

EXPLANATORY STATEMENT

Australian Aged Care Quality Agency Act 2013

Australian Aged Care Quality Agency Legislation Amendment (Unannounced Re-accreditation Audits) Principles 2018

Authority

Section 53 of the *Australian Aged Care Quality Agency Act 2013* (Quality Agency Act) and section 96-1 of the *Aged Care Act 1997* (Aged Care Act) provide that the Minister may make principles providing for matters required or permitted by the Quality Agency Act, or Aged Care Act.

Purpose

The *Australian Aged Care Quality Agency Legislation Amendment (Unannounced Re-accreditation Audits) Principles 2018* (the Amending Principles) amends the *Quality Agency Principles 2013* (the Quality Agency Principles) to change the re-accreditation arrangements to no longer give approved providers notice of the date of re-accreditation site audits (unannounced site audits).

Background

On 25 October 2017, in releasing the *Review of National Aged Care Quality Regulatory Processes* (the Review) report, the Australian Government announced that changes would be made so that approved providers are no longer given notice of the date of site audits. The Government committed to implement this change “as soon as possible”.

The introduction of these unannounced site audits is intended to provide the community with greater assurance that residential aged care services maintain consistently high levels of quality.

Details

In introducing unannounced site audits, changes are required to:

- give care recipients and their representatives an opportunity to provide input to the unannounced site audit; and
- maintain procedural fairness for approved providers who apply for re-accreditation of services, including the opportunity to provide necessary information to inform the unannounced site audit and decision on the application.

Aside from the Quality Agency Principles, an amendment is required to the *Subsidy Principles 2014*, to change a reference that needs to be modified as a result of the Amending Principles.

Consultation

Extensive consultation on the accreditation process was undertaken as part of the Review with over 400 submissions received, three forums held with consumers and carers, and meetings with over 40 individual stakeholders. The Review reported community concern that notification of the date of re-accreditation site audits allows approved providers to focus on performing well during the site audit, rather than on ongoing delivery of high quality care.

The Government committed to implementing unannounced re-accreditation audits as an immediate step in responding to the Review's findings and recommendations. The arrangements detailed in this Instrument also have been informed by stakeholder feedback received through the Aged Care Sector Committee and the National Aged Care Alliance on the Review recommendations.

In preparing this Instrument, the Department of Health (the Department) consulted with the Australian Aged Care Quality Agency (the Quality Agency). Consultation also occurred with the aged care sector during January 2018 through a working group comprising the Department and the Quality Agency, providers and consumer peak bodies, a consumer advocacy agency and approved providers (including representatives from regional, rural and remote areas).

While largely supported by consumer and advocate stakeholders, there are diverse views in the industry regarding the reform.

The sector identified the need for arrangements to retain engagement with care recipients and their representatives. The working group strongly supported ongoing consumer engagement in re-accreditation audits and worked with the Department and Quality Agency to develop arrangements to support input from care recipients and their representatives to the audit. For example, the Instrument provides for care recipients and their representatives to be advised that a site audit is to occur and to be informed of when the site audit has commenced – in order to afford them an opportunity to provide input. Additionally, feedback on a service may be provided to the Quality Agency.

The working group raised a concern regarding the regulatory demands placed on approved providers arising from unannounced site audits and the sector was also concerned with the possibility of key approved provider staff not being present at the time of the site audit. In response to these concerns, measures have been introduced to manage regulatory demands on approved providers and include multiple mechanisms for the approved provider to provide input even if all key approved provider staff are

not present at the time of the site audit (for example, input can be provided through submission of self-assessment information prior to the audit, daily meetings with the assessment team during the site audit and the opportunity to provide feedback on the full audit report).

Regulation Impact Statement (RIS)

The Review has been agreed with the Office of Best Practice Regulation (OBPR) as having undertaken a similar process and analysis to that required for a Regulation Impact Statement as set out in the Australian Government Guide to Regulation and, as such, preparation of a Regulation Impact Statement is not required (OBPR ID 22277).

This Instrument commences the day after it is registered on the Federal Register of Legislation.

The Instrument is a legislative Instrument for the purpose of the *Legislation Act 2003*.

Details of the *Australian Aged Care Quality Agency Legislation Amendment (Unannounced Re-accreditation Audits) Principles 2018*

1. Name

Section 1 provides how the proposed Instrument is to be cited, that is, as the *Australian Aged Care Quality Agency Legislation Amendment (Unannounced Re-accreditation Audits) Principles 2018*.

2. Commencement

This section sets out the commencement of the Instrument. The commencement date is the day after the Instrument is registered.

3. Authority

This section provides that the authority for making the Instrument is the *Aged Care Act 1997* (the Act) and the *Australian Aged Care Quality Agency Act 2013* (which provides that the Minister may make Quality Agency Principles providing for matters that are required or permitted by that Act to be provided, or necessary or convenient to be provided in order to carry out or give effect to that Act).

Under subsection 33(3) of the *Acts Interpretation Act 1901* (the Acts Interpretation Act), where an Act confers a power to make, grant or issue any Instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such Instrument.

Accordingly, the power in section 96-1 of the Act to make Principles is relied on, in conjunction with subsection 33(3) of the Acts Interpretation Act, to vary the *Subsidy Principles 2014* varied by this Instrument. Section 53 of the *Australian Aged Care Quality Agency Act 2013* is relied upon in conjunction with the Acts Interpretation Act to vary the Quality Agency Principles.

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 terms.

Schedule 1 Amendments

The amendments in Schedule 1 are set out under:

- *Quality Agency Principles 2013*; and
- *Subsidy Principles 2014*.

Schedule 1 — Amendments

Quality Agency Principles 2013

Item 1: Section 1.4

This item inserts a definition of a relevant service. A relevant service is defined as the commencing service, accredited service or previously accredited service to which an application made under section 2.2 relates.

Item 2: Before Division 1 of Part 1 of Chapter 2

This item inserts a new Division, Division 1A, before Division 1, Part 1 of Chapter 2. The Division inserts section 2.1A that provides for reminder notices. The section sets out that the CEO may give the approved provider of an accredited service a written reminder notice before the end of the service's accreditation expiry date.

Paragraph 2.1A(1)(a) sets out the content of the written reminder notice.

Subparagraph 2.1A(1)(a)(i) provides that the written notice is to remind the approved provider of the day that the service's current accreditation period will end.

Subparagraph 2.1A(1)(a)(ii) sets out that the notice is to specify the day on or before which the approved provider must lodge an application for re-accreditation if the approved provider wishes to avoid section 2.5 applying. It is intended that all approved providers will be given a standard period of time in which to make an application for re-accreditation based on the date that their current accreditation expires. This will result in a standard period of time between the application for re-accreditation and the service's current accreditation expiry date during which a site audit may take place.

Subparagraph 2.1A(1)(a)(iii) provides that the reminder notice specifies the words that are to be used by the approved provider to tell care recipients and their representatives about the site audit, should the approved provider apply for re-accreditation.

Paragraph 2.1A(1)(b) provides for the reminder notice to be accompanied by a poster to inform care recipients and their representatives about the site audit. The poster may be in electronic or paper form.

Subsection 2.1A(2) sets out what the CEO must consider when specifying a day on or before which the approved provider must apply for re-accreditation. This subsection specifies that the CEO must consider the likelihood of the re-accreditation decision, made under subsection 2.18(1), being made before the end of the service's current accreditation period if the application was made on or after the specified date. This is intended to limit the CEO's discretion in specifying a date as it should be linked to the date of the service's current accreditation period ending.

The reminder notice is a procedural step in the CEO making a decision under subsection 2.18(1) and is not intended to significantly affect the approved provider's rights or responsibilities.

Item 3: Subsection 2.3(2)

This item specifies that the approved provider must provide self-assessment information for the service when making an application for accreditation or for re-accreditation.

Item 4: At the end of section 2.3

If an application is made under subsection 2.2(2) and the CEO has informed the approved providers of the matters mentioned in subsection 10(2) of the *Accountability Principles 2014*, this item requires the application for re-accreditation to include a statement by the approved provider that consents to the assessment team accessing the premises of the relevant service in order to undertake the site audit. Subsection 10(4) of the *Accountability Principles 2014* enables the approved provider to withdraw this consent at any time.

Item 5: Section 2.4

This item amends section 2.4 to prevent the CEO from accepting an application that does not meet the requirements set out in subsection 2.3(1), is not accompanied by self-assessment information (subsection 2.3(2)) and, if applicable, is not accompanied by a statement that the approved provider consents to the assessment team accessing the premises of the relevant service for the purpose of conducting a site audit of the service (subsection 2.3(3)). Subsection 2.3(3) is not applicable to commencing services.

Item 6: At the end of Division 1 of Part 1 of Chapter 2

This item inserts section 2.5 to manage re-accreditation applications that are made late. A late application is an application for re-accreditation in relation to an accredited service that is made after the date specified in the reminder notice given under paragraph 2.1A(1)(a).

Subsection 2.5(1) specifies that subsection 2.5(2) only applies to re-accreditation applications if the CEO has given the approved provider a written reminder notice under paragraph 2.1A(1)(a) and the approved provider applies for re-accreditation after the date specified in the reminder notice.

Subsection 2.5(2) provides that if an application is received late, the assessment team is not required to complete the site audit before the service's current accreditation ceases. The assessment team is also not required to give the CEO the site audit report under subsection 2.17(3) in less than 7 days after the completion of the site audit even if the seven days ends after the service ceases to be accredited. In addition, the CEO is not required to make a decision under subsection 2.18(1) on the application earlier

than 28 days after receiving the site audit report even if the 28 days ends after the service's current accreditation ceases.

Subsection 2.5(3) specifies that subsection 2.5(2) does not affect the timeframes in which anything must be done in regard to re-accreditation applications that are not late.

Item 7: Section 2.6 (note)

This item is a consequential amendment reflecting the changes to section 2.3. The CEO must not accept an application by a commencing service that does not meet the requirements set out in subsection 2.3(1) and is not accompanied by self-assessment information (subsection 2.3(2)).

Item 8: Section 2.9 (note)

This change is consequential in nature, reflecting the change to section 2.3.

Item 9: Sections 2.10 and 2.11

This item replaces the previous Section 2.10 and Section 2.11.

Subsection 2.10(1) will require the CEO, if receiving an application for re-accreditation, to appoint an assessment team to conduct the site audit. Part 4 of the Quality Agency Principles specifies additional requirements regarding the appointment of the assessment team.

Subsection 2.10(2) requires the CEO to give the assessment team the self-assessment information that accompanied the application as soon as practicable after the appointment of the team.

Subsection 2.11(1) sets out that as soon as practicable after receiving an application for re-accreditation, the CEO must give the approved provider written notice of the form of words to be used to tell care recipients and care recipient representatives about the site audit of the service that is to be conducted; and a poster to inform the care recipients and their representatives about the site audit. The poster may be in electronic or paper form.

Subsection 2.11(2) specifies that section 2.11 does not apply where the approved provider applying for re-accreditation has already been provided with the reminder notice and the poster under section 2.1A. An example of where subsection 11(2) may apply is when previously accredited services apply for re-accreditation.

Item 10: Paragraph 2.12(1)(b)

This item replaces the requirement that the approved provider make care recipients or their representatives aware of the date(s) of the site audit with the new requirement that the approved provider must make care recipients or their representatives aware of the time period in which the site audit could occur.

Item 11: At the end of subsection 2.12(1)

This item introduces additional information that the approved provider must make care recipients or the care recipient's representative aware of the site audit. The approved provider must make care recipients and their representatives aware that they may give information to the Quality Agency about the care and services they are receiving, as well as details of how to contact the Quality Agency. This complements subsection 2.12(1)(c) which requires the approved provider to advise care recipients or their representatives of the opportunity to talk with members of the assessment team. The CEO of Quality Agency will provide the approved provider with the form of words, and a poster to be used for this purpose. Under paragraph 7(r) of the *Records Principles 2014*, the approved provider must keep up-to-date records of the name and contact details of at least one representative of each care recipient.

Item 12: Paragraph 2.12(2)(a)

This is a consequential change as a result of the insertion of section 2.1A and amendments to section 2.11.

Item 13: Paragraph 2.12(2)(b)

This is a consequential change as a result of the insertion of section 2.1A and amendments to section 2.11.

Item 14: Subsections 2.12(3) and (4)

This item repeals section 2.12(4) and repeals and substitutes subsection 2.12(3). Subsection 2.12(3) now requires the approved provider to make care recipients, or their representatives, aware of the information specified in subsection 2.12(1) as soon as practicable after receiving the notice and poster or after making the application for re-accreditation, whichever occurs last.

Paragraph 3(a) is intended to apply to the circumstance where the approved provider has received the notice and poster under paragraph 2.11(1)(a). These providers, usually a service that was previously accredited but not currently accredited, will generally not receive the notice and poster until after they make an application for re-accreditation. In this circumstance, the approved providers should take the steps mentioned in subsection 2.12(1) as soon as practicable after receiving the notice and poster.

Paragraph 3(b) is intended to apply to the circumstance where the approved provider has received the notice and poster under subparagraph 2.1A(1). In this circumstance, the approved provider will have received the notice and poster in the reminder notice issued under 2.1A and is required to take the steps mentioned in subsection 2.12(1) as soon as practicable after making the application for re-accreditation. The intention of these subsections is that the approved provider gives care recipients and their representatives early notice about the service's site audit.

Item 15: Section 2.13

This item replaces section 2.13. Section 2.13 now specifies that at the start of the site audit, the assessment team must give the relevant service a written notice issued by the CEO of the Quality Agency stating the full names of each member of the assessment team.

Item 16: After paragraph 2.14(2)(d)

This item inserts the requirement that the assessment team must consider any relevant information, including the service's self-assessment information, given to the assessment team by the CEO of the Quality Agency.

Item 17: Paragraph 2.14(2)(e)

This item makes a consequential amendment.

Item 18: After section 2.14

Subsection 2.14A(1) requires the approved provider, as soon as practicable after the start of the site audit, to take reasonable steps to inform care recipients and their representatives that the site audit has commenced. This provision provides care recipients and their representatives with better opportunities to provide feedback when site audits are unannounced.

Section 2.14A(2) sets out that reasonable steps to inform care recipients or their representatives must include, but are not limited to, the display in one or more prominent places within the service of any posters given to the approved provider by the assessment team for that purpose.

The intention of this amendment is to support care recipients and their representatives who wish to meet with the assessment team. Other reasonable steps will depend on the circumstances of each service but other reasonable steps that could be taken, but that are not specified in the Amending Principles, include:

- informing care recipients while attending to their care;
- sending care recipient representatives an email or text message; or
- in some instances, contacting individual care recipient representatives by phone, particularly if they have advised that they wish to meet with the assessment team and cannot be contacted by other means.

Item 19: Subsection 2.15(1)

The amendment requires the assessment team to meet on each day of the site audit with the person at the service's premises who is in charge of the service to discuss the progress of the audit. This item recognises that the approved provider may not always be present at the time of the site audit, especially as the approved provider will not be notified of the date of the site audit prior to the audit taking place.

Item 20: Subsection 2.15(3)

This item amends subsection 2.15(3), placing an onus on the approved provider to take all reasonable steps to enable care recipients and their representatives that request to meet with the assessment team to do so privately.

Item 21: Section 2.16

This item changes the previous requirement that the assessment team give a written report of major findings to the approved provider on the last day of the site audit. The new requirement will require the assessment team to meet with the person at the premises who is in charge of the service to discuss the key issues that the team identified during the audit. This amendment is related to the changes made by Item 22.

Item 22: Subsection 2.17(3)

This item replaces the previous subsection 2.17(3) and now allows for the approved provider to receive and provide a written response to the site audit report prior to the CEO making a decision on the service's application for re-accreditation. This change, combined with the change made to section 2.16, is intended to strengthen procedural fairness accorded to approved providers.

Subsection 2.17(3) requires that the assessment team must provide the CEO with the site audit report within seven days of the site audit being completed.

Subsection 2.17(4) requires the CEO, as soon as practicable after receiving the site audit report, to give the approved provider a copy.

Subsection 2.17(5) specifies that the copy of the report given to the approved provider must comply with the requirements of section 4.1 that relate to the disclosure of identifying information (defined in section 1.4 of the Quality Agency Principles).

Subsection 2.17(6) specifies that the approved provider may provide the CEO with a written response to the audit report. This response must be provided to the CEO within 14 days after the approved provider receives a copy of the report.

Item 23: Subparagraph 2.18(3)(a)(ii)

This item makes a consequential change.

Item 24: Subsection 2.23(4)

This item makes a consequential change as a result of the insertion of subsection 2.17(4).

Item 25: Subsection 2.23(5)

This is a consequential amendment as a result of subsection 2.23(4) being repealed.

Item 26: Subsection 2.24(4)

This item makes a consequential change as a result of the insertion of subsection 2.17(4).

Item 27: Section 2.57

This item amends the purpose of Chapter 2 Part 4 of the Quality Agency Principles to set out how assessment teams for site audits and review audits are appointed.

Item 28: At the end of section 2.60

This item inserts subsection 2.60(4) that sets out that subsection 2.60(3) does not apply if the assessment team was appointed to conduct the site audit and the appointment of the replacement team member occurs before the CEO has notified the approved provider of the names of the members of the assessment team under section 2.13.

As section 2.13 requires the CEO to notify the approved provider of the names of the assessment team at the start of the site audit, the CEO must provide the approved provider with the notice of names of any replacement team member that occurs after the site audit commences.

Item 29: Section 2.61

This item removes the ability of the approved provider to object to the appointment of an assessment team for a site audit. Given that site audits will be unannounced, approved providers will no longer receive notice of the names of the assessment team conducting the audit until the start of the site audit. As a result, the previous provisions that allowed for the approved provider to object to a member of the team prior to the site audit have been removed.

Nevertheless, the approved provider may still request the CEO to reconsider a decision to refuse to re-accredit an accredited service or a previously accredited service, a decision relating to the period of accreditation and a decision to revoke the accreditation of an accredited service. Such requests may mention an objection to a member of the assessment team. Depending on the circumstances, an objection to an assessment team member is able to form part of an approved provider's reasons to request a review of these decisions.

Item 30: Section 2.66 (table item 7)

This item makes a consequential change as a result of the change made by item 29.

Item 31: Paragraphs 2.68(2)(b) and 2.69(5)(b)

This item makes consequential changes as a result of the changes made by item 30.

Item 32: In the appropriate position in Chapter 5

This item sets out the transitional arrangements for the commencement of the Amending Principles.

Paragraph 5.3(a) details the arrangements for services applying for accreditation and re-accreditation during the transition period between the date that the Instrument commences and 1 July 2018. During this period, any applications that are made for re-accreditation of a service with an accreditation expiry date on or after 1 January 2019 will be subject to the amendments introduced by Schedule 1 (other than the transitional provisions), but any applications for re-accreditation for an accredited service with an accreditation expiry date before 1 January 2019 will not be subject to the amendments introduced by Schedule 1 (other than the transitional provisions).

During this period, applications made by previously accredited services and commencing services will not be subject to the amendments made by Schedule 1 (other than the transitional provisions).

Paragraph 5.3(b) provides for the arrangements introduced by the Instrument to apply to all applications made under section 2.2 on or after 1 July 2018.

Subsidy Principles 2014

Item 33: Subsection 11(3)

This item makes a consequential change to the *Subsidy Principles 2014*.

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

***Australian Aged Care Quality Agency Legislation Amendment
(Unannounced Re-accreditation Audits) Principles 2018***

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

The purpose of the *Australian Aged Care Quality Agency Legislation Amendment (Unannounced Re-accreditation Audits) Principles 2018* is to implement the Government's decision announced in October 2018 to introduce unannounced site audits of services seeking re-accreditation by the Australian Aged Care Quality Agency.

The instrument makes changes to the following principles:

- *Quality Agency Principles 2013* to enable the Australian Aged Care Quality Agency to undertake unannounced site audits of services seeking re-accreditation; and
- *Subsidy Principles 2014* to make a consequential change.

Human rights implications

The instrument engages the following human rights:

- the right to an adequate standard of living;
- the right to the enjoyment of the highest attainable standard of physical and mental health; and
- the right to protection from exploitation, violence and abuse.

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 Convention on Economic, Social and Cultural Rights*, and articles 25 and 28 of the *Convention of the Rights of Persons with Disabilities*. In conducting site audits of residential aged care services, the Australian Aged Care Quality Agency promotes quality standards that support aged care recipients to achieve a high standard of living and high standards in their physical and mental health.

The instrument engages the right to protection from exploitation, violence and abuse as contained in article 20(2) of the *International Covenant on Civil and Political Rights* and article 16 of the *Convention of the Rights of Persons with Disabilities*. Unannounced site audits, implemented through this instrument, are intended to promote quality care service provision by accredited services at all times. The

instrument is intended to increase protection for aged care residents against potential exploitation, violence and abuse.

Conclusion

The instrument is compatible with human rights as it promotes the human rights to an adequate standard of living, the highest standard of physical and mental health and protection from exploitation, violence and abuse.

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