

## EXPLANATORY STATEMENT

Issued by the authority of the Assistant Minister for Social Services

*Aged Care Act 1997*

*Committee Principles 2014*

The *Aged Care Act 1997* (the Act) provides for the regulation and funding of aged care services. Persons who are approved under the Act to provide aged care services (approved providers) can be eligible to receive subsidy payments in respect of the care they provide to approved care recipients.

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 are the *Committee Principles 2014* (the Principles).

The Principles describe the functions, constitution and certain operational arrangements for the Aged Care Financing Authority. The Aged Care Financing Authority provides independent advice to the Government on funding and financing issues, informed by consultation with consumers, and the aged care and finance sectors.

From 1 July 2014, these Principles will replace the existing *Committee Principles 2013*. The main difference between the principles is that the new Principles have been renumbered and some provisions have been re-drafted to reflect contemporary drafting practice (and for consistency with other aged care principles). No policy changes have been made to the Principles.

### Consultation

In April 2012, the former Government launched a major program of aged care reforms. The reform agenda was developed in close consultation with the aged care sector, including consumers, industry and professional bodies.

As part of the consultation on the proposed changes to the Act, and to delegated legislation, arising from the reforms, the former Government communicated its intention to examine the delegated legislation and, where possible, simplify the delegated legislation.

This intent was communicated in November 2012, with the public release of a paper providing an overview of the proposed legislative changes. A video presentation detailing the proposed reforms was also made available online to assist members of the public to understand these changes.

During late 2012 and in the first half of 2013, briefing sessions were held across Australia to provide information and to explain, in detail, the proposed legislative changes included in the package of Bills introduced into Parliament on 13 March 2013. As part of these

consultations, the intention to make related changes to delegated legislation was again discussed. For those interested members of the public unable to attend the briefings, the presentation, supporting handouts, a detailed Question and Answer document and an information video were made available online.

In early 2014, consultation was undertaken on those aged care principles that reflected significant policy changes. As the *Committee Principles 2014* do not substantially differ from the *Committee Principles 2013*, an exposure draft of these Principles was not released for public comment.

### Regulation Impact Statement

The Office of Best Practice Regulation has advised that no RIS is required (OBPR ID 16682).

### Commencement

The Principles commence on 1 July 2014.

**Details of the Committee Principles 2014**

**Part 1 – Preliminary**

**Section 1 – Name of principles**

This section provides that the name of the principles is the *Committee Principles 2014* (the Principles).

**Section 2 – Commencement**

This section states that the Principles commence on 1 July 2014.

**Section 3 – Authority**

This section provides that the authority for making the Principles is section 96-1 of the *Aged Care Act 1997* (the Act).

**Section 4 – Definitions**

This section defines certain terms used in the Principles.

*Act* means the *Aged Care Act 1997*.

*Aged Care Financing Authority* means the committee established under paragraph 96-3(1)(a) the Act.

*Aged Care Financing Authority member* means a member of the Aged Care Financing Authority (including the Chair and the Deputy Chair of the Authority) but excluding:

- the representative of the Department administered by the Minister administering the Act (currently the Department of Social Services);
- the representative of the Department administered by the Treasurer; and
- the Aged Care Pricing Commissioner.

**Part 2 – Aged Care Financing Authority**

**Section 5 – Purpose of this Part**

This section describes the purpose of Part 2. Part 2 describes matters that relate to the Aged Care Financing Authority (ACFA) including: its functions; its constitution; appointment and remuneration of its members; disclosure of members' interests; and termination of appointments.

**Section 6 – Functions**

This section establishes the functions of ACFA. It is intended that ACFA provide advice to the Minister in relation to funding and financing of aged care and its impact on the viability and sustainability of the aged care sector, access to quality care, and the aged care workforce. This includes considering the impact of revenue, cost and productivity movements and the impact of accommodation payments and fees for additional services charged by approved providers in the aged care sector.

ACFA also considers any other matters referred to ACFA by the Minister and makes recommendations to the Minister on those matters, within the timeframes set by the Minister.

In performing its functions, ACFA must consult the following: providers of aged care services, or their representatives; recipients of aged care services, or their representatives; the aged care workforce, or their representatives; bodies or organisations that provide funding or finance for aged care services; and any other bodies or organisations that ACFA considers appropriate.

ACFA is also required to publish, on its website, a copy of any advice or recommendation given to the Minister in the performance of ACFA's functions. The advice or recommendation must be published within 28 days after it is given to the Minister.

### **Section 7 – Directions by Minister**

This section gives the Minister the power to give written directions to ACFA about the way in which ACFA is to carry out its functions, and the procedures to be followed in relation to meetings. However, the Minister must not give a direction to ACFA about the content of any advice, information or recommendation that ACFA may give to the Minister. The directions given by the Minister must relate to administrative matters only and be of a general nature.

This section also provides that:

- ACFA must comply with a direction given by the Minister;
- if the Minister does not give a direction to ACFA in relation to the procedures to be followed in meetings, ACFA may determine its own procedures.

A direction given by the Minister is not a legislative instrument. This statement is included in section 7 to assist readers, as the instrument is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*.

### **Section 8 – Annual report**

This section requires ACFA to prepare and give the Minister a report on its operations during the past year as soon as practicable after the end of each financial year. ACFA must publish the report on its website as soon as practicable after giving the report to the Minister.

### **Section 9 – Constitution**

This section provides that ACFA consist of a Chair, a Deputy Chair, up to 10 other members, a representative of the Department administered by the Minister administering the Act, a representative of the Department administered by the Treasurer and the Aged Care Pricing Commissioner.

The Departmental representatives and the Aged Care Pricing Commissioner are not members of ACFA for the purposes of the definition of ACFA member (see section 4).

## **Section 10 – Appointment of members**

This section describes how ACFA members are to be appointed, for how long, and the skills and experience they need to possess.

ACFA members:

- are appointed by the Minister by written instrument. A person is not eligible for appointment as an ACFA member (other than the Chair or the Deputy Chair) unless the Minister is satisfied that the person has expertise or experience in one of the following fields - equity finance, debt finance, aged care consumer issues, aged care workforce issues, the provision of not-for-profit aged care services, the provision of for-profit aged care services, or any other appropriate field; and
- hold office on a part-time basis for no longer than three years. However, this does not prevent a member from being reappointed.

## **Section 11 – Acting appointments**

This section provides that the Minister may appoint a person to act as the Chair of ACFA during a vacancy in the office of the Chair (whether or not an appointment has previously been made to the office) or during any period, or during all periods, when the Chair is absent from duty or from Australia, or is for any reason unable to perform the duties of the office.

In the same circumstances as described above, the Minister may also appoint a person to act as the Deputy Chair of ACFA (during any vacancy) or appoint a person to act as an ACFA member (other than the Chair or the Deputy Chair) during a vacancy in the office of an ACFA member.

A person is not eligible for appointment to act as an ACFA member (other than the Chair or Deputy Chair) unless the Minister is satisfied that the person has expertise or experience in at least one of the fields mentioned in section 10.

## **Section 12 – Remuneration**

This section provides for the payment of remuneration and allowances to ACFA members as determined in writing by the Minister.

The section also provides that an ACFA member is not entitled to be paid remuneration if the member holds an office or appointment, or the member is otherwise employed, on a full-time basis in the service or employment of: a State; a public statutory corporation; a company limited by guarantee where the interests and rights of the members in (or in relation to) the company are beneficially owned by a State; or a company in which all the stock or shares are beneficially owned by a State or by a public statutory corporation.

## **Section 13 – Resignation**

This section provides for the resignation of an ACFA member. A member can resign by giving the Minister a written resignation. The resignation takes effect on the day it is received by the Minister or on a later day if a later day is specified in the written resignation.

**Section 14 – Disclosure of interests to the Minister**

This section provides for the disclosure of interests to the Minister. An ACFA member is required to give written notice to the Minister of any interests, pecuniary or otherwise, that conflict or may conflict with the proper performance of the member's functions.

**Section 15 – Disclosure of interests to the Aged Care Financing Authority**

This section provides for the disclosure of interests to ACFA. An ACFA member is required to disclose to a meeting of ACFA, the nature of an interest, pecuniary or otherwise, the member has in a matter being considered, or about to be considered, by ACFA. The disclosure must be made to the meeting as soon as possible after the relevant facts have come to the member's knowledge. The disclosure must be recorded in the minutes of the ACFA meeting.

**Section 16 – Termination of appointment**

This section provides for the termination of an ACFA member's appointment. The Minister may terminate the appointment of an ACFA member for misbehaviour, or if the member is unable to perform the duties of his or her office because of physical or mental incapacity, or is absent without reasonable excuse from three consecutive meetings of ACFA, or fails without reasonable excuse to comply with the requirements regarding disclosure of interests to the Minister or to a meeting of ACFA.

Further, the Minister must terminate the appointment of a member of ACFA if the member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, or compounds with his or her creditors, or makes an assignment of his or her remuneration for the benefit of his or her creditors.

**Section 17 – Other terms and conditions**

This section states that an ACFA member holds office on the terms and conditions (if any) in relation to matters not covered in the Principles that are determined, in writing, by the Minister.

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

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

### **Committee Principles 2014**

The *Committee Principles 2014* (the Principles) are 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**

The purpose of the Principles is to describe the functions, membership and operations of the Aged Care Financing Authority (ACFA). The functions of ACFA include providing independent advice to the Minister responsible for administering the *Aged Care Act 1997* (the Act) in relation to any specific issues relevant to the funding and financing of aged care services. ACFA provides advice to the Minister by 30 June each year on the impact of aged care funding and financing arrangements on sector viability and sustainability, care recipient access to quality care and the aged care workforce.

This includes monitoring the impact of: revenue, cost and productivity movements in the aged care sector; accommodation payments that are charged by approved providers for accommodation provided with residential care; and amenity fees for additional services that are charged by approved providers for aged care services. ACFA may also consider any other matters referred to ACFA by the Minister and make recommendations to the Minister on those matters.

The members of ACFA must have expertise or experience in at least one of the following fields: equity finance; debt finance; aged care consumer issues; aged care workforce issues; the provision of not-for-profit aged care services; the provision of for-profit aged care services; any other appropriate field.

### **Human Rights Implications**

The Principles are compatible with human rights as they will assist in promoting the right of recipients of aged care services to an adequate standard of living and their right to the enjoyment of the highest attainable standard of physical and mental health. The Principles will facilitate the provision of independent expert advice to the Australian Government on matters relating to the funding and financing of aged care services. This will assist the Australian Government to develop and implement appropriate policies to promote a high quality of care and accommodation for the recipients of aged care services and to enable access to those services by those who need them.

### **Conclusion**

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

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