

EXPLANATORY STATEMENT

Aged Care Act 1997

Aged Care Legislation Amendment (Financial Reporting) Principles 2017

Authority

Item 1 in the table to section 96-1 of the *Aged Care Act 1997* (the Act) provides that the Minister may make Accountability Principles providing for matters required or permitted by Part 4.3 of that Act.

Item 14A in the table to section 96-1 of the Act provides that the Minister may make Fees and Payments Principles providing for matters required or permitted by Parts 3A.1, 3A.2 and 3A.3 of that Act.

Purpose

The purpose of the *Aged Care Legislation Amendment (Financial Reporting) Principles 2017* (the Amending Principles) is to amend the *Accountability Principles 2014* and the *Fees and Payments Principles 2014 (No. 2)* to implement changes to financial reporting including the introduction of the Aged Care Financial Report.

Background

The Department of Health announced changes to the financial reporting requirements for residential, home care and flexible care (short-term restorative care) providers. A single report called the 'Aged Care Financial Report' (ACFR) will consolidate the:

- Annual Prudential Compliance Statement;
- Survey of Aged Care Homes;
- Home Care Financial Report; and
- Short-Term Restorative Care Financial Report.

The General Purpose Financial Report has been retained as a stand-alone audited report. The General Purpose Financial Report and the independent audited opinion for a completed Annual Prudential Compliance Statement must be submitted at the same time as all other components of the Aged Care Financial Report.

Under the new arrangements, the current General Purpose Financial Report suggested residential segment format will be replaced by mandatory data (i.e., mandated line items) at both the approved provider and residential segment level. However,

providers will have the flexibility to include the mandated line items in the General Purpose Financial Report or the Aged Care Financial Report.

Consultation

The Aged Care Financial Report was developed in consultation with the aged care industry.

A Design Implementation Group (DIG) comprising of representatives of stakeholder groups, aged care providers, the Aged Care Financing Authority (ACFA) and the Department of Health met in November 2014 and June 2015 to help develop and refine the ACFR. A sub-group of the DIG also met in July 2015 to review specific sections of the ACFR.

A public consultation was also held in February 2015 with 35 submissions received from providers, aged care peak bodies, financiers, accountants and software providers. As a result of the feedback received a number changes were made to the ACFR with amended version being tabled and discussed at the second DIG workshop.

A second limited consultation took place in April 2016 with aged care peak bodies and DIG members invited to comment on the final proposal with 1 peak body and 3 DIG members responding.

This instrument commences the day after registration on the Federal Register of Legislation.

This instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

Details of the Aged Care Legislation Amendment (Financial Reporting) Principles 2017

1 Name

Section 1 states that the name of the instrument is the *Aged Care Legislation Amendment (Financial Reporting) Principles 2017*.

2 Commencement

Section 2 states that these amendments commence on the day after the instrument is registered.

3 Authority

Section 3 states that this instrument is made under the *Aged Care Act 1997* (the Act).

4 Schedules

This section 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 term

Schedule 1 Amendments

The amendments in Schedule 1 to this instrument are set out in two parts:

- Part 1—Amendments
- Part 2—Application Provisions

Part 1 – Amendments

Accountability Principles 2014

Item 1: Section 4 (after the heading)

Item 1 inserts a reference to a number of expressions used in the *Accountability Principles 2014* (Accountability Principles) which are defined in the *Aged Care Act 1997*.

Item 2: Section 4

Item 2 inserts the definitions for ‘aged care financial report’ and ‘Australian accounting standards’.

The Australian accounting standards are disallowable legislative instruments and are incorporated from time to time.

Item 3: Section 4 (definition of *financial year*)

Item 3 replaces the definition of *financial year* with the new definition having the meaning given by subsection 32(1) of the Accountability Principles.

Item 4: Section 4

Item 4 inserts definitions for; ‘general purpose financial report,’ ‘short-term restorative care’ and ‘Statement of Accounting Concepts SAC 1’.

Item 5: Section 4 (note)

Item 5 repeals the note at the end of section 4, which previously listed expressions used in the Accountability Principles and defined in the Act. This is a consequential change to item 1 above, which inserts the note after the heading in section 4.

Item 6: Part 3 (heading)

Item 6 repeals the heading and substitutes a new heading; ‘Part 3 – Information to be given to Secretary’. This is a consequential change due to items 7 and 8 below, which removes requirements for an approved provider to give certain information to the Minister when requested.

Item 7: Paragraph 24(a)

Item 7 omits the phrase ‘or the Minister’ from paragraph 24(a).

Item 8: Sections 26 and 27

Item 8 repeals:

- Section 26, which specified information about accommodation payments, contributions, bonds and charges; and
- Section 27, which specified information about building, upgrading and refurbishment.

Previously, sections 26 and 27 required approved providers of a residential care service to provide certain information to the Minister, when requested to do so. This included information about accommodation payments and contributions, and upgrades to residential care services. However, it is no longer necessary to include these requirements in sections 26 and 27, as approved providers will now be required to provide that information as part of the ‘aged care financial report’ under the new subsection 35(3), which is inserted by item 16 below.

Item 9: Part 4 (heading)

Item 9 repeals the heading and substitutes a new heading; ‘Part 4 – Aged care financial report’.

Item 10: Paragraphs 31(a) and (b)

Item 10 replaces paragraphs 31(a) and (b) to specify the purpose of Part 4 of the Accountability Principles. Part 4 describes an approved provider’s financial reporting responsibilities for a financial year, and specifies the period that is a financial year.

Item 11: After section 31

Item 11 inserts a new section 31A, which specifies that Part 4 applies to approved providers of a residential care service, a home care service or a flexible care service through which short-term restorative care is provided.

Item 12: Subsections 32(1) and (2)

Item 12 omits the words ‘of a residential care service, or a home care service’ from subsection 32(1) and (2). Those words are no longer necessary to include in subsections 32(1) and (2), as the new section 31A now provides that this Part applies to such providers.

Item 13: Subsection 32(4)

Item 13 omits the words ‘, 3 or 4 (as the case requires)’ from subsection 32(4).

Item 14: Division 2 of Part 4 (heading)

Item 14 repeals the heading and substitutes a new heading; ‘Division 2—Responsibilities of approved providers’. Previously, Division 2 set out responsibilities for approved providers that were not State or Territory governments. However, Division 2 will now set out responsibilities for approved providers, including State and Territory government approved providers. The new heading reflects this broader application.

Item 15 Section 34

Item 15 omits all the words in section 34 after ‘of an approved provider’. This is a consequential change due to other items which amend Division 2, so that it now applies to State and Territory approved providers as well as other approved providers.

Item 16: Section 35

Item 16 repeals the currently existing section 35 and substitutes a new section 35 and 35A, which set out requirements for approved providers to prepare an ‘aged care financial report’ and a ‘general purpose financial report’.

Section 35

Subsections 35(1) and (2) specify that an approved provider must prepare an ‘**aged care financial report**’, which must be signed by a member of the approved provider’s key personnel.

The Note to subsection 35(1) informs the reader that an approved provider who provides more than one type of care must prepare a report for each type of care, as required by the relevant provision. For example, a non-government approved provider that provides residential care as well as home care must prepare an aged care financial report for its residential care services as per the requirements in subsections (3) and (4), and its home care services as per subsection (7).

All approved providers of residential care

Subsection 35(3) sets out a requirement for all approved providers of residential care. For approved providers of residential care services, the ‘aged care financial report’ must be in a form approved by the Secretary of the Department of Health, and include information about matters specified in paragraphs 63-2(2)(ca), (cb), (d) and (f) of the Act. This includes information about:

- the amounts of accommodation payments and accommodation contributions paid;
- the amounts of those accommodation payments and accommodation contributions paid as refundable deposits and daily payments;
- the amounts of accommodation bonds and accommodation charges charged; and
- the extent of building, upgrading and refurbishment of aged care facilities.

Note 2 to subsection 35(3) informs the reader that the aged care financial report must also include the approved provider’s annual prudential compliance statement.

Approved providers of non-government residential care

Under the new subsection 35(4), approved providers of non-government residential aged care must prepare an ‘aged care financial report’ which must:

- be in a form approved by the Secretary;
- be accompanied by a copy of an audited general purpose financial report; and
- be accompanied by an audit opinion for each general purpose financial report.

Subsection 35(5) provides that if the form approved by the Secretary requires approved providers to give information about a residential care service, the approved provider does not need to include this information in the ‘aged care financial report’ if it is already included in one of the general purpose financial reports.

Residential care services—government providers

Subsection 35(6) sets out requirements for approved providers of residential care that are State or Territory governments, or an authority of a State or Territory government, or a local government authority. These government approved providers must prepare an ‘aged care financial report’ which includes a financial report relating to the provider’s residential care services and is in a form approved by the Secretary. The approved form will set out the requirements for provision of that information. This replaces the requirement previously set out in Division 3 of Part 4 to the Accountability Principles.

Home care services

Subsection 35(7) specifies requirements for an approved provider of home care. Approved providers of home care must prepare an ‘aged care financial report’ which includes a financial report relating to the provider’s home care services and is in a form approved by the Secretary. The approved form will set out the specific requirements for the provision of that information. This does not represent a material change for approved providers of home care. Previously, Division 4 of Part 4 to the Accountability Principles required an approved provider of a home care service to prepare a financial report.

Flexible care services involving short-term restorative care

Subsection 35(8) specifies requirements for approved providers of flexible care provided as short-term restorative care. Approved providers of a flexible care service, through which short-term restorative care is provided, must prepare an ‘aged care financial report’ which includes a financial report relating to the provider’s short-term restorative care services and is in a form approved by the Secretary. This is consistent with the current requirements for approved providers of short-term restorative care. Currently, the conditions of allocation of flexible care (short-term restorative care) places require those approved providers to prepare certain financial reports, which are now covered by this provision.

Section 35A

Section 35A sets out the requirements for approved providers to prepare a ‘**general purpose financial report**’. Subsection 35A(1) provides that a non-government residential care provider must prepare one or more general purpose financial reports. Together, these reports must deal with all of the residential care services provided during the financial year.

This allows approved providers to prepare either a single general purpose financial report which includes all residential care services (along with any other non-residential care services) or one general purpose financial report for each residential care service.

As set out in subsection 35A(2), the general purpose financial report must:

- be a general purpose financial report within the meaning given by section 6 of the *Statement of Accounting Concepts SAC 1*;
- be written as if the approved provider was a distinct reporting entity within the meaning of the *Statement of Accounting Concepts SAC 1*;
- be prepared in accordance with Australian accounting standards in force at the time of preparation; and
- give a true and fair view of the financial position and performance of the approved provider.

Subsection 35A(3) specifies that if the general purpose financial report deals with several types of aged care (such as home care and residential care) or with matters other than residential care, then residential care must be treated as a reportable segment for the purposes of the Australian accounting standards.

Subsection 35A(4) specifies that if all the information required under paragraph 35(4)(a) is included in the aged care financial report, then provided that the general purpose financial report still meets the Australian accounting standards, there is no requirement to also include that information in the general purpose financial report.

Item 17: Section 36 (heading)

Item 17 repeals the heading and substitutes a new heading; ‘36 Auditing of general purpose financial reports – non-government approved providers’.

Items 18 and 19: Subsections 36(1) and (2)

Items 18 and 19 amend subsections 36(1) and (2) to specify that an approved provider must have its general purpose financial report audited by:

- a registered company auditor; or
- a person approved by the Secretary.

The audit opinion must also contain a statement that as to whether the general purpose financial report complies with the requirements of paragraphs 35A(2)(b) and (c), which are inserted by item 16 above. That is, whether the general purpose financial report:

- was prepared in accordance with the Australian accounting standards; and
- gives a true and fair view of the financial position and performance of the approved provider for the financial year.

Item 20: Subsection 36(3)

Item 20 amends subsection 36(3) to omit the words “financial report prepared under section 35” and substitute with “general purpose financial report”.

Item 21: At the end of section 36

Item 21 adds additional subsections to section 36. These new provisions specify that the Secretary can revoke a person's approval as an auditor, if satisfied that the person is no longer a 'fit and proper person' to audit a general purpose financial report. This could be any circumstance where the reason and justification for which the person was approved in the first place is no longer applicable to this person. For instance, the qualifications relied on to approve this person are no longer current, the person has not undertaken regular training and maintenance of professional skills and knowledge and/or lapses of memberships to any professional organisations that were mentioned in the application to approve the alternative (i.e. CPA, ICAA, IPA). A decision to revoke a person's approval as an auditor is a reviewable decision under section 85-1 of the Act.

Item 22: Section 37

Item 22 repeals the section and substitutes a new section 37 and 37A.

- Section 37 requires an approved provider to submit their aged care financial report to the Secretary within 4 months of the end of the financial year.
- Section 37A requires an approved provider to give a copy of their audited general purpose financial report to each person who asks for a copy, and who is:
 - a care recipient (or their representative) of the residential service; or
 - a person (or their representative) who is approved to receive residential care and is considering receiving care through the service.

Item 23: Section 38

Item 23 amends section 38 to omit the words "a residential" and replace with "an aged". This change is to reflect that section 38 now applies to an approved provider of an aged care service generally, not only residential care services. This is due to the fact that approved providers of home care and flexible care (provided as short-term restorative care) are also required to prepare aged care financial reports in relation to those aged care services.

Item 24: Section 38

Item 24 omits the references to "sections 35, 36 and 37" and replaces it with "this Division". This reflects the fact that Division 2 of Part 4 now covers approved providers of other aged care services, not only residential care services.

Item 25: Divisions 3 and 4 of Part 4

Item 25 repeals Divisions 3 and 4 of Part 4 of the Accountability Principles. These Parts related to the responsibilities of State and Territory government residential care providers and home care providers. Divisions 3 and 4 are no longer necessary because the responsibilities of State and Territory government approved providers and home care providers are now specified in section 35, inserted by item 16 above.

Fees and Payments Principles 2014 (No. 2)

Items 26 and 27: Section 4

Items 26 and 27 amend section 4 of the *Fees and Payments Principles 2014 (No. 2)* (Fees and Payments Principles) to include the following definitions:

- ‘aged care financial report’, which has the same meaning as in the Accountability Principles; and
- ‘annual prudential compliance statement’, which means the statement required by section 51 of the Fees and Payments Principles.

Items 28 and 29: Subsections 51(1) and (2)

Items 28 and 29 amend section 51 to specify that an approved provider must give the Secretary an ‘*annual prudential compliance statement*’ for the financial year.

Subsection 51(2) provides that the annual prudential compliance statement must:

- be in writing;
- be in a form approved by the Secretary;
- not contain false or misleading information;
- be included in the ‘aged care financial report’; if the approved provider is required to prepare one under the Accountability Principles;
- be signed by one of provider’s key personnel and given to the Secretary within 4 months after the end of the financial year; if the approved provider is not required to prepare an aged care financial report.

Part 2 – Application Provisions

Part 2 of Schedule 1 sets out the application of these amendments.

Accountability Principles 2014

Item 30: In the appropriate position

Item 30 inserts a new Part 8 to the Accountability Principles, which specifies that:

- the amendments apply to an approved provider’s financial year that begins on or after 1 July 2016 and will thus first apply to financial reports for the financial year ending 30 June 2017 due to be lodged by 31 October 2017; and
- a person who was already approved as an auditor of a general purpose financial report at the time of these amendments commencing, continues to be approved after these amendments commence.

Fees and Payments Principles 2014 (No. 2)

Item 31: In the appropriate position

Item 31 specifies that these amendments apply to an approved provider's financial year that begins on or after 1 July 2016 and will thus first apply to financial reports for the financial year ending 30 June 2017 due to be lodged by 31 October 2017.

Statement of Compatibility with Human Rights

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

Aged Care Legislation Amendment (Financial Reporting) Principles 2017

The *Aged Care Legislation Amendment (Financial Reporting) Principles 2017* 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 Legislation

The legislative instrument amends the following principles:

- *Accountability Principles 2014* to provide for changes to the financial and prudential reporting obligations for residential aged care, home care and flexible care (short-term restorative care) providers.
- *Fees and Payments Principles 2014 (No. 2)* to provide for changes to the prudential reporting obligations for residential aged care providers.

Human rights implications

This 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 health and well-being 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.

This legislative instrument concerns the financial and prudential reporting obligations of approved providers that provide care and services to people with a condition of frailty or disability who require assistance, to achieve and maintain the highest attainable standard of physical and mental health.

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.

The Hon Ken Wyatt
Minister for Aged Care
Minister for Indigenous Health