

EXPOSURE DRAFT



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

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

Dated 2022

Anika Wells **[DRAFT ONLY—NOT FOR SIGNATURE]**
Minister for Aged Care

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1 Name

This instrument is the *Aged Care Legislation Amendment (Governance and Reporting for Approved Providers) Principles 2022*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 December 2022.	1 December 2022

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under section 96-1 of the *Aged Care Act 1997*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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Schedule 1 Amendments

Part 1 Governance of approved providers etc.

Schedule 1—Amendments

Part 1—Governance of approved providers etc.

Accountability Principles 2014

1 Part 7A

Repeal the Part, substitute:

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

52 Purpose of this Part

For the purposes of paragraph 63-1A(b) of the Act, this Part specifies the requirements that a record of the suitability matters considered by an approved provider must comply with in relation to an individual who is one of the key personnel of the approved provider.

53 Record of consideration of suitability matters

The record must include the following:

- (a) the name of the individual in relation to whom the suitability matters were considered;
- (b) the date or dates on which the suitability matters were considered in relation to the individual;
- (c) the outcome of the approved provider's consideration of each suitability matter in relation to the individual;
- (d) the reasons for reaching that outcome.

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

53A Purpose of this Part

This Part specifies:

- (a) the requirements about membership of the quality care advisory body required to be established and continued in existence by an approved provider; and
- (b) 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.

53B Requirements about membership of quality care advisory bodies

- (1) For the purposes of subparagraph 63-1D(6)(a)(i) of the Act, a quality care advisory body established by an approved provider must comply with the requirements about membership specified in subsection (2) of this section.
- (2) The requirements are that the quality care advisory body must include:
 - (a) a member who:
 - (i) is one of the key personnel of the approved provider; and
 - (ii) has appropriate experience in the provision of aged care; and
 - (b) a member who is directly involved in:
 - (i) the delivery of aged care; or
 - (ii) if the approved provider delivers clinical care—the provision of clinical care; and
 - (c) a member who represents the interests of care recipients, for example:
 - (i) a care recipient; or
 - (ii) a member of a consumer advisory body (if established); or
 - (iii) a member of an organised consumer advisory service; or
 - (iv) a consumer advocate.

Note: A quality care advisory body may also include other persons with an interest in the quality of aged care delivered by the approved provider.

53C Report about quality of aged care provided

- (1) For the purposes of subsection 63-1D(7) of the Act, a written report given to the governing body of an approved provider by a quality care advisory body under subparagraph 63-1D(6)(a)(ii) of the Act about the quality of aged care that the approved provider provides through an aged care service must comply with the requirements specified in subsection (2) of this section.
- (2) The report must include an assessment of the quality of aged care provided by the approved provider through the service in the period (the **report period**) covered by the report, taking into account the following:
 - (a) feedback provided in the report period by care recipients and staff members of the approved provider about the quality of aged care provided by the approved provider through the service;
 - (b) complaints received in the report period by the approved provider about the quality of aged care provided by the approved provider through the service and action taken by the approved provider to address the complaints;
 - (c) concerns that the quality care advisory body has about the quality of aged care provided by the approved provider through the service;
 - (d) regulatory action taken in the report period by the Quality and Safety Commissioner in relation to the quality of aged care provided by the approved provider through the service;
 - (e) 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;

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Schedule 1 Amendments

Part 1 Governance of approved providers etc.

- (f) performance reports given to the approved provider in the report period by the Quality and Safety Commissioner, in accordance with rules made under the Quality and Safety Commission Act, in relation to the quality of aged care provided by the approved provider through the service;
- (g) staffing arrangements at the service during the report period, including details of the following, as applicable:
 - (i) the availability of allied health practitioners or other health support at the service;
 - (ii) the availability of registered nurses (within the meaning of the *Health Insurance Act 1973*) at the service;
 - (iii) staff turnover at the service;
- (h) any reportable incident for the approved provider that occurred in the report period at the service and any action taken by the approved provider in response to the reportable incident;

Note: *Reportable incident* is defined in the Aged Care Act 1997.

- (i) if the service is a residential care service:
 - (i) feedback received in the report period from care recipients at the service about the quality of food provided by the service to care recipients;
 - (ii) changes in the report period in the quality of food provided, and the food preparation model used, by the service;
 - (iii) menu assessments conducted by an accredited practicing dietitian in the report period in relation to food provided by the service;
 - (iv) information compiled or derived from a measurement or other assessment made by the approved provider in the report period in accordance with section 26.

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

53D Purpose of this Part

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

Note: *Reporting period* for an approved provider is defined in clause 1 of Schedule 1 to the Act as having the meaning given by subsection 63-1G(3) of the Act.

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

For the purposes of subsection 63-1G(1) of the Act, the following kind of information is specified in relation to a reporting period for an approved provider that provides a residential care service or a home care service:

- (a) details of feedback and complaints received by the approved provider in the reporting period in respect of each residential care service and home care service provided by the approved provider;

- (b) details of any improvements made by the approved provider in the reporting period in relation to the quality of each residential care service and home care service provided by the approved provider;
- (c) information about:
 - (i) the diversity of the governing body of the approved provider in the reporting period; and
 - (ii) 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;
- (d) whether the approved provider was, in the reporting period, a person or body mentioned in any of paragraphs 63-1D(1)(a) to (c) of the Act;
- (e) if subsection 63-1D(2) of the Act applied to the approved provider during the reporting period—whether the approved provider complied with the responsibilities set out in paragraphs 63-1D(2)(a) and (b) of the Act;
- (f) whether any of subsections 63-1D(3) to (5) of the Act applied to the approved provider during the reporting period.

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

For the purposes of subsection 63-1G(1) of the 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*):

- (a) 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;
- (b) 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.

53G Responsibilities to prepare and provide statements

- (1) For the purposes of paragraph 63-1(1)(m) of the Act, the following responsibilities are specified for an approved provider that provides a residential care service or a home care service:
 - (a) to prepare a statement for a reporting period for the approved provider that complies with the requirements specified in subsection (2) of this section;
 - (b) to give a copy of the statement to the Secretary within 4 months after the end of the reporting period for the approved provider.
- (2) The statement must:
 - (a) be in the form approved by the Secretary; and
 - (b) if the governing body of the approved provider believes that the approved provider has complied with the responsibilities of the approved provider under the Act and the requirements under the Quality and Safety Commission Act—state that fact and must be signed by a member of the approved provider’s governing body on behalf of all members of the governing body; and

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Schedule 1 Amendments

Part 1 Governance of approved providers etc.

- (c) if the governing body of the approved provider believes that the approved provider has failed to comply with one or more responsibilities of the approved provider under the Act or requirements under the Quality and Safety Commission Act—state that fact and must be signed by a member of the approved provider’s governing body on behalf of all members of the governing body and set out details of:
- (i) each responsibility or requirement that the governing body believes that the approved provider has failed to comply with; and
 - (ii) the reasons why the approved provider has failed to comply with the responsibility or requirement; and
 - (iii) how the approved provider will rectify the non-compliance.

Example: Under the Quality and Safety Commission Act an approved provider may be required:

- (a) to give undertakings about remedying non-compliance (see section 63T of that Act); or
- (b) to agree to certain matters if revocation of approval is being considered (see section 63U of that Act).

53H Service provided during part only of reporting period

If an approved provider of an aged care service was responsible for the operations of the service during part only of a reporting period for the approved provider, the approved provider is taken to have complied with sections 53E, 53F and 53G in relation to the service for the reporting period if the approved provider complied with those sections in relation to the service and that part of the reporting period.

2 In the appropriate position in Part 8

Insert:

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

Responsibilities of approved providers relating to their governing bodies etc.—existing providers

- (1) If a person is an approved provider immediately before 1 December 2022, Part 7A, as inserted by Part 1 of Schedule 1 to the *Aged Care Legislation Amendment (Governance and Reporting for Approved Providers) Principles 2022*, applies in relation to the person on and after 1 December 2023.

Responsibilities of approved providers relating to their governing bodies etc.—new providers

- (2) If a person becomes an approved provider on or after the 1 December 2022, Part 7A, as inserted by Part 1 of Schedule 1 to the *Aged Care Legislation Amendment (Governance and Reporting for Approved Providers) Principles 2022*, applies in relation to the person on and after the day the person becomes an approved provider.

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Amendments **Schedule 1**
Governance of approved providers etc. **Part 1**

Responsibilities relating to giving information

- (3) Part 7B, as inserted by Part 1 of Schedule 1 to the *Aged Care Legislation Amendment (Governance and Reporting for Approved Providers) Principles 2022*, applies in relation to a reporting period that starts on 1 July 2022 and each later reporting period for the approved provider.

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Schedule 1 Amendments

Part 2 Record keeping requirements

Part 2—Record keeping requirements

Records Principles 2014

3 Before section 1

Insert:

Part 1—Preliminary

4 After section 5

Insert:

Part 2—Records to be kept

5 After section 6

Insert:

6A Records about governing body

- (1) This section applies if the responsibilities set out in paragraphs 63-1D(2)(a) and (b) of the Act apply in relation to an approved provider.
- (2) The approved provider must keep a record about the members of the approved provider's governing body that includes the following information:
 - (a) the names of the members of the governing body who are independent non-executive members;
 - (b) the names of the members of the governing body who are not independent non-executive members;
 - (c) both:
 - (i) the names of the members of the governing body who have experience in the provision of clinical care; and
 - (ii) details of each such member's experience.

6B Records about the quality care advisory body

- (1) This section applies if the responsibility set out in subsection 63-1D(6) of the Act to establish and maintain a quality care advisory body applies in relation to an approved provider.
- (2) The approved provider must keep a record about the quality care advisory body that includes the following information and documents:
 - (a) the names of the members of the quality care advisory body and details of the following:
 - (i) the date each member was appointed to the quality care advisory body;
 - (ii) the date a member resigned from the quality care advisory body;

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- (b) details about how the quality care advisory body satisfies the requirements of section 53B of the *Accountability Principles 2014*;
- (c) a copy of the minutes of each meeting of the quality care advisory body and the date on which the meeting was held;
- (d) 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 Act;
- (e) 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 Act;
- (f) a copy of any written advice given to the quality care advisory body by the governing body of the approved provider under subparagraph 63-1D(6)(b)(ii) of the Act advising how the governing body has considered the report and feedback mentioned in paragraphs (d) and (e).

6C Records about the consumer advisory body

- (1) This section applies if the responsibility to offer care recipients and their representatives an opportunity to establish a consumer advisory body under subsection 63-1D(9) of the Act applies in relation to an approved provider.
- (2) The approved provider must keep a record that includes the following information and documents:
 - (a) a copy of each written offer made to care recipients and their representatives giving them the opportunity to establish a consumer advisory body;
 - (b) the date on which each offer was given to care recipients and their representatives;
 - (c) if a consumer advisory body is established:
 - (i) a copy of the minutes of each meeting of the consumer advisory body; and
 - (ii) 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 Act; and
 - (c) 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 Act advising how the governing body has considered any such feedback.

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

- (1) This section applies if the responsibility under subsection 63-1D(11) of the Act applies in relation to an approved provider.
- (2) The approved provider must keep a record about how the governing body of the approved provider has ensured that the staff members of the approved provider:
 - (a) 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

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Schedule 1 Amendments

Part 2 Record keeping requirements

- (b) are given opportunities to develop their capability to provide that care or those other services.

Note: Other record keeping responsibilities of an approved provider in relation to certain staff are set out in sections 9, 10A and 10B.

6 After section 11

Insert:

Part 3—Application, transitional and saving provisions

7 At the end of the instrument

Add:

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

Record keeping requirements—existing providers

- (1) If a person is an approved provider immediately before 1 December 2022, sections 6A to 6D, as inserted by Part 2 of Schedule 1 to the *Aged Care Legislation Amendment (Governance and Reporting for Approved Providers) Principles 2022*, apply in relation to the person on and after 1 December 2023.

Record keeping requirements—new providers

- (2) If a person becomes an approved provider on or after the 1 December 2022, sections 6A to 6D, as inserted by Part 2 of Schedule 1 to the *Aged Care Legislation Amendment (Governance and Reporting for Approved Providers) Principles 2022*, apply in relation to the person on and after the day the person becomes an approved provider.