



## **Aged Care Legislation Amendment (Reportable Incidents) Instrument 2022**

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I, Anika Wells, Minister for Aged Care, make the following instrument.

Dated 28 September 2022

Anika Wells  
Minister for Aged Care

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## 1 Name

This instrument is the *Aged Care Legislation Amendment (Reportable Incidents) Instrument 2022*.

## 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. Sections 1 to 4 and anything in this instrument not elsewhere covered by this table	The day after this instrument is registered.	30 September 2022
2. Schedule 1	3 October 2022.	3 October 2022
3. Schedule 2	1 December 2022.	1 December 2022

Note: This table relates only to the provisions of this instrument as originally made.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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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 commencing 3 October 2022**

### ***Quality of Care Principles 2014***

#### **1 After paragraph 15NE(2)(b)**

Insert:

- (ba) of the kind covered by paragraph 54-3(2)(b) of the Act (about unlawful sexual contact or inappropriate sexual conduct inflicted on a residential care recipient); or

#### **2 After Part 5**

Insert:

### **Part 6—Application, saving and transitional provisions**

#### **Division 1—Amendments made by the Aged Care Legislation Amendment (Reportable Incidents) Instrument 2022**

##### **19 Application—certain priority 1 reportable incidents**

Paragraph 15NE(2)(ba), as inserted by the *Aged Care Legislation Amendment (Reportable Incidents) Instrument 2022*, applies in relation to an incident that occurs, is alleged to have occurred or is suspected of having occurred on or after 3 October 2022.

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## **Schedule 2—Amendments commencing 1 December 2022**

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

#### **1 Section 95A**

Repeal the section, substitute:

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

This Part sets out how the Commissioner may deal with reportable incidents notified by an approved provider or a service provider of a Commonwealth-funded aged care service.

The action that the Commissioner may take in relation to a reportable incident notified by an approved provider or such a service provider includes:

- (a) requiring the provider to give further information that the Commissioner requires to deal with the incident; and
- (b) requiring the provider to give a final report about the incident; and
- (c) referring the incident to police or persons or bodies with responsibilities in relation to the incident; and
- (d) requiring or requesting the provider to undertake remedial action in relation to the incident; and
- (e) requiring an investigation of the incident to be carried out.

The Commissioner may also carry out an inquiry in relation to certain matters, including a reportable incident for an approved provider.

#### **2 Division 2 of Part 6A (at the end of the heading)**

Add “for approved providers”.

#### **3 At the end of section 95E**

Add:

- (3) If the Commissioner is given a final report about a reportable incident, the Commissioner may take any action in response to the report that the Commissioner considers appropriate.

#### **4 Paragraph 95G(1)(a)**

Repeal the paragraph, substitute:

- (a) refer the incident to whichever of the following the Commissioner considers appropriate:
  - (i) the Australian Federal Police;
  - (ii) the police force or police service of a State or Territory;
- (aa) refer the incident to a person or body with responsibilities in relation to the incident;

**5 At the end of subparagraphs 95G(1)(c)(ii) and (d)(ii)**

Add “in the manner and within the period specified by the Commissioner”.

**6 At the end of paragraph 95H(1)(a)**

Add “for an approved provider”.

**7 Section 95J**

Repeal the section, substitute:

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

Nothing in this Division prevents the Commissioner from taking action under the Commission Act in relation to:

- (a) a reportable incident for an approved provider; or
- (b) information or documents given to the Commissioner under this Division or Part 4B of the *Quality of Care Principles 2014*.

**8 At the end of Part 6A**

Add:

**Division 3—Reportable incidents for service providers of Commonwealth-funded aged care services**

**Subdivision A—Purpose of this Division**

**95K Purpose of this Division**

This Division is made for the purposes of subsections 21(1) and (8) of the Commission Act.

**Subdivision B—Dealing with a reportable incident for a service provider**

**95L Commissioner may require further information in relation to a reportable incident**

If:

- (a) a service provider of a Commonwealth-funded aged care service notifies the Commissioner of a reportable incident for the service provider in accordance with the funding agreement that relates to the service; and
- (b) the Commissioner requires further information in order to deal with the reportable incident;

the Commissioner may, by written notice, require the service provider to give the Commissioner specified information in relation to the reportable incident within a specified period.

**95M Commissioner may deal with a reportable incident by taking certain action**

- (1) This section applies if a service provider of a Commonwealth-funded aged care service notifies the Commissioner of a reportable incident for the service provider in accordance with the funding agreement that relates to the service.



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- (2) The Commissioner may do any one or more of the following:
- (a) refer the reportable incident to whichever of the following the Commissioner considers appropriate:
    - (i) the Australian Federal Police;
    - (ii) the police force or police service of a State or Territory;
  - (b) refer the reportable incident to a person or body with responsibilities in relation to the incident;
  - (c) require or request the service provider to undertake specified remedial action in relation to the reportable incident within a specified period, including remedial action to ensure the safety, health and well-being of a recipient of the Commonwealth-funded aged care service affected by the incident;
  - (d) require the service provider:
    - (i) to carry out an internal investigation of the reportable incident in the manner, and within the period, specified by the Commissioner; and
    - (ii) to give the Commissioner a report of the investigation in the manner, and within the period, specified by the Commissioner;
  - (e) require the service provider to give the Commissioner, within the period specified in subsection (3), a final report about the reportable incident that includes information specified by the Commissioner;
  - (f) take any other action to deal with the reportable incident that the Commissioner considers reasonable in the circumstances.
- (3) The period for the purposes of paragraph (2)(e) is:
- (a) the period of 84 days starting on the day after the requirement under that paragraph is made; or
  - (b) such other period as is specified by the Commissioner.
- (4) If the Commissioner is given a report of an internal investigation of a reportable incident carried out by a service provider, the Commissioner may take any action to deal with the outcome of the investigation that the Commissioner considers appropriate.
- (5) If the Commissioner is given a final report about a reportable incident, the Commissioner may take any action in response to the report that the Commissioner considers appropriate.

### **95N Taking of other action not prevented by this Division**

Nothing in this Division prevents the Commonwealth from taking action under the funding agreement that relates to a Commonwealth-funded aged care service, or the Commissioner from taking action under the Commission Act, in relation to:

- (a) a reportable incident for the service provider of the service; or
- (b) information or documents given to the Commissioner under this Division; or
- (c) information or documents relating to such a reportable incident given to the Commissioner or the Commonwealth under the funding agreement.

## **9 At the end of Part 9**

Add:

## **Division 4—Amendments made by the Aged Care Legislation Amendment (Reportable Incidents) Instrument 2022**

### **166 Final report about reportable incident**

Subsection 95E(3), as inserted by the *Aged Care Legislation Amendment (Reportable Incidents) Instrument 2022*, applies in relation to a final report given to the Commissioner before, on or after 1 December 2022.

### **167 Action by Commissioner to deal with a reportable incident**

Paragraphs 95G(1)(a) and (aa), as inserted by the *Aged Care Legislation Amendment (Reportable Incidents) Instrument 2022*, apply in relation to a reportable incident notified before, on or after 1 December 2022.

### **168 Reportable incidents for a service provider of a Commonwealth-funded aged care service**

Division 3 of Part 6A, as inserted by the *Aged Care Legislation Amendment (Reportable Incidents) Instrument 2022*, applies in relation to a reportable incident notified on or after 1 December 2022.