

Aged Care Legislation Amendment (Reportable Incidents) Instrument 2022

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Note: This table relates only to the provisions of this instrument as originally made.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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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

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.

(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.