

## EXPLANATORY STATEMENT

Issued by the authority of the Assistant Minister for Social Services

*Aged Care Act 1997*

### *User Rights Amendment (Investment of Accommodation Bonds) Principle 2013*

The *Aged Care Act 1997* (the Act) provides for the regulation and funding of aged care services. Approved providers of aged care under the Act can charge an accommodation bond for the entry of a care recipient to a residential or flexible care service. Providers that charge bonds must have in place a governance system to manage bonds.

Section 96-1 of the Act allows the Minister to make Principles providing for various matters required or permitted by a Part or section of the Act. Among the Principles made under section 96-1 is the *User Rights Principles 1997*. Under Division 57 of the Act approved providers must, amongst other requirements, comply with the Prudential Standards in the User Rights Principles and use accommodation bonds only for 'permitted uses', including those set out in the Principles. Under section 23.38B of the User Rights Principles, providers that invest accommodation bonds in certain ways must implement and maintain a written investment management strategy. Under section 23.64B a provider can use an accommodation bond for certain additional permitted uses.

Existing paragraphs 23.38B(1)(b) and 23.64B(1)(c) of the User Rights Principles refer to religious charitable development funds listed in Banking exemption No. 1 of 2011 made under the *Banking Act 1959* in relation, respectively, to the requirement for an investment management strategy when investing bonds in such funds and that investment of bonds in these funds is permitted. The purpose of the *User Rights Amendment (Investment of Accommodation Bonds) Principle 2013* (the Amending Principle) is to update this reference following expiration of Banking exemption No. 1 of 2011, replacing this by reference to these funds as listed in Banking exemption No.1 of 2013.

Details of the Amending Principle are set out in **Attachment A**.

The Amending Principle is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

#### Consultation

To ensure that no unforeseen consequences would arise, the proposed amendments were provided to the Prudential Advisory Group, comprised of aged care peak bodies and approved providers, on 23 October 2013. Comments received were supportive of the proposed amendments.

#### Regulation Impact Statement

The Office of Best Practice Regulation has advised that no Regulation Impact Statement is required (OBPR ID 15335).

### Commencement

The Amending Principle commences on the day after it is registered.

### Statement of Compatibility with Human Rights

A Statement of Compatibility with Human Rights (the Statement) has been completed for the Amending Principle, in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. A copy of the Statement is at **Attachment B**.

**Details of the *User Rights Amendment (Investment of Accommodation Bonds) Principle 2013***

**Clause 1** states that the name of the Amending Principle is the *User Rights Amendment (Investment of Accommodation Bonds) Principle 2013*.

**Clause 2** states that the Amending Principle commences on the day after it is registered.

**Clause 3** provides that the authority for the making of the Amending Principle is the *Aged Care Act 1997*.

**Clause 4** provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

**Schedule 1 – Amendments**

**Item 1 - Paragraph 23.38B(1)(b)**

Item 1 repeals existing paragraph 23.38B(1)(b) of the User Rights Principles, substituting a provision referring to funds listed in the Schedule to Banking exemption No. 1 of 2013 made under the *Banking Act 1959*.

This provision continues the requirement that approved providers of aged care which invest accommodation bonds in such funds must implement and maintain a written investment strategy.

For the avoidance of doubt, the provision specifies that it does not apply to an approved provider that invests an accommodation bond in a controlling entity of a fund listed in the Schedule, since such investment is not a ‘permitted use’ under Division 57 of the Aged Care Act (see Item 2 below).

**Item 2 – Paragraph 23.64B(1)(c)**

Item 2 repeals existing paragraph 23.64B(1)(c) of the User Rights Principles, substituting a provision referring to funds listed in the Schedule to Banking exemption No. 1 of 2013 made under the *Banking Act 1959*.

Under this provision, investment of accommodation bonds in such funds remains a ‘permitted use’ under Division 57 of the Aged Care Act. For the avoidance of doubt, the provision specifies that this does not apply to investment of accommodation bonds in a controlling entity of a fund listed in the Schedule.

## **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### ***User Rights Amendment (Investment of Accommodation Bonds) Principle 2013***

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### **Overview of the Legislative Instrument**

This legislative instrument seeks to make changes to the User Rights Principles to reflect the commencement of Banking exemption No. 1 of 2013 made under the *Banking Act 1959* and the expiration of Banking exemption No. 1 of 2011.

### **Human Rights Implications**

The legislative instrument is compatible with the right to an adequate standard of living and the right to the enjoyment of the highest attainable standard of physical and mental health as contained in article 11(1) and article 12(1) of the International Covenant on Economic, Social and Cultural Rights, and article 25 and article 28 of the Convention on the Rights of Persons with Disabilities.

The legislative instrument will assist in promoting a key object of the Act, namely to protect the health and well-being of recipients of aged care services, by strengthening consumer protection for accommodation bonds paid by them to aged care providers.

### **Conclusion**

This legislative instrument is compatible with human rights as it promotes the human right to health and the right to an adequate standard of living.

**Senator the Hon Mitch Fifield, Assistant Minister for Social Services**