

EXPLANATORY STATEMENT

Issued at the authority of the Minister for Aged Care

Aged Care Act 1997

Aged Care Legislation Amendment (Transparency of Information) Principles 2023

Purpose

The purpose of the *Aged Care Legislation Amendment (Transparency of Information) Principles 2023* (Amending Principles) is to specify the information in relation to aged care services which the Secretary must make publicly available. The Amending Principles amend the *Accountability Principles 2014* (Accountability Principles) and the *Information Principles 2014* (Information Principles).

The Amending Principles support the implementation of changes made to the *Aged Care Act 1997* (Aged Care Act) by Schedule 5 to the *Aged Care and Other Legislation Amendment (Royal Commission Response) Act 2022* (RCR Amending Act) and Schedule 3 to the *Aged Care Amendment (Implementing Care Reform) Act 2022* (ICR Amending Act). The Amending Principles specify:

- changes to the information about an aged care service that an approved provider is required to report to the Secretary for the purposes of sections 63-1G(1) and 63-1(1)(m) of the Aged Care Act;
- information about an aged care service that the Secretary may make publicly available for the purposes of paragraph 86-9(1)(m) of the Aged Care Act; and
- information in relation to aged care services that the Secretary must make publicly available for the purposes of subsection 86-10(1) of the Aged Care Act.

By obtaining and publishing information on the operations of approved providers, as well as information about income, expenditure, and profits (or losses), the Amending Principles are aimed at assisting current and prospective aged care recipients and their representatives to better understand the operations and financial information of approved providers and services.

This increased transparency is intended to support choice by empowering current and prospective care recipients to make more informed care decisions. It will also increase the accountability of aged care providers and their services.

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

Background

The Royal Commission into Aged Care Quality and Safety (Royal Commission) found that there was a lack of transparency and accountability about approved providers' operations. The Amending Principles respond in part to Recommendation 88 of the final report of the Royal Commission, by requiring the Secretary to make publicly available specified information about approved providers' operations. It also implements a commitment by the

Australian Government to increase financial transparency in aged care, by publishing more information on approved providers' profits and how they spend their funds.

Schedule 5 to the RCR Amending Act amended the Aged Care Act to introduce new governance responsibilities for approved providers, including specific requirements for the implementation of those responsibilities, as specified in the Accountability Principles.

Schedule 3 to the ICR Amending Act amended the Aged Care Act to introduce a requirement for the Secretary to publish information in relation to aged care services, including approved providers, as specified in the Information Principles.

Authority

Section 96-1 of the Aged Care Act provides that the Minister may, by legislative instrument, make Principles providing for matters required or permitted, or necessary or convenient, to give effect to the relevant Part or section of the Aged Care Act.

Accountability Principles

The Accountability Principles are made under section 96-1 of the Aged Care Act and provide for matters required or permitted, or necessary or convenient, to give effect to Part 4.3 of the Aged Care Act.

Information Principles

The Information Principles are made under section 96-1 of the Aged Care Act and provide for matters required or permitted, or necessary or convenient, to give effect to Part 6.3 of the Aged Care Act.

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 Amending Principles commence on 1 July 2023.

Consultation

The Department undertook targeted consultation with aged care stakeholder and consumer reference groups on provider governance initiatives, including information to be collected and published about providers' operations, during the period of December 2021 to August 2022.

An Information and Consultation Paper and accompanying questionnaire on approved provider governance reforms was available to the sector for comment from 21 December 2021 to 18 January 2022. The Department received 548 questionnaire

responses and 12 written submissions from a range of aged care providers, staff, aged care recipients, consumer representatives, and peak organisations.

The consultations showed that there was strong support from respondents regarding the proposed information to be collected and published about providers' operations. Suggestions included additional information that could be reported. Concerns were raised regarding privacy issues particularly in relation to publication of the name and role of each key personnel of the service provider.

The Amending Principles have been prepared following careful consideration of all feedback provided, along with specific consultation with consumer and aged care sector reference groups, and the Aged Care Quality and Safety Commission (Commission).

Further consultation on the financial information of aged care providers was undertaken over July and August 2022, with the Older Persons Advocacy Network, the Council of Elders, relevant unions, and peak bodies.

Additional consultations with aged care provider representatives and the Commission were undertaken in February 2023, as a result of which further changes were considered and made to the Amending Principles, including to enhance the confidentiality of diversity information.

The Department published the draft Amending Principles and accompanying Explanatory Statement on its website on 2 May 2023 and provided a 14-day period for comment. Feedback received was broadly supportive of the Amending Principles, with recommendations focused on how provider information, particularly financial information on income and expenditure, should be categorised and presented to ensure its relevance and accessibility to care recipients. Amendments were made to the Explanatory Statement following this feedback to clarify the Department's intent.

Regulation Impact Statement

The Office of Impact Analysis (OIA) was consulted during the development of both the RCR Amending Act and ICR Amending Act. In respect of Schedule 3 of the ICR Amending Act, which the Amending Principles are made under, the Office of Impact Analysis assessed these amendments as non-regulatory (Reference OBPR 22-02577). The financial information to be published under new paragraphs 8A(2)(a)-(c) and 8A(4)(a) is consistent with this advice.

OIA was also consulted during the development of the preceding amendments to the Accountability Principles, which are not substantially altered in regard to regulatory impact by these further amendments (Reference OBPR22-01446).

OIA was further consulted on the publication of other information, as per new subsections 8A(3) and 8A(4) and assessed these amendments as having no regulatory impact (Reference OBPR 22-02577).

Details of the Information Amendment (Transparency of Information) Principles 2023

Section 1 provides that the name of the instrument is the *Aged Care Legislation Amendment (Transparency of Information) Principles 2023* (Amending Principles).

Section 2 provides that the Amending Principles commence on 1 July 2023.

Section 3 states that the authority for making the Amending Principles is the *Aged Care Act 1997*.

Section 4 provides that each instrument that is specified in a Schedule to the instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the instrument has effect according to its terms.

Schedule 1 – Amendments

Accountability Principles 2014

Item 1 – Subparagraph 53E(c)(i)

Item 1 amends subparagraph 53E(c)(i) of the Accountability Principles by replacing the words “the diversity of the governing body of the approved provider in the reporting period” with “the representation of different demographic groups in the membership of the governing body (but, for any group, only if a member of the governing body who is a member of the group consents to that information being provided)”.

This amendment clarifies the information which will be sought from approved providers of residential care and home care in accordance with paragraph 53E(c), being confirmation or otherwise of the representation of different demographic groups in the approved provider’s governing body. This information is to be gathered in order to ascertain the diversity of the governing body and to improve the transparency of the approved provider.

The requirement that consent be obtained from governing body members prior to this information being provided to the Secretary has been added to afford a reasonable level of protection to the personal information of governing body members, noting that information on diversity is sensitive information within the definition provided by the *Privacy Act 1988*.

Item 2 – Paragraphs 53G(2)(b) and (c)

Item 2 amends paragraphs 53G(2)(b) and 53G(2)(c) of the Accountability Principles by omitting the words “and must be signed by a member of the approved provider’s governing body on behalf of all members of the governing body”. These words have been moved to paragraph 53G(2)(e) (see Item 3) to make the application of the requirements clearer.

Item 3 – After paragraph 53G(2)(c)

Item 3 inserts new paragraphs 53G(2)(d) and 53G(2)(e) into section 53G of the Accountability Principles.

Paragraph 53G(2)(d)

Paragraph 53G(2)(d) provides that the approved form for collecting the specified statement under section 53G may require additional statements or information to be made beyond those that are set out in paragraphs 53G(2)(b) and 53G(2)(c). This is to allow the Department a discretion in requesting information which is incidental to the information set out in paragraphs 53G(2)(b) and 53G(2)(c). For example, asking providers to disclose whether the reported non-compliance also ceased during the relevant reporting period.

Paragraph 53G(2)(e)

Paragraph 53G(2)(e) repeats the wording previously included in paragraphs 53G(2)(b) and 53G(2)(c) advising that a statement made under section 53G must be signed by a member of the approved provider's governing body on behalf of all members of the governing body. This requirement has been relocated for clarity purposes (see Item 2).

Item 4 – Subsection 53G(2) (example)

Item 4 amends the example given under subsection 53G(2) of the Accountability Principles by replacing the word “Under” with “For subparagraph (c)(iii), under”. This amendment is consequential to the additions made by section subsection 53G(2) by Item 3.

Information Principles 2014

Item 5 – Section 4

Item 5 inserts definitions of “financial year” and “staff member” into section 4 of the Information Principles.

- “financial year” is given the meaning given by subsection 32(1) of the Accountability Principles.
- “staff member” is given the meaning given by section 4 of the Accountability Principles.

Item 6 – Paragraph 6(1)(f)

Item 6 amends paragraph 6(1)(f) of the Information Principles by omitting the word “Director” and substituting “Chief Executive Officer”. This reflects the change in title of the head of the Australian Institute of Health and Welfare, as per the *Australian Institute of Health and Welfare Amendment Act 2018*.

Item 7 – Section 7

Item 7 repeals section 7 of the Information Principles and inserts a new section 7, which sets out the purpose of Part 3 of the Information Principles.

Subsection 7(a)

New subsection 7(a) specifies that for the purposes of paragraph 86-9(1)(m) of the Aged Care Act, Part 3 of the Information Principles specifies information about an aged care service that the Secretary may make publicly available.

Subsection 7(b)

New subsection 7(b) specifies that for the purposes of subsection 86-10(1) of the Aged Care Act, Part 3 of the Information Principles specifies information in relation to aged care services that the Secretary must make publicly available.

Item 8 – Section 8 (at the end of the heading)

Item 8 inserts the words “that may be made publicly available” after “Information about an aged care service” in the heading of section 8 of the Information Principles. This clarifies that section 8 only deals with the types of information that the Secretary may make publicly available under paragraph 86-9(1)(m) of the Aged Care Act.

Item 9 – Section 8

Item 9 amends section 8 of the Information Principles by replacing the words “The information is the following” with “For the purposes of paragraph 86-9(1)(m) of the Aged Care Act, the following is information about an aged care service that the Secretary may make publicly available”. This clarifies the scope of section 8.

Item 10 – At the end of section 8

Item 10 inserts new paragraphs 8(h) and 8(i) into section 8 of the Information Principles.

Paragraph 8(h)

New paragraph 8(h) complements the provisions in new section 8A (see Item 11) by enabling the Secretary to publish information received from approved providers that is specified in sections 53E and 53F of the Accountability Principles. Sections 53E and 53F of the Accountability Principles require certain approved providers to give the Secretary specified information in relation to a reporting period.

Paragraph 8(i)

New paragraph 8(i) also complements the provisions in new section 8A (see Item 11) by enabling the Secretary to publish information received from approved providers that is included in a statement under section 53G of the Accountability Principles. Section 53G of the Accountability Principles requires certain approved providers to prepare and give the Secretary a statement in relation to a reporting period.

The publication of the information included in the statement received in accordance with section 53G includes any information taken or derived from those statements. For the avoidance of doubt, this may include information that is summarised or otherwise manipulated prior to publishing – which will enable the Secretary to publish information in a more easily understood format.

New paragraphs 8(h) and (i) provide the Secretary a discretion to publish additional information received from approved providers that may not otherwise be specified under new section 8A.

Item 10 also inserts a note at the end of section 8 of the Information Principles specifying that information disclosed under subsection 86-9(1) of the Aged Care Act must not include personal information about a person as per subsection 86-9(2) of the Aged Care Act.

A similar note was previously included in the repealed section 7 of the Information Principles (see Item 7). It ensures the protection of the personal information of aged care recipients and their representatives, as well as staff members of providers and other involved persons.

Item 11 – At the end of Part 3

Item 11 inserts new section 8A into the Information Principles, which specifies information about aged care services that the Secretary must make publicly available in accordance with subsection 86-10(1) of the Aged Care Act. Approved providers are required to give information about the matters mentioned in section 8A under the Aged Care Act and instruments and agreements made under, or for the purposes of, the Aged Care Act.

Subsection 8A(1)

New subsection 8A(1) specifies that section 8A is made for the purposes of subsection 86-10(1) of the Aged Care Act. The note specifies that information disclosed under subsection 86-10(1) of the Aged Care Act must not include personal information about an individual, other than an individual who is one of the key personnel of an approved provider (as defined by the *Aged Care Quality and Safety Commission Act 2018* (Quality and Safety Commission Act), as per subsection 86-10(3) of the Aged Care Act.

Residential care services—income and expenditure

Subsection 8A(2)

New subsection 8A(2) specifies that the Secretary must make publicly available information about the following matters in relation to a residential care service operated by an approved provider:

- the approved provider’s income in relation to the service in a financial year for the provider;
- expenditure by the approved provider in relation to the service in a financial year for the provider on:
 - care, including labour costs;
 - catering;
 - maintenance;
 - cleaning and laundry;
 - administration;
- the approved provider’s profit or loss in relation to the service in a financial year for the provider.

It is intended that the publication of this information will assist current and prospective care recipients to make more informed decisions about aged care services. It will also increase transparency and accountability by enabling people to better understand how much approved providers of residential care services spend on care, nursing, food, maintenance, cleaning, administration, and their profits or losses in a given financial year for the provider in relation to that service.

To clarify, this provision requires the Secretary to publish information in respect of each “residential care service” but not at the aggregated level for the entire approved provider. A “residential care service” has the meaning as in the Aged Care Act (see item 1 of Schedule 1).

The provision is intended to give the Secretary discretion in how exactly to publish the information specified in the subsection. This will enable the Secretary to publish the information in a format that will be most useful and easy for older Australians to understand, and to amend how it is published over time. For example, the Secretary may publish some or all information at a “per resident per day” rate in relation to the residential care service. This “per resident per day” rate would enable more direct comparisons between services than aggregated figures, which will be affected by several factors including the number of care recipients the approved provider delivers services to.

Residential care services—other information

Subsection 8A(3)

New subsection 8A(3) specifies that the Secretary must make publicly available information about the matters set out in paragraphs 8A(3)(a) to 8A(3)(h) in relation to a residential care service operated by an approved provider.

Paragraph 8A(3)(a)

New paragraph 8A(3)(a) specifies that the Secretary must make publicly available, in relation to a residential care service operated by an approved provider, information about the kind of feedback and complaints received by the approved provider in respect of the service in a reporting period for the provider.

Information will be presented in aggregate form around the kinds of feedback and complaints that have been raised in relation to the service. For example, this may include feedback and complaints about aspects of the quality of care such as food and catering, clinical care, and choice and dignity. This information is to provide current and prospective aged care recipients with greater transparency around the type of issues raised in positive feedback and in complaints about a service, which may prompt them to consider and discuss these matters with the provider when determining if the service is right for them.

Publications made under this paragraph will not include any personal information about complainants or respondents, nor is there an intention to publish the number of complaints received by an approved provider in respect of the service. Low or high number of complaints alone do not reflect the quality of a service but instead may be related to other factors, such as the ease of making a complaint.

Paragraph 8A(3)(b)

New paragraph 8A(3)(b) specifies that the Secretary must make publicly available, in relation to a residential care service operated by an approved provider, information about improvements made by the approved provider in relation to the quality of the service in a reporting period for the provider.

This paragraph provides a balance against the information required to be published under other paragraphs (particularly paragraph 8A(3)(a)), ensuring that where providers are taking active steps to improve the quality of a service, including in response to previous complaints and feedback, this information is made publicly available to assist current and prospective aged care recipients.

Paragraph 8A(3)(c)

New paragraph 8A(3)(c) specifies that the Secretary must make publicly available, in relation to a residential care service operated by an approved provider, information about the representation of different demographic groups in the membership of the governing body of the approved provider in a reporting period for the provider.

The publication of this information will assist current and prospective aged care recipients to consider the diversity of approved providers' governing bodies, which may be relevant to aged care recipients in determining if a provider is a good fit for them. Such publication also encourages approved providers to diversify the membership of their governing body, which can support more effective decision-making in the aged care sector. Australia is a diverse society and our aged care recipients reflect this diversity. Diverse governing boards assist to promote a culture of inclusivity.

Paragraph 8A(3)(d)

New paragraph 8A(3)(d) specifies that the Secretary must make publicly available, in relation to a residential care service operated by an approved provider, information about initiatives that the approved provider has implemented in a reporting period for the provider to support a diverse and inclusive environment, in relation to the service, for care recipients and staff members.

The publication of this information will support aged care recipients in determining if a provider is a good fit for them.

Paragraph 8A(3)(e)

New paragraph 8A(3)(e) specifies that the Secretary must make publicly available, in relation to a residential care service operated by an approved provider, information about the total number of persons to whom residential care is provided through the service at the end of a reporting period for the approved provider.

The publication of this information, along with data published under paragraphs 8A(3)(f)-(h), will assist current and prospective aged care recipients to understand the size and capacity of a particular service operated by a provider. This information may be relevant to aged care recipients in determining whether a provider and their service is a good fit for them.

Paragraph 8A(3)(f)

New paragraph 8A(3)(f) specifies that the Secretary must make publicly available, in relation to a residential care service operated by an approved provider, information about the occupancy rate during a reporting period for the approved provider of places allocated in respect of the service.

This information will be drawn from an aggregation of information known to the Department, being the ratio of available places to allocated places within the relevant service.

The publication of this information, along with data published under paragraphs 8A(3)(e) and 8A(3)(g)-(h), will assist current and prospective aged care recipients to understand the size and capacity of a particular service operated by a provider. This information may be relevant to aged care recipients in determining whether a provider and their service is a good fit for them.

Paragraph 8A(3)(g)

New paragraph 8A(3)(g) specifies that the Secretary must make publicly available, in relation to a residential care service operated by an approved provider, information about the number of persons who entered the service during a reporting period for the approved provider.

The publication of this information, along with data published under paragraphs 8A(3)(e)-(f) and 8A(3)(h), will assist current and prospective aged care recipients to understand the size, and capacity of a particular service operated by a provider. This information may be relevant to aged care recipients in determining whether a provider and their service is a good fit for them.

Paragraph 8A(3)(h)

New paragraph 8A(3)(h) specifies that the Secretary must make publicly available, in relation to a residential care service operated by an approved provider, information about the number of persons for whom the approved provider ceased to provide residential care through the service during a reporting period for the provider.

The publication of this information, along with data published under paragraphs 8A(3)(e)-(g), will assist current and prospective aged care recipients to understand the size and capacity of a particular service operated by a provider. This information may be relevant to aged care recipients in determining whether a provider and their service is a good fit for them.

Home care services

Subsection 8A(4)

New subsection 8A(4) specifies that the Secretary must make publicly available information about the matters set out in paragraphs 8A(4)(a) to 8A(4)(h) in relation to a home care service through which home care is provided by an approved provider.

Paragraph 8A(4)(a)

New paragraph 8A(4)(a) specifies that the Secretary must make publicly available, in relation to a home care service through which home care is provided by an approved provider, information about the approved provider's income and expenditure in relation to the service in a financial year for the provider.

It is intended that the publication of this information about home care service providers' income and expenditure will assist current and prospective aged care recipients to make more informed decisions about aged care services. It will also increase transparency and accountability by enabling people to better understand how much approved providers of home care services spend on those services, and their profits (if any) in a given financial year for the provider.

Paragraph 8A(4)(b)

New paragraph 8A(4)(b) specifies that the Secretary must make publicly available, in relation to a home care service through which home care is provided by an approved provider, information about the kind of feedback and complaints received by the approved provider in respect of the service in a reporting period for the provider.

Information will be presented in aggregate form around the kinds of feedback and complaints that have been raised in relation to the service. For example, this may include feedback and

complaints about aspects of the quality of care such as food and catering, clinical care, and choice and dignity. This information is to provide current and prospective aged care recipients with greater transparency around the type of issues raised in positive feedback and in complaints about a service, which may prompt them to consider and discuss these matters with the provider when determining if the service is right for them.

Publications made under this paragraph will not include any personal information about complainants or respondents, nor is there an intention to publish the number of complaints received by an approved provider in respect of the service. Low or high number of complaints alone do not reflect the quality of a service but instead may be related to other factors, such as the ease of making a complaint.

Paragraph 8A(4)(c)

New paragraph 8A(4)(c) specifies that the Secretary must make publicly available, in relation to a home care service through which home care is provided by an approved provider, information about improvements made by the approved provider in relation to the quality of the service in a reporting period for the provider.

This paragraph provides a balance against the information required to be published under other paragraphs (particularly paragraph 8A(4)(b)), ensuring that where providers are taking active steps to improve the quality of a service, including in response to previous complaints and feedback, this information is made publicly available to assist current and prospective aged care recipients.

Paragraph 8A(4)(d)

New paragraph 8A(4)(d) specifies that the Secretary must make publicly available, in relation to a home care service through which home care is provided by an approved provider, information about the representation of different demographic groups in the membership of the governing body of the approved provider in a reporting period for the provider.

The publication of this information will assist current and prospective aged care recipients to consider the diversity of approved providers' governing bodies, which may be relevant to aged care recipients in determining if a provider is a good fit for them. Such publication also encourages approved providers to diversify the membership of their governing body, which can support more effective decision-making in the aged care sector. Australia is a diverse society and our aged care recipients reflect this diversity. Diverse governing boards assist to promote a culture of inclusivity.

Paragraph 8A(4)(e)

New paragraph 8A(4)(e) specifies that the Secretary must make publicly available, in relation to a home care service through which home care is provided by an approved provider, information about initiatives that the approved provider has implemented in a reporting period for the provider to support a diverse and inclusive environment, in relation to the service, for care recipients and staff members.

The publication of this information will support aged care recipients in determining if a provider is a good fit for them.

Paragraph 8A(4)(f)

New paragraph 8A(4)(f) specifies that the Secretary must make publicly available, in relation to a home care service through which home care is provided by an approved provider, information about the total number of persons to whom home care is provided through the service at the end of a reporting period for the approved provider.

The publication of this information, along with data published under paragraphs 8A(4)(g)-(h), will assist current and prospective aged care recipients to understand the size and capacity of a particular service operated by a provider. This information may be relevant to aged care recipients in determining whether a provider and their service is a good fit for them.

Paragraph 8A(4)(g)

New paragraph 8A(4)(g) specifies that the Secretary must make publicly available, in relation to a home care service through which home care is provided by an approved provider, information about the number of persons who entered the service during a reporting period for the approved provider.

The publication of this information, along with data published under paragraphs 8A(4)(f) and 8A(4)(h), will assist current and prospective aged care recipients to understand the size and capacity of a particular service operated by a provider. This information may be relevant to aged care recipients in determining whether a provider and their service is a good fit for them.

Paragraph 8A(4)(h)

New paragraph 8A(4)(h) specifies that the Secretary must make publicly available, in relation to a home care service through which home care is provided by an approved provider, information about the number of persons for whom the approved provider ceased to provide home care through the service during a reporting period for the provider.

The publication of this information, along with data published under paragraphs 8A(4)(f)-(g), will assist current and prospective aged care recipients to understand the size and capacity rate of a particular service operated by a provider. This information may be relevant to aged care recipients in determining whether a provider and their service is a good fit for them.

When information must be made publicly available

Subsection 8A(5)

New subsection 8A(5) specifies the Secretary must make information mentioned in section 8A publicly available as soon as practicable after the approved provider has given the Secretary the information, and that the Secretary is not required to make information about a matter publicly available until the approved provider has given the Secretary information about the matter. The note specifies that approved providers are required to give information to the Secretary about the matters mentioned in section 8A under the Aged Care Act and instruments and agreements made under or for the purposes of the Aged Care Act.

This subsection provides the Secretary with a necessary level of flexibility as to when information must be published in accordance with section 8A. This is required for several reasons, including:

- providers operate on different financial years and so certain providers have different reporting periods and dates;

- some providers may be late in their reporting;
- for some providers, the Secretary may need to clarify certain data with the provider prior to publication, including a quality review of the data received; and
- it will take the Secretary time to prepare information for publication after it has been reported.

The requirement for information to be published as soon as practicable is intended to support the timely publication of information.

Item 12 – In the appropriate position in Part 4

Item 12 inserts new section 10 into the Information Principles that specifies section 8A, as added by the Amending Principles, applies in relation to information given to the Secretary on or after 1 July 2023.

Statement of Compatibility with Human Rights

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

Aged Care Legislation Amendment (Transparency of Information) Principles 2023

This *Aged Care Legislation Amendment (Transparency of Information) Principles 2023* (Amending Principles) is 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 Legislative Instrument

The Amending Principles amends the *Accountability Principles 2014* and the *Information Principles 2014* by specifying information about aged care services that must be provided to, and made publicly available by, the Secretary.

The Amending Principles support the implementation of changes made to the *Aged Care Act 1997* (Aged Care Act) by Schedule 5 to the *Aged Care and Other Legislation Amendment (Royal Commission Response) Act 2022* (RCR Amending Act) and Schedule 3 to the *Aged Care Amendment (Implementing Care Reform) Act 2022* (ICR Amending Act). The Amending Principles specify:

- changes to the information about an aged care service that an approved provider is required to report to the Secretary for the purposes of subsection 63-1G(1) and 63-1(1)(m) of the Aged Care Act;
- information about an aged care service that the Secretary may make publicly available for the purposes of paragraph 86-9(1)(m) of the Aged Care Act; and
- information in relation to aged care services that the Secretary must make publicly available for the purposes of subsection 86-10(1) of the Aged Care Act.

By collecting and publishing information on operations, as well as information about income, expenditure, and profits (or losses), the Amending Principles are aimed at assisting current and prospective aged care recipients and their representatives to better understand the operations and financial information of approved providers and services.

This increased transparency is intended to support choice by empowering current and prospective care recipients to make more informed care decisions. It will also increase the accountability of aged care providers and their services.

Human rights implications

The Amending Principles engages the following rights:

- the right to access information in article 21 of the *Convention on the Rights of Persons with Disabilities* (CRPD);
- the right to the enjoyment of the highest attainable standard of physical and mental health in article 12(1) of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) and article 25 of the CRPD; and
- the right to privacy in article 17 of the *International Covenant on Civil and Political Rights* (ICCPR) and article 22 of the CRPD.

Right to access information

The right to access information is contained in article 21 of the CRPD. It provides that parties to the CRPD shall take appropriate measures to ensure people with disabilities can exercise their right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice. Such measures include providing information in accessible formats and technologies, in a timely manner, and without additional cost.

The Amending Principles will promote the right to access information by requiring the Secretary of the Department of Health and Aged Care to make publicly available the information specified in the Amending Principles about aged care services. The published information will provide care recipients, who may have impediments to their full and effective participation in society, and their representatives with clear, timely and meaningful information about aged care services and approved providers.

While some of this information that the Secretary must publish under this instrument is already publicly available, the totality of this information is not available from one location, and at no cost. In addition, all information required to be published by the Amending Principles is to be designed in accordance with the World Wide Web Consortium's Web Content Accessibility Guidelines (WCAG) 2.0 standard, making the website accessible for a wider audience.

Right to health

The right to health is contained in article 12(1) of the ICESCR. It provides that parties to the ICESCR recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

The Amending Principles will promote the right to health by requiring the Secretary to make publicly available the information specified in the Amending Principles about approved aged care services. This information will empower current and prospective care recipients and their representatives to make more informed care decisions in all aspects of their lives. This will help the individual to choose an aged care provider, encouraging a holistic approach and supporting better health outcomes.

Right to privacy

Article 17 of the ICCPR provides that no one shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour or reputation, and that everyone has the right to the protection of the law against such interference or attacks. Article 22 of the CRPD outlines a similar right in relation to persons with disability. Although the United Nations Human Rights Committee has not defined ‘privacy’, it should be understood to comprise freedom from unwarranted and unreasonable intrusions into activities that society recognises as falling within the sphere of individual autonomy.

The right to privacy under article 17 can be permissibly limited to achieve a legitimate objective and where the limitations are lawful and not arbitrary. The term ‘unlawful’ in article 17 of the ICCPR means that no interference can take place except as authorised under domestic law. Additionally, the term ‘arbitrary’ in article 17(1) of the ICCPR means that any interference with privacy must be in accordance with the provisions, aims and objectives of the ICCPR and should be reasonable in the circumstances. The Committee has interpreted ‘reasonableness’ to mean that any limitation must be proportionate and necessary in the circumstances.

The Amending Principles limit the right to privacy under article 17 of the ICCPR by requiring the Secretary to publish specified information about aged care services operated by approved providers. This information must not include personal information about an individual, other than an individual who is one of the key personnel of an approved provider.

Conclusion

The Amending Principles is compatible with human rights because it promotes the rights of aged care recipients to access information and to attain the highest standard of physical and mental health. To the extent that the Amending Principles may limit the right to privacy, those limitations are reasonable, necessary, and proportionate to protect the rights of older Australians.

**Hon Anika Wells MP
Minister for Aged Care**