14/03/2025

Aged Care Quality and Safety Commission
New_FP_Standards@agedcarequality.gov.au

Dear Commissioner Hefren-Webb,

Consultation on the new Financial and Prudential Standards

Ageing Australia welcomes the opportunity to provide feedback to the Aged Care Quality and Safety Commission (Commission) on the new Financial and Prudential Standards, including both the exposure draft and the draft *Guidance for Providers*.

Ageing Australia is the national peak body representing providers across the aged care sector, including retirement living, seniors housing, residential care, home care, community care and related services. We represent the majority of service providers, working together to create a sector that empowers older Australians to age with dignity, care and respect.

Further to our discussions, our key comments and recommendations regarding the exposure draft of the Aged Care Financial and Prudential Standards 2025 (exposure draft) and the draft guidance are outlined in this submission. More detailed feedback on the exposure draft can be found in **Attachment A**. This submission has been informed by feedback from our members, modelling by StewartBrown for Ageing Australia and legal advice.

We recognise the importance of good financial and prudential management practices for the sector, supporting sector stability and continuity. However, we have significant concerns about several aspects of the proposed new Financial and Prudential Standards and the subsequent consequences. These include:

- the proposed inclusion of refundable independent living and retirement village payment amounts when calculating the minimum liquidity amount
- the lack of recognition in the exposure draft of alternative ways providers can demonstrate compliance with the Liquidity Standard, and
- the scope of the Financial and Prudential Standards, with some of the provisions appearing to extend beyond the Commission's powers under the new Aged Care Act.

To address these issues, Ageing Australia recommends the following:

1. That the Commission amend the proposed minimum liquidity calculation to 25% of quarterly cash expenses and 5% of Refundable Accommodation Deposit liability.
2. Refundable independent living and retirement village payment amounts should not be included in the calculation for the minimum liquidity standard.

3. a) That the Commission amends the exposure draft of the Financial and Prudential Standards to explicitly recognise that there are alternative ways that providers who do not meet the minimum liquidity amount (as worked out under s 11(3)) can demonstrate that they do not pose a liquidity risk. This should include, for example, where a provider:

    - can show they can maintain the minimum liquidity amount if current capital Work in Progress and/or unused line of credit are included in the amount worked out under subsection (3), or
    - provides the Commission with a 12 month cash flow forecast against budget/target each quarter, together with actual movements for the previous quarter.

    b) The *Guidance for Providers* should be updated to reflect Recommendation 3a.
4. That the Commission removes section 8(2)(c) from the exposure draft.
5. The minimum liquidity amount should be subject to continual review and assessment by the Commission. If review indicates that the sector is being unduly or adversely affected, impacting on investment, then the Commission should be required to establish an independent review of the new Liquidity Standard.
6. That the Commission takes the necessary time to develop the legislative instrument for the Financial and Prudential Standards, following consideration of public consultation feedback, further engagement and enact transitional provisions to support well-designed reform.

Each of these recommendations are discussed in detail below.

Changes to the proposed method for calculating the minimum liquidity amount are needed to avoid unintended consequences

Impacts of the proposed minimum liquidity amount

Under the proposed new Financial and Prudential Standards, a providers' minimum liquidity amount will be equivalent to 35 per cent of their cash expenses for the previous quarter, plus 10% of refundable deposit liabilities (for providers with refundable deposits). Modelling by StewartBrown shows that this proposed liquidity calculation significantly increases the average amount of liquid cash assets a provider needs to hold, without substantive benefit. Currently providers, on average, hold 24% of liquid cash assets to match their Liquidity Management Strategy. StewartBrown's analysis shows that the proposed minimum liquidity calculation, if implemented in its current form, would increase the amount providers would need to hold to 58%.

Ultimately, we believe that the proposed method for calculating the minimum liquidity amount is overly conservative. There are several reasons for this, including:

- staff costs represent 68% of total non-cash expenses for the aged care sector, most of which are supported by government subsidies (over 95%)
- net cash flows from resident liabilities (including from both Refundable Accommodation Deposits and retirement living) were positive in the last two financial years. In FY23 net cash inflows exceeded outflows by 28%, and this increased to 33% in FY24, and
- 10% retention of resident refundable loans would equate to 6.84 months of average cash outflows, without recognition of any cash inflows.

We are concerned that imposing an overly conservative minimum liquidity amount is likely to inhibit the sector's ability to meet current and future demand. We have received strong and consistent feedback from our members that the liquidity standard, as currently drafted, will significantly limit their ability to build new bed stock and invest in upgrading existing facilities. This unintended consequence is particularly concerning in the context of Australia's ageing population. The percentage of Australians aged 65 and over is expected to increase from 16% of the total population in 2020 to between 21-

23% by 2066, resulting in increasing demand for aged care services.[1] It is therefore critical that the Commission ensures that the Liquidity Standard will not stifle development of new builds and upgrades – especially at a time when they are most needed.

Recommendation 1: That the Commission amend the proposed minimum liquidity calculation to 25% of quarterly cash expenses and 5% of Refundable Accommodation Deposit liability.

Inclusion of refundable independent living and retirement village payment amounts

Part 3, section 11(3) of the exposure draft specifies how a provider must calculate their minimum liquidity amount. This calculation includes, among other things, 10% of refundable independent living payment amounts, and 10% of retirement village payment amounts, held by the provider at the end of the previous quarter (if any).

It is not appropriate to include refundable independent living and retirement village payments in the calculation of the minimum liquidity amount given the significant differences between these liabilities and refundable accommodation deposits (RADs). It is now standard industry practice to have a six to 12 month buyback period, and these will soon be legislated in most states. In New South Wales and Tasmania, six to 12 month buyback periods already apply, while 12 month buyback periods will commence in South Australia, Queensland and Western Australia in 2025.[2] In addition, 12 month buybacks are likely to be introduced in Victoria for leasehold tenure in 2025 or 2026.[3] The effect of these buyback regimes is that if a unit does not sell, the operator is already required to buy it back. Given these safeguards and the length of time in order to repay the former resident, the need for additional prudential oversight of retirement living is not established.

Further, we do not consider it appropriate to measure the liquidity risk of registered providers who also offer retirement living based on the value of entry fees paid by new residents. The ingoings/exit entitlements are not a liquidity risk in a going concern because the gap between exit and payment can be up to 12 months, which is more than enough time to have a new ingoing to fund the exit entitlement. To the extent that the retirement village or independent living business may pose a liquidity risk to a registered provider, it is limited to the trading operations of the retirement village or independent living unit business. This would be captured in the cash expenses component of the minimum liquidity amount calculation (which includes the aged care, retirement village and independent living businesses).

Ultimately, the inclusion of these liabilities in the calculation at 10% risks drastically reducing investment in new retirement villages at a time when demand is growing, and fails to recognise the significantly lower liquidity risk represented by independent living and retirement village liabilities compared to RADs.

Recommendation 2: Refundable independent living and retirement village payment amounts should not be included in the calculation for the minimum liquidity standard.

Clarification is needed about the alternative ways providers can demonstrate compliance with the Liquidity Standard

As acknowledged by the Commission in its *Guidance for Providers*, 'there will be some providers, based on our analysis of quarterly financial reports, who will not appear to be

---

[1] Australian Institute of Health and Welfare (2024). Older Australians (web report). https://www.aihw.gov.au/reports/older-people/older-australians/contents/demographicprofile

[2] *Retirement Villages Act 1999* (NSW), *Retirement Villages Act 2004* (TAS), South Australian *Retirement Villages Act 2016* update, Queensland *Housing Legislation Amendment Act 2021* changes, *Retirement Villages Amendment Bill 2024* (WA)

[3] *Retirement Villages Amendment Bill 2024* (VIC)

meeting the standard but do not pose a liquidity risk.' This may include providers who are able to access liquidity through means which are not included in their Quarterly Financial Reports, such as third party arrangements. The February 2025 edition of *Compliance Management Insights* states 'Where that's the case, if they can show us other arrangements are in place, they will be deemed compliant.'[3]

While we welcome this position which appropriately recognises the diverse structures and business practices used across the sector, it is not currently reflected in the exposure draft. Currently section 12(1) states that 'A registered provider must maintain, at all times, the provider's minimum liquidity amount in the form specified in the provider's liquidity management strategy,' without stating any alternatives or exceptions. This must be explicitly stated in both the exposure draft and *Guidance for Providers*, providing clarity and confidence for the sector, lenders and investors. Not doing so will reduce investment and reduce viability of new projects at a time when we need to build thousands of new units per year.

Ageing Australia believes that a provider, who does not meet the minimum liquidity amount, should be considered compliant with the Liquidity Standard in the following circumstances:

- Where a provider has used liquid assets for capital purposes, which are currently work in progress. Although this will reduce the liquidity calculation in the short term, after the project is completed, cash inflows (refundable deposits) will progressively replenish the liquid assets, or;
- Where a provider has established a secure line of credit, as this will enable future outflows (operating and capital) to be met up to the limit of the line of credit, or;
- Where the provider can accurately forecast future positive cash flow projections over a 12 month period and provide those to the Commission.

Recommendation 3a: That the Commission amends the exposure draft of the Financial and Prudential Standards to explicitly recognise that there are alternative ways that providers who do not meet the minimum liquidity amount (as worked out under s 11(3)) can demonstrate that they do not pose a liquidity risk. This should include, for example, where a provider:

- **can show they can maintain the minimum liquidity amount if current capital Work in Progress and/or unused line of credit are included in the amount worked out under subsection (3), or**
- **provides the Commission with a 12 month cash flow forecast against budget/target each quarter, together with actual movements for the previous quarter.**

Recommendation 3b: The *Guidance for Providers* should be updated to reflect Recommendation 3a.

<u>The scope of the new financial and prudential standards is too broad</u>

Section 8(2)(c) of the exposure draft states that the objects of a registered provider's financial and prudential management system must include 'enabling financial and prudential decisions of the provider to:

(i) be made in a fair, equitable and reasonable manner; and
(ii) focus on the safety, health, wellbeing and quality of life of individuals accessing funded aged care services delivered by the provider.'

We note that while the other objects of a provider's financial and prudential management system are outcomes focused, section 8(2)(c)(i) requires providers to implement a process that is procedurally fair to those affected by the outcomes – effectively requiring corporations, governing persons and the executive leadership team to involve third parties in financial decision-making. Imposing such a requirement on directors goes against their fiduciary duties.

Similarly, section 8(2)(c)(ii) appears to impose a new duty on corporations and directors which elevates a focus on the safety, health, wellbeing and quality of life of individuals accessing funded aged care services delivered by the provider to be a primary purpose of the corporation.

Section 8(2)(c) goes beyond the scope of the Royal Commission into Aged Care Quality and Safety's (Royal Commission's) recommendations in relation to financial and prudential regulation. The Royal Commission recommended that the regulator 'be empowered under statute to make and enforce standards relating to prudential matters…to ensure that they remain in a sound financial position, and ensure continuity of care in the aged care system, or the conduct of the affairs of approved providers with integrity, prudence and professional skill.'[4] It also recommended that the regulator 'should be empowered under statute to impose liquidity and capital adequacy requirements on approved providers, for the purpose of identifying and managing risks relating to whether providers have the financial viability to deliver ongoing high quality care and whether providers of residential care services that hold Refundable Accommodation Deposits are able to repay those deposits promptly as and when required.'[5] However as outlined above, section 8(2)(c) goes beyond this, requiring providers to apply procedural fairness to their financial decision-making and imposing a new duty, which requires financial and prudential decisions to be focussed on the safety, health, wellbeing and quality of life of individuals.

Section 8(2)(c) also extends beyond the Commission's legislative power under section 376 of the new Aged Care Act, which is limited to making standards in relation to financial and prudential matters. It is also unnecessary and duplicative, given that the new Aged Care Act imposes many obligations on providers to ensure the safety, health, wellbeing and quality of life. As reflected in section 376 and 377, the achievement of financial viability and sustainability satisfies the requirements for the ability of a registered provider to deliver ongoing quality and safe care. Section 376(2) states what the financial and prudential standards 'may only deal with' - and this does not include embedding in the decision-making process a procedural fairness requirement, nor a focus on safety, health, wellbeing and quality of life as these are already dealt with elsewhere.

Recommendation 4: That the Commission removes section 8(2)(c) from the exposure draft.

Responsive policy analysis and settings are required to avoid unintended policy consequences

It will be critical to monitor the impact of the minimum liquidity standard on residential care capital investment and independent living and retirement village supply over time. It is important that the Commission allows for adjustments to the standards and their application, if the sector can demonstrate compliance but cannot meet current and future demand for aged care services.

Recommendation 5: The minimum liquidity amount should be subject to continual review and assessment by the Commission. If review indicates that the sector is being unduly or adversely affected, impacting on investment, then the Commission should be required to establish an independent review of the new Liquidity Standard.

---

[4] Royal Commission into Aged Care Quality and Safety (2021). *Aged Care Royal Commission Final Report: Recommendations*, recommendation 131, https://www.royalcommission.gov.au/system/files/2021-03/final-reportrecommendations.pdf

[5] Royal Commission into Aged Care Quality and Safety (2021). *Aged Care Royal Commission Final Report: Recommendations*, recommendation 132, https://www.royalcommission.gov.au/system/files/2021-03/final-reportrecommendations.pdf

Importance of robust design of the new Financial and Prudential Standards

Given the very short timeframe of this public consultation, it is critical that the Commission takes the necessary time to consider and address feedback received. It is imperative to sector and investor confidence that this is not rushed, despite the introduction of the new Aged Care Act on 1 July 2025. If transitional timeframes are needed to get the new Financial and Prudential Standards right, then this should be considered as part of implementation.

This could be achieved, for example, by making the standards made under section 376 reflect the existing Financial and Prudential Standards as an interim measure. This would give the Commission more time to undertake comprehensive consultation on the proposed new Financial and Prudential Standards, including with the aged care, retirement living and banking sectors, before they become law.

Recommendation 6: That the Commission takes the necessary time to develop the legislative instrument for the Financial and Prudential Standards, following consideration of public consultation feedback, further engagement and enact transitional provisions to support well-designed reform.

Thank you again for the opportunity to provide feedback on the new Financial and Prudential Standards. If you would like to discuss this submission or have any questions, please contact Roald Versteeg, General Manager, Policy and Advocacy, at roald.versteeg@ageingaustralia.asn.au and Anne Liddell, Head of Policy, at anne.liddell@ageingaustralia.asn.au.

Yours sincerely,

[redacted]

Tom Symondson
Chief Executive Officer, Ageing Australia

Attachments Exposure draft of the Aged Care Financial and Prudential Standards 2025 with Ageing Australia's comments

EXPOSURE DRAFT

If you have any comments on this exposure draft, they should be sent to to the Aged Care Quality and Safety Commission at New_FP_Standards@agedcarequality.gov.au by 7 March 2025.

Aged Care Financial and Prudential Standards 2025

I, *[insert name]*, Commissioner of the Aged Care Quality and Safety Commission, make the following instrument.

Dated 2025

[Insert name] **[DRAFT ONLY—NOT FOR SIGNATURE]**
Commissioner of the Aged Care Quality and Safety Commission

EXPOSURE DRAFT

Contents

EXPOSURE DRAFT

Part 1—Preliminary

1 Name

This instrument is the *Aged Care Financial and Prudential Standards 2025*.

2 Commencement

(1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	**Column 2**	**Column 3**
Provisions	**Commencement**	**Date/Details**
1. The whole of this instrument	At the same time as section 376 of the *Aged Care Act 2024* commences.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

(2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under section 376 of the *Aged Care Act 2024*.

4 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:
(a) provider registration category;
(b) refundable deposit;
(c) registered provider;
(d) rules.

In this instrument:

accommodation bond balance has the same meaning as in the *Aged Care Rules 2025*.

accounting standard has the same meaning as in the *Corporations Act 2001*.

Act means the *Aged Care Act 2024*.

deposited amount means:

(a) a refundable deposit; or

(b) an accommodation bond

deposited amount balance means:

(a) a refundable deposit balance; or

(b) an accommodation bond balance.

minimum liquidity amount has the meaning given by subsection 11(1).

refundable independent living payment amount has the same meaning as in the *Aged Care Rules 2025*.

refundable retirement village payment amount has the same meaning as in the *Aged Care Rules 2025*.

relevant responsible person of a registered provider means a responsible person of the provider other than one who is a responsible person of the provider only because of subparagraph 12(1)(c)(i) of the Act.

5 Purpose of this instrument

For the purposes of subsection 376(1) of the Act, this instrument:

(a) prescribes standards relating to financial and prudential matters; and

(b) provides for the application of certain standards to:

(i) registered providers in specified provider registration categories; or

(ii) specified kinds of registered providers.

Note 1: It is a condition of registration that a registered provider must comply with the provisions of this instrument that apply to the provider: see section 150 of the Act. If a registered provider breaches a condition of registration, the provider may be liable to a civil penalty: see subsections 142(3) and (4) of the Act.

Note 2: One of the safeguarding functions of the Commissioner is to protect continuity of care through monitoring the compliance of registered providers with their financial and prudential requirements, and taking proactive steps to prevent non-compliance with those requirements: see section 349 of the Act.

6 Objects of this instrument

The objects of this instrument are to prescribe minimum standards relating to financial and prudential matters:

(a) to ensure the financial viability and sustainability of registered providers in relation to the delivery of funded aged care services by those providers; and

(b) to enable registered providers delivering funded aged care services to individuals to offer continuity of care to those individuals.

Part 2—Financial and prudential management

7 Application of Part

This Part applies to a registered provider that:

(a) is registered in any of the following provider registration categories:

(i) personal and care support in the home or community;

(ii) nursing and transition care;

(iii) residential care; and

(b) is not a government entity or a local government authority.

Commented [A1]: Need to clarify whether this includes both HCP and CHSP.

8 Requirement to implement and maintain a financial and prudential management system

(1) A registered provider must implement and maintain a financial and prudential management system.

(2) The objects of a registered provider's financial and prudential management system must include the following:

(a) ensuring the financial viability and sustainability of the provider;

(b) ensuring the provider is managed in a financially sound manner;

(c) enabling financial and prudential decisions of the provider to:

(i) be made in a fair, equitable and reasonable manner; and

(ii) focus on the safety, health, wellbeing and quality of life of individuals accessing funded aged care services delivered by the provider;

(d) ensuring the provider's compliance with this Part;

(e) if the provider is registered in the provider registration category residential care—ensuring the management and use of deposited amounts, and the refund of deposited amount balances, by the provider is in accordance with the Act, the rules and this instrument.

Commented [A2]: We recommend this is removed as outlined in our submission.

Commented [A3]: We note this does not include a reference to retirement villages or independent living loans. Consistent with our recommendation that these should not be included in the calculation of the minimum liquidity amount, this should remain as is.

(3) A registered provider's financial and prudential management system must:

(a) set out the roles, including the accountabilities and responsibilities of those roles, of persons in the system, including in relation to:

(i) the provider's finances; and

(ii) if the provider is registered in the provider registration category residential care—the management and use of deposited amounts and the refund of deposited amount balances; and

(b) enable the provider to monitor and control any delegation or outsourcing of those roles, accountabilities or responsibilities; and

(c) include internal reporting mechanisms for those roles to enable the provider to effectively monitor and control:

(i) the provider's finances; and

(ii) if the provider is registered in the provider registration category residential care—the management and use of deposited amounts, and the refund of deposited amount balances; and

Commented [A4]: The provider guidance should clarify how detailed this information needs to be.

(d) be able to detect, record and respond to any failure to comply with the system or this Part.

Note: Separate to the internal reporting mechanisms mentioned in paragraph (c) of this subsection, a registered provider may be required to give a report to the Commissioner, or another person, relating to specified financial and prudential matters: see sections 166 and 167 of the Act.

(4) A registered provider must ensure that persons are aware of, and understand, their roles, accountabilities and responsibilities in relation to implementing the provider's financial and prudential management system.

(5) A registered provider must ensure that relevant responsible persons of the registered provider are aware of, and understand, the following:

(a) the provider's financial and prudential management system;

(b) the standards prescribed by this instrument;

(c) any requirements imposed on the provider by the rules that relate to financial and prudential matters, including:

(i) the management and use of deposited amounts; and

(ii) record-keeping, reporting and notification of financial and prudential matters.

(6) This section does not limit the matters a registered provider's financial and prudential management system may deal with.

9 Review of financial and prudential management system

(1) A registered provider must review and assess:

(a) the effectiveness of the provider's financial and prudential management system in achieving the objects of the system; and

(b) what, if any, actions could be taken to improve the system.

(2) A registered provider must conduct a review and assessment under subsection (1):

(a) regularly, and at least once in each financial year; and

(b) at the following times:

(i) when the provider considers that updates to the system may be required in order to achieve the objects of the system;

(ii) when the provider considers that the system, including its implementation, is not in compliance with this Part;

(iii) when the provider identifies, or becomes aware of, new or evolving financial risks.

Commented [A5]: Would a review be required upon the acquisition of another registered provider or aged care business segment? If so, this should be explicitly stated.

(3) If a registered provider determines that actions could be taken to improve the provider's financial and prudential management system, the provider must ensure that:

(a) such actions, that are reasonable in the circumstances, are taken; and

(b) the efficacy of those actions in improving the system is monitored.

Note: For paragraph (b), monitoring could form part of subsequent reviews and assessments undertaken under subsection (1), or as part of a separate monitoring process.

Part 3—Liquidity

10 Application of Part

This Part applies to a registered provider that:

(a) is registered in the provider registration category residential care; and

(b) is not a government entity or a local government authority.

11 Registered provider must determine minimum liquidity amount on a quarterly basis

(1) A registered provider must determine, each quarter, the provider's ***minimum liquidity amount*** for the quarter.

Note: The minimum liquidity amount must be set out in the provider's liquidity management strategy: see section 13.

(2) A registered provider's minimum liquidity amount for a quarter must be an amount that:

(a) is sufficient for the provider to ensure that the provider can:

(i) meet the provider's financial obligations as they fall due; and

(ii) refund, in accordance with the Act and the rules, any deposited amount balances that can be expected to fall due in the following 12 months; and

(iii) deliver safe and quality care to individuals accessing funded aged care services delivered by the provider; and

(b) is at least equal to the amount worked out under subsection (3) for the provider.

(3) For the purposes of paragraph (2)(b), the amount is:

(a) if the registered provider holds a deposited amount—the amount worked out by adding the following amounts:

(i) the amount equal to 35% of the provider's cash expenses for the previous quarter;

(ii) the amount equal to 10% of the deposited amount balances held by the provider at the end of the previous quarter;

(iii) the amount equal to 10% of refundable independent living payment amounts (if any) held by the provider at the end of the previous quarter;

(iv) the amount equal to 10% of refundable retirement village payment amounts (if any) held by the provider at the end of the previous quarter; or

(b) if the registered provider does not hold a deposited amount—the amount worked out by adding the following amounts:

(i) the amount equal to 35% of the provider's cash expenses for the previous quarter;

Commented [A6]: What is the time frame for determining this? Is it at the lodgement of the QFR? This should be clearly articulated in both the legislative instrument and guidance for providers.

Commented [A7]: Add 'in accordance with the Corporations Act 2001' (if these are the financial obligations this is intended to refer to)

Commented [A8]: As outlined in our submission, we recommend that the Commission amends the exposure draft of the Financial and Prudential Standards to explicitly recognise that there are alternative ways that providers who do not meet the minimum liquidity amount (as worked out under s 11(3)) can demonstrate that they do not pose a liquidity risk. This should include, for example, where a provider:

- can show they can maintain the minimum liquidity amount if current capital Work in Progress and/or unused line of credit are included in the amount worked out under subsection (3), or
- provides the Commission with a 12 month cash flow forecast against budget/target each quarter, together with actual movements for the previous quarter.

The *Guidance for Providers* should also be updated to reflect the above.

Commented [A9]: We recommend that this be reduced to 25% for the reasons outlined in our submission

Commented [A10]: We recommend that this be reduced to 5% for the reasons outlined in our submission

Commented [A11]: We recommend that these provisions be removed for the reasons outlined in our submission.

Commented [A12]: We recommend that this be reduced to 25% for the reasons outlined in our submission

(ii) the amount equal to 10% of refundable independent living payment amounts (if any) held by the provider at the end of the previous quarter;

(iii) the amount equal to 10% of refundable retirement village payment amounts (if any) held by the provider at the end of the previous quarter.

Commented [A13]: We recommend that these provisions be removed for the reasons outlined in our submission.

(4) If:

(a) a registered provider has determined a minimum liquidity amount for a quarter; and

(b) a change in circumstances or an event occurs; and

(c) the change in circumstances or event means the provider's minimum liquidity amount for the quarter does not meet the requirements in subsection (2);

the provider must re-determine the provider's minimum liquidity amount for the quarter.

(5) A registered provider's cash expenses are to be calculated for the purposes of this section in accordance with accounting standards in force at the time the determination under subsection (1) is made. This section has effect whether the accounting standard would otherwise apply to the provider.

12 Requirement to maintain minimum liquidity amount

(1) A registered provider must maintain, at all times, the provider's minimum liquidity amount in the form specified in the provider's liquidity management strategy (see section 13).

(2) A registered provider must notify the Commissioner if the provider's liquidity falls below, or is at risk of falling below, the provider's minimum liquidity amount.

Commented [A14]: Provision should be amended to state the timeframe within which a registered provider is required to notify the Commission.

13 Requirement to implement and maintain a written liquidity management strategy

(1) A registered provider must implement and maintain a written liquidity management strategy.

(2) The objects of a registered provider's liquidity management strategy must include the following:

(a) ensuring the sound management of the provider's liquidity and the provider's liquidity risks;

(b) ensuring the provider can do the things mentioned in subparagraphs 11(2)(a)(i), (ii) and (iii);

(c) ensuring the provider's compliance with this Part.

(3) A registered provider's liquidity management strategy must set out the following:

(a) the provider's minimum liquidity amount (see section 11);

(b) the form in which the provider will maintain the provider's minimum liquidity amount;

(c) the factors the provider considered in determining the provider's minimum liquidity amount;

Commented [A15]: This is ambiguous and its intended meaning needs to be clarified. What 'factors' would/can be considered given that section 11(3) expressly states how a provider must calculate their minimum liquidity amount?

(d) how the provider's income and expenses will be monitored;

(e) the provider's sources of income;

(f) the provider's loan arrangements;

(g) the liquidity risks of the provider and the strategies to address those risks;

(h) how new liquidity risks will be identified and mitigated;

(i) how financial forecasting will be used to determine liquidity and to assess liquidity risks;

(j) the roles, including the accountabilities and responsibilities of those roles, of persons in relation to the implementation of the strategy;

(k) how the provider will monitor and control any delegation or outsourcing of those roles, accountabilities or responsibilities;

(l) internal reporting mechanisms for those roles to enable the provider to effectively monitor and control the provider's liquidity and the provider's liquidity risks;

(m) how the provider will detect, record and respond to any failure to comply with the strategy or this Part;

(n) the procedures the provider will follow, and the actions the provider will take, if the provider's liquidity falls below the provider's minimum liquidity amount.

(4) A registered provider must ensure that persons are aware of, and understand, their roles, accountabilities and responsibilities in relation to implementing the provider's liquidity management strategy.

(5) This section does not limit the matters a registered provider's liquidity management strategy may deal with.

14 Registered provider must comply with liquidity management strategy

A registered provider must manage the provider's liquidity, and the provider's liquidity risks, in accordance with the provider's liquidity management strategy.

15 Review of liquidity management strategy

(1) A registered provider must review and assess:

(a) the provider's liquidity management strategy and its implementation; and

(b) what, if any, updates could be made to the strategy, or other actions could be taken, to:

(i) ensure the provider's compliance with this Part; or

(ii) improve the management of the provider's liquidity and the provider's liquidity risks.

(2) A registered provider must conduct a review and assessment under subsection (1):

(a) regularly, and at least once in each financial year; and

(b) at the following times:

(i) when the provider considers there is a risk that the provider is not maintaining, or will be unable to maintain, the provider's minimum liquidity amount;

(ii) when the provider considers that the strategy, or its implementation, is not in compliance with this Part;

(iii) when the provider identifies, or becomes aware of, new or evolving liquidity risks.

Note: A registered provider must update the provider's liquidity management strategy each quarter to, at least, set out the provider's minimum liquidity amount for the quarter: see paragraph 13(3)(a).

(3) If a registered provider determines that updates could be made to the provider's liquidity management strategy, or actions could be taken as mentioned in subsection (1), the registered provider must ensure that:

(a) those updates are made; and

(b) any actions that are reasonable in the circumstances are taken; and

(c) the efficacy of those updates and actions in ensuring the provider's compliance with this Part, or in improving the efficacy of the strategy, is monitored.

Note: For paragraph (c), monitoring could form part of subsequent reviews and assessments undertaken under subsection (1), or as part of a separate monitoring process.

16 Requirements relating to loans

A registered provider may make a loan only if:

(a) the loan is made on a commercial basis; and

(b) there is a written agreement in place in relation to the loan.

Commented [A16]: Does not mention security. If no security, what enforceability is required? We also note that there is no mention of use of loan for permitted uses (refer section 63 of Fees & Payments Principles)

Part 4—Investment

17 Application of Part

This Part applies to a registered provider that:

(a) is registered in the provider registration category residential care; and

(b) is not a government entity or a local government authority.

18 Requirement to implement and maintain a written investment management strategy

(1) A registered provider must implement and maintain a written investment management strategy that sets out the following:

(a) the provider's investment objectives, which must include:

(i) the adoption of sound practices in relation to the selection, management and monitoring of investments by the provider; and

(ii) ensuring the delivery of safe and quality care to individuals accessing funded aged care services delivered by the provider; and

(iii) protecting deposited amounts;

(b) a strategy for achieving the provider's investment objectives;

(c) the roles, including the accountabilities and responsibilities of those roles, of persons in relation to the implementation of the strategy;

(d) the skills and experience required for those roles;

(e) how the provider will monitor and control any delegation or outsourcing of those roles, accountabilities or responsibilities;

(f) internal reporting mechanisms for those roles to enable the provider to effectively monitor and control the provider's investments and the implementation of the strategy;

(g) processes for identifying, mitigating and addressing investment risks;

(h) how the provider will detect, record and respond to any failure to comply with the strategy or this Part.

(2) A registered provider must ensure that persons are aware of, and understand, their roles, accountabilities and responsibilities in relation to implementing the provider's investment management strategy.

(3) This section does not limit the matters a registered provider's investment management strategy may deal with.

19 Investments must be in accordance with investment management strategy

Investments made by a registered provider must be made and managed in accordance with the provider's investment management strategy.

20 Review of investment management strategy

(1) A registered provider must review and assess:

Commented [A17]: Should this also be referenced to the Annual Prudential Compliance Statement requirements?

Commented [A18]: We note that the guidelines around the investment management strategy (IMS) are very general. No requirement to invest in ADI's or equities than can be publicly traded, no mention of related party investments or of the percentage of liquid cash assets that can form part of the IMS.

There is also no reference to Permitted Uses.

(a) the implementation of the provider's investment management strategy, including its effectiveness in achieving the provider's investment objectives; and

(b) what (if any) updates could be made to the strategy, or other actions could be taken to:

(i) ensure compliance with this Part; or

(ii) improve the effectiveness of the strategy.

(2) A registered provider must conduct a review and assessment under subsection (1):

(a) regularly, and at least once in each financial year; and

(b) at the following times:

(i) when the provider considers that updates to the strategy may be required in order to achieve the provider's investment objectives;

(ii) when the provider considers that the strategy, or its implementation, is not in compliance with this Part;

(iii) when the provider identifies, or becomes aware of, new or evolving investment risks.

(3) If a registered provider determines that updates could be made to the provider's investment management strategy, or actions could be taken as mentioned in subsection (1), the registered provider must ensure that:

(a) those updates are made; and

(b) any actions that are reasonable in the circumstances are taken; and

(c) the efficacy of those updates and actions in ensuring the provider's compliance with this Part, or in improving the efficacy of the strategy, is monitored.

Note: For paragraph (c), monitoring could form part of subsequent reviews and assessments undertaken under subsection (1), or as part of a separate monitoring process.