



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

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I, Richard Colbeck, Minister for Senior Australians and Aged Care Services, make the following instrument.

Dated 9 March 2021

Richard Colbeck  
Minister for Senior Australians and Aged Care Services

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## 1 Name

This instrument is the *Aged Care Legislation Amendment (Serious Incident Response Scheme) Instrument 2021*.

## 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 April 2021.	1 April 2021

Note: This table relates only to the provisions of this instrument as originally made.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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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—Incident management and prevention**

### **Part 1—Amendments of the Quality of Care Principles**

#### *Quality of Care Principles 2014*

##### **1 After Part 4A**

Insert:

### **Part 4B—Incident management and prevention**

#### **Division 1—Purpose of this Part**

##### **15K Purpose of this Part**

- (1) For the purposes of subparagraphs 54-1(1)(e)(i) and (ii) of the Act, this Part sets out requirements that relate to an approved provider's responsibility to manage incidents and take reasonable steps to prevent incidents.
- (2) This Part applies to incidents that consist of acts, omissions, events or circumstances that:
  - (a) occur, are alleged to have occurred, or are suspected of having occurred, in connection with the provision of residential care, or flexible care provided in a residential setting, to a residential care recipient of the approved provider; and
  - (b) either:
    - (i) have caused harm to the residential care recipient or another person; or
    - (ii) could reasonably have been expected to have caused harm to a residential care recipient or another person.
- (3) Divisions 2 and 3 of this Part also apply to incidents not covered by subsection (2) that consist of acts, omissions, events or circumstances that:
  - (a) the approved provider becomes aware of in connection with the provision of residential care, or flexible care provided in a residential setting, to a residential care recipient of the approved provider; and
  - (b) have caused harm to the residential care recipient.

#### **Division 2—Requirements for managing and preventing incidents**

##### **15L Purpose of this Division**

For the purposes of subparagraph 54-1(1)(e)(ii) of the Act, this Division specifies requirements that an approved provider must comply with in managing and preventing incidents.

Note: For incidents to which this Division applies, see subsections 15K(2) and (3).

### **15LA Requirements for managing incidents**

- (1) The approved provider's management of incidents must be focused on the safety, health, well-being and quality of life of residential care recipients of the provider.
- (2) The approved provider must respond to an incident by:
  - (a) assessing the support and assistance required to ensure the safety, health and well-being of persons affected by the incident; and
  - (b) providing that support and assistance to those persons; and
  - (c) assessing how to appropriately involve each person affected by the incident, or a representative of the person, in the management and resolution of the incident; and
  - (d) involving each person or representative in that way; and
  - (e) using an open disclosure process.
- (3) The approved provider must assess the incident in relation to the following, taking into account the views of persons affected by the incident:
  - (a) whether the incident could have been prevented;
  - (b) what, if any, remedial action needs to be undertaken to prevent further similar incidents from occurring, or to minimise their harm;
  - (c) how well the incident was managed and resolved;
  - (d) what, if any, actions could be taken to improve the provider's management and resolution of similar incidents;
  - (e) whether other persons or bodies should be notified of the incident.
- (4) The approved provider must:
  - (a) take any actions determined under paragraph (3)(b); and
  - (b) take any actions determined under paragraph (3)(d) that are reasonable in the circumstances; and
  - (c) notify the persons and bodies determined under paragraph (3)(e).

#### *Notifying police of incident*

- (5) If there are reasonable grounds to report the incident to police, the approved provider must notify a police officer of the incident within 24 hours of becoming aware of the incident.
- (6) If the approved provider later becomes aware of reasonable grounds to report the incident to police, the provider must notify a police officer of the incident within 24 hours of becoming aware of those grounds.

### **15LB Requirements for improving management and prevention of incidents**

- (1) The approved provider must collect data relating to incidents that will enable the provider to continuously improve the provider's management and prevention of incidents, including to enable the provider to:
  - (a) identify and address systemic issues in the quality of care provided by the provider; and
  - (b) provide feedback and training to staff members of the provider about managing and preventing incidents.

- (2) The approved provider must regularly analyse and review this information to assess:
  - (a) the effectiveness of the provider's management and prevention of incidents; and
  - (b) what, if any, actions could be taken to improve the provider's management and prevention of incidents.
- (3) The approved provider must take any actions determined under paragraph (2)(b) that are reasonable in the circumstances.

### **Division 3—Incident management system requirements**

#### **15M Purpose of this Division**

- (1) An approved provider who provides residential care, or flexible care provided in a residential setting, has a responsibility to implement and maintain an incident management system.

Note: This is a responsibility of the approved provider under Chapter 4 of the Act: see section 54-1.

- (2) For the purposes of subparagraph 54-1(1)(e)(i) of the Act, the incident management system of the approved provider must comply with the requirements set out in this Division.

#### **15MA Incidents that must be covered**

The incident management system of the approved provider must cover all incidents to which this Division applies, including reportable incidents.

Note 1: For incidents to which this Division applies, see subsections 15K(2) and (3).

Note 2: For additional requirements that apply to reportable incidents, see Division 4.

#### **15MB Incident management system procedures**

- (1) The incident management system of the approved provider must establish procedures to be followed in identifying, managing and resolving incidents, including procedures that specify the following:
  - (a) how incidents are identified, recorded and reported;
  - (b) to whom incidents must be reported;
  - (c) the person who is responsible for notifying reportable incidents to the Quality and Safety Commissioner;
  - (d) how the provider will provide support and assistance to persons affected by an incident to ensure their safety, health and well-being (including providing information about access to advocates such as independent advocates);
  - (e) how persons affected by an incident (or representatives of the persons) will be involved in the management and resolution of the incident;
  - (f) when an investigation by the provider is required to establish:
    - (i) the causes of a particular incident; or
    - (ii) the harm caused by the incident; or
    - (iii) any operational issues that may have contributed to the incident occurring;



- and the nature of that investigation;
- (g) when remedial action is required and the nature of that action.
- (2) The procedures may vary, depending on the seriousness of the incident.
- (3) The incident management system must set out procedures for ensuring that the requirements of sections 15LA and 15LB are complied with.
- (4) The incident management system must provide that, if the incident is a reportable incident, the incident must also be notified and managed in accordance with Division 4.

### **15MC Documentation, record keeping and data analysis**

- (1) The approved provider must:
- (a) document its incident management system procedures; and
  - (b) make the documented procedures available, in an accessible form, to the following persons:
    - (i) residential care recipients of the provider;
    - (ii) each staff member of the provider;
    - (iii) family members, carers, representatives, advocates (including independent advocates) of the residential care recipients, and any other person significant to those residential care recipients; and
  - (c) assist persons referred to in paragraph (b) to understand how the incident management system operates.
- (2) The incident management system of the approved provider must provide for the following details, as a minimum, to be recorded in relation to each incident:
- (a) a description of the incident, including:
    - (i) the harm that was caused, or that could reasonably have been expected to have been caused, to each person affected by the incident; and
    - (ii) if known—the consequences of that harm;
  - (b) whether the incident is a reportable incident;
  - (c) if known—the time, date and place at which the incident occurred or was alleged or suspected to have occurred;
  - (d) the time and date the incident was identified;
  - (e) the names and contact details of the persons directly involved in the incident;
  - (f) the names and contact details of any witnesses to the incident;
  - (g) details of the assessments undertaken in accordance with subsections 15LA(2) and (3);
  - (h) the actions taken in response to the incident, including actions taken under subsections 15LA(2), (4), (5) or (6);
    - (i) any consultations undertaken with the persons affected by the incident;
    - (j) whether persons affected by the incident have been provided with any reports or findings regarding the incident;
  - (k) if an investigation is undertaken by the provider in relation to the incident—the details and outcomes of the investigation;
  - (l) the name and contact details of the person making the record of the incident.

- (3) A record of an incident for the purposes of subsection (2) must be retained for 7 years after the date the incident was identified.
- (4) The incident management system must provide for the collection of data relating to incidents that will enable the approved provider to:
  - (a) identify occurrences, or alleged or suspected occurrences, of similar incidents; and
  - (b) comply with section 15LB (about using information to continuously improve the provider's management and prevention of incidents); and
  - (c) provide information to the Quality and Safety Commissioner, if required or requested to do so by the Commissioner.
- (5) This section does not limit paragraph 15MB(1)(a).

### **15MD Roles, responsibilities, compliance and training of staff members**

- (1) The incident management system of the approved provider must set out the roles and responsibilities of staff members of the provider in identifying, managing and resolving incidents and in preventing incidents from occurring.
- (2) Without limiting subsection (1), the incident management system must provide that each staff member of the approved provider must comply with the incident management system.
- (3) The incident management system must include requirements relating to the provision of training to each staff member of the approved provider in the use of, and compliance with, the incident management system.

## **Division 4—Reportable incidents**

### **15N Purpose of this Division**

- (1) For the purposes of subsection 54-3(1) of the Act, this Division makes provision for dealing with reportable incidents.
- (2) Under subparagraph 54-1(1)(e)(i) of the Act the incident management system of an approved provider must comply with the requirements set out in this Division in relation to reportable incidents.

Note: An approved provider who provides residential care, or flexible care provided in a residential setting, has a responsibility under Chapter 4 of the Act to implement and maintain an incident management system: see section 54-1.

### **15NA What is a *reportable incident*?**

- (1) This section is made for the purposes of subsection 54-3(4) of the Act. It defines or clarifies the meaning of expressions used in paragraph 54-3(2)(a), (b), (c), (d), (e), (f) or (h) of the Act.

Note 1: Under subsection 54-3(2) of the Act a **reportable incident** is any of the incidents in paragraphs 54-3(2)(a) to (h) of the Act that have occurred, are alleged to have occurred, or are suspected of having occurred, in connection with the provision of residential care, or flexible care provided in a residential setting, to a residential care recipient of an approved provider. See also subsection 15K(2) for incidents to which this Part applies.

- Note 2: The use of physical restraint or chemical restraint in relation to the residential care recipient (other than in circumstances set out in this instrument) is also a reportable incident: see paragraph 54-3(2)(g) of the Act and Part 4A of this instrument.
- Note 3: Subsection 54-3(5) of the Act allows this instrument to provide that specified acts, omissions or events are, or are not, reportable incidents. This instrument can override subsection 54-3(2) of the Act in this regard. See section 15NB of this instrument which is made for the purpose of subsection 54-3(5) of the Act.

*Unreasonable use of force*

- (2) In paragraph 54-3(2)(a) of the Act, the expression “unreasonable use of force against the residential care recipient” includes conduct ranging from a deliberate and violent physical attack to use of unwarranted physical force.
- (3) To avoid doubt, that expression does not cover gently touching the residential care recipient:
- (a) for the purposes of providing care; or
  - (b) to attract the residential care recipient’s attention; or
  - (c) to guide the residential care recipient; or
  - (d) to comfort the residential care recipient when the recipient is distressed.

*Unlawful sexual contact, or inappropriate sexual conduct*

- (4) In paragraph 54-3(2)(b) of the Act, the expression “unlawful sexual contact, or inappropriate sexual conduct, inflicted on the residential care recipient” includes the following:
- (a) if the contact or conduct is inflicted by a person who is a staff member of the approved provider or a person while the person is providing care or services for the provider (such as while volunteering)—the following:
    - (i) any conduct or contact of a sexual nature inflicted on the residential care recipient, including (without limitation) sexual assault, an act of indecency and the sharing of an intimate image of the residential care recipient;
    - (ii) any touching of the residential care recipient’s genital area, anal area or breast in circumstances where this is not necessary to provide care or services to the residential care recipient;
  - (b) any non-consensual contact or conduct of a sexual nature, including (without limitation) sexual assault, an act of indecency and the sharing of an intimate image of the residential care recipient;
  - (c) engaging in conduct relating to the residential care recipient with the intention of making it easier to procure the residential care recipient to engage in sexual contact or conduct.
- (5) However, that expression does not include consensual contact or conduct of a sexual nature between the residential care recipient and a person who is not a staff member of the approved provider, including the following:
- (a) another person who is a residential care recipient of the provider;
  - (b) a person who provides care or services for the provider (such as while volunteering) other than while that person is providing that care or services.

*Psychological or emotional abuse*

- (6) In paragraph 54-3(2)(c) of the Act the expression “psychological or emotional abuse of the residential care recipient” includes conduct that:
- (a) has caused the residential care recipient psychological or emotional distress; or
  - (b) could reasonably have been expected to have caused a residential care recipient psychological or emotional distress.
- (7) Conduct covered by subsection (6) includes (without limitation) the following:
- (a) taunting, bullying, harassment or intimidation;
  - (b) threats of maltreatment;
  - (c) humiliation;
  - (d) unreasonable refusal to interact with the residential care recipient or acknowledge the recipient’s presence;
  - (e) unreasonable restriction of the residential care recipient’s ability to engage socially or otherwise interact with people;
  - (f) repetitive conduct or contact which does not constitute unreasonable use of force but the repetition of which:
    - (i) has caused the residential care recipient psychological or emotional distress; or
    - (ii) could reasonably have been expected to have caused a residential care recipient psychological or emotional distress.

*Unexpected death*

- (8) In paragraph 54-3(2)(d) of the Act the expression “unexpected death of the residential care recipient” includes death in circumstances where:
- (a) reasonable steps were not taken by the approved provider to prevent the death; or
  - (b) the death is a result of:
    - (i) care or services provided by the approved provider; or
    - (ii) a failure of the approved provider to provide care or services.

*Stealing or financial coercion*

- (9) In paragraph 54-3(2)(e) of the Act, the expression “stealing from, or financial coercion of, the residential care recipient by a \*staff member of the provider” includes the following:
- (a) stealing from the residential care recipient by a staff member of the approved provider;
  - (b) conduct by a staff member of the approved provider that:
    - (i) is coercive or deceptive in relation to the residential care recipient’s financial affairs; or
    - (ii) unreasonably controls the financial affairs of the residential care recipient.

*Neglect*

- (10) In paragraph 54-3(2)(f) of the Act, the expression “neglect of the residential care recipient” includes the following:

- (a) a breach of the duty of care owed by the approved provider, or a staff member of the provider, to the residential care recipient;
- (b) a gross breach of professional standards by a staff member of the approved provider in providing care or services to the residential care recipient.

*Unexplained absence*

- (11) In paragraph 54-3(2)(h) of the Act the expression “unexplained absence of the residential care recipient from the residential care services of the provider” means an absence of the residential care recipient from the residential care services in circumstances where there are reasonable grounds to report the absence to police.

**15NB What is not a reportable incident?**

- (1) This section is made for the purposes of paragraph 54-3(5)(b) of the Act. Despite subsection 54-3(2) of the Act, an incident covered by one of the following subsections is not a **reportable incident**.
- (2) Despite paragraph 54-3(2)(g) of the Act, the use of physical restraint or chemical restraint in relation to a residential care recipient is not a **reportable incident** if:
  - (a) the use of physical restraint or chemical restraint is in a transition care program in a residential care setting; and
  - (b) the use is in the circumstances in sections 15F and 15G (assuming that those sections applied to the residential care recipient in relation to that care).
- (3) Despite subsection 54-3(2) of the Act, an incident is not a **reportable incident** if the incident results from the residential care recipient deciding to refuse to receive care or services offered by the approved provider.

**15NC Approved provider must notify reportable incidents in accordance with this Division**

An approved provider must take all reasonable steps to ensure that reportable incidents are notified to the Quality and Safety Commissioner in accordance with this Division.

**15ND Approved provider must ensure that staff members notify reportable incidents**

An approved provider must ensure that a staff member of the provider who becomes aware of a reportable incident notifies one of the following of that fact as soon as possible:

- (a) one of the provider’s key personnel;
- (b) a supervisor or manager of the staff member;
- (c) the person specified for the purposes of paragraph 15MB(1)(c) for the provider.

**15NE Priority 1 notice must be given within 24 hours**

- (1) If:
  - (a) an approved provider becomes aware of a reportable incident; and

- (b) the provider has reasonable grounds to believe that the incident is a priority 1 reportable incident;

the provider must give the Quality and Safety Commissioner a notice (a **priority 1 notice**) in accordance with subsection (3) within 24 hours of becoming aware of the reportable incident.

Note: Notice about certain reportable incidents is not required to be given: see section 15NG.

- (2) A **priority 1 reportable incident** is a reportable incident:
- (a) that has caused, or could reasonably have been expected to have caused, a residential care recipient physical or psychological injury or discomfort that requires medical or psychological treatment to resolve; or
  - (b) where there are reasonable grounds to report the incident to police; or
  - (c) of the kind covered by paragraph 54-3(2)(d) or (h) of the Act (about unexpected death or unexplained absence).

*Information to be included in notice*

- (3) Subject to subsection (4), the priority 1 notice must include the following information about the reportable incident:
- (a) the name and contact details of the approved provider;
  - (b) a description of the reportable incident including:
    - (i) the kind of reportable incident; and
    - (ii) the harm that was caused, or that could reasonably have been expected to have been caused, to each person affected by the incident; and
    - (iii) if known—the consequences of that harm;
  - (c) the immediate actions taken in response to the reportable incident, including:
    - (i) actions taken to ensure the safety, health and well-being of the residential care recipients affected by the incident; and
    - (ii) whether the incident has been reported to police or any other body;
  - (d) any further actions proposed to be taken in response to the reportable incident;
  - (e) the name, position and contact details of the person giving the notice;
  - (f) if known—the time, date and place at which the reportable incident occurred or was alleged or suspected to have occurred;
  - (g) the names of the persons directly involved in the reportable incident;
  - (h) if known—the level of cognition of the residential care recipients directly involved in the reportable incident.
- (4) The approved provider is not required to include information in the priority 1 notice if that information is not available within the 24 hours.

*Additional information*

- (5) The approved provider must give the Quality and Safety Commissioner a notice including the following information about the reportable incident within 5 days after the start of the 24 hours, or within such other period as the Commissioner determines under subsection 95C(1) of the Quality and Safety Commission Rules:

- (a) any information required by subsection (3) not provided in the priority 1 notice;
  - (b) any further information specified by the Commissioner under subsection 95C(1) of the Quality and Safety Commission Rules.
- (6) However, the approved provider is not required to give a notice under subsection (5) if the Commissioner decides otherwise under subsection 95C(1) of the Quality and Safety Commission Rules.

*Form of notices*

- (7) A notice given under this section must:
- (a) be in writing; and
  - (b) be in the approved form.

Note: The Quality and Safety Commissioner must approve forms for the purposes of this Division: see section 95F of the Quality and Safety Commission Rules.

**15NF Priority 2 notice must be given within 30 days**

- (1) If:
- (a) an approved provider becomes aware of a reportable incident; and
  - (b) the provider has not given a notice under section 15NE about the incident; the provider must give the Quality and Safety Commissioner a notice (a **priority 2 notice**) in accordance with subsection (2) within 30 days of becoming aware of the incident.
- Note: Notice about certain reportable incidents is not required to be given: see section 15NG.
- (2) The priority 2 notice must include the following information about the reportable incident:
- (a) the name and contact details of the approved provider;
  - (b) a description of the reportable incident including:
    - (i) the kind of reportable incident; and
    - (ii) the harm that was caused, or that could reasonably have been expected to have been caused, to each person affected by the incident; and
    - (iii) if known—the consequences of that harm;
  - (c) the actions taken in response to the reportable incident, including:
    - (i) actions taken to ensure the safety, health and well-being of the residential care recipients affected by the incident; and
    - (ii) whether the incident has been reported to police or any other body;
  - (d) any further actions proposed to be taken in response to the reportable incident;
  - (e) the name, position and contact details of the person giving the notice;
  - (f) if known—the time, date and place at which the reportable incident occurred or was alleged or suspected to have occurred;
  - (g) the names of the persons directly involved in the reportable incident;
  - (h) if known—the level of cognition of the residential care recipients directly involved in the reportable incident.

*Additional information*

- (3) If under subsection 95C(2) of the Quality and Safety Commission Rules the Quality and Safety Commissioner requires the approved provider to give a notice including specified further information about the reportable incident within a specified period, the provider must give the Commissioner a notice including that information with the specified period.

*Form of notices*

- (4) A notice given under this section must:
- (a) be in writing; and
  - (b) be in the approved form.

Note: The Quality and Safety Commissioner must approve forms for the purposes of this Division: see section 95F of the Quality and Safety Commission Rules.

*Application*

- (5) This section applies to an incident that an approved provider becomes aware of on or after 1 October 2021.

**15NG Reporting not required in certain circumstances**

Despite sections 15NE and 15NF, an approved provider is not required to give a notice to the Quality and Safety Commissioner about a reportable incident under those sections if the Commissioner has decided that the provider is not required to do so under section 95D of the Quality and Safety Commission Rules.

**15NH Significant new information must be notified**

- (1) An approved provider must notify the Quality and Safety Commissioner of significant new information relating to a reportable incident as soon as reasonably practicable after becoming aware of the information if:
- (a) the provider notifies the Commissioner of the reportable incident under section 15NE or 15NF; and
  - (b) the provider later becomes aware of the significant new information.
- (2) The notification must:
- (a) be in writing; and
  - (b) be in the approved form.

Note: The Quality and Safety Commissioner must approve forms for the purposes of this Division: see section 95F of the Quality and Safety Commission Rules.

**15NI Final report about reportable incident must be given if required**

- (1) If required by the Quality and Safety Commissioner under subsection 95E(1) of the Quality and Safety Commission Rules, an approved provider must give the Commissioner a final report about a reportable incident.
- (2) The final report must be given:
- (a) within 84 days of the day a notice about the incident was first given to the Quality and Safety Commissioner under section 15NE or 15NF; or



(b) within such other period as is specified by the Commissioner under subsection 95E(2) of the Quality and Safety Commission Rules.

(3) The final report must:

(a) be in writing; and

(b) be in the approved form; and

(c) contain the information specified by the Quality and Safety Commissioner under subsection 95E(1) of the Quality and Safety Commission Rules.

Note: The Quality and Safety Commissioner must approve forms for the purposes of this Division: see section 95F of the Quality and Safety Commission Rules.

## **2 At the end of paragraph 8(3)(d) of Schedule 2**

Add:

(iv) managing and preventing incidents, including the use of an incident management system;

## **Part 2—Amendments of the Aged Care Quality and Safety Commission Rules**

### *Aged Care Quality and Safety Commission Rules 2018*

#### **3 After Part 6**

Insert:

### **Part 6A—Incident management and prevention**

#### **Division 1—Introduction**

##### **95A Simplified outline of this Part**

An approved provider who provides residential care, or flexible care in a residential setting, has a responsibility under Chapter 4 of the Aged Care Act to manage and take reasonable steps to prevent incidents. This includes implementing and maintaining an incident management system and complying with requirements relating to reportable incidents.

An approved provider must notify the Commissioner of reportable incidents. The Commissioner's powers in relation to reportable incidents include requiring the provider to give further information or a final report about a reportable incident and deciding that a notice is not required to be given about specified reportable incidents.

The Commissioner may take action to deal with a reportable incident including requiring the provider to undertake specified remedial action or to investigate. The Commissioner may also inquire into a reportable incident, a series of reportable incidents or an approved provider's compliance with requirements relating to reportable incidents.

#### **Division 2—Reportable incidents**

##### **Subdivision A—Purpose of this Division**

###### **95B Purpose of this Division**

This Division is made for the purposes of subsections 21(1) and (7) of the Commission Act.

## **Subdivision B—Notices and reports about reportable incidents**

### **95C Commissioner’s powers relating to notices about reportable incidents**

#### *Priority 1*

- (1) The Commissioner may do any of the following in relation to a notice about a priority 1 reportable incident required to be given by an approved provider under subsection 15NE(5) of the *Quality of Care Principles 2014*:
  - (a) require the provider to include in the notice specified further information that the Commissioner requires to deal with the reportable incident;
  - (b) require the provider to give the notice within a specified period;
  - (c) decide that the provider is not required to give the Commissioner a notice about the reportable incident under that subsection.

#### *Priority 2*

- (2) If an approved provider gives a priority 2 notice about a reportable incident under subsection 15NF(1) of the *Quality of Care Principles 2014*, the Commissioner may require the provider to give the Commissioner within a specified period a notice under subsection (3) of that section that includes specified further information that the Commissioner requires to deal with the reportable incident.

#### *Notice of decision*

- (3) The Commissioner must give the approved provider written notice of a decision under this section as soon as practicable after making the decision.

### **95D Commissioner may decide certain reportable incidents not required to be notified**

The Commissioner may decide that an approved provider is not required to give a notice under section 15NE or 15NF of the *Quality of Care Principles 2014* about a specified reportable incident if the Commissioner is satisfied that:

- (a) the same incident has been repeatedly alleged by a residential care recipient to have occurred; and
- (b) the allegation is the result of a delusion of the residential care recipient.

### **95E Commissioner may require final report on reportable incident**

- (1) If an approved provider gives a notice under section 15NE or 15NF of the *Quality of Care Principles 2014* about a reportable incident, the Commissioner may require the provider to give the Commissioner a final report that includes specified information about the reportable incident.
- (2) The Commissioner may specify the period in which the report is to be given.

### **95F Approved forms**

The Commissioner must, in writing, approve one or more forms for the purposes of a provision of Division 4 of Part 4B of the *Quality of Care Principles 2014* that provides for something to be in an approved form.

## **Subdivision C—Commissioner’s actions in dealing with reportable incidents**

### **95G Actions the Commissioner may take in dealing with reportable incidents**

- (1) The Commissioner may, upon receiving a notice about a reportable incident given by an approved provider under section 15NE or 15NF of the *Quality of Care Principles 2014*, do one or more of the following:
  - (a) refer the incident to police or another body with responsibility in relation to the incident (such as a relevant State or Territory agency);
  - (b) require or request the provider to undertake specified remedial action in relation to the incident within a specified period, including remedial action to ensure the safety, health and well-being of residential care recipients affected by the incident;
  - (c) require the provider to:
    - (i) carry out an internal investigation into the incident in the manner and within the period specified by the Commissioner; and
    - (ii) give the Commissioner a report on the investigation;
  - (d) require the provider to:
    - (i) engage an appropriately qualified and independent expert, at the expense of the provider, to carry out an investigation into the incident in the manner and within the period specified by the Commissioner; and
    - (ii) give the Commissioner a report on the investigation;
  - (e) carry out an inquiry in relation to the incident in accordance with section 95H;
  - (f) take any other action to deal with the reportable incident that the Commissioner considers reasonable in the circumstances.
- (2) If a reportable incident is investigated under paragraph (1)(c) or (d), the Commissioner may take any action to deal with the outcome of the investigation that the Commissioner considers appropriate.

### **95H Commissioner’s inquiries in relation to reportable incidents**

- (1) The Commissioner may inquire into any of the following:
  - (a) a reportable incident;
  - (b) a series of reportable incidents that relate to the aged care provided by one or more approved providers;
  - (c) the compliance of one or more approved providers with Division 4 of Part 4B of the *Quality of Care Principles 2014*.
- (2) An inquiry may be carried out under paragraph (1)(a) or (b) whether or not any of the reportable incidents have been notified to the Commissioner under section 15NE or 15NF of the *Quality of Care Principles 2014*.
- (3) An inquiry may be carried out as the Commissioner thinks fit.
- (4) Without limiting subsection (3), the Commissioner may:
  - (a) consult with other persons, organisations and governments on matters relating to the inquiry; and

- (b) request information that is relevant to the inquiry from any person; and
  - (c) provide opportunities for residential care recipients to participate in the inquiry.
- (5) The Commissioner may prepare and publish a report setting out the Commissioner's findings in relation to the inquiry.

**95J Taking of other action not prevented by this Part**

- (1) This Part does not prevent the Commissioner from taking action under the Commission Act in relation to:
- (a) an incident, including a reportable incident; or
  - (b) information received by the Commissioner under this Part or Part 4B of the *Quality of Care Principles 2014*.
- (2) This Part does not prevent the Commonwealth from taking action under the funding agreement that relates to a Commonwealth-funded aged care service in relation to:
- (a) an incident, including a reportable incident; or
  - (b) information received by the Commissioner under this Part or Part 4B of the *Quality of Care Principles 2014*.

## **Part 3—Consequential amendments**

### *Accountability Principles 2014*

#### **4 Section 4 (paragraph (d) of the note to the heading)**

Repeal the paragraph.

#### **5 Part 7**

Repeal the Part.

### *Aged Care Quality and Safety Commission Rules 2018*

#### **6 Section 4**

Insert:

*residential care recipient* has the same meaning as in the Aged Care Act.

#### **7 Paragraph 17(1)(d)**

After “Part 7B”, insert “or section 74EB, 74EC, 74ED or 74EE”.

#### **8 Subsection 21(2) (note 1)**

After “Part 7B”, insert “or Part 8A”.

#### **9 Subsection 23(1)**

Omit “Part 7B of”.

### *Quality of Care Principles 2014*

#### **10 Section 4 (at the end of the note to the heading)**

Add:

- ; (c) reportable incident;
- (d) residential care recipient;
- (e) staff member.

#### **11 Section 4**

Insert:

*priority 1 reportable incident* has the meaning given by section 15NE.

*Quality and Safety Commission Rules* means rules made under the Quality and Safety Commission Act.

### *Records Principles 2014*

#### **12 Section 8**

Repeal the section.