

EXPLANATORY STATEMENT

Issued at the authority of the Minister for Aged Care

Aged Care Act 1997

Aged Care Legislation Amendment (Quarterly Financial Reports) Principles 2023

Purpose

The purpose of the *Aged Care Legislation Amendment (Quarterly Financial Reports) Principles 2023* (Amendment Principles) is to amend the:

- *Accountability Principles 2014* (Accountability Principles); and
- *Information Principles 2014* (Information Principles),

to enhance oversight and transparency of financial information reported by approved providers of aged care. These amendments seek to provide greater assurance to care recipients, the Australian public and the Australian Government of approved aged care providers' financial viability and to improve the accuracy of their financial reporting.

The Amendment Principles are a legislative instrument for the purposes of the *Legislation Act 2003*.

Background

The *Aged Care Act 1997* (the Act) provides for the regulation and funding of aged care services. Persons who are approved under the *Aged Care Quality and Safety Commission Act 2018* to provide aged care services (approved providers) can be eligible to receive subsidy payments under the Act in respect of the care they provide to approved care recipients.

Section 63-1 of the Act sets out the responsibilities of an approved provider in relation to accountability for the aged care provided by the approved provider through an aged care service. These responsibilities include any such other responsibilities as are specified in the *Accountability Principles* (paragraph 63-1(1)(m) of the Act).

As part of the 2021-22 Budget, a new financial and prudential monitoring, compliance and intervention framework (the Framework) was announced for approved providers of aged care services. The Framework is designed to increase the Government's oversight and transparency of approved providers' financial performance, improve the financial resilience of the sector, and enhance the Government's powers necessary to achieve desired market outcomes. The Framework is being implemented over three phases. The Amendment Principles implements amendments to complement amendments that were brought in under the second phase of the Framework.

In September 2022, the *Aged Care Legislation Amendment (Financial Information) Principles 2022* amended the Accountability Principles to introduce a new responsibility for certain approved providers to give a quarterly financial report to the Secretary of the Department of Health and Aged Care (department). The Amendment Principles build on these amendments to allow for the Secretary to request further information or documents about a matter included in or required by a quarterly financial report.

The Amendment Principles also responds, in-part, to recommendation 133 of the Royal Commission’s final report, which was for more stringent financial reporting requirements for approved providers.

Authority

Under section 96-1 of the Act, the Minister may, by legislative instrument, make Principles (as specified in the table in the Act by reference to the provisions specified in column 3 of the table). Section 96-1 of the Act further specifies that the Principles may provide for matters required or permitted, or necessary or convenient, in order to give effect to that relevant Part or section of the Act. This includes the Accountability Principles and the Information Principles.

Reliance on subsection 33(3) of the *Acts Interpretation Act 1901*

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue an instrument of a legislative or administrative character (including rules, regulations, or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Commencement

The Amendment Principles commences the day after it is registered on the Federal Register of Legislation.

Consultation

In the 2018-19 Budget, the Government announced that it supported strengthening the prudential framework for aged care providers (Better Quality Care - Managing Prudential Risk in Residential Care measure). In 2019, the department released a public Discussion Paper “Managing Prudential Risk in Residential Aged Care” (Discussion Paper) which consulted the sector and the broader community about the issue of managing prudential risk in residential aged care. The Discussion Paper consulted on reform options recommended through two previous reviews; the Ernst & Young 2017 Review of Aged Care legislation which provides for the regulation and protection of Refundable Accommodation Payments in Residential Aged Care; and the 2017 Legislated Review of Aged Care (Tune Review). Both reviews and the responses to the Discussion Paper supported greater transparency and improved provider disclosure in financial reporting. In response to this consultation and the

final report of the Royal Commission into Aged Care Quality and Safety (Royal Commission), the Australian Government announced that it would be implementing a new Financial and Prudential Monitoring, Compliance and Intervention Framework (the framework) for the aged care sector.

Further consultation on the Amendment Principles did not occur as appropriate consultation had already been undertaken in 2019 by the department, and the Amendment Principles are consistent with the outcomes of that consultation and the intent of the framework. The Amendment Principles are essential to ensure the framework is robust and effective.

Details of the Aged Care Legislation Amendment (Quarterly Financial Reports) Principles 2023

Section 1 provides that the name of the instrument is the *Aged Care Legislation Amendment (Quarterly Financial Reports) Principles 2023* (Amendment Principles).

Section 2 provides that the Amendment Principles commences the day after it is registered on the Federal Register of Legislation.

Section 3 states that the authority for making this instrument is the *Aged Care Act 1997*.

Section 4 provides that 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, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 – Amendments

Accountability Principles 2014

Item 1 – At the end of Part 4A

Item 1 inserts new section 44 into the Accountability Principles. Section 44 enables the Secretary of the Department of Health and Aged Care to, by notice, require an approved provider to give the Secretary:

- updated specified information about matters that are included in, or are required to be included in, a quarterly financial report; or
- specified information or documents the Secretary considers are or may be relevant to assessing the accuracy of a quarterly financial report or a notice for updated information.

This will provide the Government with more assurance about the financial performance of aged care providers and the accuracy of the financial information they report to the Government.

New subsection 44(1) specifies that an approved provider must comply with a notice provided by the Secretary under subsection 44(3) or subsection 44(5) within the period specified in the notice or, if no period is specified in the notice, within 28 days after the day when the notice is given.

New subsection 44(2) specifies that an approved provider will be taken to comply with a notice provided by the Secretary under subsections 44(3) or 44(5) only if the approved provider gives the information or documents in a form, if any, approved by the Secretary for the purposes of this subsection.

New subsection 44(3) specifies that the Secretary may at any time, by notice in writing, require an approved provider to give the Secretary updated information about a matter specified in the notice if the information about the matter is:

- included, or
- required to be included,

in a quarterly financial report given to the Secretary in accordance with section 43 of the Accountability Principles.

New subsection 44(4) specifies that a notice under subsection 44(3) may require an approved provider to give updated information about a matter in relation to a period that is the same as the period to which a quarterly financial report for the provider relates, or a period different from the period to which such report relates. This provision applies so that the Secretary may:

- access updated information to determine a provider's position for a different period; or
- confirm that the requirements for a quarterly financial report have been satisfied and the information previously reported was accurate.

New subsection 44(5) specifies that the Secretary may at any time, by notice in writing, require an approved provider to give the Secretary specified information or documents that the Secretary considers are, or may be, relevant to assessing the accuracy of:

- information included in a quarterly financial report for the provider given to the Secretary in accordance with section 43; or
- updated information given to the Secretary by the provider in accordance with a notice under subsection 44(3) of this section.

New subsection 44(6) clarifies that a notice under subsection 44(5) may require an approved provider to give the Secretary information or documents, whether or not the information or documents are required by or under the Act to be included in a quarterly financial report. This is intended to enable the Secretary to validate and assess the accuracy of information provided through the quarterly financial report and access supporting information or documents to determine the current financial position of a provider, despite the fact that the information or documents requested may not have been required to be included in the quarterly financial report for the provider.

Item 2 – In the appropriate position in Part 8

Item 2 inserts new section 61 into the Accountability Principles, which is an application provision for new section 44 as introduced by the Amendment Principles.

New section 61 provides that new section 44 (added by the Amendment Principles) applies in relation to a quarterly financial report given to the Secretary on or after the commencement of the Amendment Principles, whether the period to which the report relates begins before, on or after that commencement.

The intent of this application provision is to clarify that the Secretary may make a request under new subsections 44(3) and (5) for information or documents in relation to a quarterly financial report for a reporting period that began before commencement of the Amendment Principles, provided that the report is given to the Secretary on or after commencement of the Amendment Principles.

Information Principles 2014

Item 3 - After subparagraph 8(f)(v)

Item 3 inserts a new subparagraph (va) into section 8(f) of the Information Principles. This provision will provide that, for the purposes of paragraph 86-9(1)(m) of the Act, the Secretary may make publicly available information included in updated information given to the Secretary under section 44 of the Accountability Principles in compliance with a notice under subsection 44(3).

This item aims to increase transparency by enabling the Secretary to publish updated information about a matter included in a quarterly financial report, given to the Secretary under new section 44 as introduced by the Amendment Principles. This includes any information taken or derived from the information in subparagraph 8(f)(va). For the avoidance of doubt, this may include information that is summarised or manipulated prior to publishing.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Aged Care Legislation Amendment (Quarterly Financial Reports) Principles 2023

The *Aged Care Legislation Amendment (Quarterly Financial Reports) Principles 2023* (Amendment Principles) are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Disallowable Legislative Instrument

The Amendment Principles amend the:

- *Accountability Principles 2014* (Accountability Principles); and
- *Information Principles 2014* (the Information Principles),

to enhance oversight and transparency of financial information reported by approved providers of aged care. These amendments seek to provide greater assurance to care recipients, the Australian public and the Australian Government of approved aged care providers' financial viability and to improve the accuracy of their financial reporting.

The Amendment Principles are a legislative instrument for the purposes of the *Legislation Act 2003*.

Human rights implications

This Amendment Principles engages the following human rights:

- right to the highest attainable standard of physical and mental health, as contained in article 12(1) of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR); and
- right to an adequate standard of living including adequate food, clothing, and housing and to the continuous improvement of living conditions, as contained in article 11(1) of the ICESCR.

The Amendment Principles are designed to enhance oversight and transparency of the performance of aged care approved providers. It does this by enabling the Government to better monitor approved aged care providers' financial viability and the accuracy of their reporting; and by increasing transparency around information providers report to the Secretary. In doing so, it will reduce the risk of a sudden, unforeseen cessation of care for aged care recipients and it will mean that care recipients and the public can have greater confidence in the accuracy of any information about aged care services that is made public. As a result, the Amendment Principles promotes the right to *attain the highest standard of physical and mental health, and the right to an adequate standard of living*.

Conclusion

The Amendment Principles are compatible with human rights as they promote the rights to an adequate standard of living and to attain the highest standard of physical and mental health.

Circulated by the authority of the Minister for Aged Care, the Hon Anika Wells MP