

SUPPLEMENTARY EXPLANATORY STATEMENT

Issued by the authority of the Minister for Senior Australians and Aged Care Services

Aged Care Act 1997
Aged Care Quality and Safety Commission Act 2018

Aged Care Legislation Amendment (Serious Incident Response Scheme)
Instrument 2021

Background

The *Aged Care Legislation Amendment (Serious Incident Response Scheme) Instrument 2021* (Instrument) which came into force on 1 April 2021, amended the *Quality of Care Principles 2014* (Quality of Care Principles) and the *Aged Care Quality and Safety Commission Rules 2018* (Quality and Safety Commission Rules) to prescribe arrangements relating to the Serious Incident Response Scheme (SIRS) in residential aged care, including flexible care delivered in a residential aged care setting. This includes arrangements relating to an approved provider's responsibility to manage incidents and take reasonable steps to prevent incidents. The Instrument also made consequential amendments to the Quality of Care Principles, Quality and Safety Commission Rules, the *Accountability Principles 2014*, and the *Records Principles 2014* to remove references to the previous reportable assault arrangements, and in relation to expanded enforcement powers of the Aged Care Quality and Safety Commissioner.

Purpose

The purpose of this Supplementary Explanatory Statement, which should be read in conjunction with the Instrument's Explanatory Statement, is to provide additional information in response to matters raised by the Senate Standing Committee for the Scrutiny of Delegated Legislation raised in Delegated Legislation Monitors 7 of 2021, 10 of 2021, and 12 of 2021.

Details of the Aged Care Legislation Amendment (Serious Incident Response Scheme) Instrument 2021

After the paragraph commencing "New subsection 15NA(11) provides" insert:

Unlike other expressions included in new section 15NA, new subsection 15NA(11) is not inclusive, due to the specific nature of the type of incident, and the certainty required for implementation. Subsection 15NA(11) ensures clarity on the circumstances where it would be appropriate to notify the Commissioner about the unexplained absence of a residential care recipient.

New subsection 15NA(11) was included following consultation which indicated that it was not appropriate for every single unexplained absence to be a reportable incident under the scheme. New subsection 15NA(11) limits the definition so that an incident is not reportable to the Commissioner where

a residential care recipient is absent, although it is not out of character for them to be away from the service, and the provider considers that the individual has the ability to look after themselves and make their own choices.

It is necessary and appropriate to include this matter in delegated legislation to ensure the flexibility for prompt modifications, should the arrangements have any unintended consequences, that may result in paternalistic measures or other implications that may affect the health, safety, well-being, quality of life and dignity of residential care recipients. It is also considered necessary and appropriate for these matters to be included in delegated legislation to ensure ease of interpretation and implementation by having all detailed legislative arrangements for approved providers in one place (the Quality of Care Principles). Further, similar arrangements are present in subsections 16(2) and (4) of the *National Disability Insurance Scheme (Incident Management and Reportable Incidents) Rules 2018*, upon which the legislative design for the SIRS is based.

The Government will continue to monitor these arrangements and will review whether they should be included on the face of the Act as part of the current project to introduce a new Aged Care Act. On 1 March 2021, in response to the recommendations of the Final Report of the Royal Commission into Aged Care Quality and Safety, the Government committed to immediately commence work on a new consumer-focused Aged Care Act. The new Act will replace the existing aged care legislative framework and is intended to commence from 1 July 2023, subject to parliamentary processes. As part of the project, the Government will consider how existing aged care arrangements should be dealt with under the new legislative structure, including whether certain arrangements should be included on the face of the Act, rather than in delegated legislation.

After the paragraph commencing “It is important for approved providers and their staff members to maintain the rights of residential care recipients” insert:

While it is not expected that situations accounted for under new subsection 15NB(3) will occur frequently, these arrangements were included following consultation which indicated that residential care recipients’ choice and autonomy need to be maintained.

It necessary and appropriate to include these matters in delegated legislation to ensure the flexibility for prompt modifications, should the arrangements have any unintended consequences, that may affect the health, safety, well-being, quality of life and dignity of residential care recipients. It is also considered necessary and appropriate for these matters to be included in delegated legislation to ensure ease of interpretation and implementation by having detailed legislative arrangements for approved providers in one place (the Quality of Care Principles). Further, similar arrangements are present in subsections 16(2) and (4) of the *National Disability Insurance Scheme (Incident Management and Reportable Incidents) Rules 2018*, upon which the legislative design for the SIRS is based.

The Government will continue to monitor these arrangements and will review whether these arrangements should be included on the face of the Act as part of the project to introduce a new Aged Care Act. In response to the recommendations of the Final Report of the Royal Commission into Aged Care Quality and Safety, the Government has committed to immediately commence work on a new consumer-focused Aged Care Act. The new Act will replace the existing aged care legislative framework and is intended to commence from 1 July 2023, subject to parliamentary processes. As part of the project, the Government will consider how existing aged care arrangements should be dealt with under the new legislative structure, including whether certain arrangements should be included on the face of the Act, rather than in delegated legislation.