

## EXPLANATORY STATEMENT

### *Aged Care Act 1997*

#### *Aged Care Legislation Amendment (Quality Indicator Program) Principles 2019*

##### Authority

Section 96-1 of the *Aged Care Act 1997* (Aged Care Act) provides that the Minister may make principles providing for matters required or permitted, or necessary or convenient to give effect to, the Aged Care Act.

In addition to the power to make principles under section 96-1 of the Aged Care Act, subsection 33(3) of the *Acts Interpretation Act 1901* provides that 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.

These powers provide the authority to make the amendments set out in this instrument.

##### Purpose

The purpose of the *Aged Care Legislation Amendment (Quality Indicator Program) Principles 2019* (Amending Principles) is to mandate the collection and provision of a defined set of indicators for all providers of residential aged care from 1 July 2019. It is mandated that this collection is in accordance with a document incorporated into the Amending Principles: *the National Aged Care Mandatory Quality Indicator Program Manual 1.0* (the Manual).

The Manual sets out requirements relating to the collection and reporting of data with respect to three quality indicators: pressure injuries; use of physical restraint; and unplanned weight loss, using standard definitions for Commonwealth-subsidised residential aged care providers.

This will support a key object of the *Aged Care Act 1997*, namely protecting and enhancing the safety, health, well-being and quality of life of residential aged care recipients and promoting the provision of quality care and services by approved providers of Commonwealth-subsidised aged care services.

##### Background

In February 2019 the Prime Minister, announced that participation in the National Aged Care Quality Indicator Program (the Program) would be mandatory for all Commonwealth-subsidised residential aged care providers from 1 July 2019.

Quality indicators measure aspects of service provision which contribute to the quality of care and services by the provider, and to the consumers' quality of life and experience of service.

The three quality indicators mandated in the Manual are pressure injuries, use of physical restraint and unplanned weight loss. Outcomes against these indicators are directly attributable to the level of care received by the care recipient from the aged care provider.

The clinical information required to be collected under the mandatory program will complement the Department's increased focus on clinical governance and support a national promotion of high quality clinical care in residential aged care.

The Program has been voluntary for residential aged care providers to join since 2016. It was developed and implemented in consultation with the sector and peak bodies.

### Details

The Amending Principles amend the *Accountability Principles 2014* and the *Records Principles 2014* to mandate the collection and provision of three clinical quality indicators for all providers of residential aged care.

As part of the Program, approved providers of residential aged care must in accordance with the Manual:

- (a) make measurements or other assessments that:
  - (i) relate to care recipients to whom the approved provider provides residential care; and
  - (ii) are relevant to indicating the quality of the residential care; whether or not making the measurements or other assessments involves collecting or using personal information, or health information, and therefore sensitive information, within the meaning of the *Privacy Act 1988*, about the care recipients; and
- (b) compile or otherwise derive from those measurements and assessments information that:
  - (i) is relevant to indicating the quality of the care; and
  - (ii) is not personal information about any of the care recipients; and
- (c) give the information to the Secretary.

Providers will be required to keep appropriate and timely records as identified in the Manual.

The Australian Institute of Health and Welfare will publish on the GEN aged care data website quality indicator data as part of the program.

Additional information on the details of the Amending Principles is set out in **Attachment A**.

## Documents Incorporated by Reference

The *National Aged Care Mandatory Quality Indicator Program Manual 1.0* is incorporated as it existed at commencement on 1 July 2019 in accordance with s 14(1)(b) of the *Legislation Act 2003*.

The Manual will be accessible and freely available, through the Department of Health's website, to all providers of residential aged care, as well as care recipients and their families and carers.

The Manual will provide for the content of obligations for all providers of residential aged care under the Program. The Manual prescribes the specific methods for collecting, recording, submitting and interpreting information for the Program. The Manual was included as an incorporated document to allow for the level of detail required to undertake the program to be included. The Manual is designed specifically for residential aged care services and provides a user-friendly document that facilitates implementation of the program for providers.

## Consultation

The Department did not engage with the aged care sector in the development of the Amending Principles. However, the Amending Principles and the Manual, have been broadly informed by extensive consultation with the sector and peak bodies undertaken in the development and voluntary implementation of the Program following the Productivity Commission (2011) report, *Caring for Older Australians*, and the Australian National Audit Office (2011) report, *Monitoring and Compliance Arrangements Supporting Quality of Care in Residential Aged Care Homes*. These reports all recommended that Quality Indicators be developed for aged care.

In the development of the instrument, the protection of individuals' privacy was considered. The provisions regarding personal information were developed drawing on consultations that occurred with sector peaks during the development of the 2016 voluntary program.

The Program is consistent with the Government's focus on raising the quality of care for residents of residential aged care services and empowering consumers to make informed decisions regarding their ongoing care needs.

The 2017 *Review of National Aged Care Quality Regulatory Processes*, and the House of Representatives Standing Committee on Health, Aged Care and Sport October 2018 report on the *Inquiry into the Quality of Care in Residential Aged Care Facilities in Australia* all recommended mandatory participation in a Quality Indicator program. The 2018 Council of the Ageing Project Report: *Measuring Quality and Consumer Choice in Aged Care* supported the continued collection of 'quality of care' metrics and the mandatory publication of these metrics for consumers to be able to see. Public consultation was undertaken in the context of each of these reviews

and this consultation, including the findings of these reviews, have also generally informed the Amending Principles.

From 1 July 2019, the mandatory Program will commence using the same parameters and definitions as the voluntary program that were developed in consultation with the sector.

The Department will consult with stakeholders on the information about the quality of residential care that will be published under the Program, and other supporting materials.

### Regulation Impact Statement

As part of the development of the Program, a Regulatory Impact Statement was provided to the Office of Best Practice Regulation (OBPR) who agreed that the Program is likely to have only minor impacts on the aged care sector (OBPR Reference ID24360). The Regulation Impact Statement is included at **Attachment B**.

The Program operates fee-free for the sector. In addition, while services are likely to be currently recording similar data, aged care providers may need to update their processes to enable the collection of data in line with the mandated Quality Indicator definitions. The regulatory impact relates to these changes. The Department will develop further resources and provide support to assist providers in complying with the new mandatory requirements.

### Commencement

This Instrument commences 1 July 2019.

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

**Details of the Aged Care Legislation Amendment (Quality Indicator Program) Principles 2019**

**1 Name of Instrument**

Section 1 provides how the instrument is to be cited, that is, as the *Aged Care Legislation Amendment (Quality Indicator Program) Principles 2019* (the Instrument).

**2 Commencement**

This section provides for the Instrument to commence on 1 July 2019.

**3 Authority**

Section 3 provides that the Instrument is made under the authority of the *Aged Care Act 1997* (Aged Care Act).

Under subsection 33(3) of the *Acts Interpretation Act 1901* (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 Aged Care Act to make Principles is relied on, in conjunction with subsection 33(3) of the Acts Interpretation Act, to vary the *Accountability Principles 2014* and the *Records Principles 2014* as set out in Schedule 1.

**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:

- *Accountability Principles 2014*; and
- *Records Principles 2014*.

## **Accountability Principles 2014**

### **Item 1: Section 4**

This item defines the document that will provide the content of the new quality indicator obligations on residential care Providers. This document is the *National Aged Care Mandatory Quality Indicator Program Manual 1.0* (the Manual).

The Accountability Principles are a disallowable legislative instrument and, by section 14 of the *Legislation Act 2003*, the Manual is incorporated as in force as at 1 July 2019.

### **Item 2: After Section 25**

This item inserts a new section 26 into the Accountability Principles, to require approved providers of a residential aged care service, in accordance with the *National Aged Care Mandatory Quality Indicator Program Manual 1.0* as it existed at 1 July 2019 (the Manual), to take measurements and make assessments of and in relation to care recipients to whom they provide residential care.

The new provision requires approved providers to compile and provide service level aggregated data to the Secretary, without any personal information about any of the care recipients. That is, the data will be non-identifiable data. Sub-paragraph 26(b)(ii) clarifies that the responsibility of approved providers which is being inserted by item 2 is to compile measurements and assessments information that “is not personal information about any of the care recipients” to whom the approved provider provides residential care.

Data submitted by approved providers will be information acquired under the Aged Care Act that relates to the affairs of an approved provider. As such, the information will be protected information, the use and disclosure of which will be subject to the secrecy provisions in Division 86 of the Aged Care Act.

The Manual provides three quality indicators, the different data collection and recording methods for each of the three quality indicators and examples of data collection. In addition, the Manual specifies instructions for providers to submit their collated data through the My Aged Care provider portal as well as the dates for collection and submission of data. Approved providers are required to acknowledge, prior to submitting the aggregated service data through the My Aged Care provider portal, the following:

#### **CONFIRMATION**

*By submitting quality indicator data you:*

- 1. Confirm that you have collected, and are providing, the quality indicator data in accordance with the National Aged Care Mandatory Quality Indicator Program Manual 1.0 and all applicable laws.*
- 2. Confirm that any information you have provided does not contain any personal information as defined under the Privacy Act 1988 (Cth).*

### **Item 3: Part 8**

This item is a transitional provision for approved providers who either did not participate, or did not fully participate (by reporting on all three quality indicators), in the Quality Indicator Program in the three months ending on 30 June 2019. These providers will not be required to provide data to the Secretary in July 2019 for the final quarter of 2018-19.

### ***Records Principles 2014***

#### **Item 5: Section 4**

This item defines the Manual for the purposes of the *Records Principles 2014* (Records Principles) to be the same document that will provide for the content of obligations as provided in Item 1.

The Records Principles are a disallowable legislative instrument and, by section 14 of the *Legislation Act 2003*, the Manual is incorporated as in force at 1 July 2019.

#### **Item 6: Section 7**

This item provides that approved providers of residential aged care must keep records as required by the Manual, in accordance with the Records Principles.

**Short Form Regulation Impact Statement: Residential Care – Mandatory National Aged Care Quality Indicator Program**

**Name of proposal:** Residential Care – Mandatory National Aged Care Quality Indicator Program

**OBPR Reference number:** ID24360

**What will this proposal do?**

The stated objectives of the Quality Indicator (QI) Program are to give consumers transparent information about quality in aged care to aid decision making and for providers to have robust, valid data to measure and monitor their performance and support continuous quality improvement.

The proposal is to mandate the national collection and reporting of three national clinical indicators and commence consultation on expanding the National Aged Care QI Program in residential aged care from three to five quality of care indicators with the introduction of indicators on falls and fractures, and medication management.

**What are the regulatory impacts associated with this proposal?**

The regulatory impacts will be the time that it would take for staff at each of the aged care services to collect and input the data. This would be reporting for three indicators for each resident four times a year. Eight per cent (223) of residential aged care services are currently participating in the voluntary QI program which requires them to enter data for three QIs four times a year.

While services are likely to be currently recording similar data, aged care providers may need to update their processes to enable the collection of data in line with the mandated QI definitions. The department will develop further resources to support providers in complying with the new mandatory requirements.

The proposal represents a minimal increase in regulatory burden on the sector however this is warranted by several reports such as the Carnell-Paterson *Review of National Aged Care Quality Regulatory Processes*; the House of Representatives Standing Committee on Health, Aged Care and Sport October 2018 report on the *Inquiry into the Quality of Care in Residential Aged Care Facilities in Australia*; and the 2018 *COTA Project report: Measuring Quality and Consumer Choice in Aged Care*, and is broadly supported by the sector.

**What are the regulatory costs associated with this proposal?**

There are 200,689 people in residential aged care services in Australia. The QIs for each resident would be "counted" 4 times per year, which would total 802,756 "counts" per year. As there is a total number of 2,672 residential aged care services in Australia, this equates to each service having to enter an average estimate of 300 pieces of data per year. This figure of 300 pieces of data is an estimate.

It is estimated that the costs associate with this, using the average pay rate for an aged care worker, would be less than \$2 million.

A total of 44% of services are run by business and 56% are not for profit organisations. For the purposes of the impact of entering the data the costs would be the same for business and not for profit so they have been calculated as one.

On the assumption that all services will already have systems in place for identifying these types of risks (noting the new Aged Care Quality Standards will require service providers to effectively manage high impact or high prevalence risks, which these Qis



are), then the Victorian Department of Health and Human Services estimates that the additional time for collating and submitting results for the QIs could be as little as 15-20 minutes per quarter for a small facility (of around 30-45 beds), and even less time for a larger facility which should have good clinical record keeping and review processes in place.

In relation to the specific indicators, the pressure injuries and weight-loss quality indicators would be done as part of the regular attendance of a resident's personal care and hygiene and so should take no more than an additional 15-20 minutes per quarter. To do an audit of the use of restraint devices may take 15 minutes for the whole facility, dependent upon the size and layout of the facility. These estimates were also informed by information provided by the Department of Health and Human Services Victoria who manage the Victorian Quality Indicator Program.

### Regulatory Burden Estimate (RBE) Table

Average Annual Regulatory Costs (from business as usual)				
	Business	Community Organisations	Individuals	Total (\$m)
Change in costs by sector (\$m)	\$1.667	\$0	\$0	\$1.667

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

### STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

*Aged Care Legislation Amendment (Quality Indicator Program) Principles 2019*

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 legislative instrument enables the implementation of the National Aged Care Quality Indicator Program that will apply to approved providers residential aged care services.

#### **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;
- the right to prevent acts of cruel, degrading or in humane treatment or punishment; and
- the right that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

The 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. In addition the Instrument is compatible to the right to prevent acts of cruel, degrading or inhumane treatment or punishment as contained in article 16(1) of the Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment. The Instrument is also compatible with the right that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation as contained in article 17(1) of the International Covenant on Civil and Political Rights.

Quality indicators measure aspects of service provision which contribute to the quality of care and services for consumers, and are used by providers as part of their internal management of care and continuous improvement. The intent of the National Aged Care Quality Indicator Program (the Program) is to enable providers to have robust, valid data to measure and monitor their performance, support continuous quality improvement, to compare themselves to their counterparts and better manage risks. The clinical information will complement the increased focus on clinical governance and support a national focus on high quality clinical care in residential aged care.

The Program aims to achieve quality outcomes against three clinical quality indicators; pressure injuries, use of physical restraint and unplanned weight loss for consumers. The level of care provided by the aged care provider against each of these indicators can directly affect a care recipient's quality of life and standard of living.

The use of a physical restraint quality indicator aims to promote a restraint-free environment and contribute to alleviating any degrading and inhumane treatment, including physical injuries of aged care recipients. Monitoring, recognising and addressing pressure injuries and unplanned weight loss will work to reduce the common adverse events associated these conditions such as infection, reduced physical function, pain, increased risk of hip fractures and poor wound healing. All of which can reduce a care recipient's right to the enjoyment of the highest attainable standard of physical and mental health.

The collection of the required personal data by approved providers of aged care goes no further than currently required for the proper care of residential care recipients. The data is then provided in de-identified form (without the inclusion of care recipients' personal information to the Secretary of the department. Hence any infringement of the individual right to privacy is minimised and is no more than necessary for existing residential care arrangements.

## **Conclusion**

The 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*. The instrument promotes the consumer's rights to an adequate standard of living, to live without fear of cruel, degrading, inhumane treatment and optimises each consumer's physical and mental health while maintaining the consumers right to privacy.

The Hon Richard Colbeck  
Minister for Aged Care and Senior Australians