



Aged Care Legislation Amendment (Incident Management and Reporting) Instrument 2022

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

Dated 30 November 2022

Anika Wells
Minister for Aged Care

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1 Name

This instrument is the *Aged Care Legislation Amendment (Incident Management and Reporting) 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. The whole of this instrument	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Note: This table relates only to the provisions of this instrument as originally made.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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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

Aged Care Quality and Safety Commission Rules 2018

1 Section 4 (definition of residential care recipient)

Repeal the definition.

2 Paragraphs 95D(a), (b), 95G(1)(b) and 95H(4)(c)

Omit “residential”.

Quality of Care Principles 2014

3 Sections 1 and 3

Omit “These principles are”, substitute “This instrument is”.

4 Section 4 (note)

Omit “these principles”, substitute “this instrument”.

5 Section 4 (paragraph (d) of the note)

Repeal the paragraph.

6 Section 4

Omit “In these principles”, substitute “In this instrument”.

7 Section 15F (note)

Omit “residential”.

8 Paragraph 15K(2)(a)

Omit “residential care, or flexible care provided in a residential setting, to a residential”, substitute “aged care to a”.

9 Subparagraphs 15K(2)(b)(i) and (ii)

Omit “residential”.

10 Paragraphs 15K(3)(a) and (b)

Omit “residential care recipient”, substitute “care recipient”.

11 Subsection 15LA(1)

Omit “residential”.

12 Subsection 15M(1)

Omit “who provides residential care, or flexible care provided in a residential setting,”.

13 Subparagraphs 15MC(1)(b)(i) and (iii)

Omit “residential” (wherever occurring).

14 Section 15N (note)

Omit “who provides residential care, or flexible care provided in a residential setting,”.

15 Subsection 15NA(1) (note 1)

Omit “residential care, or flexible care provided in a residential setting, to a residential”, substitute “aged care to a”.

16 Subsection 15NA(1) (note 1)

After “subsection 15K(2)”, insert “of this instrument”.

17 Subsection 15NA(1) (note 2)

Omit “residential”.

18 Subsection 15NA(1) (note 3)

Omit “section 15NB of this instrument which is”, substitute “sections 15NAA and 15NB of this instrument which are”.

19 Subsections 15NA(2) to (8)

Omit “residential” (wherever occurring).

20 Paragraph 15NA(8)(a)

Before “reasonable steps”, insert “the care recipient was provided with residential care, or flexible care provided in a residential setting, and”.

21 Paragraph 15NA(8)(b)

Omit “death is”, substitute “care recipient’s death was”.

22 Subsections 15NA(9) and (10)

Omit “residential” (wherever occurring).

23 Subsection 15NA(11)

Omit “residential care recipient” (wherever occurring), substitute “care recipient”.

24 After section 15NA

Insert:

15NAA Additional reportable incident

- (1) This section is made for the purposes of paragraph 54-3(5)(a) of the Act.
- (2) Despite subsection 54-3(2) of the Act, it is a *reportable incident* if:
 - (a) a care recipient goes missing in the course of an approved provider providing home care, or flexible care provided in a community setting, to the care recipient; and
 - (b) there are reasonable grounds to report that fact to police.

25 Subsection 15NB(2)

Omit “residential” (first occurring).

26 Subsection 15NB(2)

Omit “reportable incident”, substitute “*reportable incident*”.

27 Paragraph 15NB(2)(b)

Omit “these principles (assuming that that Part applied to the residential”, substitute “this instrument (assuming that that Part applied to the”.

28 After subsection 15NB(2)

Insert:

- (2A) Despite paragraph 54-3(2)(g) of the Act, the use of a restrictive practice in relation to a care recipient is not a *reportable incident* if:
- (a) the restrictive practice is used in the course of providing home care or flexible care in a community setting; and
 - (b) before the restrictive practice is used, the following matters were set out in the care and services plan for the care recipient:
 - (i) the circumstances in which the restrictive practice may be used in relation to the recipient, including the recipient’s behaviours of concern that are relevant to the need for the use;
 - (ii) the manner in which the restrictive practice is to be used, including its duration, frequency and intended outcome; and
 - (c) the restrictive practice is used:
 - (i) in the circumstances set out in the plan; and
 - (ii) in the manner set out in the plan; and
 - (iii) in accordance with any other provisions of the plan that relate to the use; and
 - (d) details about the use of the restrictive practice are documented as soon as practicable after the restrictive practice is used.

29 At the end of section 15NB

Add:

- (4) Despite subsection 54-3(2) of the Act, an incident is not a *reportable incident* if:
- (a) the incident occurred, is alleged to have occurred, or is suspected of having occurred, in connection with the provision of home care, or flexible care provided in a community setting, to a care recipient by an approved provider; and
 - (b) apart from this subsection, the incident would be a reportable incident under paragraph 54-3(2)(f) of the Act (which deals with neglect of care recipients), but would not otherwise be a reportable incident; and
 - (c) the incident results from a choice made by the care recipient about the care or services the approved provider is to provide to the care recipient, or how the care or services are to be provided by the approved provider; and
 - (d) before the incident occurred, is alleged to have occurred, or is suspected of having occurred, the choice had been communicated by the care recipient to the approved provider, and the approved provider had recorded the choice in writing.

30 Paragraphs 15NE(2)(a) and (ba)

Omit “residential”.

31 At the end of subsection 15NE(2)

Add:

; or (d) of the kind covered by subsection 15NAA(2) of this instrument (about a care recipient going missing in the course of the provision of home care, or flexible care provided in a community setting).

32 Subparagraph 15NE(3)(c)(i)

Omit “residential”.

33 Paragraph 15NE(3)(h)

Omit “residential”.

34 Subparagraph 15NF(2)(c)(i)

Omit “residential”.

35 Paragraph 15NF(2)(h)

Omit “residential”.

36 At the end of Division 1 of Part 6

Add:

20 Application—certain incidents in a residential care setting

Subsections 15NA(8) and 15NB(2), as amended by the *Aged Care Legislation Amendment (Incident Management and Reporting) Instrument 2022*, apply in relation to an incident that occurs, is alleged to have occurred or is suspected of having occurred before, on or after 1 December 2022.

21 Application—certain incidents in a home care setting

Section 15NAA, subsection 15NB(4) and paragraph 15NE(2)(d), as inserted by the *Aged Care Legislation Amendment (Incident Management and Reporting) Instrument 2022*, apply in relation to an incident that occurs, is alleged to have occurred or is suspected of having occurred on or after 1 December 2022.