**EXPLANATORY STATEMENT**

**Issued by the authority of the Assistant Minister for Social Services**

***Aged Care Act 1997***

***Quality Agency Reporting Principles 2013***

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

Section 96-1 of the Aged Care Act allows the Minister to make Principles providing for various matters required or permitted by a Part or section of that Act. Among the Principles made under section 96-1 are the Quality Agency Reporting Principles (the Principles).

The Principles describe some of the operational arrangements relating to the new Australian Aged Care Quality Agency (the Quality Agency).

The Quality Agency was established, through the *Australian Aged Care Quality Agency Act 2013*, to replace the existing Aged Care Standards and Accreditation Agency from 1 January 2014. The new body will be the sole agency that providers of aged care, approved under the Act, will deal with in relation to the quality assurance of the aged care services that they deliver, whether those services are delivered through a residential aged care service or in the person’s own home.

The Quality Agency will commence functions relating to residential aged care services from 1 January 2014, and will commence functions relating to home care services from 1 July 2014.

The Principles:

* describe the information that must be provided by the CEO of the Quality Agency to the Secretary of the Department of Social Service (the Secretary) to enable him or her to fulfil his or her responsibilities under the Aged Care Act; and
* repeal the existing *Accreditation Grant Principles 2011* which currently describe the accreditation process (applied by the Aged Care Standards and Accreditation Agency) for residential aged care services.

The Principles operate in conjunction with the Quality Agency Principles (made under the *Australian Aged Care Quality Agency Act 2013*) that describe the process for accreditation of residential aged care services (from 1 January 2014) and the quality review process for home care services from 1 July 2014.

The Principles are a legislative instrument for the purposes of the *Legislative Instruments Act 2003.*

Consultation

The Principles support the establishment of the new Quality Agency under the *Australian Aged Care Quality Agency Act 2013*.

The establishment of the Quality Agency was subject to extensive consultation with the aged care sector, consumers and industry and professional bodies during late 2012 and early 2013. This included consultation on the new legislation via an overview paper, a video presentation detailing the changes, briefing sessions in Melbourne, Sydney and Canberra, and a call for public comment.

In addition, consultation was undertaken on an exposure draft of the Principles (and related Quality Agency Principles) in October 2013. The Department of Social Services received fourteen submissions from interested stakeholders. These submissions informed the finalisation of the Principles and the Quality Agency Principles.

Regulation Impact Statement

The Office of Best Practice Regulation has advised that no Regulation Impact Statement is required (OBPR ID 15170).

Commencement

The Principles commence on 1 January 2014.

**ATTACHMENT**

**Details of the *Quality Agency Reporting Principles 2013***

**Part 1 - Preliminary**

**Section 1 - Name of Principles**

This section states thatthe name of the Principles is the *Quality Agency Reporting Principles 2013* (the Principles).

**Section 2 - Commencement**

This section states that the Principles commence on 1 January 2014.

**Section 3 - Authority**

This sectionstates that the Principles are made under section 96-1 of the *Aged Care Act 1997* (the Aged Care Act).

**Section 4 - Schedule(s)**

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

**Section 5 - Definitions**

This section provides definitions of terms used in the Principles and also notes that a number of definitions are included in the Aged Care Act.

**Part 2 – Information relating to residential care services**

**Section 6 - Purpose of this Part**

The purpose of Part 2 is to specify the circumstances in which the CEO of the Quality Agency must provide certain information relating to residential care services to the Secretary for the purposes of Part 4.4 of the Aged Care Act.

**Section 7 - Information about decision to accredit or re-accredit residential care service**

This section applies if the CEO of the Quality Agency makes a decision to accredit an approved provider of a commencing service or re-accredit an accredited service (or a previously accredited service) to provide residential aged care.

If the CEO of the Quality Agency makes a decision to accredit or re-accredit a provider of residential aged care, the CEO must provide in writing to the Secretary the decision, reasons for the decision, and the period of accreditation (or further accreditation) within 14 days of making that decision.

Details about the matters to be taken into account by the CEO in reaching a decision to accredit or re-accredit a residential care service are described in the Quality Agency Principles.

**Section 8 - Information about decision not to accredit or re-accredit residential care service**

This section applies if the CEO of the Quality Agency makes a decision not to accredit an approved provider of a commencing service or re-accredit an accredited service (or a previously accredited service) to provide residential aged care.

If the CEO of the Quality Agency makes a decision not to accredit or re-accredit a provider of residential aged care, the CEO must provide in writing to the Secretary the decision and reasons for the decision. This information must be provided to the Secretary as soon as practicable, but not later than 14 days, after the decision is made by the CEO of the Quality Agency.

Details about the matters to be taken into account by the CEO in reaching a decision not to accredit or re-accredit a residential care service (along with the reconsideration and review rights of the approved provider) are described in the Quality Agency Principles.

**Section 9 - Information about decision to revoke accreditation of accredited service**

This section applies if the CEO of the Quality Agency makes a decision to revoke an accredited service’s accreditation.

If the CEO of the Quality Agency makes a decision to revoke an accredited service’s accreditation, the CEO must provide in writing to the Secretary, the decision, reasons for the decision, and the date the revocation is to take effect. This information must be provided to the Secretary as soon as practicable, but not later than 14 days, after the CEO makes the decision.

The matters to be taken into account by the CEO in reaching a decision to revoke accreditation (along with the reconsideration and review rights of the approved provider) are described in the Quality Agency Principles.

**Section 10 - Information about decision not to revoke accreditation of accredited service and not to vary accreditation period**

This section applies if, following a review audit of an accredited service, the CEO of the Quality Agency makes a decision not to revoke the accreditation of the service and not to vary the period of accreditation of the service.

If the CEO of the Quality Agency makes a decision not to revoke or vary an accredited service’s accreditation, the CEO must within 14 days after receiving the review audit report, provide the Secretary with the decision and the reasons for the decision. This must be in writing.

The matters to be taken into account by the CEO in reaching a decision not to revoke accreditation (or vary the accreditation period) are described in the Quality Agency Principles.

**Section 11 - Information about decision not to revoke accreditation of accredited service and to vary accreditation period**

This section applies if, following a review audit of an accredited service, the CEO of the Quality Agency makes a decision not to revoke the accreditation of the service, but to vary the period of accreditation of the service.

If the CEO makes a decision not to revoke but to vary an accredited service’s accreditation, the CEO must provide the Secretary, in writing, the decision, reasons for the decision, and the date upon which the service’s accreditation will cease. This must be provided to the Secretary within 14 days of the CEO receiving the review audit report.

The Quality Agency Principles describe the matters to be taken into account by the CEO of the Quality Agency when making a decision not to revoke accreditation but to vary the period of accreditation.

**Section 12 - Information about failure to comply with Aged Care Act**

This section applies if the CEO of the Quality Agency becomes aware of evidence of a failure by an approved provider to comply with one or more of the approved provider’s responsibilities under the Aged Care Act.

As soon as possible after the CEO becomes aware of the evidence, the CEO must inform the Secretary in writing.

**Section 13 - Information about serious risk to care recipients**

This section sets out the actions required if the CEO of the Quality Agency identifies a failure by an approved provider to comply with the Accreditation Standards in relation to the service. Where the failure has placed, or may place, the safety, health or wellbeing of a care recipient of the service at serious risk, the CEO must, as soon as possible, provide in writing to the Secretary:

* specific information about the reason for the risk;
* evidence for the risk; and
* a statement of any other standard in the Accreditation Standards that the approved provider may have failed to comply with.

**Section 14 - Information relating to improvements of accredited service**

This section sets out the actions required if an approved provider has been given a timetable for making improvements in relation to the service, and at the end of that timetable (or any extension of the period), the CEO of the Quality Agency is not satisfied that the level of care and services provided through the service, complies with the Accreditation Standards.

If this is the case, the CEO must provide the Secretary in writing:

* reasons why the CEO is not satisfied;
* details of evidence to support this finding; and
* a copy of relevant information.

The CEO must provide this information to the Secretary as soon as practicable, but no later than 14 days, after the end of the period set out in the timetable for making improvements or if the period was extended, as soon as practicable, but no later than 14 days, after the end of the period of extension.

**Section 15 - Reconsideration decisions made by CEO**

This section applies if the CEO of the Quality Agency makes a reconsideration decision either on the CEO’s own initiative or at the request of a relevant person.

If the reconsideration decision is made upon request of a relevant person or by the CEO’s own initiative, and relates to:

* the refusal to accredit a commencing service; or
* the refusal to re-accredit an accredited service or a previously accredited service; or
* the revocation of accreditation of an accredited service;

the CEO of the Quality Agency must provide the Secretary with a copy of the reconsideration decision within 56 days after the CEO received the request for reconsideration from the relevant person, or the CEO commenced reconsideration.

If the reconsideration decision is made upon request of a relevant person, or by the CEO’s own initiative, and relates to:

* a decision on the period of accreditation of an accredited service or a previously accredited service; or
* varying the period of accreditation of an accredited service; or
* cancelling the registration of a quality assessor; or
* rejecting an objection to the appointment of a person to an assessment team;

the CEO of the Quality Agency must provide the Secretary with a copy of the reconsideration decision within 14 days after the CEO received the request for reconsideration from the relevant person, or the CEO commenced reconsideration.

**Part 3 – Information relating to home care services**

**Section 16 - Application of this Part**

This section states that Part 3 applies to home care services on and after 1 July 2014. This is the date from which the Quality Agency takes responsibility for the quality review of home care services.

**Section 17 - Purpose of this Part**

This section describes the purpose of Part 3 which is to specify the circumstances in which the CEO of the Quality Agency must provide information relating to home care services to the Secretary.

**Section 18 - Final quality review report**

This section requires the CEO of the Quality Agency to give a copy of the final quality review report to the Secretary within 20 days after giving the approved provider the interim quality review report. The approved provider is also given the final quality review report in accordance with the Quality Agency Principles.

**Section 19 - Information about failure to comply with Aged Care Act**

This section applies if the CEO of the Quality Agency is aware of evidence of a failure by an approved provider of a home care service to comply with one or more of its responsibilities under the Aged Care Act.

As soon as possible after becoming aware of the evidence, the CEO must notify the Secretary, in writing, about the evidence.

**Section 20 - Information about serious risk to care recipients**

This section applies if the CEO of the Quality Agency finds that an approved provider of a home care service has failed to meet one or more of the expected outcomes in the Home Care Standards and the failure has placed, or may place, the safety, health or wellbeing of a care recipient of the service at serious risk.

As soon as possible after deciding there is a serious risk to a care recipient of the service, the CEO of the Quality Agency must notify the Secretary, in writing, about the reason for and evidence of the risk, and information about any other expected outcome in the Home Care Standards the approved provider may have failed to meet.

**Section 21 - Information relating to improvements of home care service**

This section applies if the approved provider of a home care service has been given a timetable for making improvements and at the end of the period set out in the timetable (or at the end of any extension of that period) the CEO of the Quality Agency is not satisfied that the level of care and services provided through the home care service complies with the Home Care Standards.

Where this is the case, the CEO must provide the Secretary, in writing, the reasons why the CEO is not satisfied, the details of the evidence relied on to support this finding and a copy of any other relevant information.

This information must be given to the Secretary as soon as practicable, but not later than 14 days after the end of the period set out in the timetable for improvement (or such extended period).

**Part 4 – Other reporting requirements**

**Section 22 – Protected information acquired by CEO**

This section applies if the Secretary makes a request to the CEO of the Quality Agency for information that is protected under the *Australian Aged Care Quality Agency Act 2013* (the Quality Agency Act) that the CEO has acquired in the course of performing duties or exercising powers under that Act.

If the Secretary makes a request for protected information, this information must be provided to the Secretary and, in providing the information, the CEO will not commit an offence under section 48 of the Quality Agency Act.

**Schedule 1 – Repeal**

***Accreditation Grant Principles 2011***

**Item 1**

This item repeals the Accreditation Grant Principles 2011 (the Accreditation Grant Principles).The Accreditation Grant Principles are being replaced by the Quality Agency Principles and the Quality Agency Reporting Principles.

**Statement of Compatibility with Human Rights**

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

**The *Quality Agency Reporting Principles 2013***

The *Quality Agency Reporting Principles 2013* (the Principles) are compatible with the human rights and freedoms recognised or declared in the international instruments listed in Section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011.*

**Overview of the Legislative Instrument**

The purpose of the Principles is to describe the reporting requirements for the new Australian Aged Care Quality Agency (the Quality Agency) under the *Aged Care Act 1997* (the Aged Care Act). This body will replace the existing Aged Care Standards and Accreditation Agency Ltd from 1 January 2014.

The Quality Agency will be the sole agency that providers of aged care, approved under the Aged Care Act*,* will deal with in relation to the quality assurance of the aged care services they deliver, whether those services are delivered through a residential aged care service or in the person’s own home.

The Quality Agency will commence functions relating to residential aged care services from 1 January 2014, and will commence functions relating to home care services from 1 July 2014.

**Human Rights Implications**

The Principles engage the human right to the enjoyment of the highest attainable standard of physical and mental health as set out in Article 12 of the International Covenant on Economic, Social and Cultural Rights. The Principles set out the circumstances in which the CEO of the Quality Agency must provide information relating to aged care services to the Secretary for the purposes of Part 4.4 of the *Aged Care Act 1997*, which deals with compliance action that may be taken by the Secretary against approved providers who do not meet their responsibilities in relation to quality of care, user rights and accountability.

**Conclusion**

The Principles are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 201*1 because they promote the human right to the enjoyment of the highest attainable standard of physical and mental health.

**Senator the Hon Mitch Fifield**

**Assistant Minister for Social Services**