

## EXPLANATORY STATEMENT

### ***Aged Care Act 1997***

#### *Aged Care Legislation Amendment (Financial Reporting) Principles 2018*

#### 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 2018* is to amend the *Accountability Principles 2014* and the *Fees and Payments Principles 2014 (No. 2)* to implement changes to the financial reporting requirements for approved providers of aged care.

#### Background

##### Reporting issues

1. The Aged Care Financial Report (ACFR) was introduced from July 2017. This new reporting format introduced new mandatory line items into the Income Statement, Balance Sheet, Cash Flow Statement and notes to the financial statements.
2. To assist with the completion of these new mandatory items, providers were given the flexibility to complete each of the approved provider and residential segment financial statements in either their audited General Purpose Financial Report (GPFR) or ACFR.
3. Some approved providers were confused by this change and as a result provided incomplete information. This resulted in approximately 300 providers (out of approximately 900) being required to correct the errors and/or omissions.

4. In most cases this involved significant re-work and re-submissions by approved providers, which in turn caused delays for the Department receiving appropriate financial data.
5. It is proposed that a minor amendment be made to the *Accountability Principles 2014* to remove the option to provide financial data in either the approved provider's audited GPFR or ACFR. This change will provide clear direction to approved providers on how to report the mandatory financial data items in their ACFR.

#### Fees and charges

6. Approved providers of residential aged care report their management and expenditure of the Refundable Accommodation Deposits (RADs) received from care recipients in their Annual Prudential Compliance Statement (APCS). The statement does not currently report on other fees and/or charges imposed on care recipients.
7. On 2 March 2018, the Federal Court ruled that 'asset replacement charges' (and similar fees and charges) are not allowed under the aged care legislation, and that the *Aged Care Act 1997* sets out an exhaustive scheme of all fees and charges that approved providers can charge to care recipients.
8. In order to gain transparency over the charging of these fees in the sector, it is proposed to change the legislative requirements regarding the APCS, to require all approved providers to self-report their charging of fees and charges which are not provided for in the Act. The additional information sought should have minimal impact on reporting obligations for approved providers of residential aged care. The legislation will require approved providers to report:
  - What fees, if any, the provider charges other than resident fees or accommodation payments;
  - The amount of such fees; and
  - What those fees purport to cover.
9. This change will require minor amendments to the *Fees and Payments Principles 2014 (No. 2)* under the Act.
10. These changes are intended to apply to reporting for the 2017-18 financial year.

## Consultation

The introduction of the ACFR in 2017 occurred in consultation with the aged care industry. Consultation with peak bodies in the aged care sector (Aged & Community Services Australia, Leading Age Services Australia and the Aged Care Guild) on the ACFR reporting change resulted in no significant objections being raised with the proposal. It was noted that there might be some additional work for a small number of providers in correctly completing their GPFR data, depending on what level of detail that they decide to report. Consultation comments agreed that the option to report in either the ACFR or GPFR was confusing and poorly understood by providers.

StewartBrown (an accounting firm specialising in aged care) were also consulted and were supportive of the change, noting that this would best occur before the collection of the 2017-18 data commences in July 2018.

## Commencement

This instrument commences on 1 July 2018.

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

**Details of the Aged Care Legislation Amendment (Financial Reporting) Principles 2018**

**1 Name**

Section 1 states that the name of the instrument is the *Aged Care Legislation Amendment (Financial Reporting) Principles 2018*.

**2 Commencement**

Section 2 states that these amendments commence on 1 July 2018.

**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**

**Accountability Principles 2014**

**Item 1: Paragraph 35(4)(a)**

Item 1 omits the phrase '(subject to subsection (5))' from paragraph 35(4)(a). The phrase is no longer required as subsection 5 is being repealed by item 2 below.

**Item 2: Subsection 35(5)**

Item 2 repeals subsection 35(5), which currently specifies that approved providers can include the financial information required by the Aged Care Financial Report (ACFR) in either the ACFR or the provider's General Purpose Financial Report (GPFR).

Previously residential aged care providers were able to complete the approved provider and residential segment financial statements required by the ACFR in either the ACFR or the provider's GPFR. Commencing with the submission of the GPFR and ACFR for the 2017-18 financial year, this option has been removed with all financial statement information required by the ACFR needing to be completed in the ACFR regardless of whether the information is also contained in the GPFR.

**Fees and Payments Principles 2014 (No. 2)**

**Item 3: After paragraph 51(1)(c)**

Item 3 inserts a new paragraph (ca) into subsection 51(1), which specifies that approved providers must include information in their Annual Prudential Compliance Statement regarding other fees that will be listed in section 54A.

**Item 4: After section 54**

Item 3 inserts a new provision, section 54A, which specifies that approved providers need to provide information in their Annual Prudential Compliance Statement specifically regarding what fees (if any) other than resident fees, accommodation payments and accommodation contributions that the approved provider charged to care recipients during the financial year. Specifically approved providers are asked to provide details of:

- The fees (if any) that were charged;
- the total value of each such fee charged by the approved provider during the financial year; and
- what each such fee purports to cover.

**Item 5: After paragraph 55(a)**

Item 5 inserts a new paragraph (aa) into section 55, which will require the approved provider to provide a statement in their Annual Prudential Compliance Statement about why the provider has not complied with the Liquidity Standard (if the provider has not complied with the Liquidity Standard). This change is intended to ensure consistency with the current requirements in paragraphs 55(c) and 55(d), which require an approved provider to specify a reason why the provider has not complied with the Governance Standard and Disclosure Standard.

**Item 6: After paragraph 55(e)**

Item 6 inserts a new paragraph (ea) into section 55, which will require the approved provider to provide a date when their liquidity management strategy was last modified or replaced. This is consistent with the current requirement in paragraph 44(2)(b), that an approved provider must ensure that the provider's liquidity management strategy is kept up-to-date.

## **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 2018**

The *Aged Care Legislation Amendment (Financial Reporting) Principles 2018* 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 reporting obligations for residential aged care.
- *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**