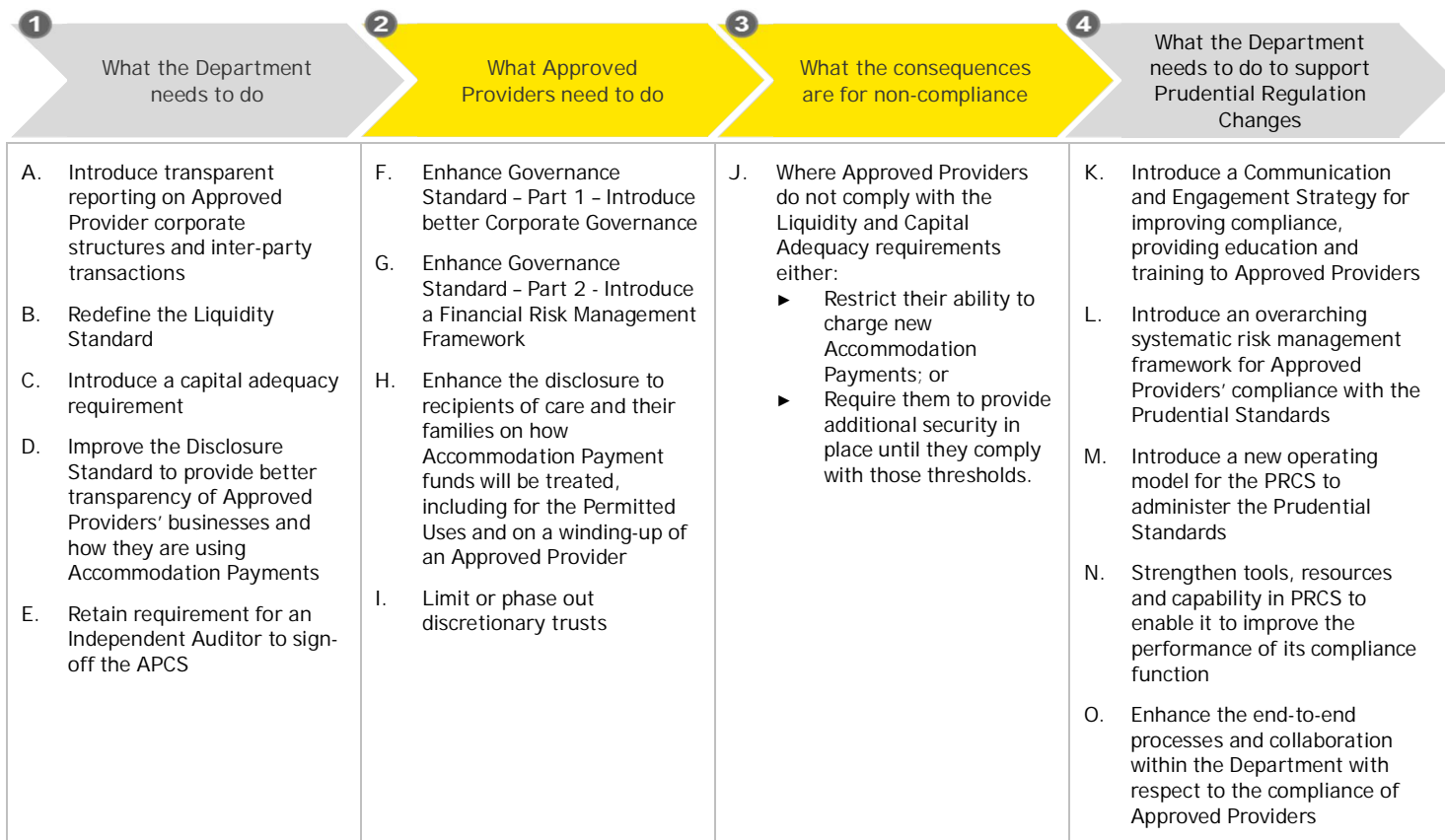
We also found that the PRCS, in understanding how Approved Providers comply with the Prudential Standards and to be more proactive as a regulator, has adopted certain tests and methods to identify and deal with Approved Providers who are most at risk of non-compliance with the Prudential Standards.

Our recommendations for improving the Prudential Standards consider the financial services sector's regulatory practices and incorporate the Department's risk assessment approach in evaluating Approved Provider non-compliance with the Prudential Standards. Another key consideration is how to provide a regulatory framework that means that the aged care sector can be financially viable and vibrant for Approved Providers, financiers and investors.

A number of stakeholders, particularly the financial services institutions and larger for profit and not-for-profit Approved Providers, outlined that the proposals were largely consistent with the tests that they operate under. For financiers, this is the lending criteria applied and how they assess the credit worthiness of Approved Providers. Similarly, for the Approved Providers, the proposals reflect the tests for their internal governance frameworks and reporting to shareholders/members and other key stakeholders.

We recommend that the Prudential Standards be changed in a phased or staged process. This is to minimise the disruption to the Approved Provider sector.

Our recommendations can be categorised as follows:



### 1. What the Department needs to know (Recommendations A, B, C, D, E)

The Department needs a much deeper understanding of, and a more structured process to evaluate Approved Providers' financial positions and practices and the relative risks to the wider industry. To do this, greater transparency is needed to enable the Department to understand Approved Providers' corporate group structures, their shareholders and ultimate owners, changes in ownership and their related party transactions. The Department also needs assurance that Approved Providers are financially viable, that is, adequately capitalised and with access to sufficient liquid funds to repay Accommodation Payment money when it is due. Where unit trusts are included in the corporate structure, we propose that there be minimum levels of paid up unit funds and/or subordinated loans in the unit trust and that the unit trust has access to the assets in the unit trust to satisfy these two tests.

Adopting each of these recommendations to change the Prudential Standards will provide additional information that will assist the Department to better understand Approved Providers' operating structures and to strengthen protections for Accommodation Payments.

As a way of independently assessing whether Approved Providers are complying with the Prudential Standards framework, a sign-off by an independent auditor (as set out in Recommendation E) is required. As Accommodation Payments are the equivalent of financial instruments, money lent by residents to Approved Providers for limited investment purposes (that is, the permitted uses), this independent oversight is essential. It is also equivalent of what is required in the financial services sector.

### 2. What Approved Providers need to do better (Recommendations F, G, H and I)

To ensure that Approved Providers are financially viable and remain appropriate organisations to hold Accommodation Payments, we have outlined in Recommendations F and G how the Department can improve its supervisory assessment process and improve the Governance Standard. The approach offers a structured process to evaluate each of the Approved Providers' practices in meeting their regulatory and legislative obligations in order to form a view of their relative sophistication and risk they pose to the wider industry. A risk-based model is proposed to support all Approved Providers, with outcomes in terms of supervisory oversight commensurate with the relative risk profile and size of each of the market

participants. The purpose of these proposals is to put the risk of managing the Accommodation Payments and disclosing how they are used on to the Approved Providers.

Enhancing the disclosure to recipients of care and their families on how Accommodation Payment funds will be treated, including for the Permitted Uses and in the event of Approved Provider winding up (Recommendation H), is integral to protecting the interests of residents. An increasing area of feedback to the PRCS from recipients of care and their families is a lack of understanding of how Accommodation Payments are used and when they can be refunded. The purpose of requiring Approved Providers to clarify how Accommodation Payments will be used and when they can be refunded is to enable recipients of care and their families to understand their rights. This is also consistent with how ASIC and the ACCC require clearer disclosure to consumers.

To support the required transparency and compliance we have also recommended that discretionary trusts be phased out and that no new ones be permitted in the operating and corporate structures of Approved Provider groups. This will assist in embedding the principles of protecting the residents and the Government from further calls on the Scheme.

### 3. Consequences of non-compliance (Recommendations J)

Where an Approved Provider is unable to satisfy the liquidity standard or capital adequacy tests (Recommendations B and C), we have proposed that additional capital or security be put in place (Recommendations A and C). Capital can take the form of shareholder equity (including subordinated debt). Where Accommodation Payment money has moved outside the Approved Provider group we have proposed that security such as a mortgage over the assets (that is, land and buildings) be granted in favour of the Approved Provider entity who has the liability to repay the Accommodation Payment money. The purpose of this is twofold. Firstly to ensure that the Approved Provider is financially viable and able to repay the Accommodation Payment money when the liability falls due; and secondly, to ensure that the assets (especially land and buildings) are kept close to the liabilities of the operating entity who accepts residents and provides the residential aged care services.

### 4. What the Department needs to do to support the Prudential Standards changes

#### ► Communication and engagement strategy (Recommendation K)

The Department must implement an effective communication and engagement strategy with the Aged Care industry to ensure that they understand the Prudential Standards. This will also assist the Department, through prior notice of any non-compliance or financial stress of a single Approved Provider, an Approved Provider group or the residential aged care sector generally.

We recommend that the Department collaborates with the ACCC and Aged Care peak representative bodies to reach both Approved Providers and consumers of aged care services, that is, residents and their carers or families. The purpose of engaging with the ACCC is to enable better understanding and engagement with consumers of aged care services. The ACCC has extensive experience and suggestions on how best to achieve this engagement having undertaken a similar exercise for the National Disability Insurance Scheme and through regular engagement with small businesses as well as consumers. Greater engagement with the aged care peak representative bodies will extend the Department's reach to Approved Providers for education and training purposes.

#### ► Changing the Department's work practices (Recommendations L, M, N and O)

Our Desktop Review recommended a number of changes to the Department's operating practices. We recommend that these proposals be read in conjunction with the Stewart Brown review as we understand that that review is also looking at the Department's business processes and workflows. These proposals are necessary to support the successful implementation of the changes to the Prudential Standards and to support the Department's regulatory functions and powers.

### Full list of Detailed Recommendations

Appendix D lists all of the Recommendations from our Desktop Review, Consultations and additional feedback from the Department. Where applicable we have categorised them into the four categories referred to above. However, there are some that are outside the remit of this Project which are still relevant for the Department to consider.



## Part 2 - Evaluation of Recommendations

In this section we have evaluated and prioritised our Recommendations to provide a basis for further action. This will assist the Department to develop a roadmap for implementing the changes.

### Risk/Benefit Analysis

The table below sets out the risk/benefit analysis of the recommendations. We recommend that the Department undertake further data analysis to prepare the policy and consultation documents necessary for the legislative amendments which will underpin these Recommendations. As previously stated in Part 1, Recommendations L, M, N and O should be read with the Stewart Brown recommendations for the revision of the Department's operating model.

Recommendation	Risks	Benefits
1) What the Department needs to know		
A. Introduce transparent reporting on Approved Provider corporate structures and inter-party transactions	<p>Potential disclosure of corporate structures for tax planning purposes</p> <p>Minimal risk to residents and the Department</p>	<p>Greater Transparency</p> <p>Reduction in requirement to investigate corporate and operating structures of Approved Providers</p> <p>Reporting aligned to other regulators (such as ASIC, ACNC) and financiers</p> <p>Earlier warning signs of non-compliance or financial stress</p> <p>Increased ability to track Accommodation Payment money and Permitted Uses</p> <p>Fewer calls on the Scheme</p> <p>Approved Providers may try to pass on additional costs to residents (however, their ability to do so is limited)</p>
B. Redefine the Liquidity Standard	<p>Reduction in capital available to invest in residential accommodation</p> <p>For some Approved Providers, an adjustment to their financial management practices or heighten the risk that they may exit the industry</p>	<p>Provides an early warning system if an Approved Provider is unable to repay Accommodation Payments</p> <p>More financially robust Approved Providers</p> <p>Better understanding of what is required under the Prudential Standards</p> <p>Easier test to monitor compliance with Prudential Standards</p> <p>Earlier warning signs of non-compliance or financial stress</p>
C. Introduce a capital adequacy requirement	<p>Reduction in capital available to invest in residential accommodation</p> <p>For some Approved Providers, an adjustment to their financial management practices or heighten the risk that they may exit the industry</p>	<p>More financially robust Approved Providers</p> <p>Better understanding of what is required under the Prudential Standards</p> <p>Easier test to monitor compliance with Prudential Standards</p> <p>Earlier warning signs of non-compliance or financial stress</p>

Recommendation	Risks	Benefits
D. Improve the Disclosure Standard to provide better transparency of Approved Providers' businesses and how they are using Accommodation Payments	<p>Potential awareness of financial stress or non-compliance of an Approved Provider which may impact on morale or conditions in a facility</p> <p>Potentially heightened risk with financiers and shareholders until Prudential Standards requirements are achieved</p> <p>Public disclosure (to consumers and others) of non-compliance</p>	<p>Provides an early warning system if an Approved Provider is unable to repay Accommodation Payments</p> <p>Alignment with information collected by other regulators</p> <p>Better understanding of what is required under the Prudential Standards</p> <p>More financially robust Approved Providers</p> <p>Increase in more timely and appropriate information on Approved Providers</p> <p>Ability to analyse better data</p> <p>Earlier warning signs of non-compliance or financial stress</p>
E. Retain requirement for an Independent Auditor to sign-off the APCS	Retained cost of compliance	<p>Independent examination of compliance with Prudential Standards</p> <p>More financially robust Approved Providers</p> <p>Earlier warning signs of non-compliance or financial stress</p>
<b>2) What the Approved Providers needs to do</b>		
F. Enhance Governance Standard – Part 1 – Introduce better Corporate Governance	Increase in costs of compliance	<p>Ensure financial and business management is the responsibility of the directors of Approved Providers</p> <p>Alignment with information collected by other regulators</p> <p>For those not doing this already, increasing awareness of threats to their business</p> <p>More financially robust Approved Providers</p> <p>Increase in more timely and appropriate information on Approved Providers</p> <p>Ability to analyse better data</p>
G. Enhance Governance Standard – Part 2- Introduce a Financial Risk Management Framework	Increase in costs of compliance	<p>Ensure financial and business management is the responsibility of the directors of Approved Providers</p> <p>Alignment with information collected by other regulators</p> <p>More financially robust Approved Providers</p> <p>Better understanding of the financial risks to their business</p> <p>Earlier warning signs of non-compliance or financial stress</p>
H. Enhance the disclosure to recipients of care and their families on how Accommodation Payment funds will be treated, including for the Permitted Uses and on a winding-up	Potential minimal increase in cost in communications from Approved Providers to recipients of care and their families. <i>[We note that the majority of Approved Providers that we spoke to do this already and see it as a marketing</i>	<p>Greater transparency</p> <p>Reduce reliance on the Scheme</p> <p>Greater protection of residents' Accommodation Payment money</p>

Recommendation	Risks	Benefits
	<i>opportunity to demonstrate their financial viability and that they provide quality services]</i>	Increased understanding of recipients of care and their families on how their money is being held, when it will be repaid and what their rights are on a winding up of an Approved Provider.
I. Limit or phase out discretionary trusts	<p>Potential disclosure of corporate structures for tax planning purposes</p> <p>Crystallise potential tax liabilities for those who have discretionary trusts in their structures</p>	<p>Greater Transparency</p> <p>More financially robust Approved Providers</p> <p>Reduce incidence of those Approved Providers using corporate structures to move assets away from liabilities</p> <p>Increased ability to track Accommodation Payment money and Permitted Uses more easily</p>
<b>3) What the consequences are for non-compliance</b>		
<p>J. Where Approved Providers do not comply with the Liquidity and Capital Adequacy requirements either:</p> <ul style="list-style-type: none"> <li>▶ Restrict their ability to charge new Accommodation Payments; or</li> <li>▶ Require them to provide additional security in place until they comply with those thresholds.</li> </ul>	<p>Potential awareness of financial stress or non-compliance of an Approved Provider which may impact on morale or conditions in a facility</p> <p>Potentially heightened risks with financiers and shareholders until Prudential Standards requirements are achieved</p> <p>Public disclosure (to consumers and others) of non-compliance (especially if Accommodation Payments cannot be charged)</p>	<p>Provides an early warning system if an Approved Provider is unable to repay Accommodation Payments</p> <p>More financially robust Approved Providers</p> <p>Better understanding of what is required under the Prudential Standards</p> <p>Easier test to monitor compliance with Prudential Standards</p> <p>Earlier warning signs of non-compliance or financial stress</p>
<b>4) What the Department needs to do to support Prudential Standard Changes</b>		
<p>K. Introduce a Communication and Engagement Strategy for improving compliance, providing education and training to Approved Providers</p>	<p>Increase or reallocation of costs</p> <p>Information and workforce overload for both Approved Providers and the Department</p>	<p>Better understanding of the concerns of Approved Providers and residents</p> <p>Increased awareness of how to seek redress for non-compliance</p> <p>Increased understanding of how to comply with the Prudential Standards</p> <p>Better compliance</p> <p>Reduction in reliance on the Scheme</p> <p>Greater protection of residents' Accommodation Payment money</p> <p>Access to better communication channels with Government</p>
<p>L. Introduce an overarching systematic risk management framework for Approved Providers' compliance with the Prudential Standards</p>	<p>Transformation costs and time</p> <p>Transition and change at the Regulator causing disruption to the industry</p>	<p>A more robust basis and framework for assessing (non)compliance with the Prudential Standards</p> <p>More financially robust Approved Providers</p> <p>Greater protection of residents' Accommodation Payment money</p> <p>Increased understanding of how to comply with the Prudential Standards</p> <p>Ability to focus resources on those Approved Providers who require support</p>



Recommendation	Risks	Benefits
		Reduction in reliance on the Scheme
M. Introduce a new operating model for the PRCS to administer the Prudential Standards	Transformation costs and time Transition and change at the Regulator causing disruption to the industry	Increased understanding of how to comply with the Prudential Standards More financially robust Approved Providers Ability to focus resources on those Approved Providers who require support Reduction in reliance on the Scheme Greater protection of residents' Accommodation Payment money
N. Strengthen tools, resources and capability in PRCS to enable it to improve its compliance function	Transformation costs and time Transition and change at the Regulator causing disruption to the industry	Increased understanding of how to comply with the Prudential Standards More financially robust Approved Providers Better compliance Ability to focus resources on those Approved Providers who require support Reduction in reliance on the Scheme Greater protection of residents' Accommodation Payment money
O. Enhance the end-to-end processes and collaboration within the Department with respect to the compliance of Approved Providers	Transition and change at the Regulator causing disruption to the industry	Increase transparency and compliance of Approved Providers across different arms of the Department More financially robust Approved Providers Increased understanding of how to comply with the Prudential Standards A more proactive regulator Better compliance Ability to focus resources on those Approved Providers who require support Reduction in reliance on the Scheme Greater protection of residents' Accommodation Payment money

## Prioritisation and high level schedule to implement Recommendations

### Organisational change factors

We have evaluated our Recommendations against an organisational change factors framework. The framework categorises change into four dimensions as presented below.

- ▶ Legal: any changes relating to legislative powers, legal compliance, legal interpretation, enforcement, regulation and policy
- ▶ Information: any changes relating to standards/metrics, processes, information/knowledge management
- ▶ Resources: any changes relating to people/organisation and technology/systems
- ▶ Education: any changes relating to training and communication/engagement

This change management framework has been tailored to meet the objectives of this review.

The Recommendations to change Regulations and the two legislative amendments<sup>2</sup> will require the Department to work with Parliamentary Counsel.

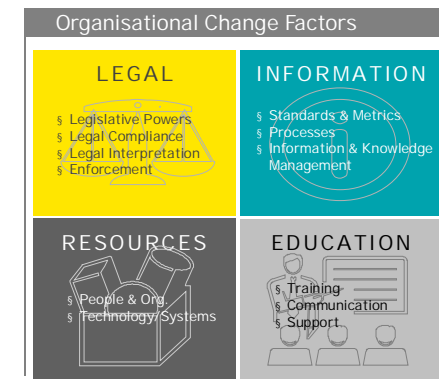


Figure 2: Change Management Framework

### Evaluate effort and impact of change to define timeframes

The Recommendations have been prioritised according to a priority matrix, assessing effort and impact of change. Each Recommendation has then been given an appropriate timeframe.

1. Effort of change: Based on the nature of the change (Legal, Information, Resources and Education) for each Recommendation, assess the effort required to implement the change
2. Impact of change: Consider the guiding principles and assess the impact of change
3. Priority matrix: Prioritise the recommendations, using the Priority matrix
4. Timeframes: Allocate an appropriate timeframe based on the outcome from the priority assessment and in accordance with the classifications quick win, short term and medium term

1 Effort of change		2 Impact of change		3 Priority matrix			4 Timeframes
Rating	Explanation	Rating	Explanation	EFFORT	IMPACT		
					Minor	Moderate	Major
High	Extensive program of work. Preparation and execution will take over at least a year and/or will involve substantial resources	Major	The Impact on one (or more) of the Prudential Standards, the Department or the industry is major	High	Moderate	High	Extreme
Medium	Moderate program of work. Preparation and execution will take over at least a couple of months and will involve a moderate amount of resources	Moderate	The Impact on one (or more) of the Prudential Standards, the Department or the industry is moderate	Medium	Low	Moderate	High
Low	A quick win and/or minor program of work. Preparation and execution can be completed with ease and/or doesn't involve significant resources	Minor	The Impact on one (or more) of the Prudential Standards, the Department or the industry is minor	Low	Low	Moderate	High

Quick Win

Short Term

Medium Term

<sup>2</sup> All but two of our Recommendations which require a Legal change to the Fees and Payments Principles. One change set out in Appendix D at 1.3.1 requires an amendment to Section 9 of the Act. Provision of Consultancy Services to conduct a review of Aged Care legislation which provides for the regulation and protection of Accommodation Payments in Residential Aged Care – Final Report

## High Level Plan – Recommended Timeframes

The high level plan outlines the key recommendations and has been developed to take into account the effort, impact and priority of proposed changes. On this basis, a suggested timeframe has been allocated for each Recommendation. The implementation period for each of the Recommendations is classified as quick win, short term and medium term. We recommend that the Prudential Standards be changed in a phased or staged process. That is, medium term changes may include initiatives that start in the shorter term but have a phased full implementation over a 5-10 year period. This is to minimise the disruption to the Approved Provider market.

Proposals	Recommendation	Change Type	Effort of Change	Impact of Change	Priority Rating	Recommended Timeframe
1) What the Department needs to know						
A. Introduce transparent reporting on Approved Provider corporate structures and inter-party transactions	A1. Require Approved Providers to report their corporate structures including identity of ultimate shareholders and any significant changes to their ownership	Legal (Regulation)	Low	Major	High	SHORT TERM
	A2. Allow Approved Providers to report on a single entity or consolidated group basis	Legal (Regulation)	Low	Major	High	SHORT TERM
	A3. Where an Approved Provider or Approved Provider group wishes to transfer assets outside the group: <ul style="list-style-type: none"> <li>▶ The loan to value ratio of the asset to the liabilities should not exceed 80% of the value of the underlying asset</li> <li>▶ The use must be secured by appropriate security, such as a mortgage (ranking below bank secured debt)</li> </ul>	Legal (Regulation)	Medium	Major	High	MEDIUM TERM
B. Redefine the Liquidity Standard	B1. Set a liquidity threshold as a defined percentage of Accommodation Payment money held by the Approved Provider Group, such as the higher of 10%, where an Approved Provider is a single site, single facility operation with a smaller Accommodation Payment pool and low resident turnover, a higher threshold	Legal (Regulation)	Medium	Major	High	MEDIUM TERM
	B2. Phase in the threshold over a 5-10 year period. For example, require 5% within 5 years; 7.5% within 7.5 years and 10% within 10 years	Legal (Regulation)	Medium	Major	High	MEDIUM TERM
	B3. Define the form of liquidity as real liquid or accessible funds being a combination of unpledged/unencumbered cash in the bank; a bank facility (such as an overdraft or line of credit) or money that can otherwise be accessed immediately	Legal (Regulation)	Medium	Major	High	MEDIUM TERM
C. Introduce Capital adequacy requirement	C1. Introduce a capital adequacy metric, such as, 20% equity on the balance sheet <sup>3</sup>	Legal (Regulation)	Medium	Major	High	MEDIUM TERM
	C2. Define quality of capital to include tangible assets such as land and buildings; and intangible assets which are able to be valued, such as, bed licences	Legal (Regulation)	Medium	Major	High	MEDIUM TERM
D. Improve the Disclosure Standard to provide better transparency of Approved Providers' businesses and	D1. Amend section 9(1) of the Act to require notification " <i>as soon as it happens and in no event more than 14 days after it happens</i> "	Legal (Legislation)	High	Major	Extreme	MEDIUM TERM
	D2. Require the prior consent of the Department to be given to material changes in the legal ownership or control of an Approved Provider	Legal (Legislation)	High	Major	Extreme	MEDIUM TERM

<sup>3</sup> This is equivalent to what is required by financiers when lending against real property. Where a borrower is more highly geared, a financier will require them to take out insurance to secure the balance of the value of the property.

Proposals	Recommendation	Change Type	Effort of Change	Impact of Change	Priority Rating	Recommended Timeframe
how they are using Accommodation Payments	D3. Require Approved Providers to adopt an industry standard such as APS330 or Direct2APRA (D2A) reporting. Approved Providers would be obligated to disclose the following to the Department: <ul style="list-style-type: none"> <li>▶ changes in corporate structure</li> <li>▶ significant related party transactions, which are required to be reported in the GPFR</li> <li>▶ cash flow in accordance with the Accounting Standards to show the financial position of the Approved Provider</li> <li>▶ compliance with the liquidity standard (including any period of non-compliance and how it was rectified)</li> <li>▶ compliance with the capital adequacy metric (including any period of non-compliance and how it was rectified)</li> </ul>	Legal (Regulation)	Medium	Major	High	MEDIUM TERM
E. Retain requirement for an Independent Auditor to sign-off the APCS	E1. Reinstate / Do not remove the requirement for an independent auditor to sign-off the APCS	Legal (Regulation)	Low	Major <sup>4</sup>	High	QUICK WIN
<b>2) What the Approved Providers needs to do</b>						
F. Enhance Governance Standard – Introduce: Part 1 Corporate Governance	F1. Develop the Governance Standard to adopt generally accepted corporate governance principles (such as those adopted by ASIC, APRA, ASX and the ACNC). This includes (leveraging ASX corporate governance principles 3rd ed.): <ul style="list-style-type: none"> <li>▶ lay foundations for the management and oversight of the organisation</li> <li>▶ to act ethically and responsibility</li> <li>▶ safe guard reporting</li> <li>▶ prepare a code of conduct for “key personnel” to improve industry practices to operate in accordance with recipients of care’s best interests</li> </ul> Impose an obligation for Approved Providers to produce a corporate governance statement which describes the extent to which they have complied with the code of practice and principles	Legal (Regulation)	Low	Moderate	Moderate	MEDIUM TERM
G. Enhance Governance Standard – Part 2: Introduce a Financial Risk Management Framework	G1. Incorporate a financial risk management standard into the Governance Standard.	Legal (Regulation)	Low	Moderate	Moderate	MEDIUM TERM
H. Enhance the disclosure to recipients of care and their families on how Accommodation Payment funds will be treated, including for the Permitted Uses and on	H1. Require Approved Providers to disclose to recipients of care and their families how Accommodation Payment money will be held, when it will be refunded and how recipients of care rank on a winding up of an Approved Provider	Legal (Regulation)	Medium	Moderate	Moderate	MEDIUM TERM

<sup>4</sup> Approved Providers are currently required to have an independent auditor sign-off the APCS. Retaining this requirement will not impose an additional compliance burden or additional cost on Approved Providers. However, the impact on the Department’s ability to assess compliance is major is this sign-off is not retained or re-instated.

Proposals	Recommendation	Change Type	Effort of Change	Impact of Change	Priority Rating	Recommended Timeframe
a winding-up of an Approved Provider						
I. Limit or phase out discretionary trusts	I1. Allow no new discretionary trusts in Approved Provider group structures	Legal (Regulation)	Low	Major	High	SHORT TERM
	I2. Phase out discretionary trust structures in a 5-10 year period	Legal (Regulation)	Low / High <sup>5</sup>	Major	Extreme	MEDIUM TERM
<b>3) What the consequences are for non-compliance</b>						
J. Where Approved Providers do not comply with the Liquidity and Capital Adequacy requirements either: <ul style="list-style-type: none"> <li>▶ Restrict their ability to charge new Accommodation Payments; or</li> <li>▶ Require them to provide additional security in place until they comply with those thresholds.</li> </ul>	J1.If the Approved Provider capital falls below the liquidity or capital adequacy thresholds: <ul style="list-style-type: none"> <li>▶ require the Approved Provider to make up the shortfall; such as by injecting additional capital or by entering into a subordinated loan with shareholders<sup>6</sup></li> <li>▶ restrict the charging of new Accommodation Payments until the capital metric is achieved. This may also require an amendment to the Sanctions Principles accordingly</li> </ul>	Legal (Regulation)	Medium	Major	High	MEDIUM TERM
<b>4) What the Department needs to do to support Prudential Standard Changes</b>						
K. Compliance education and training	K1. The Department create a communication and engagement strategy for engaging with Approved Providers and other stakeholders in the Aged Care industry	Education	Medium	Major	Extreme	QUICK WIN – ongoing
L. Overarching systematic risk management framework	L1. To support the revised Prudential Standards, the Department will need to recalibrate its current risk assessment methodology and model to reflect the new compliance requirements. We recommend that the Department adopt a probability and impact rating system (PAIRS) - type model adopting a qualitative and quantitative assessment criteria of Approved Providers. The revised model will reflect the criteria in the Prudential Standards should be risk-based and commensurate with the size and sophistication of the Approved Provider. The framework should focus towards higher risk entities. Considerations of what the model would include are: <ul style="list-style-type: none"> <li>▶ Risk management</li> <li>▶ Financial management metric</li> <li>▶ Capital management (as redefined in the Prudential Standards)</li> <li>▶ Liquidity management (as redefined in the Prudential Standards)</li> <li>▶ Management and corporate governance practices (as redefined in the Prudential Standards)</li> </ul>	Information	Medium	Major	High	MEDIUM TERM

<sup>5</sup> The impact of this change is “High” for Approved Providers but Low for the Department

<sup>6</sup> There is a limit to how much equity can be injected via subordinated debt under tax legislation.

Proposals	Recommendation	Change Type	Effort of Change	Impact of Change	Priority Rating	Recommended Timeframe
	L2. Introduce an internal risk management strategy document for the Department to assess the inherent risks of Approved Providers' non-compliance which may mean that an Approved Provider is not financially viable or that the Scheme is called on	Information	Medium	Major	High	MEDIUM TERM
	L3. Introduction of measures to assess threshold requirements	Information	Medium	Major	High	MEDIUM TERM
	L4. Consideration to be given to determine appropriate segmentation and classification of Approved Providers	Information	Medium	Major	High	MEDIUM TERM
M. New target operating model	M1. Assess demands and develop target operating model to support the new regulatory framework <i>To be considered in conjunction with the Stewart Brown review</i>	Resources	Medium	Major	High	MEDIUM TERM
N. Strengthen tools, resources and capability in PRCS to enable it to improve its compliance function	N1. Collect data and enhance the analytics capability within PRS to assess and understand risk profile of Approved Providers in light of the revised the Prudential Standards <i>To be considered in conjunction with the Stewart Brown review</i>	Resources / Information	Medium	Major	High	SHORT TERM
	N2. Enhance number of resources and the use of more sophisticated tools in the PRCS to conduct compliance activities <i>To be considered in conjunction with the Stewart Brown review</i>	Resources	Medium	Major	High	SHORT TERM
O. Enhance end-to-end processes and internal collaboration	O1. Consider developing and socialising a holistic end-to-end business process across the Department, including (i) identifying who is collecting or accessing prudential data about Approved Providers and for what purpose and (ii) escalation pathways. This should ideally be done in collaboration with other teams in the Department that are involved in the compliance pathways <i>To be considered in conjunction with the Stewart Brown review</i>	Resources / Information	Medium	Major	High	SHORT TERM

## Conclusions

Our findings are that the Prudential Standards should be amended. This will align the regulatory framework and the Department's powers with leading prudential regulatory practice. This will assist the protection of residents' money and reduce the reliance on the Scheme.

To further support these changes, the Department needs to have a communications and engagement strategy and recalibrate its internal resources and tools to meet the new regulatory framework.





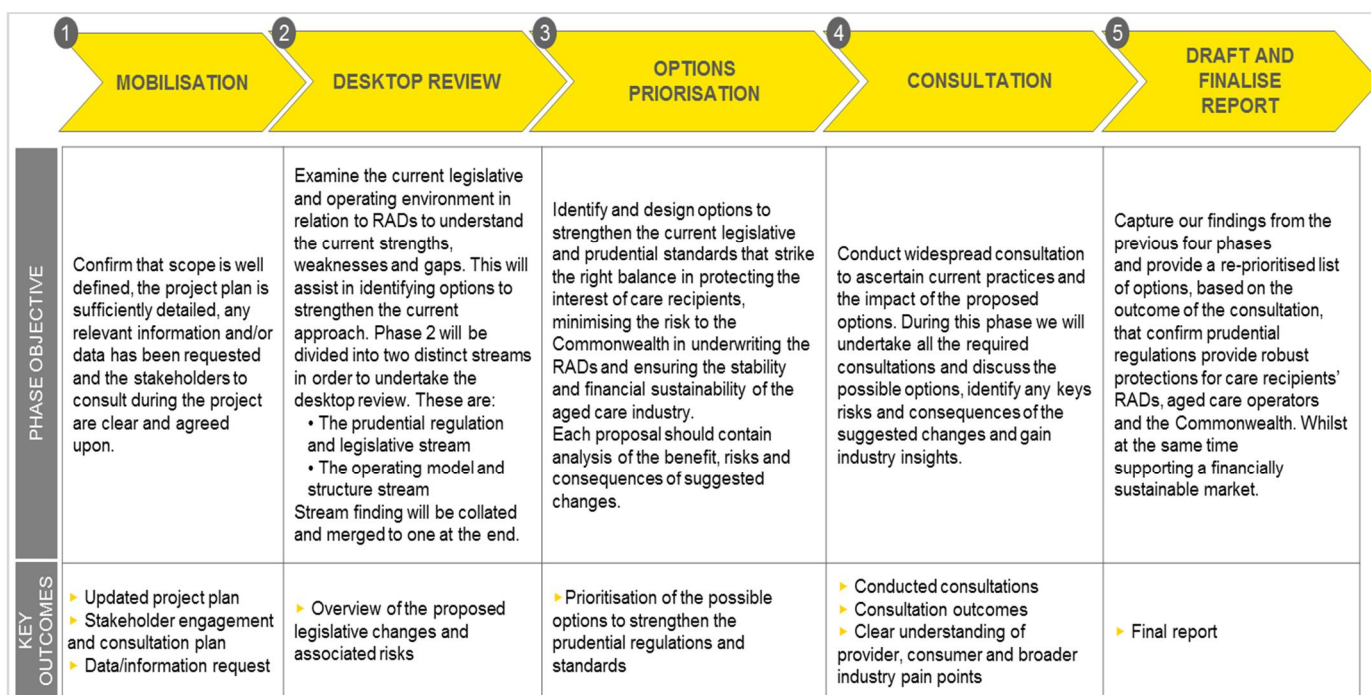
## Appendix A Acronyms

Acronym	Description
ACCC	Australian Competition and Consumer Commission
Accommodation Payments	Refundable accommodation payments, including RADs, accommodation bonds and entry contributions in residential aged care
ACFA	Aged Care Financing Authority
ACFI	Aged Care Funding Instrument
ACFR	Aged Care Financial Report
ACNC	Australian Charities and Not-for-profits Commission
ADI	Australian Deposit Taking Institutions
D2A	Direct2APRA
the Act	The <a href="#">Aged Care Act 1997</a>
APCS	Annual Prudential Compliance Statement which Approved Providers are required to submit under Division 52M of the Act
Approved Provider	A person approved under Division 8 of the Act to provide aged care services which are entitled to receive Commonwealth funds for those services
APRA	Australian Prudential Regulatory Authority
APS330	Australian Prudential Standard 330 – Public Disclosure
ASIC	Australian Securities & Investments Commission
ASX	Australian Securities Exchange
ATO	Australian Tax Office
Branch	Approved Provider Regulation Branch
COTA	Council of the Ageing Australia
DAPs	Daily Accommodation Payments
Department	Department of Health
Disclosure Standard	Information about the financial management of Approved Providers
Fees and Payment Principles	<a href="#">Fees and Payments Principles 2014 (No.2)</a>
Commonwealth / Government	Australian Federal Government
GPFR	General Purpose Financial Report which Approved Providers are required to submit under the Act
Liquidity Standard	Level of liquidity for an Approved Provider to refund RAD balances
NDIS	National Disability Insurance Scheme
Permitted Uses	The permitted uses of Accommodation Payments in accordance with the Act and the Fees and Payment Principles
PRCS	The Prudential Risk and Compliance Section within the Department
Prudential Requirements / Prudential Standards	The regulatory framework that Approved Providers must comply with in how they deal with RADs as set out in Division 52M of the Act and the Fees and Payment Principles
RADs	Refundable accommodation deposits
Records Principles	<a href="#">Records Principles</a> created under section 87-2 of the Act
Sanctions Principles	<a href="#">Sanctions Principles</a> created under section 64-2 of the Act
Scheme	Accommodation Bond Guarantee Scheme
Section	Prudential Risk and Compliance Section

## Appendix B Background, Scope and Approach

EY was engaged by the Department to assist in the Department's review of existing aged care legislation in respect of the regulation and protection of Accommodation Payments. Our procedures included examining the existing legislation and prudential standards in the context of protecting the interests of care recipients and whether, as a mechanism, current controls support the effective management of the risk underwritten by the Commonwealth in relation to refundable deposits in residential aged care.

The project consisted of five phases from 5 December 2016 with a distinct set of activities as outlined below.



### Scope

The scope<sup>7</sup> of the project was to:

1. Identify gaps and weaknesses in the current prudential regulations to identify and inform possible changes to the Fees and Payments Principles 2014 (No.2)(the Principles) to strengthen protections for refundable deposits.
2. Identify and articulate the risks, benefits and consequences if changes were made to the regulations governing providers' management and use of refundable deposits.
3. Review the Prudential Standards, in particular the Liquidity Standard and Disclosure Standard to identify how these standards may be strengthened (as made under Division 52M of the Aged Care Act 1997).
4. Review the permitted uses of refundable deposits and identify whether current provisions could be strengthened (Division 5N of the Act and Part 6 of the Fees and Payments Principles 2014 (No.2) (the Principles)).
5. Review the current compliance pathway as set out in the Act and identify whether improvements could be made to more effectively address prudential non-compliance (Division 67 of the Act and the Sanctions Principles 2014).
6. Review the methods providers employ for managing refundable deposits, including the level of transparency in the movement and use of these monies. For example, to consider whether approved providers should manage refundable deposits separately from other monies being held by an approved provider.
7. Review existing and emerging risks presented by different provider operating structures and provide advice with respect to the capacity of the Department's existing prudential compliance monitoring activities to effectively assess and respond to these risks. This advice would build on existing departmental analysis of provider compliance information (General Purpose Financial Reports and the Annual Prudential Compliance Statement), and be informed by analysis undertaken to complete the other requirements of this project, e.g. gap analysis of legislation.

<sup>7</sup> Official Order – Under Deed of Standing Offer (Head Agreement for Services) – SON2647271

Provision of Consultancy Services to conduct a review of Aged Care legislation which provides for the regulation and protection of Accommodation Payments in Residential Aged Care – Final Report

8. Consult with the Aged Care Financing Authority (ACFA), a representative group of residential aged care providers and their peak bodies to consider how any proposed changes to regulation would impact providers and their businesses.
9. Consult with other regulatory bodies conducting similar work, such as the Australian Securities and Investment Commission and the Australian Competition and Consumer Commission, to understand existing risks, share knowledge and avoid duplication.
10. Consult with Council of the Ageing (COTA) Australia to understand how changes to legislation would affect consumers of residential aged care.
11. Provide progress report to the Director of the Prudential Risk and Compliance Section.
12. At the conclusion of the project, provide a report to the Department which includes possible options to ensure prudential regulations provide robust protections for care recipients' refundable deposits and the Commonwealth. Each option should contain analysis of the benefits, risks and consequences of suggested changes.

## Out of scope

Arrangements for the Accommodation Payment Guarantee Scheme are currently under review and are therefore out of scope for this project. Overall review of the aged care legislation is also out of scope for this project and is currently being undertaken by David Tune and his team.<sup>8</sup>

No Analysis of data has been done, as advised by the Department, but rather we have relied on any data provided by the Department.

## General Limitations

The Report is advisory in nature and does not constitute an audit, a review or an engagement to perform agreed-upon procedures in accordance with the Australian Auditing Standards.

Unless mutually agreed, this engagement ceased upon delivery of the final Report. The Department is fully and solely responsible for applying independent business judgment with respect to the services and work product provided by us, including in relation to this Report, to make implementation decisions, if any, and to determine further courses of action with respect to any matters addressed in any advice, recommendations, services, reports or other work product or deliverables.

The Report is subject to the specific limitations set out in the Disclaimer above.

## Approach

The project commenced 5 December 2016 with five phases. The purpose of each phase, associated deliverable and timing is listed in Table 3 below.

Phase	Objective	Outcome	Timing
1. Mobilisation	Confirm that scope is well defined, the project plan is sufficiently detailed, any relevant information and/or data has been requested and the stakeholders to consult during the project are clear and agreed upon.	<ul style="list-style-type: none"> <li>• Updated project plan</li> <li>• Stakeholder engagement and consultation plan</li> <li>• Data/information request</li> </ul>	8 <sup>th</sup> December 2017
2. Desktop Review	Examine the current legislative and operating environment in relation to Accommodation Payments to understand the current strengths, weaknesses and gaps. This will assist in identifying proposals to strengthen the current approach. Phase 2 will be divided into two distinct streams in order to undertake the desktop review. These are: <ul style="list-style-type: none"> <li>• The prudential regulation and legislative stream</li> <li>• The operating model and structure stream</li> </ul>	<ul style="list-style-type: none"> <li>• Overview of the proposed legislative changes and associated risks</li> </ul>	2 <sup>nd</sup> February 2017

<sup>8</sup> Official Order – Under Deed of Standing Offer (Head Agreement for Services) – SON2647271

Provision of Consultancy Services to conduct a review of Aged Care legislation which provides for the regulation and protection of Accommodation Payments in Residential Aged Care – Final Report

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Table3: Project phases

Phase	Objective	Outcome	Timing
	Stream finding will be collated and merged to one at the end.		
3. Options Prioritisation	Identify and design proposals to strengthen the current legislative and prudential standards that strike the right balance in protecting the interest of care recipients, minimise the risk to the Commonwealth in underwriting the Accommodation Payments and ensuring the stability and financial sustainability of the aged care industry. Each proposal should contain analysis of the benefit, risks and consequences of suggested changes.	<ul style="list-style-type: none"> <li>• Prioritisation of the proposals to strengthen the prudential regulations and standards</li> </ul>	10 <sup>th</sup> February 2017
4. Consultations	Conduct widespread consultation to ascertain current practices and the impact of the proposals. During this phase we will undertake all the required consultations and discuss the possible changes, identify any keys risks and consequences of the suggested changes and gain industry insights.	<ul style="list-style-type: none"> <li>• Conducted consultations</li> <li>• Consultation outcomes</li> <li>• Clear understanding of provider, consumer and broader industry pain points</li> </ul>	16 <sup>th</sup> March 2017
5. Draft and finalise Report	Capture our findings from the previous four phases and provide a re-prioritised list of recommendations, based on the outcome of the consultation, that confirm prudential regulations provide robust protections for care recipients' Accommodation Payments, aged care operators and the Commonwealth, whilst at the same time supporting a financially sustainable market.	<ul style="list-style-type: none"> <li>• Presentation of Final Draft Report findings</li> <li>• Final Report</li> </ul>	6 <sup>th</sup> April 2017  26 <sup>th</sup> May 2017

## Appendix C Our Response to the Scope<sup>9</sup>

#	Official Order Item (Ref from Official Order section: 1. <i>The Services and subcontractors</i> )	Final Report section	Recommendation Reference
1	Identify gaps and weaknesses in the current prudential regulations to identify and inform possible changes to the <i>Fees and Payments Principles 2014</i> (No.2) (the Principles) to strengthen protections for refundable deposits.	§ <a href="#">Appendix D</a> : Further Recommendations – Focus Area 1, Focus Area 2	§ B) Redefine the Liquidity Standard § C) Introduce a Capital adequacy requirement § D) Enhance Disclosure Standard
2	Identify and articulate the risks, benefits and consequences if changes were made to the regulations governing providers' management and use of refundable deposits.	§ <a href="#">Appendix D</a> : Further Recommendations – Focus Area 3	§ B) Redefine the Liquidity Standard § C) Introduce a Capital adequacy requirement § G) Enhance Governance Standard – Part 1 Corporate Governance § H) Enhance Governance Standard – Part 2 Risk Management
3	Review the Prudential Standards, in particular the Liquidity Standard and Disclosure Standard to identify how these standards may be strengthened (as made under Division 52M of the <i>Aged Care Act 1997</i> ).	§ <a href="#">Appendix D</a> : Further Recommendations – Focus Area 1, Focus Area 2	§ B) Redefine the Liquidity Standard § C) Introduce a Capital adequacy requirement § D) Enhance Disclosure Standard
4	Review the permitted uses of refundable deposits and identify whether current provisions could be strengthened (Division 5N of the Act and Part 6 of the <i>Fees and Payments Principles 2014</i> (No.2) (the Principles).	§ <a href="#">Appendix D</a> : Further Recommendations – Focus Area 3	§ A) Introduce transparent reporting on Approved Provider corporate structures and inter-party transaction § O) Limit or phase out discretionary trusts § E) Enhance Disclosure Standard § J) Introduce a Communication and Engagement Strategy for improving compliance, providing training education and training to Approved Providers
5	Review the Current compliance pathway as set out in the Act and identify whether improvements could be made to more effectively address prudential non-compliance (Division 67 of the Act and the <i>Sanctions Principles 2014</i> ).	§ <a href="#">Appendix D</a> : Further Recommendations – Focus Area 4	§ D) Enhance Disclosure Standard
6	Review the methods providers employ for managing refundable deposits, including the level of transparency in the movement of these monies and use of these monies. For example, to consider whether approved providers should manage refundable deposits separately from other monies being held by an approved provider.	§ <a href="#">Appendix D</a> : Further Recommendations – Focus Area 5	§ A) Introduce transparent reporting on Approved Provider corporate structures and inter-party transaction
7	Review existing and emerging risks presented by different provider operating structures and provide advice with respect to the capacity of the Department's existing prudential compliance monitoring activities to effectively assess and respond to these risks. This advice would build on existing departmental analysis of provider compliance information (General Purpose Financial Reports and the Annual	§ <a href="#">Appendix D</a> : Further Recommendations – Focus Area 6	§ F) Retain requirement for an Independent Auditor to sign-off the APCS § J) Introduce a Communication and Engagement Strategy for improving compliance, providing training education and training to Approved Providers

<sup>9</sup> Official Order in relation to the provision of services of program review and evaluation SON2647271

#	Official Order Item (Ref from Official Order section: 1. The Services and subcontractors)	Final Report section	Recommendation Reference
	Prudential Compliance Statement), and be informed by analysis undertaken to complete the other requirements of this project, e.g. gap analysis of legislations.		§ K) Introduce an overarching systematic risk management methodology § L) Introduce a new operating model for the PRCS to administer the Prudential Standards § M) Strengthen tools, resources and capability in PRCS to enable it to improve the performance of its compliance function § N) Enhance end-to-end processes and collaboration within the Department with respect to the compliance function
8	Consult with the Aged Care Financing Authority (ACFA), a representative group of residential aged care providers and their peak bodies to consider how any proposed changes to regulation would impact providers and their businesses.	§ ACFA was consulted on 16 February 2017 and feedback included in consultation feedback in <a href="#">Appendix E: Consultation Findings</a>	N/A
9	Consult with Council of the Ageing (COTA) Australia to understand how changes to legislation would affect consumers of residential aged care.	§ COTA was consulted on 7 March 2017 and feedback included in consultation feedback in <a href="#">Appendix F: Consultation Findings</a>	§ J) Introduce a Communication and Engagement Strategy for improving compliance, providing training education and training to Approved Providers
10	Consult with other regulatory bodies conducting similar work, such as the Australian Securities and Investment Commission (ASIC) and the Australian Competition and Consumer Commission (ACCC), to understand existing risks, share knowledge and avoid duplication.	§ ASIC was not consulted due to a lack of response to requests for consultation. § ACCC was consulted on 2 March 2017 and feedback included in consultation feedback in <a href="#">Appendix F: Consultation Findings</a>	§ J) Introduce a Communication and Engagement Strategy for improving compliance, providing training education and training to Approved Providers
11	Provide progress report to the Director of the Prudential Risk and Compliance Section.	§ Completed on a weekly basis throughout the engagement.	N/A-
12	At the conclusion of the project, provide a report to the Department which includes possible options to ensure prudential regulations provide robust protections for care recipients' refundable deposits and the Commonwealth. Each option should contain analysis of the benefits, risks and consequences of suggested changes.	§ This Report and specifically <a href="#">Appendix D: Further Recommendations</a>	N/A

## Appendix D Further Recommendations

This Appendix D lists all of the Recommendations from our Desktop Review, Consultations and additional feedback from the Department. Where applicable we have categorised them into the four categories, that is, “What the Department needs to know”, “What Approved Providers need to do”, “What the consequences are for non-compliance” and “What the Department needs to do to support Prudential Regulation Changes”. However, there are some that are outside the remit of this project which are still relevant for the Department to consider.

Focus area	Key desktop review findings	Source	Recommendation	Category	
1. Current prudential regulations and legislation	1.1	The Liquidity Standard does not specify how Approved Providers should determine an appropriate level of liquidity	Desktop Review	1.1.1 Legislative amendment required to either define or provide more guidance on what constitutes “sufficient liquidity”	1) What the Department needs to know
	1.2	The Prudential Requirements and the Liquidity Standard focus on an Approved Provider’s ability to repay the Accommodation Payments which may fall due in the next 12 months and do not take account of the financial viability of the Approved Provider	Desktop Review	1.2.1 Amend the legislation to require enhanced disclosure of corporate structure, the level of indebtedness of the Approved Provider’s group and any intra-group or related party transactions	1) What the Department needs to know
			Desktop Review	1.2.2 Amend the legislation to define “sufficient liquidity” and provide greater clarity of what the “liquidity management strategies” should contain	1) What the Department needs to know
	1.3	There is a gap between what applicants must disclose to become Approved Providers and what they report under the Prudential Requirements	Desktop Review	1.3.1 Include an enhanced continuous disclosure regime in the Act by amending section 9(1) of the Act to require notification “as soon as it happens and in any event no more than 14 days after it happens”	1) What the Department needs to know [This requires a change to the Act]
			Desktop Review	1.3.2 Amend the Act to require the board, director or shareholders to be responsible for notifying the Department of material changes	1) What the Department need to know
			Additional Finding	1.3.3 The APCS does not address how to treat a change of owner in the course of a financial year. Further, the auditor will not have access to the previous owner’s financial statements to complete the APCS. Amend the Prudential Standards to contain an obligation for an outgoing owner to complete the APCS up to the completion date of the change of ownership and for the new owner to complete the APCS from the date of acquisition to the end of the financial year	1) What the Department need to know
	1.4	There is no requirement for Accommodation Payments to be kept separate from other funds held by an Approved Provider	Desktop Review Desktop Review Amended Recommendation	1.4.1 Not used 1.4.2 Not used 1.4.3 The ability to track money is extremely limited. Amend the Prudential Regulation framework to provide the protection that the Department is looking for; that is, that the RAP money is being used for a Permitted Use and that it can be repaid when required	1) What the Department needs to know 4) What the Department needs to do to support Prudential Regulations Changes
	1.5	There is no formal governance, fit and proper persons test or code of conduct to support the governance arrangements of Approved Providers	Desktop Review	1.5.1 Develop the Governance Standard to impose tighter requirements on Approved Providers. This includes (leveraging ASX corporate governance principles 3rd ed): Lay foundations for the management and oversight of the organisation; ▶ To act ethically and responsibly; ▶ Safe guard reporting	2) What Approved Providers need to do
			Desktop Review	1.5.2 Develop the Governance Standard to require Approved Providers to prepare a code of conduct for “key personnel” to improve industry practices to operate in accordance with recipients of care’s best interests	2) What Approved Providers need to do

			Desktop Review	1.5.3 Develop the Governance Standard to require Approved Providers to produce a corporate governance statement to the extent they have complied with the code of practice and principles	2) What Approved Providers need to do	
	1.6	The Act only governs those payments as specified in the Act	Desktop Review (Amended)	1.6.1 Further analysis is required to determine how prevalent the practice of charging for “other” deposits is to enable the Department to take appropriate action. This matter should be referred to the David Tune legislation review of Aged Care to consider whether the Prudential Regulations should be extended to “other” security deposits paid by residents to Approved Providers	6) Outside of scope	
	1.7	Sanctions are not proportionate or cannot be applied at an appropriate time in the process	Desktop Review (Amended following consultations)	1.7.1 Amend the legislation to provide a framework for the Department to support those Approved Providers who are at risk of default without triggering the sanctions under <a href="#">Part 4.4 of the Act</a> and the Sanctions Principles  The Recommendations set out in Categories (1), (2) and (4) achieve this objective without requiring additional legislative amendment to Part 4.4 of the Act or the Sanctions Principles. That is, the recommended legislative amendment is to increase transparency as opposed to sanctions or penalties	1) What the Department needs to know 2) What Approved Providers need to do 4) What the Department needs to do to support Prudential Regulations Changes	
			Desktop Review	1.7.2 Develop a robust risk management framework and methodology for supporting Approved Providers at risk of failure	2) What Approved Providers need to do	
	1.8	Approved Provider’s policies for refunding Accommodation Payments are not clear as to whether probate must be obtained or who accrues the interest on the Accommodation Payments between the death of the resident and the refund being made	Desktop Review (Amended)	1.8.1 Require Approved Providers to disclose to care recipients who hold Accommodation Payments the Approved Provider’s policy regarding: <ul style="list-style-type: none"> <li>▶ the process and timing of refunds on death</li> <li>▶ who accrues the interest and at what rate on the Accommodation Payments between the resident leaving the facility and the refund of the Accommodation Payment</li> </ul>	2) What Approved Providers need to do	
			Additional Feedback from the Department	1.8.2 In the context of the issue of RAP refunds to estates never being late if probate is not requested by the Approved Provider and how/whether interest is applicable if refunding without probate.  Our understanding and interpretation of the legislation is that a probate request must come through the estate – either the executors if there is a will or the beneficiaries if there is not a will. The reason for requiring probate to be granted is to limit the risk of an Approved Provider being pursued by an aggrieved beneficiary for non-receipt of the estate proceeds. Any non-compliance or misunderstanding of consumers should be addressed via guidance	4) What the Department needs to do to support Prudential Regulations Changes	
			Additional Feedback from the Department	1.8.3 When and how interest is calculated is also determined by the Prudential Standards. Any non-compliance or misunderstanding of consumers should be addressed via guidance		
	1.9	The Department has raised issues with who refunds are refunded to when a family member pays the RAP.	Desktop Review	1.9.1 The Communication and Engagement Strategy should include more information for consumers of residential aged care services to understand the consequences if a family member other than a resident pays the RAP	4) What the Department needs to do to support Prudential Regulations Changes	
	2. Prudential Standards	2.1	There is a lack of understanding of the liquidity risk profile of Approved Providers and quantification of liquid asset holdings	Desktop Review	2.1.1 Improve the Liquidity Standard through introducing a liquidity stress testing requirement for Approved Providers	1) What the Department needs to know
				Desktop Review	2.1.2 Support the assessment of whether the level of liquidity available is adequate and appropriate by introducing quantitative industry based metrics including: <ul style="list-style-type: none"> <li>• prescribed duration of event;</li> <li>• minimum level of liquidity; and</li> <li>• definition of liquid asset holdings</li> </ul>	1) What the Department needs to know



		Desktop Review	2.1.3 Consider enhancing the Disclosure Standard so that information regarding liquidity is disclosed more frequently and on a forecast as opposed to a historical basis. This would be in line with other types of financial reporting by entities to their lenders	1) What the Department needs to know
2.2	There is no capital adequacy requirement imposed on Approved Providers within the Prudential Requirements	Desktop Review	2.2.1 Amend the Prudential Requirements to include a capital management requirement for Approved Providers including: <ul style="list-style-type: none"> <li>introduce a capital adequacy metric to better manage and improve the assessment of capital adequacy to mitigate against thin capitalisation;</li> <li>definition to support quality of capital;</li> <li>an obligation for Approved Providers to develop a capital management plan and strategy.</li> </ul> This will provide a cushion to support Approved Providers in the event of a loss to better protect recipients of care from lack of service and the Department to minimise the Scheme being called on	1) What the Department needs to know
2.3	There is no risk management standard required for Approved Providers to understand their inherent risks and the management of these risks	Desktop Review	2.3.1 To improve the risk management practices of Approved Providers, amend the Prudential Requirements to include a risk management requirement in the Governance Standard. This would include: <ul style="list-style-type: none"> <li>a systematic approach to risk management;</li> <li>an obligation for Approved Providers to identify their risks and how they will mitigate them; and</li> <li>an obligation for Approved Providers to develop a suitable Investment Management Strategy (IMS); risk and controls to impose risk reporting and disclosure obligations</li> </ul>	2) What Approved Providers need to do
2.4	It is up to the Approved Providers to determine the level of risk in their Investment Management Strategy (IMS), governance arrangements and ability to repay the ACCOMMODATION PAYMENTS	Desktop Review	2.4.1 Approved Providers should establish a sound risk management framework to support their IMS and periodically review the effectiveness of the framework	2) What Approved Providers need to do
2.5	The Disclosure Standard does not require disclosure of certain material events or information	Desktop Review	2.5.1 An Approved Provider should make timely and balanced disclosure of all matters concerning it that a reasonable person would expect to have a material effect on its operating structure, operations and financial position	1) What the Department needs to know
		Desktop Review	2.5.2 Amend the Disclosure Standard to include an obligation on Approved Providers to disclose material events or information	1) What the Department needs to know
		Desktop Review	2.5.3 Consideration should be given to whether an industry standard should apply such as APS 310 (Australian Prudential Standard 310) or equivalent	1) What the Department needs to know
2.6	There is no recovery planning obligation on Approved Providers relating to a risk of failure	Desktop Review	2.6.1 Consideration of contingency planning to support recovery requirements in the event an Approved Provider is at risk of default. This will provide a robust framework to support any action taken by the Department to assist Approved Providers who may be at risk of failure	2) What Approved Providers need to do
		Desktop Review	2.6.2 Identify thresholds and associated actions. This is equivalent to disaster recovery planning or IT business continuity planning which is part of good governance	2) What Approved Providers need to do
2.7	The APCS uses a binary approach for the questions which limits the transparency of the disclosure as Approved Providers are inclined to record compliance to avoid potential sanctions	Desktop Review	2.7.1 Retain/Reinstate the requirement for the APCS to be audited by an independent and registered auditor	1) What the Department needs to know
		Desktop Review	2.7.2 Develop a Communication and Education Campaign to address how APCS forms should be completed. There is a perfect opportunity to do this for the next reports due given the changes to the GPFR and the APCS and the Portal for submitting them	4) What the Department needs to do to support Prudential Regulations Changes

			Additional Feedback from the Department	2.7.3 Recommended amendment of the APCS: Amend the APCS to contain evidence of how non-compliance has been rectified during the reporting period	1) What the Department needs to know
			Additional Feedback from the Department	2.7.4 Amend the Disclosure Standard to delete Principle 52(h). The reason for this deletion is that the Department will know who is not permitted to issue Accommodation Payments	1) What the Department needs to know
			Additional Feedback from the Department	2.7.5 Amend the Record Standard to reflect the voluntary move of resident which enables the Department to see the date for the reset pricing	1) What the Department needs to know
			Additional Feedback from the Department	2.7.6 To make the Disclosure Standard consistent for Bond Agreements and RAP Agreements: (i) change the period to 28 days for both Bond Agreements and RAD Agreements in <i>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; 52F-2(1)</i> (ii) remove the question from the APCS as the fact that the resident has moved into the facility is taken as is enough to say they have accepted the agreement terms	1) What the Department needs to know
3. Permitted Uses	3.1	The Permitted Use provisions do not restrict or limit which jurisdictions RAP money can be held	Desktop Review	3.1.1 Further analysis is required to determine how prevalent this practice is and whether it is an issue for all or only some Approved Providers	6) Outside of scope
			Desktop Review	3.1.2 The ability to track money is extremely limited. The proposals to amend the Prudential Regulation framework are constructed to provide protection that the Department is looking for; that is, that the Approved Providers have sufficient liquidity to repay the Accommodation Payments and sufficient capital to support their operations and liabilities in delivering residential aged care services. Further, the proposals regarding how to deal with Approved Providers who do not satisfy these requirement provide additional protection to both residents and the Department	1) What the Department needs to know
	3.2	Approved Providers may use funds for non-permitted uses	Desktop Review	3.2.1 Further analysis is required to determine how prevalent this practice is and whether it is an issue for all or only some Approved Providers. Approved Providers may require additional education on Permitted Uses and the Governance Standard or an Administrator or Adviser may need to be appointed to support the Approved Provider	4) What the Department needs to do to support Prudential Regulations Changes
			Desktop Review	3.2.2 The Prudential Requirements should be amended to increase the transparency of how RAP monies are used and who they are passed to irrespective of whether it is through one or several transactions	1) What the Department needs to know
	3.3	Section 63(c) of Part 6 of the Fees and Payment Principles should be repealed as the Scheme referred to in it has been repealed	Desktop Review	3.2.3 Legislative amendment to amend section 63(c) of the Fees and Payment Principles so that it applies to the relevant banking exemption under the Banking Act 1959	6) Outside of scope
	4. Compliance Pathway	4.1	The Department does not get real time data of non-compliance except through an open case, complaint or self-notification	Desktop Review	4.1.1 Work with the Complaints Commissioner and the Scheme to determine what “real-time” information would assist with the compliance of Approved Provider with the Prudential Regulations
Desktop Review				4.1.2 Review the new GPFR and APCS Portal functionality and specifications to determine whether there is an opportunity for further enhancement	4) What the Department needs to do to support Prudential Regulations Changes
Desktop Review				4.1.3 Continue the review of the PRCS team’s workflows to determine what “real-time” information would assist with the compliance of Approved Provider with the Prudential Regulations	4) What the Department needs to do to support Prudential Regulations Changes

			Desktop Review	4.1.4 Determine what “real-time” information would assist with the compliance of Approved Provider’s with the Prudential Regulations and what is appropriate to include in the re-procurement of the services currently provided by Forms Administration	4) What the Department needs to do to support Prudential Regulations Changes
			Desktop Review	4.1.5 Conduct an education campaign with Approved Providers on their obligations under <u>section 9(1) of the Act</u> insofar as it relates to the compliance with the Prudential Requirements	4) What the Department needs to do to support Prudential Regulations Changes
	4.2	Approved Providers do not fully understand compliance requirements despite robust guidelines for how to complete APCS and GPFR	Desktop Review	4.2.1 Further data analysis is required to understand which Approved Providers do not understand their compliance obligations. This may be undertaken by Forms Administration and may be part of a Communication and Engagement Plan for notifying Approved Providers of their obligations	6) Outside of scope / 4) What the Department needs to do to support Prudential Regulations Changes
			Desktop Review	4.2.2 Once the analysis has been completed, the Department can create a communication and engagement strategy or a targeted education campaign to assist Approved Providers improve completion of the APCS	4) What the Department needs to do to support Prudential Regulations Changes

Table 4: Operating model and Structure findings

FOCUS AREA	KEY FINDINGS	SOURCE	RECOMMENDATION	CATEGORY OF RECOMMENDATION
5. Methods of managing refundable deposits	5.1 Approved Providers have a variety of corporate structures and operating models	Desktop Review	5.1.1 Further analysis of how Approved Providers manage Accommodation Payments is required	1) What the Department needs to know
6. Approved Provider operating structures	6.1 Lack of visibility of different operating structures Approved Providers use	Desktop Review	6.1.1 Disclosure Standard to be amended to require disclosure of corporate structure and related party transactions	1) What the Department needs to know
7. The Department's prudential compliance monitoring activities	7.1 The Department's compliance function is underpinned by an in-house developed financial model which assesses the financial viability of Approved Providers	Desktop Review	7.1.1 The legislative framework needs to be reviewed to support an assessment of the financial viability of Approved Providers (as recommended above) this would support the use of the model by the Department. The model should be independently tested and verified and reviewed on an annual basis	1) What the Department needs to know 4) What the Department needs to do to support Prudential Regulations Changes
		Desktop Review	7.1.2 Once a robust model has been developed, the risk weighting allocation should be redone	4) What the Department needs to do to support Prudential Regulations Changes
	7.2 The Department lacks an overarching systematic risk management methodology for assessing the risks of Approved Providers	Desktop Review	7.2.1 We recommend that the Department adopt a probability and impact rating system (PAIRS) - type model adopting a qualitative and quantitative assessment criteria of Approved Providers. Model to be risk-based commensurate with the size and sophistication of the Approved Provider. The framework should focus towards higher risk entities. Considerations include: <ul style="list-style-type: none"> <li>▶ Risk management</li> <li>▶ Financial management metric</li> <li>▶ Capital management</li> <li>▶ Liquidity management</li> <li>▶ Management and corporate governance practices</li> </ul>	4) What the Department needs to do to support Prudential Regulations Changes
		Desktop Review	7.2.2 Introduce an internal risk management strategy document for the PRCS to assess the Department's inherent risks in respect of Accommodation Payments and the likelihood of Approved Providers being non-compliant with the Prudential Standards	4) What the Department needs to do to support Prudential Regulations Changes
		Desktop Review	7.2.3 Introduction a risk based framework to assist in identifying higher risk Approved Provider's to allow greater focus of Department resource's and attention - an example of this is the APRA PAIRS rating model <a href="http://www.apra.gov.au/CrossIndustry/Documents/O417-PAIRS-guide.pdf">http://www.apra.gov.au/CrossIndustry/Documents/O417-PAIRS-guide.pdf</a>	4) What the Department needs to do to support Prudential Regulations Changes
		Desktop Review	7.2.4 Consideration to be given to determine appropriate segmentation and classification of the aged care industry for the purpose of identifying and assessing risk of non-compliance of Approved Providers	4) What the Department needs to do to support Prudential Regulations Changes
		Desktop Review	7.2.5 Collect data and introduce an analytical team to assess and understand risk profile of Approved Providers	4) What the Department needs to do to support Prudential Regulations Changes
Desktop Review	7.2.6 Assessment of Department demands and develop target operating model to support new regulatory framework. Benchmark against leading industry practice to identify gaps and preferred operating model	4) What the Department needs to do to support Prudential Regulations Changes		

	7.3	The Department has limited resources and specialist knowledge to perform analytics/reporting and limited use of sophisticated technology for compliance reviews	Desktop Review	7.3.1 Review data collected and assess the feasibility of data analytics to improve the compliance function	4) What the Department needs to do to support Prudential Regulations Changes
			Desktop Review	7.3.2 Review the tools and resources used to perform current tasks and investigate whether they can be performed more cost effectively by IT tools (such as off-the-shelf or bespoke software products, financial models or data analytics or automation) or outsourced (for example, to a claims review specialist or discovery firm) to review compliance case documentation prior to being reviewed by the PRCS compliance team. The purpose of this would be to compile the information in a more searchable and transferable format to make it easier for the PRCS compliance team to undertake their work	4) What the Department needs to do to support Prudential Regulations Changes
			Desktop Review	7.3.3 Department to review the ACPS portal reporting templates to confirm whether they satisfy the Department's data needs and requirements	4) What the Department needs to do to support Prudential Regulations Changes
	7.4	The Department has limited resources to do on-site reviews and investigations of compliance	Desktop Review	7.4.1 Consider obtaining additional resource for PRCS to conduct reviews of Approved Providers compliance with the Prudential Standards [ <i>N.B., these are currently termed "Health Checks" in PRCS</i> ]	4) What the Department needs to do to support Prudential Regulations Changes
			Desktop Review	7.4.2 Consider more effective ways of obtaining information from Approved Providers and sharing information with them - for example, presenting at Peak Body conferences or establishing a working group such as the Australian Taxation Office's Not-for-Profit Stewardship Group	4) What the Department needs to do to support Prudential Regulations Changes
			Desktop Review	7.4.3 Retain/Reinstate the requirement for the APCS to be audited by an independent and registered auditor	4) What the Department needs to do to support Prudential Regulations Changes
	7.5	Limited end-to-end processes in place to interact and collaborate with other parts of the Department, which may affect PRCS's responsiveness to address non-compliance	Desktop Review	7.5.1 Consider developing and socialising a holistic end-to-end business process across the Department, including (i) identifying who is collecting or accessing prudential data about Approved Providers and for what purpose and (ii) escalation pathways. This should ideally be done in collaboration with other teams in the Department that are involved in the compliance pathways	4) What the Department needs to do to support Prudential Regulations Changes

The following Appendix provides a copy of the Consultation Pack that was issued by participating stakeholders prior to our consultation

## Department of Health: Review of the prudential regulations for RADs under the Aged Care Act

### *Consultation Pack February 2017*

#### 1. Background

The Department of Health (the Department) has engaged to EY to provide an independent study of the legislative, business and operational framework of the Refundable Accommodation Deposits (RADs) in residential aged care.

This is part of a wider review by the Department of the sustainability of the Aged Care services industry; in particular residential aged care. The Department's objectives in this review are based on the following three principles:

- ▶ the protection of residents
- ▶ the protection of the Government; both reputationally when an Approved Provider is non-compliant; and to reduce the reliance and use of the Scheme
- ▶ to limit the compliance burden on Approved Providers.

EY's project has been split into 5 phases being: Phase 1 Mobilisation; Phase 2 Desktop Review; Phase 3 Options Prioritisation; Phase 4 Consultation and Phase 5 Final report.

The Prudential Regulation and Compliance Section (PRCS) has been the executive sponsor of this project and has provided us with the information for our desktop review.

We are consulting with a range of stakeholders in the aged care industry including operators, investors and peak representative bodies. The operators being consulted are a combination of large and small corporates, not-for-profits and government; and across metropolitan and rural and regional geographies.

The options stated in this paper have been prepared for Department of Health: *Review of the prudential regulations for Refundable Accommodation Deposits* consultation purposes. The options that are to be discussed with the aged care stakeholders in the consultation process are not the final view of the Department. The Department is not committed to nor committing to implement some or all of the options. The options also do not represent the views of EY.

The options are being shared on a confidential basis and are not to be distributed outside of this consultation.

If you require any further information or explanations, please do not hesitate to contact EY.

#### 2. The need for change

In our review of the Prudential Requirements for RADs we identified that the Department obtains insufficient information to allow it to determine whether an Approved Provider complies with the Prudential Requirements.

The Options proposed are aimed at addressing this issue. In particular, their purpose is to:

- ▶ develop a framework for Approved Providers to demonstrate that they are adequately capitalised, have sufficient liquidity and good governance
- ▶ develop a framework that will encourage Approved Providers to invest the RADs monies wisely and with confidence which will in turn create a more sustainable residential aged care industry
- ▶ develop a framework that minimises cost and administrative burden for the Department and Approved Providers.

The Department is also looking to align itself with other Commonwealth regulators in terms of how compliance is regulated and what information it receives.

### 3. Process and next steps

The consultation with aged care industry stakeholders will take place over 3 weeks. EY will consolidate the feedback on a confidential basis and present a report to the Department by the end of April.

The Department will then form a view as to whether to implement some, all or none of the Options.

Aged Care stakeholders should also note that the Department has a number of other projects in this area including ACFA's review of the Accommodation Bond Guarantee Scheme and the Aged Care Legislated Review led by David Tune. Any implementation of any Options will be subject to the overall policy of the Department.

### 4. Options

- A. Approved Provider Reporting Entities
- B. Limit or phase out discretionary trusts and unit trusts
- C. Redefine the Liquidity Standard framework
- D. Capital adequacy requirements and disclosure
- E. Enhanced Disclosure Standard
- F. Auditor signs off the APCS
- G. Enhance Governance Standard – Part 1 Corporate Governance
- H. Enhance Governance Standard – Part 2 Risk Management Framework
- ~~I. Increase ranking of RADs on a winding-up~~
- I. Compliance education and training

## Appendix F Consultation Findings

### Approach

The consultation with aged care industry stakeholders took place over three weeks with the purpose of discussing proposed changes to the prudential regulation, identifying any key risks and consequences of the suggested changes and gaining industry insights.

We consulted with a range of stakeholders in the aged care industry including residential aged care providers, investors and peak representative bodies as seen in figure 3. The stakeholder groups and organisations were identified through discussions with the Department.

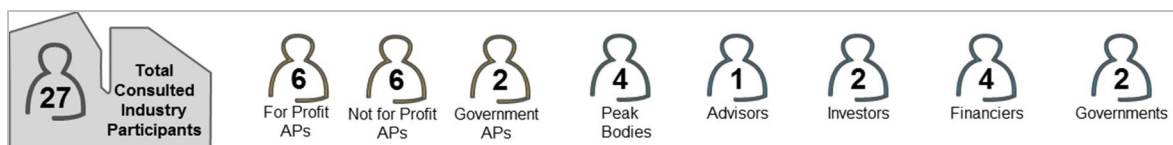


Figure 3: Overview of consulted stakeholder groups

The consulted aged care providers were a combination of large and small corporates, not-for-profits and government; and across metropolitan and rural and regional geographies.

A consultation pack, which can be found in Appendix E, was shared with the participants prior to the consultations. The consultations were conducted by conference call and in some instances, participants provided additional email feedback. We have captured these under the sub section "Additional Consultation Findings".

### Consultation Findings

EY consolidated the feedback on the proposals on a confidential and non-attributable basis, with the key findings presented in this Appendix. Some of the general comments on the proposals were:

- ▶ Proposals were perceived as sensible and participants did generally support the proposed changes to the liquidity standard, capital adequacy requirements and reporting on Approved Provider structures. Examples from the financial sector enhanced the credibility of the proposal.
- ▶ Participants wanted to understand if the review is considering other reviews of the aged care industry, such as the changes and impacts to the guarantee scheme and wider legislative changes. Concerns were expressed that the reviews may be conducted in isolation with limited overall view on the regulatory environment. Participants also raised concern of the ongoing regulatory review and change, and its impact on the industry.
- ▶ The participants wanted to understand the overall driver for the review and confirm the size of the problem in the industry.
- ▶ Participants highlighted the tiered nature of the Aged Care market, with varied operating style and reliance on Accommodation Payments, which can therefore make a 'one size fits all' approach challenging.
- ▶ For several of the proposals, it has been raised that we need to be mindful of, and protect, smaller communities, especially in rural and remote sites with special needs that have resource constraints and high turnover of staff. In particular, it is likely that these APs would find it harder to meet defined liquidity or capital adequacy metrics.
- ▶ The participants would like to see more details of what the proposal contains and how the Options will be implemented.



## Feedback on Proposals

Proposal A: Approved Provider Reporting Entities	
THEMES	FINDINGS
General	<ul style="list-style-type: none"> <li>▶ Two participants, who are a single entity or manage one single group entity for their aged care business, thought there should be a group view for all providers to maintain transparency and efficiency.</li> <li>▶ One of the participating Financiers explained that the bank has basic arrangements in place with certain rules, similar to Permitted Uses, where they generally don't allow movement of money outside of the disclosed group structures.</li> <li>▶ One of the participating Financiers agreed that improved transparency and reviews of incoming shareholders, share transactions and movement of money related to APs is required.</li> </ul>
Definition	<ul style="list-style-type: none"> <li>▶ Multiple participants required clarity of how to identify the reporting entity "group". There were mixed views about what should be excluded from the group if the intent is to have sight of the financial viability of the group overall.</li> </ul>
OpCo/PropCo	<ul style="list-style-type: none"> <li>▶ Obstacles has been raised by multiple financiers and investors in regards to OpCo and PropCo structures, with increased risks of moving assets away from liabilities.</li> <li>▶ One participant discussed the classification and treatment of Accommodation Payments purely as a liability rather than considering the asset aspect of Accommodation Payments.</li> <li>▶ One issue raised was that the bed licences are linked to the property and therefore there is a limit to the ability to split effectively OpCo from PropCo</li> </ul>
Not-For-Profit view	<ul style="list-style-type: none"> <li>▶ It was raised that currently organisations that have more than the RAC activities in single entities prepare a segment note which the Department mandates. If it includes the relevant line items to help them monitor the risks they are concerned about, the trade-off for groups to prepare a segment note rather than a stand-alone set of accounts that aren't otherwise required may be appealing for APs. The key here is that the segment note needs to be specific enough that consolidated or group accounts could adopt. There is precedent for the Department to ask for more than the accounting standards requirements.</li> </ul>

Proposal B: Limit or phase out discretionary trusts <del>and unit trusts</del>	
THEME	FINDINGS
General	<ul style="list-style-type: none"> <li>▶ A large Approved Provider raised that they have a mix of trusts, including discretionary trusts, within their group and explained that they provide consolidated level reporting to banks and still have to track the financial viability of the group.</li> <li>▶ One of the participating Financiers stated that they required APs to provide consolidated group reporting including trust structures. They monitored outflows from the OpCo very closely to confirm that they align with Permitted Uses and Lending Criteria.</li> </ul>
Not-For-Profit view	<ul style="list-style-type: none"> <li>▶ It was raised that the Australian Charities and Not-for-profits Commission (ACNC) effectively captures unincorporated structures for reporting</li> </ul>

Proposal C: Redefine the Liquidity Standard framework	
THEME	FINDINGS
General	<ul style="list-style-type: none"> <li>▶ Most participants think the industry would benefit from more prescriptive and objective guidance on Liquidity Management.</li> <li>▶ One participant was concerned about making things more complex, adding unnecessary bureaucracy and extra costs to providers. One participant had concerns in regards to the impact on smaller APs and their financial viability if a set requirement for liquidity and capital was put forward.</li> <li>▶ It was raised that the diversity of the members of the aged care industry as a factor that would mitigate against a common set of principles.</li> <li>▶ A participant raised that because there are about large scale changes proposed and already occurring, the industry will need time for implementation and there is a need to work through a detailed and phased implementation plan.</li> </ul>
Metric	<ul style="list-style-type: none"> <li>▶ Most participants agreed that Approved Provider could benefit from guidance on a metric, however there were discussions on taking into account that setting different levels of liquidity metrics would depend on a number of factors.</li> <li>▶ According to some participants, a liquidity metric based on RAP turnover was deemed inadequate particularly with small Approved Providers.</li> </ul>
Financier view	<ul style="list-style-type: none"> <li>▶ One of the participating financiers raised that customer cash flow forecasting for operations and liquidity, with assumptions validated against historical performance as well as trends emerging (notably RAP/DAP mix), are critical to getting the financiers comfortable.</li> </ul>

Proposal D: Capital adequacy requirements and disclosure	
THEME	FINDINGS
General	<ul style="list-style-type: none"> <li>▶ Most participants think the industry would benefit from more prescriptive and objective guidance on Capital Adequacy.</li> <li>▶ One participant was concerned about making things more complex, adding unnecessary bureaucracy and extra costs to providers.</li> <li>▶ It was raised that the diversity of the members of the aged care industry was a factor that would mitigate against a common set of principles</li> </ul>
Realisable Value	<ul style="list-style-type: none"> <li>▶ One of the participating Financiers highlighted that the views of the bank is that land is only component of what a group's net realisable value is.</li> <li>▶ An Approved Provider is more valuable as a going concern than as the sum of its assets. The Financier's view was that the Department of Health should be taking action to ensure that APs can be sold as going concerns prior to administration commencing.</li> </ul>
Not-For-Profit view	<ul style="list-style-type: none"> <li>▶ Raised assumption that this proposal should look at balance sheet ratios as opposed to other measures for For-Profits given the Not-for-Profit structures in place.</li> </ul>

Proposal E: Enhanced Disclosure Standard	
THEME	FINDINGS
General	<ul style="list-style-type: none"> <li>▶ In principle, participants understood the purpose of the proposal and how enhancing the Disclosure Standard ties together with other proposals.</li> <li>▶ Participants would like to understand how enhanced disclosure will improve the Department's management of compliance matters (<i>see additional feedback under Proposal I: Education and Training</i>).</li> <li>▶ A participant raised the need to be mindful of government providers disclosure constraints related to parliament dates, with a long process for sign-offs and later reporting timelines</li> </ul>
Ownership changes	<ul style="list-style-type: none"> <li>▶ All ownership changes were felt by those consulted to go through normal processes (ACNC and ASIC) and generally through the Department if Approved Provider status is impacted</li> </ul>
Related party transactions	<ul style="list-style-type: none"> <li>▶ Related party transactions are reported if they are general purpose accounts (which all Approved Providers should be)</li> </ul>

Proposal F: Auditor signs off the APCS	
THEME	FINDINGS
General	<ul style="list-style-type: none"> <li>▶ In principle, participants understand the purpose of the proposal and how it ties together with other proposals.</li> <li>▶ Two participants thought that requiring additional audits of the APCS component would increase the cost burden on Approved Providers.</li> </ul>

Proposal G & H: Enhance Governance Standard – Part 1 Corporate Governance and Part 2 Risk Management Framework	
THEME	FINDINGS
General	<ul style="list-style-type: none"> <li>▶ Participating Financiers highlighted that most Approved Providers they interact with have frameworks in place and are in control in regards to their financial management, which larger Approved Providers also confirmed.</li> <li>▶ One Participant suggested that regulation should still be kept light to not increase the burden on Approved Providers.</li> <li>▶ One of the participants raised that there are already a few governance and risk management frameworks in place for corporations, and that the Department could leverage these appropriately instead of potentially creating additional frameworks.</li> </ul>
Risk Management	<ul style="list-style-type: none"> <li>▶ One participant raised that the turnover of Accommodation Payments may vary depending on location and other factors, and that the RAP turnover should be taken into account when assessing risks.</li> </ul>

Proposal I: Compliance education and training	
THEME	FINDINGS
General	<ul style="list-style-type: none"> <li>All participants were supportive of enhanced compliance education and training.</li> </ul>
Funding	<ul style="list-style-type: none"> <li>While participants see a real value in enhanced education and communication, questions on how this would be funded has been raised.</li> </ul>
Disclosure Management & Engagement	<ul style="list-style-type: none"> <li>How will enhanced disclosure improve the management of non-compliance and the problems in the industry? Multiple participants felt there was limited visibility and communication around how the Department manages the large volume of data that is collected and disclosed to them. They would like to see enhanced communication on how the Department manages data for high risk organisations, non-compliance and act upon this.</li> </ul>
Approach	<ul style="list-style-type: none"> <li>Multiple participants raised that there should be increased focus on lessons learned, by sharing examples around risky behaviours, instances of non-compliance and how to manage this.</li> <li>It was suggested that the Department should enhance collaboration and leverage existing relationships with Aged Care peak bodies and other forums.</li> <li>It was suggested that the industry would benefit from a prudential supervisory organisation, a consultation stewardship group or similar.</li> <li>Small and remotely located APs in certain communities will in particular require better support and collaboration between different stakeholders in the industry.</li> <li>It has been noted that more education is required in regards to Permitted Uses.</li> </ul>

## Additional Consultation Findings

The following additional suggestions were made during the consultation.

AREA	FINDINGS
Disclosure and Data Management	<ul style="list-style-type: none"> <li>„ One Participant suggested that the Department could use the admission and ACFI data from Medicare more effectively. They also identified a number of fields in the Medicare system which are not currently used that could be used to capture some of the data suggested in this review. They have suggested that this could be used to track real time RAP movements on an individual AP/facility basis.</li> <li>„ The same Participant also said that APs should have better financial reporting and data capture systems (either in-house or outsourced). Their view is that these can provide an improved view on APs' financial sustainability, with minimal additional effort and cost required.</li> </ul>
Sanctions and penalties	<ul style="list-style-type: none"> <li>„ Multiple participants suggested an increased emphasis on penalties, accountability and clearer consequences for non-compliance.</li> <li>„ It was raised by one participant that the Department should focus on targeting risky organisations and individuals as opposed to putting stricter rules and increasing compliance burden on all APs in the industry.</li> <li>„ It has been suggested that improving awareness of sanctions and penalties among directors and other key personnel would be appropriate.</li> </ul>
Level of protection required	<ul style="list-style-type: none"> <li>„ One Participant raised that consumers who use Australian Deposit Taking Institutions only receive protection for the first \$250,000 with any one institution (if the ADI holds funds on a joint behalf e.g. a husband and wife, this is similarly limited to the joint holding). The participant noted that the Scheme provides protection up to \$1.5m for RAP depositors. This may be skewing the use of Accommodation Payments by residents for wealth and financial planning purposes. It also has a knock on effect to the amounts that beneficiaries of the resident's estate receive.</li> </ul>
Impact of other reforms on Approved Providers	<ul style="list-style-type: none"> <li>„ It has been raised that there should be consideration in regards to impact of other reforms to the aged care sector.</li> <li>„ The Government should consider the changes to the Superannuation and Pension arrangements in conjunction with self-funding of aged care</li> </ul>
Shift from Accommodation Payments to DAPs	<ul style="list-style-type: none"> <li>„ A number of Participants raised the impact on access to capital by consumers shifting from Accommodation Payments to DAPs.</li> </ul>
Impact from future demographic shifts	<ul style="list-style-type: none"> <li>„ A Participant raised the prospect of a run on Accommodation Payments when there is a demographic shift, i.e. Generation X who is a smaller cohort of the population and who follows from the baby boomers, moves into residential aged care accommodation. This may see Accommodation Payments repaid without equivalent replacement due to the number of incoming residents being smaller.</li> </ul>
Design life of facilities	<ul style="list-style-type: none"> <li>„ A Participant also raised that the design life of facilities is usually 25-30 years. He suggested that APs needed to make provision for the capital cost required to refurbish or redevelop facilities via a sinking fund as part of their good financial management</li> </ul>
Consumer perspective	<ul style="list-style-type: none"> <li>„ The team from the ACCC included a representative from the Small Business Unit and a representative who had been involved in the roll-out of information to consumers on the NDIS and provided examples on this.</li> </ul>

## Appendix G

## Documentation received and examined

Category	Document Title	Document Description
Case Study	Investigation of AP1	Provides background and advice on the best course of action relating to an Approved Provider (AP1), which was assessed as having a severe financial risk
Case Study	Minute - Interlocutory Relief dismissal data 12 August 2015	Provides background and a summary of the issues relating to the revocation of the approval of certain aged care providers
Compliance Statement	Annual prudential Compliance Statement 2015-16 for Approved Provider 1	Completed Annual Prudential Compliance Statement
Compliance Statement	Annual prudential Compliance Statement 2015-16 for Approved Provider 2	Completed Annual Prudential Compliance Statement
Compliance Statement	Annual prudential Compliance Statement 2015-16 for Approved Provider 3	Completed Annual Prudential Compliance Statement
Compliance Statement	Annual prudential Compliance Statement 2015-16 for Approved Provider 4	Completed Annual Prudential Compliance Statement
Compliance Statement	Annual prudential Compliance Statement 2015-16 for Approved Provider 5	Completed Annual Prudential Compliance Statement
Compliance Statement	Annual prudential Compliance Statement 2015-16 for Approved Provider 6	Completed Annual Prudential Compliance Statement
Discussion Paper	The Protection of Residential Aged Care Lump Sum Accommodation Payments	The Discussion Paper provided a review of the existing Accommodation Bond Guarantee Scheme (the Scheme) for residential aged care and proposed alternatives to the Scheme
Document	Changes to financial reporting arrangements for residential and home providers	Summary of the proposed changes to financial reporting arrangements for residential and home providers
Document	Media Release – David Tune to Lead Major Review of Aged Care Report	Media release announcing David Tune AO PSM to lead the Aged Care Legislative Review
Document	Prudential Health Check pilot program	Letter thanking volunteers for the participation in the Department's trial of on-site prudential compliance reviews
Document	Red Tape Reduction Action Plan	Outlines the plan for reducing the regulation of the aged care sector
Form	Annual Prudential Compliance Statement for the financial year ending 30 June 2016	An Annual Prudential Compliance Statement form for Approved Providers to complete for the financial year ending 20 June 2016

Category	Document Title	Document Description
Form	Annual Prudential Compliance Statement Guidelines 2015-16 financial year	The Guidelines to the Annual Prudential Compliance Statement for the financial year ending 30 June 2016
Report	Aged Care Financing Authority – Fourth report on the funding and financing of the Aged Care Sector	The report provides information on the structure and operation of the Australian aged care sector and its key characteristics, observations on the impact of recent reforms, funding and financial performance of the sector (based on 2014-15 data) and the emerging opportunities and challenges for the sector
Report	Prudential Health Check Report	A prudential Health Check Report for an Approved Provider
Template	2015 -16 First Pass Risk Rating Assessment	Template of the First Pass Risk Rating
Template	Aged Care Financial Report	Template of the Aged Care Financial Report for Approved Providers to complete
Template	Analysis of Submission in respect of the Notice of Non-compliance	Template of the Analysis of Submission in respect of the Notice of Non-compliance
Template	Definitions for the Aged Care Financial Report	Definitions to accompany the Aged Care Financial Report
Template	First Pass Risk Rating Assessment – Risk Scoring	The Risk scoring category for the First Pass Risk Rating Assessment
Template	Notice of Decision to Impose Sanctions Section 67-5 of the Aged Care Act 1997	Template of the Notice of Decision to Impose Sanctions Section 67-5 of the Aged Care Act 1997
Template	Notice of Non-compliance Section 67-2 of the Aged Care Act 1997	Template of the Notice of Non-compliance Section 67-2 of the Aged Care Act 1997
Template	Notice to Give Information under Section 9-2 of the Aged Care Act 1997	Template of the Notice to Give Information under Section 9-2 of the Aged Care Act 1997
Template	Notice to Give Information under Section 9-3 of the Aged Care Act 1997	Template of the Notice to Give Information under Section 9-3 of the Aged Care Act 1997
Template	Notice to Give Information under Section 9-3A of the Aged Care Act 1997	Template of the Notice to Give Information under Section 9-3A of the Aged Care Act 1997
Template	Notice to Give Information under Section 9-3B of the Aged Care Act 1997	Template of the Notice to Give Information under Section 9-3B of the Aged Care Act 1997
Work flow	Annual Prudential Compliance Statement Process	Work flow of the Annual Prudential Compliance Statement Process

## Publicly Available Documentation Examined

Legislation/Standard	Sub sections	Link to source
Aged Care Act 1997 (the Act)	Part 2.1, Division 9, Paragraph 9-1	<a href="https://www.legislation.gov.au/Details/C2016C01052/Html/Text#_Toc466285320">https://www.legislation.gov.au/Details/C2016C01052/Html/Text#_Toc466285320</a>
	Part 2.1, Division 9, Paragraph 9-3b	<a href="https://www.legislation.gov.au/Details/C2016C01052/Html/Text#_Toc466285320">https://www.legislation.gov.au/Details/C2016C01052/Html/Text#_Toc466285320</a> <a href="https://www.legislation.gov.au/Details/C2016C01052/Html/Text#_Toc466285325">https://www.legislation.gov.au/Details/C2016C01052/Html/Text#_Toc466285325</a>
	Part 2.2, Division 8, Paragraph 8-3(1)(e) and (f)	<a href="https://www.legislation.gov.au/Details/C2016C01052/Html/Text#_Toc466285315">https://www.legislation.gov.au/Details/C2016C01052/Html/Text#_Toc466285315</a>
	Part 3A.3, Division 52M	<a href="https://www.legislation.gov.au/Details/C2016C01052/Html/Text#_Toc466285654">https://www.legislation.gov.au/Details/C2016C01052/Html/Text#_Toc466285654</a>
	Part 3A.3, Division 52N	<a href="https://www.legislation.gov.au/Details/C2016C01052/Html/Text#_Toc466285656">https://www.legislation.gov.au/Details/C2016C01052/Html/Text#_Toc466285656</a>
	Part 4.4, Division 67	<a href="https://www.legislation.gov.au/Details/C2016C01052/Html/Text#_Toc466285714">https://www.legislation.gov.au/Details/C2016C01052/Html/Text#_Toc466285714</a>
Fees and Payments Principles 2014 (No.2) (the Principles)	Part 4, Division 2, Section 19	<a href="https://www.legislation.gov.au/Details/F2015C00623/Html/Text#_Toc425844079">https://www.legislation.gov.au/Details/F2015C00623/Html/Text#_Toc425844079</a>
	Part 5, Division 2, s43- 44	<a href="https://www.legislation.gov.au/Details/F2015C00623/Html/Text#_Toc425844067">https://www.legislation.gov.au/Details/F2015C00623/Html/Text#_Toc425844067</a>
	Part 5, Division 3, s45-48	<a href="https://www.legislation.gov.au/Details/F2015C00623/Html/Text#_Toc425844071">https://www.legislation.gov.au/Details/F2015C00623/Html/Text#_Toc425844071</a>
	Part 5, Division 4, s49-50	<a href="https://www.legislation.gov.au/Details/F2015C00623/Html/Text#_Toc425844076">https://www.legislation.gov.au/Details/F2015C00623/Html/Text#_Toc425844076</a>
	Part5, Division 5, s 51-60	<a href="https://www.legislation.gov.au/Details/F2015C00623/Html/Text#_Toc425844079">https://www.legislation.gov.au/Details/F2015C00623/Html/Text#_Toc425844079</a>
	Part 6	
	Part 6, Paragraph 63(c)	<a href="https://www.legislation.gov.au/Details/F2015C00623/Html/Text#_Toc425844079">https://www.legislation.gov.au/Details/F2015C00623/Html/Text#_Toc425844079</a>
Sanctions Principles 2014 (the Principles)		<a href="https://www.legislation.gov.au/Details/F2014L00803">https://www.legislation.gov.au/Details/F2014L00803</a>
Corporations Act 2001 (Corporations Act)		<a href="https://www.legislation.gov.au/Details/C2016C00922">https://www.legislation.gov.au/Details/C2016C00922</a>
Banking Act 1959	Banking Exemption No.1	<a href="https://www.legislation.gov.au/Details/C2016C00750">https://www.legislation.gov.au/Details/C2016C00750</a>



Legislation/Standard	Sub sections	Link to source
Prudential Standard APS 110 - Capital Adequacy		<a href="http://www.apra.gov.au/adi/Documents/150507-APS-110-Capital-Adequacy.pdf">http://www.apra.gov.au/adi/Documents/150507-APS-110-Capital-Adequacy.pdf</a>
Aged Care (Bond Security) Act 2006 (Cth)		<a href="http://www.austlii.edu.au/au/legis/cth/num_act/acsa2006200/">http://www.austlii.edu.au/au/legis/cth/num_act/acsa2006200/</a>
Aged Care (Bond Security) Levy Act 2006 (Cth)		<a href="http://www.austlii.edu.au/au/legis/cth/num_act/acsla2006260/">http://www.austlii.edu.au/au/legis/cth/num_act/acsla2006260/</a>
Report Title	Link to source	
Department of Social Service Red Tape Reduction Action Plan (Report)	<a href="https://www.dss.gov.au/sites/default/files/documents/05_2015/rtrap_web_version.pdf">https://www.dss.gov.au/sites/default/files/documents/05_2015/rtrap_web_version.pdf</a>	
Leading Age Services Australia (LASA), Aged Care Legislated Review December 2016	<a href="https://agedcare.health.gov.au/reform/aged-care-legislated-review/leading-age-services-australia">https://agedcare.health.gov.au/reform/aged-care-legislated-review/leading-age-services-australia</a>	
Council of the Ageing (COTA), Aged Care Legislated Review December 2016	<a href="https://agedcare.health.gov.au/reform/aged-care-legislated-review/council-of-the-ageing-cota">https://agedcare.health.gov.au/reform/aged-care-legislated-review/council-of-the-ageing-cota</a>	

## Appendix H Review of sample of Annual Prudential Compliance Statements (APCS)

### Background and Aim

The Department of Health states that all approved residential aged care providers that hold or have previously held refundable accommodation deposits, accommodation bonds or entry contributions must complete the Annual Prudential Compliance Statement (APCS) form. Compliance with prudential standards is demonstrated in accordance with Part 5 of the Fees and Payments Principles 2014 (No.2) (the Principles) and is done on annual basis by submitting the completed APCS to the Department within four months of the end of the financial year.

The aim of this analysis was to find commonalities and differences relating to the compliance and completeness of approved providers' Annual Prudential Compliance Statements.

### Limitations

This analysis is based on a small sample (6 approved Aged Care providers) and may not reflect the Aged Care at large. Certain part have been removed and/or replaced by a generic definition to protect the investigated parties, such as the Aged Care providers real business names and involved individual names. Section B and parts of Section C below have also been modified to from exact figures to ranges, for protection of Approved Providers.

### Results from the analysis

Summary of reviewed Annual Prudential Compliance Statements								
Section	Sub section	Approved Provider 1	Approved Provider 2	Approved Provider 3	Approved Provider 4	Approved Provider 5	Approved Provider 6	
Section C – Compliance with Prudential Standards	Compliance with the Liquidity Standard	COMPLIED	COMPLIED	COMPLIED	COMPLIED	COMPLIED	COMPLIED	
	Compliance with the Records Standard	COMPLIED	COMPLIED	COMPLIED	COMPLIED	COMPLIED	COMPLIED	
	Compliance with the Governance Standard	COMPLIED	COMPLIED	COMPLIED	COMPLIED	COMPLIED	COMPLIED	
	Compliance with the Disclosure Standard	COMPLIED	COMPLIED	COMPLIED	COMPLIED	COMPLIED	COMPLIED	
Section D –	Compliance with refundable lump sum payment charging responsibilities	COMPLIED	COMPLIED	COMPLIED	COMPLIED	COMPLIED	COMPLIED	
	Compliance with refunding responsibilities	NON COMPLIANCE	COMPLIED	NON COMPLIANCE	COMPLIED	COMPLIED	COMPLIED	
Section E –	Compliance with Permitted Uses for Refundable Lump Sum Payments	COMPLIED	COMPLIED	COMPLIED	COMPLIED	COMPLIED	COMPLIED	
	Permitted Uses	A. Refunded Refundable Deposits, Bonds or EC balances	Ü	Ü	Ü	Ü	Ü	Ü
		B. Capital Expenditure	Ü	Ü	Ü	Ü	Ü	Ü
		C. Invested in financial products	Ü	-	-	Ü	Ü	Ü
		D. Invested in a Religious Charitable Development Fund (RCDF)	-	-	-	-	-	-
		E. Made Loans	-	-	-	-	-	-
		F. Repaid debt accrued	Ü	-	Ü	Ü	Ü	-
		G. Reasonable business losses incurred by an approved provider in the first 12 months of a service operation	Ü	-	-	Ü	-	-
H. Repaid debt accrued before 1 Oct 2011 for the purposes of providing aged care to care recipients	-	-	-	-	-	-		
Section F – Declaration by Approved Provider		COMPLETED	COMPLETED	COMPLETED	COMPLETED	COMPLETED	COMPLETED	
Attachments	Attachment 1	COMPLETED	COMPLETED	COMPLETED	COMPLETED	COMPLETED	COMPLETED	
	Attachment 2	Provided due to non-compliance for Section D8 and D9	NIL - not required	Provided due to non-compliance for Section D8	NIL - not required	NIL - not required	NIL - not required	
	Attachment 3	COMPLETED	COMPLETED	COMPLETED	COMPLETED	COMPLETED	COMPLETED	

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