

EXPOSURE DRAFT

EXPLANATORY STATEMENT

Issued at the authority of the Minister for Aged Care

Aged Care Act 1997

Aged Care Legislation Amendment (Governance and Reporting for Approved Providers) Principles 2022

Purpose

The purpose of the *Aged Care Legislation Amendment (Governance and Reporting for Approved Providers) Principles 2022* (Amending Principles) is to introduce new governance and reporting requirements for approved providers of Commonwealth-funded aged care. The Amending Principles amend the *Accountability Principles 2014* (Accountability Principles) and *Records Principles 2014* (Records Principles).

The Amending Principles support the implementation of changes made by the *Aged Care and Other Legislation Amendment (Royal Commission Response) Act 2022* (Amending Act). The Amending Principles set out the following requirements for approved providers:

- record keeping responsibilities relating to the suitability of key personnel of approved providers;
- requirements about membership of quality care advisory bodies;
- the written report on the quality of aged care that quality care advisory bodies must give to the governing body of an approved provider;
- responsibilities to give the Secretary of the Department of Health and Aged Care (Department) specified information and statements in relation to a reporting period; and
- record keeping requirements.

These measures are aimed at improving transparency and accountability and ensuring the focus of approved providers is in the best interests of care recipients.

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

Background

Schedule 5 of the Amending Act amends the *Aged Care Act 1997* (Aged Care Act) and *Aged Care Quality and Safety Commission Act 2018* (Commission Act) to introduce new governance responsibilities for approved providers. The Amending Principles set out the specific requirements for the implementation of the new governance responsibilities.

The changes broadly align with Recommendations 88 to 90 of the Final Report of the Royal Commission into Aged Care Quality and Safety, which noted the importance of good provider governance arrangements in the provision of high-quality care for aged care recipients.

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From 1 December 2022, amendments to the Aged Care Act require approved providers to, at least once every 12 months, consider the suitability matters in relation to an individual who is one of the key personnel of the approved provider and be reasonably satisfied that the individual is suitable to be involved in the provision of aged care.

The Amending Principles introduce requirements for an approved provider's record keeping obligations in relation to the suitability matters. This will ensure there is evidence that an approved provider is complying with this requirement and has exercised due diligence in being reasonably satisfied that its key personnel are suitable to be involved in the provision of aged care.

From 1 December 2022, amendments to the Aged Care Act require certain approved providers to establish and continue in existence, a quality care advisory body that complies with the requirements about membership specified in the Accountability Principles. Further, the quality care advisory body must, at least once every 6 months, give the governing body of the provider a written report about the quality of the aged care that the provider provides through an aged care service. The quality care advisory body is also able, at any time, to give feedback to the governing body of the provider about the quality of the aged care that the provider provides through an aged care service. The governing body of the provider must consider such a report, or any such feedback, when making decisions in relation to the quality of the aged care provided through the aged care service; and advise the quality care advisory body in writing, how the governing body considered such a report or any such feedback.

The Amending Principles detail the requirements for the membership of quality care advisory bodies and the requirements that must be included in the written report that quality care advisory body must give to the governing body of the provider.

A new reporting responsibility is also being introduced for approved providers to give the Secretary certain information, which relates to a reporting period. It is intended that this information will be made publicly available. The publication of this information is subject to the passage of the relevant provisions contained within the Aged Care Amendment (Implementing Care Reform) Bill 2022 (Implementing Care Reform Bill). The intended outcome is to help care recipients and their families understand key details of approved providers' operations. The Amending Principles set out the requirements that must be included in the information given to the Secretary, including providing practical details on arrangements for where a service has operated for only part of a reporting period.

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.

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Governance Responsibilities

The Accountability Principles are made under section 96-1 of the Aged Care Act and set out matters for the purpose of Part 4.3 of the Aged Care Act (or matters necessary or convenient to carry out and give effect to the matters set out in that Part).

Record Keeping Responsibilities

The Records Principles are made under section 96-1 of the Aged Care Act and set out matters for the purpose of Part 6.3 of the Aged Care Act (or matters necessary or convenient to carry out and give effect to the matters set out in that Part).

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 December 2022.

Consultation

In December 2021, the Department undertook targeted consultation on provider governance initiatives with aged care stakeholder and consumer reference groups during the period December 2021 and September 2022.

An Information and Consultation Paper and accompanying questionnaire on the matters to be included in the Amending Principles 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 indicated that there was a strong level of support across all elements of the proposed aged care governance requirements.

A proposal to have a member of the governing body chair the quality care advisory body was the least supported proposed change and subsequently was not included in the Amending Principles. Other key matters raised included:

- a need for flexibility in approach to the reforms, in order to support implementation by the variety of providers (including care type provided, size location and governance arrangements of approved providers);
- a request for reporting requirements to be simple and avoid duplication of existing requirements;
- a need to consider the privacy implications of reforms; and
- a need for funding and support for implementing the reforms.

The Amending Principles have been prepared following careful consideration of the feedback provided, along with further consultation with aged care stakeholder and consumer reference groups.

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The Aged Care Quality and Safety Commission (Commission) was also consulted to ensure that the legislation provides appropriate detail and powers to enable the Commission to fulfill its responsibilities in relation to the measures.

Regulation Impact Statement

The Office of Best Practice Regulation (OBPR) was consulted during the development of the Amending Principles on the regulatory impact of the governance and record keeping requirements.

The Department certified that a package of independent reviews undertook a process and analysis equivalent to a Regulatory Impact Statement for certain aged care quality measures (including the Strengthening Aged Care Approved Provider Governance reforms) contained in the Amending Act.

The OBPR found the scope of the certified review process covered the policy proposals except for implementation and evaluation measures. The certification and list of reviews can be found in the Explanatory Memorandum for the Amending Act.

Supplementary analysis of the implementation and evaluation of these measures was accepted by OBPR (reference OBPR22-01446). The letter and supplementary RIS, alongside the material on the Aged Care Reforms, is published on OBPR's website.

Details of the Aged Care Legislation Amendment (Governance and Reporting for Approved Providers) Principles 2022

Section 1 provides that the name of this instrument is the *Aged Care Legislation Amendment (Governance and Reporting for Approved Providers) Principles 2022*.

Section 2 provides that the Amending Principles commence on 1 December 2022.

Section 3 states that the authority to make this instrument is under section 96-1 of the Aged Care Act.

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 terms in the Schedule, and any other item in that Schedule has effect according to its terms.

Schedule 1 – Amendments

Part 1 – Governance of approved providers etc.

Accountability Principles 2014

Item 1 repeals the existing Part 7A of the Accountability Principles and replaces it with new Part 7, new Part 7A and new Part 7B.

Part 7—Responsibilities relating to the suitability of key personnel of approved providers

New Part 7 sets out record keeping responsibilities of approved providers regarding the suitability matters considered by the approved provider in relation to an individual who is a key personnel of the approved provider. Section 63-1A of the Aged Care Act requires an approved provider to have considered the suitability matters in relation to all of its key personnel and be reasonably satisfied that its key personnel are suitable to be involved in the provision of aged care.

Section 52 – Purpose of this Part

New section 52 provides that new Part 7 is made for the purposes of section 63-1A(b) of the Aged Care Act and specifies approved providers' record keeping requirements for the suitability matters considered by the approved provider in relation to an individual who is one of its key personnel.

Section 53 – Record of consideration of suitability matters

New section 53 sets out the requirements for approved providers' records relating to the suitability of the approved providers key personnel. New subsections 53(a) to 53(d) require the record to include all of the following:

- name of the individual in relation to whom the suitability matters were considered;
- date or dates on which the suitability matters were considered in relation to the individual;

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- the outcome of the provider's consideration of each suitability matter in relation to the individual; and
- the reasons for reaching that outcome.

Part 7A—Responsibilities of certain approved providers relating to their governing bodies etc.

New Part 7A sets out the responsibilities of certain approved providers relating to their governing bodies. New Part 7A consists of new sections 53A, 53B and 53C.

Section 53A – Purpose of this Part

New section 53A provides that the purpose of Part 7A is to set out the requirements for membership and reporting in relation to a quality care advisory body. New subsection 53A(a) provides that Part 7A specifies the requirements about membership of the quality care advisory body required to be established and continued in existence by an approved provider.

New subsection 53A(b) provides that Part 7A specifies the requirements that the report the quality care advisory body is required to give to the governing body of the approved provider must comply with.

Section 53B – Requirements about membership of quality care advisory bodies

New subsection 53B(1) provides that for the purpose of subparagraph 63-1D(6)(a)(i) of the Aged Care Act, a quality care advisory body established by an approved provider must comply with the membership requirements specified in subsection 53B(2).

New subsection 53B(2) provides that the quality advisory body must include the following members:

- an individual who is one of the key personnel of the approved provider and has appropriate experience in the provision of aged care; and
- an individual who is directly involved in the delivery of aged care or, if an approved provider delivers clinical care an individual who is directly involved in the provision of clinical care; and
- an individual who represents the interests of care recipients. Examples of this include a care recipient, a member of the consumer advisory body, a member of an organised consumer advisory service, or a consumer advocate.

The note following new subsection 53B(2) clarifies that the quality care advisory body may also include other persons with an interest in the quality of aged care delivered by the approved provider. This reflects that the requirements set out in subsection 53B(2) are minimum requirements. It provides for quality care advisory bodies to also include persons in addition to those who meet the requirements specified in subsection 53B(2).

Section 53C – Report about quality of aged care provided

Under subsection 63-1D(6) of the Aged Care Act, an approved provider must establish and continue in existence a quality care advisory body. Subsection 63-1D(6)(a)(ii) of the Aged Care Act requires this body, at least once every 6 months, to give the governing body of the provider a written report about the quality of the aged care that the provider provides through an aged care service. Subsection

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63-1D(7) of the Aged Care Act provides that the written report about the quality of the aged care, must comply with any requirements specified in the Accountability Principles.

Under new subsection 53C(1), such a written report must comply with any requirements specified under subsection (2).

New subsection 53C(2) provides that the report for each aged care service provided by the approved provider must include an assessment of the quality of the aged care provided through the service. The report period is the 6-month period covered by the report. The assessment must consider:

- feedback provided in the report period by care recipients and the provider's staff members about the quality of aged care provided;
- complaints received in the report period by the approved provider about the quality of aged care provided and actions taken by the provider to address the complaints;
- concerns that the quality care advisory body has about the quality of aged care provided;
- regulatory action taken in the report period by the Aged Care Quality and Safety Commissioner (the Commissioner) in relation to the quality of aged care provided by the approved provider;
- progress made in the report period in relation to the approved provider's plan for continuous improvement (within the meaning of the *Aged Care Quality and Safety Commission Rules 2018*), particularly improvements made in the provision of aged care by the approved provider through the service;
- performance reports given to the approved provider in the report period by the Commissioner, in accordance with rules made under the *Aged Care Quality and Safety Commission Act 2018* (Commission Act) in relation to the quality of aged care provided;
- staffing arrangements at the service during the report period including details on the following, as applicable:
 - the availability of allied health practitioners or other health support at the service (such as physiotherapists, speech therapists, occupational therapists and hearing or vision services);
 - the availability of registered nurses at the service (registered nurses has the same meaning as in the *Health Insurance Act 1973*);
 - staff turnover at the service (that is, the proportion of staff who have left the service);
- any reportable incident for the approved provider that occurred at the service in the report period and any action taken by the approved provider in response to the reportable incident (reportable incident is defined in the Aged Care Act);
- if the service is a residential care service:
 - feedback received in the report period from care recipients at the service about the quality of food provided by the service to care recipients;
 - changes in the report period in the quality of food provided and the food preparation model used, by the service;
 - menu assessments conducted by an accredited practicing dietician in the report period in relation to food provided by the service; and

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- information compiled or derived from a measurement or other assessment made by the approved provider in accordance with section 26 of the Accountability Principles (that is, performance against the National Aged Care Mandatory Quality Indicators).

The quality care advisory body must provide a written report to the governing body about the quality of the aged care that the provider provides through an aged care service at least once every 6 months. It may provide written reports more frequently than each six months. The above matters must be taken into account at least each six months.

In undertaking its assessment, the quality care advisory body must assess the quality of care during the reporting period. It may be useful for the quality care advisory body to consider how performance during the reporting period compares to other time periods.

The quality care advisory body's report should aim to provide a comprehensive assessment of the care being provided to care recipients to support the governing body when making decisions in relation to the quality of the aged care provided through the aged care service. The assessment should seek to identify areas of commendable performance, as well as areas for improvement. The quality care advisory body's report can take into account information that the provider has already provided to the Department, for example, this may include staffing information reported through the Aged Care Financial Report and Quarterly Financial Report.

Part 7B—Responsibilities relating to the giving of information relating to reporting periods

New Part 7B deals with responsibilities relating to the giving of information relating to reporting periods. New Part 7B consists of new sections 53D, 53E, 53F, 53G and 53H.

Section 53D – Purpose of this Part

New section 53D sets out responsibilities of an approved provider under section 63-1G and paragraph 63-1(1)(m) of the Aged Care Act to give the Secretary specified information and statements in relation to a reporting period for the approved provider.

This provision, in conjunction with Schedule 3 of the Implementing Care Reform Bill, responds to the Royal Commission's recommendation that aged care legislation be amended to require every approved provider to report annually on their operations to enable proper scrutiny. The note following new subsection 53D provides that a reporting period for an approved provider is defined in clause 1 of Schedule 1 to the Aged Care Act as having the meaning given by subsection 63-1G(3) of the Aged Care Act.

Section 53E – Providers of residential and home care—responsibility relating to the giving of information relating to reporting periods

New section 53E provides that for the purposes of subsection 63-1G(1) of the Aged Care Act, the following kind of information is specified in relation to a reporting

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period for an approved provider that provides a residential care service or a home care service:

- details of feedback and complaints received by the approved provider in respect of each residential care service and home care service provided by the approved provider.
- details of any improvements made in relation to the quality of each residential care service and home care service provided by the approved provider.
- information about the diversity of the governing body in the reporting period, and initiatives that the approved provider has implemented in the reporting period to support a diverse and inclusive environment for care recipients and staff members in relation to each residential care service and home care service provided by the approved provider. (This may include, for example, information about the service's policies and procedures for cultural awareness, diversity and inclusion, social activities to support culture, diversity and inclusion, and whether the provider's governance framework has commitment to cultural awareness, diversity and inclusion.)
- whether the approved provider was a person or body mentioned in any of paragraphs 63-1D(1)(a) to (c) of the Aged Care Act. (These provisions relate to whether the approved provider is a State or Territory; a State or Territory authority; or local government authority.)
- if subsection 63-1D(2) of the Aged Care Act applied, whether the provider complied with the responsibilities set out in paragraphs 63-1D(2)(a) and (b) of the Act. (These provisions require certain approved providers to ensure that a majority of the members of the governing body of the provider are independent non-executive members; and at least one member of the governing body of the provider has experience in the provision of clinical care.)
- whether any of subsections 63-1D(3) to (5) of the Aged Care Act applied to the approved provider. (These provisions set out that the requirements of subsection 63-1D(2) of the Act do not apply if at a particular time if:
 - the governing body of the provider has fewer than 5 members and the provider provides aged care through one or more aged care services to fewer than 40 care recipients.
 - the provider is a kind of body that is known as an Aboriginal Community Controlled Organisation
 - if a determination under section 63-1E that the responsibility set out in paragraphs 63-1D(2)(a) or (b) does not apply in relation to the provider is in force at that time.)

Section 53F – Providers of flexible care— responsibilities relating to the giving of information relating to reporting periods

New section 53F provides that for the purposes of subsection 63-1G(1) of the Aged Care Act, the following kind of information is specified in relation to a reporting period for an approved provider that provides flexible care as transition care (within the meaning of the *Subsidy Principles 2014*):

- details of feedback and complaints received by the approved provider in the reporting period in respect of each flexible care service provided by the approved provider through which transition care is provided;

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- details of improvements made by the approved provider in the reporting period in relation to the quality of each flexible care service provided by the approved provider through which transition care is provided.

Section 53G – Responsibilities to prepare and provide statements

New subsection 53G(1) provides that for the purposes of 63-1(1)(m) of the Aged Care Act, the following responsibilities are specified for an approved provider that provides a residential care service or a home care service:

- to prepare a statement for a reporting period for the approved provider that complies with the requirements set out in subsection 53G(2)
- to give a copy of the statement to the Secretary within 4 months after the end of the reporting period for the approved provider.

New subsection 53G(2) provides that the statement must:

- be in the form approved by the Secretary
- state if the provider's governing body believes that the approved provider has complied with its responsibilities under the Aged Care Act and the requirements under the Commission Act, and must be signed by a member of the provider's governing body on behalf of all members of the governing body
- state if the approved provider's governing body believes that the approved provider has failed to comply with one or more responsibilities of the approved provider under the Aged Care Act or requirements under the Commission Act, and must be signed by a member of the provider's governing body on behalf of all members of the governing body. (As an example, under the Commission Act, an approved provider may be required:
 - to give an undertaking about remedying non-compliance (see section 63T of that Act); or
 - to agree to certain matters if revocation of approval is being considered (see section 63U of that Act).)
- If the approved provider's governing body believes that that the approved provider has failed to comply with one or more of its responsibilities or requirements, the statement must set out the details of each responsibility or requirement that the governing body believes that the approved provider has failed to comply with; the reasons why the approved provider failed to comply with the responsibility or requirement; and how the approved provider has or will rectify the non-compliance.

Section 53H – Service provided during part only of reporting period

New section 53H provides that if an approved provider was responsible for a service for only part of the reporting period, then in order to meet the requirements in sections 53E, 53F and 53G, the approved provider must provide the required information for that service for the part of the reporting period in which they were responsible.

This ensures that approved providers are not responsible to report on a service for a period in which they did not have responsibility. For example, if a service is sold from one approved provider to another, then the approved provider that purchased the service would only report information on the service for the period in which they were responsible for the operations of the service.

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Item 2 inserts new section 60 in the appropriate position in Part 8 of the Accountability Principles

Section 60 - Amendments made by the Aged Care Legislation (Governance and Reporting for Approved Providers) Principles 2022

New subsection 60(1) specifies that approved providers in existence before 1 December 2022 must comply with the responsibilities relating to governing bodies, as set out in Part 7A, from 1 December 2023. This gives existing approved providers one year to make any changes necessary to meet the responsibilities.

New subsection 60(2) specifies that providers approved on or after 1 December 2022 must comply with responsibilities relating to governing bodies, as set out in Part 7A, from the day they become an approved provider.

New subsection 60(3) specifies that the responsibilities relating to giving information, as set out in Part 7B, applies in relation to a reporting period that starts on 1 July 2022 and each later reporting period for the approved provider. This timing is intended to enable providers to report on its operations for the period between 1 July 2022 to 30 June 2023.

Part 2 – Record keeping requirements

Records Principles 2014

Item 3 inserts new Part 1 before section 1.

Part 1—Preliminary

Item 4 inserts new Part 2 after section 5.

Part 2—Records to be kept

Item 5 inserts new section 6A after section 6.

Section 6A – Records about governing body

New subsection 6A(1) provides that this section applies to approved providers that have responsibilities set out in paragraphs 63-1D(2)(a) of the Aged Care Act.

New subsection 6A(2) provides that the approved provider must keep a record about the members of their governing body that includes the following information:

- the names of members who are independent non-executive directors;
- the names of members who are not independent non-executive directors; and
- the names of members who have experience in the provision of clinical care and the details of that experience.

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Section 6B – Records about the quality advisory body

New subsection 6B(1) provides that new section 6B applies to approved providers that have responsibilities to establish and maintain a quality care advisory body under subsection 63-1D(6) of the Aged Care Act.

New subsection 6B(2) provides that the approved provider must keep a record about the members of their quality care advisory body that includes the following information and documents:

- the names of each member, the date the member was appointed and the date the member resigned;
- details of how the body satisfies the requirements of section 53B of the Accountability Principles (that is, the requirements about membership of quality care advisory bodies);
- a copy of the minutes of each meeting of the body and the date on which the meeting was held (if meetings were held);
- a copy of each written report given to the governing body of the approved provider by the quality care advisory body under subparagraph 63-1D(6)(a)(ii) of the Aged Care Act;
- details of any feedback given to the governing body of the approved provider by the quality care advisory body under subparagraph 63-1D(6)(a)(iii) of the Aged Care Act; and
- a copy of any written advice from the governing body of the approved provider to the quality care advisory body under subparagraph 63-1D(6)(b)(ii) advising how the governing body has considered the report and the feedback from the quality care advisory body.

Section 6C – Records about the consumer advisory body

New subsection 6C(1) provides that this section applies to approved providers that have responsibilities to offer care recipients and their representatives an opportunity to establish a consumer advisory body under subsection 63-1D(9) of the Aged Care Act.

New subsection 6C(2) provides that the approved provider must keep a record that includes the following information and documents:

- a copy of each written offer made to care recipients and their representatives to establish a consumer advisory body
- the date on which each offer was given
- if a consumer advisory body is established: a copy of the minutes of each meeting (if meetings were held); details of any feedback given to the governing body of the approved provider by the consumer advisory body under paragraph 63-1D(9)(a) of the Aged Care Act; and a copy of any written advice given to the consumer advisory body by the governing body under subparagraph 63-1D(9)(b)(ii) of the Aged Care Act advising how the governing body has considered any such feedback.

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Section 6D – Records about the qualifications, skills or experience etc. of staff members

New subsection 6D(1) provides that this section applies to approved providers that have responsibilities under subsection 63-1D(11) of the Aged Care Act.

Subsection 63-1D(11) of the Aged Care Act requires the governing body of certain approved providers to ensure staff members of the provider have appropriate qualifications, skills, or experience to provide the care or other services that the approved provider provides to care recipients through an aged care service; and that the staff members are given opportunities to develop their capability to provide that care or those other services. Subsection 63-1D(11) of the Aged Care Act applies to approved providers other than a State or Territory; a State or Territory authority; and a local government authority.

New subsection 6D(2) provides that the approved provider that have responsibilities under subsection 63-1D(11) of the Aged Care Act must keep a record about how the governing body has ensured that the provider's staff members:

- have appropriate qualifications, skills or experience regarding the services provided by the approved provider; and
- are given opportunities to develop their capability to provide services.

The note following new section 6D(1) provides that approved providers have other record keeping responsibilities in relation to certain staff set out in sections 9, 10A and 10B of the Records Principles.

Item 6 inserts new Part 3 at the end of section 11.

Part 3—Application, transitional and saving provisions

Item 7 Add new section 13 at the end of the Records Principles.

Section 13 Amendments made by the Aged Care Legislation Amendment (Governance and Reporting for Approved Providers) Principles 2022

New section 13 provides for transitional arrangements for the Amending Principles.

New subsection 13(1) specifies that approved providers in existence before 1 December 2022 must comply with the requirements set out in sections 6A to 6D from 1 December 2023. This gives existing approved providers one year to make any changes necessary to meet the responsibilities.

New subsection 13(2) specifies that providers approved on or after 1 December 2022 must comply with requirements set out in sections 6A to 6D from the day they are an approved provider.

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Statement of Compatibility with Human Rights

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

Aged Care Legislation Amendment (Governance and Reporting for Approved Providers) Principles 2022

The *Aged Care Legislation Amendment (Governance and Reporting for Approved Providers) Principles 2022* 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) Act 2011*.

Overview of Legislative Instrument

The *Aged Care Legislation Amendment (Governance and Reporting for Approved Providers) Principles 2022* (Amending Principles) amends the *Accountability Principles 2014* (Accountability Principles) and *Records Principles 2014* (Records Principles).

The purpose of the Amending Principles is to enable the effective implementation of arrangements relating to governance and reporting requirements for approved providers of Commonwealth-funded aged care. Improved governance arrangements are intended to improve leadership and culture, enhance transparency and accountability, and ensure approved providers' focus, from the top down, is in the best interests of care recipients.

The Amending Principles set out requirements for approved providers regarding membership of quality care advisory bodies, the report about quality of aged care that quality care advisory bodies must give to the governing body of an approved provider, and specifies the information and statements in relation to a reporting period that an approved provider must give to the Secretary. It also details record keeping responsibilities regarding the suitability matters relating to key personnel of approved providers, as well as approved providers' governing bodies, quality care advisory bodies, consumer advisory bodies and the qualifications, skills or experience etc of staff members

Human Rights Implications

The Amending Principles engages the following human rights:

- right adequate standard of living, as contained in article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and articles 25 and 28 of the Convention on the Rights of Persons with Disabilities (CRPD);
- right to health in article 12(1) of the ICESCR and articles 23(1)(c) and 25 of the CRPD; and
- right to privacy in Article 17 of the International Covenant on Civil and Political Rights (ICCPR) and Article 22 of the CRPD.

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Right to an adequate standard of living

The right to an adequate standard of living, including adequate food, water and housing, and to the continuous improvement of living conditions is contained in article 11(1) of ICESCR. Articles 25 and 28 of the CRPD also require countries to take appropriate measures to ensure clean water services and public housing programs for people with disability.

The Amending Principles promotes the right of those receiving care to an adequate standard of living by improving the accountability and transparency of governance of approved aged care providers in order to deliver high quality of care to aged care recipients.

Right to Health

The right to health is contained under article 12 of the ICESCR and article 25 of the CRPD. These articles refer to the right of individuals, including persons with disability, to the highest attainable standard of physical and mental health. The Amending Principles promotes the right to health by ensuring approved providers have good governance arrangements, including having at least one member of the governing body who has experience in the provision of clinical care and a quality care advisory body that reports to the governing body about the quality of the aged care that the provider provides.

The new governance arrangements include establishing mechanisms for care recipients and their families to provide feedback to the provider's governing body on the quality of care. The approved provider's governing body must consider this information. These arrangements support care recipients to engage and participate in all aspects of their lives, particularly where they are utilising residential aged care.

The Amending Principles also promote the right to health by maximising care recipients' ability to receive the best care appropriate for their needs, by placing more rigorous requirements on aged care providers regarding the suitability of their key personnel,

Right to privacy

The Amending Principles engages with the right to privacy in Article 17 of the International Covenant on Civil and Political Rights (ICCPR) and Article 22 of the CRPD. The right to privacy under Article 17 of the ICCPR, states that no person should be subject to interference with their privacy. Article 22 of the CRPD contains a similar provision in relation to persons with disability. The protection against arbitrary or unlawful interference with privacy is contained in article 17 of the ICCPR, and in article 22 of the CRPD in respect of persons with disability. 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.

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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 approved providers to keep records of their consideration of the suitability of key personnel to be involved in the provision of aged care. This assessment may require the provider to keep records of personal information about their key personnel, such as police checks, or evidence of work experience or training. The Aged Care Quality and Safety Commission may also view these records as part of its monitoring and investigation functions to ensure compliance with the new responsibility. The objective of this requirement is to ensure that key personnel of providers are suitable to be involved in the provision of aged care and to protect the care recipient’s rights under article 12(1) of ICESCR.

These are legitimate objectives that fall within the permissible purposes of protecting the rights of those receiving care and protecting public health. These provisions are also reasonable, necessary, and proportionate to achieving this objective, since the handling of a key personnel’s personal information is subject to the protected information provisions in Part 6.2 of the *Aged Care Act 1997*, as well as the general protections under the *Privacy Act 1988*. The existing harsh penalties for misuse of personal information will protect and ensure safe handling of the information collected.

Conclusion

The Amendment Principles are compatible with human rights as it positively promotes the human right to an adequate standard of living and to attain the highest standard of physical and mental health. To the extent that aspects of the Amending Principles may limit the right to privacy, those limitations are reasonable, necessary, and proportionate.

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