



Aged Care Legislation Amendment (Single Quality Framework Consequential Amendments and Transitional Provisions) Instrument 2019

I, Ken Wyatt AM, Minister for Senior Australians and Aged Care, make the following instrument.

Dated 25 March 2019

Ken Wyatt AM
Minister for Senior Australians and Aged Care

Contents

1	Name.....	1
2	Commencement	1
3	Authority.....	1
4	Schedules.....	1
Schedule 1—Amendments		2
	<i>Aged Care Quality and Safety Commission Rules 2018</i>	2
	<i>Allocation Principles 2014</i>	12
	<i>Sanctions Principles 2014</i>	13

1 Name

This instrument is the *Aged Care Legislation Amendment (Single Quality Framework Consequential Amendments and Transitional Provisions) Instrument 2019*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 July 2019.	1 July 2019

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the following:

- (a) the *Aged Care Act 1997*;
- (b) the *Aged Care Quality and Safety Commission Act 2018*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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

Aged Care Quality and Safety Commission Rules 2018

1 Section 4 (definition of Accreditation Standards)

Repeal the definition.

2 Section 4

Insert:

Aged Care Quality Standards means the Aged Care Quality Standards set out in the *Quality of Care Principles 2014*.

3 Section 4

Repeal the following definitions:

- (a) definition of *Flexible Care Standards*;
- (b) definition of *Home Care Standards*.

4 Section 4 (definition of plan for continuous improvement)

Omit “subsections 62(2) and 63(2)”, substitute “subsection 62(2)”.

5 Paragraph 5(1)(a)

Omit “Accreditation Standards or Flexible Care Standards (as applicable)”, substitute “Aged Care Quality Standards”.

6 Paragraph 5(2)(a)

Omit “Home Care Standards or Flexible Care Standards (as applicable)”, substitute “Aged Care Quality Standards”.

7 Paragraph 28(1)(c)

Omit “Accreditation Standards or Flexible Care Standards (as applicable)”, substitute “Aged Care Quality Standards”.

8 Subparagraph 29(2)(a)(iii)

Omit “Accreditation Standards or Flexible Care Standards (as applicable)”, substitute “Aged Care Quality Standards”.

9 Paragraphs 29(3)(b), 30(1)(c), 36(2)(a) and 40(2)(a)

Omit “Accreditation Standards or Flexible Care Standards (as applicable)”, substitute “Aged Care Quality Standards”.

10 Subparagraph 41(2)(a)(v)

Omit “Accreditation Standards or Flexible Care Standards (as applicable)”, substitute “Aged Care Quality Standards”.

11 Paragraphs 41(3)(b) and 42(1)(d)

Omit “Accreditation Standards or Flexible Care Standards (as applicable)”, substitute “Aged Care Quality Standards”.

12 Subsection 53(5)

Omit “Home Care Standards or Flexible Care Standards (as applicable)”, substitute “Aged Care Quality Standards”.

13 Paragraph 54(a)

Omit “Home Care Standards or Flexible Care Standards (as applicable)”, substitute “Aged Care Quality Standards”.

14 Paragraph 56(2)(a)

Omit “Home Care Standards or Flexible Care Standards (as applicable)”, substitute “Aged Care Quality Standards”.

15 Paragraphs 57(2)(a) and (b)

Omit “Home Care Standards or Flexible Care Standards (as applicable)”, substitute “Aged Care Quality Standards”.

16 Section 59

Omit:

The approved provider of an accredited service and the home service provider of a home service must have a plan for continuous improvement. The plan must, among other things, set out how the provider will comply with the provider’s obligations of continuous improvement in relation to the service under the Accreditation Standards, Home Care Standards or Flexible Care Standards (as applicable).

substitute:

The approved provider of an accredited service and the home service provider of a home service must have a plan for continuous improvement. The plan must, among other things, set out how the provider will:

- (a) assess the quality of care and services provided through the service against the Aged Care Quality Standards; and
- (b) monitor and improve the quality of care and services provided through the service as measured against those Standards.

17 Section 59

Omit:

The Commissioner must take certain action if the approved provider of an accredited service, or the home service provider of a home service:

- (a) fails to comply with a timetable for improvement in relation to the service; or
- (b) fails to comply with the Accreditation Standards, Home Care Standards or Flexible Care Standards (as applicable) in relation to the service.

substitute:

The Commissioner must take certain action if the approved provider of an accredited service, or the home service provider of a home service:

- (a) fails to comply with a timetable for improvement in relation to the service; or
- (b) fails to comply with the Aged Care Quality Standards in relation to the service.

18 Sections 62 and 63

Repeal the sections, substitute:

62 Approved providers of accredited services and home service providers of home services must have plan for continuous improvement

- (1) The approved provider of an accredited service and the home service provider of a home service must have a plan for continuous improvement for the service.
- (2) A *plan for continuous improvement* for a service is a written plan that sets out:
 - (a) how the provider of the service will:
 - (i) assess the quality of care and services provided through the service against the Aged Care Quality Standards; and
 - (ii) monitor and improve the quality of care and services as measured against those Standards; and
 - (b) if there are any areas in which improvements in relation to the service are needed to ensure that the Aged Care Quality Standards are complied with—how the provider of the service will make those improvements.

Note 1: Standard 8 of the Aged Care Quality Standards requires a provider to have an effective organisation wide governance system relating to continuous improvement.

Note 2: The provider may be directed to revise the plan for continuous improvement under section 84.

- (3) If the Commissioner requests the approved provider of an accredited service, or the home service provider of a home service, to give the Commissioner a copy of the plan for continuous improvement for the service, the provider must comply with the request.

19 Paragraph 68(a)

Omit “Accreditation Standards, Home Care Standards or Flexible Care Standards (as applicable)”, substitute “Aged Care Quality Standards”.

20 Paragraph 70(1)(a)

Omit “Accreditation Standards or Flexible Care Standards (as applicable)”, substitute “Aged Care Quality Standards”.

21 Paragraphs 73(2)(a) and 76(2)(a)

Omit “Accreditation Standards or Flexible Care Standards (as applicable)”, substitute “Aged Care Quality Standards”.

22 Subparagraph 77(2)(a)(v)

Omit “Accreditation Standards or Flexible Care Standards (as applicable)”, substitute “Aged Care Quality Standards”.

23 Paragraphs 77(4)(b) and 79(1)(d)

Omit “Accreditation Standards or Flexible Care Standards (as applicable)”, substitute “Aged Care Quality Standards”.

24 Division 7 of Part 5 (heading)

Omit “relevant Standards”, substitute “Aged Care Quality Standards”.

25 Sections 81 and 82

Repeal the sections, substitute:

81 Timetable for improvement given to provider

- (1) This section applies if:
 - (a) one of the following applies:
 - (i) the approved provider of an accredited service is notified of a timetable for improvement in relation to the service under section 30, 42, 68 or 79;
 - (ii) the home service provider of a home service is notified of a timetable for improvement in relation to the service under section 68;
 - (iii) the home service provider of a home service is given a final report under section 57 that specifies a timetable for improvement in relation to the service; and
 - (b) at the end of the period (the *improvement period*) set out in the timetable, or as extended under section 83, the Commissioner is not satisfied that the quality of care and services provided through the service complies with the Aged Care Quality Standards.
- (2) The Commissioner must, as soon as practicable, but not later than 14 days, after the end of the improvement period, give the provider and the Secretary:
 - (a) a written notice setting out the reasons why the Commissioner is not satisfied of the matter mentioned in paragraph (1)(b); and
 - (b) a copy of any other relevant information.

26 Subdivision B of Division 7 of Part 5 (heading)

Omit “relevant Standards”, substitute “Aged Care Quality Standards”.

27 Section 84 (heading)

Omit “relevant Standards”, substitute “Aged Care Quality Standards”.

28 Subsection 84(1)

Omit “Accreditation Standards, Home Care Standards or Flexible Care Standards (as applicable)” (wherever occurring), substitute “Aged Care Quality Standards”.

29 Section 85 (heading)

Omit “relevant Standards”, substitute “Aged Care Quality Standards”.

30 Subsection 85(1)

Omit “Accreditation Standards, Home Care Standards or Flexible Care Standards (as applicable)”, substitute “Aged Care Quality Standards”.

31 Section 109 (heading)

Omit “Home Care Standards”, substitute “Aged Care Quality Standards”.

32 Subsection 109(1)

Omit “Home Care Standards”, substitute “Aged Care Quality Standards”.

33 Division 1 of Part 9 (heading)

Repeal the heading, substitute:

Division 1—Provisions relating to the commencement of this instrument

Subdivision A—Preliminary

34 Section 112

Omit “In this Part”, substitute “In this Division”.

35 Division 2 of Part 9 (heading)

Repeal the heading, substitute:

Subdivision B—Complaints

36 Division 3 of Part 9 (heading)

Repeal the heading, substitute:

Subdivision C—Accreditation of residential aged care services

37 Division 4 of Part 9 (heading)

Repeal the heading, substitute:

Subdivision D—Quality reviews of services

38 Division 5 of Part 9 (heading)

Repeal the heading, substitute:

Subdivision E—Monitoring of services

39 Division 6 of Part 9 (heading)

Repeal the heading, substitute:

Subdivision F—Registration of quality assessors

40 Division 7 of Part 9 (heading)

Repeal the heading, substitute:

Subdivision G—Reconsideration and review of decisions

41 At the end of Part 9

Add:

Division 2—Amendments made by the Aged Care Legislation Amendment (Single Quality Framework Consequential Amendments and Transitional Provisions) Instrument 2019

138 Definitions

In this Division:

Accreditation Standards means the Accreditation Standards set out in the *Quality of Care Principles 2014*, as in force immediately before the SQF commencement time.

amending instrument means the *Aged Care Legislation Amendment (Single Quality Framework Consequential Amendment and Transitional Provisions) Instrument 2019*.

Flexible Care Standards means the Flexible Care Standards set out in the *Quality of Care Principles 2014*, as in force immediately before the SQF commencement time.

Home Care Standards means the Home Care Standards set out in the *Quality of Care Principles 2014*, as in force immediately before the SQF commencement time.

SQF commencement time means the start of 1 July 2019.

139 Pending applications for accreditation of a commencing service

- (1) This section applies in relation to an application if:
 - (a) the application was made by the approved provider of a commencing service under subsection 27(1); and
 - (b) the application was made before the SQF commencement time; and
 - (c) immediately before that time, the Commissioner had not made a decision on the application.
- (2) Subject to this section, the amendments of Subdivision C of Division 3 of Part 3 made by the amending instrument apply in relation to the application.
- (3) For the purposes of making a decision under paragraph 29(3)(b) in relation to the application, the Commissioner may take into account the extent of the approved provider's compliance, before the SQF commencement time, with the Accreditation Standards or the Flexible Care Standards (as applicable).

140 Pending applications for re-accreditation of an accredited service or a previously accredited service

- (1) This section applies in relation to an application if:
 - (a) the application was made by the approved provider of a residential service, under subsection 27(2); and
 - (b) the application was made before the SQF commencement time; and
 - (c) immediately before that time, the Commissioner had not made a decision on the application.

- (2) Subject to this section, the amendments of Subdivision D of Division 3 of Part 3 made by the amending instrument apply in relation to the application.

Site audits

- (3) If:
- (a) a site audit of the service began before the SQF commencement time; and
 - (b) immediately before that time, the site audit had not been completed;
- then:
- (c) despite the amendments of paragraphs 36(2)(a) and 40(2)(a) made by the amending instrument, those paragraphs, as in force immediately before the SQF commencement time, continue to have effect in relation to the site audit as if the amendments had not been made; and
 - (d) for the purposes of:
 - (i) taking into account whether the Commissioner is satisfied that the approved provider will undertake continuous improvement in relation to the service under subparagraph 41(2)(a)(v); or
 - (ii) making a decision under paragraph 41(3)(b) in relation to the service; the Commissioner may take into account the extent of the approved provider's compliance, before the SQF commencement time, with the Accreditation Standards or the Flexible Care Standards (as applicable).
- (4) If a site audit of the service did not begin before the SQF commencement time, the amendments of that Subdivision made by the amending instrument, apply in relation to the site audit.

141 Quality reviews of home services

- (1) This section applies in relation to a quality review of a home service if:
- (a) the review began before the SQF commencement time; and
 - (b) immediately before that time, the review had not been completed.
- (2) If:
- (a) a site visit to the premises of the home service provider of the home service, or to the premises on which the home service is provided, as part of the quality review began before the SQF commencement time; and
 - (b) immediately before that time, the site visit had not been completed;
- then:
- (c) despite the amendments of paragraphs 54(a), 56(2)(a) and 57(2)(a) made by the amending instrument, those paragraphs, as in force immediately before the SQF commencement time, continue to have effect in relation to the site visit as if the amendments had not been made; and
 - (d) for the purposes of preparing a final report under paragraph 57(2)(b) in relation to the service, the Commissioner may take into account the extent of the home service provider's compliance, before the SQF commencement time, with the Home Care Standards or the Flexible Care Standards (as applicable).
- (3) If a site visit of to the premises of the home service provider of the home service, or to the premises on which the home service is provided, as part of the quality review did not begin before the SQF commencement time, the amendments of

Subdivision B of Division 3 of Part 4 made by the amending instrument apply in relation to the site visit.

142 Assessment contacts initiated but not completed before the SQF commencement time

- (1) This section applies in relation to an assessment contact with the approved provider of an accredited service, or the home service provider of a home service, if the assessment contact:
 - (a) was first made by a regulatory official before the SQF commencement time; and
 - (b) immediately before the SQF commencement time, the regulatory official had not given the provider written notice under section 68 in relation to the assessment contact.
- (2) Despite the amendments of section 5 and Division 5 of Part 5 made by the amending instrument, those provisions, as in force immediately before the SQF commencement time, continue to have effect in relation to the assessment contact.

143 Assessment contacts initiated after the SQF commencement time in relation to timetables for improvement notified before the SQF commencement time

- (1) This section applies in relation to an assessment contact with the approved provider of an accredited service, or the home service provider of a home service, if:
 - (a) a timetable for improvement in relation to the service was:
 - (i) notified to the provider under section 30, 42, 68 or 79 before the SQF commencement time; or
 - (ii) notified to the home service provider of a home service under section 68 before the SQF commencement time; or
 - (iii) specified in a final report under section 57 given to the home service provider of a home service before the SQF commencement time; and
 - (b) immediately before the SQF commencement time, the period set out in the timetable, or as extended under section 83, had not ended; and
 - (c) the assessment contact is made in relation to the timetable for improvement after the SQF commencement time.

Definition of assessment contact

- (2) Section 5, as amended by the amending instrument, applies in relation to the assessment contact as if:
 - (a) in relation to the approved provider of an accredited service— paragraph 5(1)(a) included a reference to the Accreditation Standards or the Flexible Care Standards (as applicable); and
 - (b) in relation to the home service provider of a home service— paragraph 5(2)(a) included a reference to the Home Care Standards or the Flexible Care Standards (as applicable).

Action following assessment contact by regulatory official

- (3) For the purposes of preparing the written notice under paragraph 68(a) in relation to the service, the regulatory official may take into account the extent of the provider's compliance before the SQF commencement time with the Accreditation Standards, the Home Care Standards or the Flexible Care Standards (as applicable).

144 Review audits

- (1) This section applies in relation to a review audit of an accredited service if:
 - (a) the review audit:
 - (i) began before the SQF commencement time; and
 - (ii) immediately before that time, the audit had not been completed; or
 - (b) the review audit:
 - (i) is arranged by the Commissioner after the SQF commencement time in relation to a request made by the approved provider of the accredited service for reconsideration of a regulatory reviewable decision (other than a decision of a kind mentioned in item 8 of the table in section 98 of this instrument); and
 - (ii) the regulatory reviewable decision was made before the SQF commencement time.
- (2) Despite the amendments of Subdivision A of Division 6 of Part 5 made by the amending instrument, that Subdivision, as in force immediately before the SQF commencement time, continues to have effect in relation to the review audit.

145 Revocation following review audit

- (1) This section applies in relation to a decision whether to revoke the accreditation of an accredited service under subsection 77(1) that:
 - (a) follows a review audit of the accredited service; and
 - (b) is made after the SQF commencement time.
- (2) Subdivision B of Division 6 of Part 5, as amended by the amending instrument, applies in relation to the decision, whether the review audit was conducted before or after the SQF commencement time.
- (3) If section 144 applies in relation to the review audit, for the purposes of:
 - (a) taking into account whether the Commissioner is satisfied that the approved provider will undertake continuous improvement in relation to the service under subparagraph 77(2)(a)(v); or
 - (b) making a decision under paragraph 77(4)(b) in relation to the service; the Commissioner may take into account the extent of the provider's compliance, before the SQF commencement time, with the Accreditation Standards or the Flexible Care Standards (as applicable).

146 Timetables for improvement

Subdivision A of Division 7 of Part 5, as amended by the amending instrument, applies in relation to a timetable for improvement that:

-
- (a) is notified to the approved provider of an accredited service under section 30, 42, 68 or 79 after the SQF commencement time; or
 - (b) is notified to the home service provider of a home service under section 68 after the SQF commencement time; or
 - (c) is specified in a final report under section 57 given to the home service provider of a home service after the SQF commencement time.

147 Direction to revise plan for continuous improvement if there is failure to comply with relevant Standards

- (1) This section applies if:
 - (a) the Commissioner finds, before or after the SQF commencement time, that the approved provider of an accredited service, or the home service provider of a home service, has failed to comply, before that time, with the Accreditation Standards, Home Care Standards or Flexible Care Standards (as applicable) in relation to the service; and
 - (b) the Commissioner has not given the provider a notice under subsection 84(1) in relation to the finding.
- (2) The Commissioner may, after the SQF commencement time, give the provider a notice under subsection 84(1), as amended by the amending instrument, in relation to the finding.

148 Failure to comply with relevant Standards that places safety, health or well-being of aged care consumer at serious risk

- (1) This section applies if:
 - (a) the Commissioner finds, before or after the SQF commencement time, that the approved provider of an accredited service, or the home service provider of a home service, has failed to comply, before that time, with the Accreditation Standards, Home Care Standards or Flexible Care Standards (as applicable) in relation to the service; and
 - (b) the Commissioner has not complied with subsections 85(2), (3) and (4) in relation to the finding.
- (2) Despite the amendments of section 85 made by the amending instrument, that section, as in force immediately before the SQF commencement time, continues to have effect in relation to the finding.

149 Information about failure to comply with Home Care Standards by service providers of home support services

- (1) This section applies if:
 - (a) the Commissioner becomes aware, before or after the SQF commencement time, of a failure, before that time, by the service provider of a home support service to comply with the Home Care Standards in relation to the service; and
 - (b) the Commissioner has not given the Secretary information about the failure.

- (2) Despite the amendment of section 109 made by the amending instrument, that section, as in force immediately before the SQF commencement time, continues to have effect in relation to the failure.

Allocation Principles 2014

42 Section 4

Omit “In these principles unless a contrary intention appears, an expression that is used in the *Aged Care Act 1997* has the same meaning, when used in this Principle, as in the *Aged Care Act 1997*, and:”, substitute:

- Note: A number of expressions used in these principles are defined in the Act, including the following:
- (a) key personnel;
 - (b) people with special needs;
 - (c) region;
 - (d) relinquish;
 - (e) subsidy.

In these principles:

43 Section 4 (definition of *Accreditation Standards*)

Repeal the definition.

44 Section 4

Insert:

Aged Care Quality Standards means the Aged Care Quality Standards set out in the *Quality of Care Principles 2014*.

45 Section 4 (note at the end)

Repeal the note.

46 Subparagraphs 48(2)(g)(i) and (ii)

Omit “meet the Accreditation Standards”, substitute “comply with the Aged Care Quality Standards”.

47 Subparagraphs 59(2)(d)(i) and (ii)

Omit “meet the Accreditation Standards”, substitute “comply with the Aged Care Quality Standards”.

48 At the end of the instrument

Add:

Part 10—Application, saving and transitional provisions

75 Application of amendments made by the *Aged Care Legislation Amendment (Single Quality Framework Consequential Amendments and Transitional Provisions) Instrument 2019*

Sections 48 and 59 of these principles, as amended by the *Aged Care Legislation Amendment (Single Quality Framework Consequential Amendments and Transitional Provisions) Instrument 2019*, apply in relation to a transfer notice that is received by the Secretary on or after the day that instrument commences.

Sanctions Principles 2014

49 Section 4 (after the heading)

Insert:

Note: A number of expressions used in these principles are defined in the Act, including the following:

- (a) disqualified individual;
- (b) key personnel.

50 Section 4 (definition of *Accreditation Standards*)

Repeal the definition.

51 Section 4

Insert:

Aged Care Quality Standards means the Aged Care Quality Standards set out in the *Quality of Care Principles 2014*.

52 Section 4 (definition of *Home Care Standards*)

Repeal the definition.

53 Section 4 (note)

Repeal the note.

54 Paragraph 16(b)

Repeal the paragraph, substitute:

- (b) any assessment, that has been carried out against the Aged Care Quality Standards while the sanction has been in effect, of the quality of care and services to which the sanction relates;

55 At the end of the instrument

Add:

Part 5—Application, saving and transitional provisions

17 Definitions

In this Part:

amending instrument means the *Aged Care Legislation Amendment (Single Quality Framework Consequential Amendments and Transitional Provisions) Instrument 2019*.

18 Application of amendments made by the amending instrument

- (1) This section applies in relation to an application by an approved provider for a sanction to be lifted if:
 - (a) the application was made on or after 1 July 2019; and
 - (b) the sanction was in effect before that day.
- (2) Section 16, as amended by the amending instrument, applies in relation to the application, as if that section included a requirement for the application to include details of:
 - (a) any assessment, carried out against the Accreditation Standards while the sanction has been in effect, of the approved provider's management systems, staffing and organisational development; and
 - (b) any assessment, carried out against the Home Care Standards while the sanction has been in effect, of the home care services (if any) provided by the approved provider.