

## EXPLANATORY STATEMENT

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

***Aged Care Act 1997***

***Information Principles 2014***

The *Aged Care Act 1997* (the 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 Act allows the Minister to make Principles providing for various matters required or permitted by a Part or section of the Act.

Among the Principles made under section 96-1 are the *Information Principles 2014* (the Principles).

The purpose of the Principles is to specify the people to whom the Secretary of the Department of Social Services (the Secretary) may disclose protected information, and for what purposes the information can be disclosed. Protected information is defined in the Act to mean information that was acquired under, or for the purposes of, the Act or the *Aged Care (Transitional Provisions) Act 1997* and:

- is personal information (which has the same meaning as in the *Privacy Act 1988*);
- relates to the affairs of an approved provider;
- relates to the affairs of an applicant for approval under Part 2.1 of the Act (that is, approval as a provider); or
- relates to the affairs of an applicant for a grant under Chapter 5 of the Act.

From 1 July 2014, these Principles will replace the existing *Information Principles 1997*. The main difference between the principles is that new Principles have been renumbered, redundant information has been removed and certain provisions have been updated to reflect the current title of individuals to whom the Secretary may disclose information. No policy changes have been made to the Principles.

### Consultation

In April 2012, the former Government launched a major program of aged care reforms. The reform agenda was developed in close consultation with the aged care sector, including consumers, industry and professional bodies.

As part of the consultation on the proposed changes to the Act, and to delegated legislation, arising from the reforms, the former Government communicated its intention to examine the delegated legislation and, where possible, simplify the delegated legislation.

This intent was communicated in November 2012, with the public release of a paper providing an overview of the proposed legislative changes. A video presentation detailing the proposed reforms was also made available online to assist members of the public to

understand these changes.

During late 2012 and in the first half of 2013, briefing sessions were held across Australia to provide information and to explain, in detail, the proposed legislative changes included in the package of Bills introduced into Parliament on 13 March 2013. As part of these consultations, the intention to make related changes to delegated legislation was again discussed. For those interested members of the public unable to attend the briefings, the presentation, supporting handouts, a detailed Question and Answer document and an information video were made available online.

In early 2014, consultation was undertaken on those aged care principles that reflected significant policy changes. As the *Information Principles 2014* do not substantially differ from the *Information Principles 1997*, an exposure draft of these Principles was not released for public comment.

### Regulation Impact Statement

The Office of Best Practice Regulation has advised that no RIS is required (OBPR ID 16682).

### Commencement

The Principles commence on 1 July 2014.

**Details of the Information Principles 2014**

**Section 1 – Name of principles**

This section provides that the name of the principles is the *Information Principles 2014* (the Principles).

**Section 2 – Commencement**

This section provides that the Principles commence on 1 July 2014.

**Section 3 – Authority**

This section provides that the authority for making the Principles is section 96-1 of the *Aged Care Act 1997* (the Act).

**Section 4 – Definitions**

This section defines certain terms used in the Principles.

*Act* means the *Aged Care Act 1997*.

*Quality Agency* means the Australian Aged Care Quality Agency established by the *Australian Aged Care Quality Agency Act 2013*.

*relevant State or Territory authority* means an authority of a State or Territory (including a local authority) that has functions under a law of the State or Territory (including local by-laws) relating to fire safety.

**Section 5 – Purpose of these principles**

Paragraph 86-3(j) of the Act provides that the Secretary may disclose protected information to the kinds of people specified in the Information Principles and for the purposes specified in the Principles.

Section 5 of the Principles summarises the purpose of the Principles which is to specify the kinds of people to whom the Secretary may disclose protected information, and for what purposes the information may be disclosed.

**Section 6 – Disclosure of protected information**

This section provides that the Secretary may disclose protected information to representatives of certain departments, agencies, authorities and statutory office holders to assist them to perform their functions under relevant legislation.

The Secretary may disclose protected information to:

- the Repatriation Commission and the Secretary of the Department administering the *Veterans' Entitlements Act 1986* for the purpose of working out whether any amount is payable to a person as rent assistance under the *Veterans' Entitlements Act 1986*;
- the chief executive officer of the Quality Agency to assist the CEO to perform his or her functions under section 12 of the *Australian Aged Care Quality Agency Act 2013*;
- if the information relates to fire safety, to the chief executive officer of a relevant

- State, Territory or local authority that has functions relating to fire safety;
- the Aged Care Commissioner to assist the Aged Care Commissioner to perform his or her functions. The functions of the Aged Care Commissioner are described in the Act;
  - the Aged Care Pricing Commissioner to assist the Aged Care Pricing Commissioner to perform his or her functions. The functions of the Aged Care Commissioner are also described in the Act; or
  - the Director of the Australian Institute of Health and Welfare (AIHW) to assist the AIHW to perform its functions under the *Australian Institute of Health and Welfare Act 1987*. The AIHW is subject to certain confidentiality and information protection provisions described in the *Australian Institute of Health and Welfare Act 1987*.

A person to whom protected information is disclosed must not make a record of, disclose or otherwise use the information except for the purpose for which the information is disclosed. This is explained in more detail in section 86-5 of the Act.

## Statement of Compatibility with Human Rights

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

### **Information Principles 2014**

The *Information Principles 2014* (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 Principles specify the people to whom the Secretary of the Department of Social Services (the Secretary) may disclose protected information under paragraph 86-3(j) of the Act, and for what purposes the information can be disclosed.

### **Human Rights Implications**

The Principles promote the right of care recipients to an adequate standard of living and their right to the enjoyment of the highest attainable standard of physical and mental health as contained in article 11(1) and article 12(1) of the International Covenant on Economic, Social and Cultural Rights, and article 25 and article 28 of the Convention on the Rights of Persons with Disabilities.

The Principles enable the Secretary to disclose protected information in the form of information about the affairs of approved providers to bodies including, relevantly:

- the chief executive officer of the Quality Agency to assist the CEO to perform his or her functions under section 12 of the *Australian Aged Care Quality Agency Act 2013*; or
- if the information relates to fire safety, to the chief executive officer of a relevant State, Territory or local authority that has functions relating to fire safety; or
- the Aged Care Commissioner to assist the Aged Care Commissioner to perform his or her functions.

Disclosure of information about the affairs of an approved provider to one or more of these bodies can assist in protecting the safety, health and well-being of care recipients, for example by:

- assisting the CEO of the Quality Agency to review the quality of care provided to care recipients; or
- alerting the relevant authority of a potential fire risk at a residential care service; or
- enabling the Aged Care Commissioner to examine a complaint about the care being provided by an approved provider to a care recipient.

### *Right to privacy*

The Principles also engage the right of a person not to be subjected to arbitrary or unlawful interference with his or her privacy contained in article 17 of the International Covenant on Civil and Political Rights and article 22 of the Convention on the Rights of Persons with Disabilities.

The Principles provide that the Secretary may disclose protected information in the form of personal information collected under or for the purposes of the Act to bodies including, relevantly:

- the Repatriation Commission and the Secretary of the Department administering the *Veterans' Entitlements Act 1986* for the purpose of working out whether any amount is payable to a person as rent assistance under the *Veterans' Entitlements Act 1986*; or
- the Aged Care Commissioner to assist the Aged Care Commissioner to perform his or her functions; or
- the director of the Australian Institute of Health and Welfare (AIHW) to assist the AIHW to perform its functions under the *Australian Institute of Health and Welfare Act 1987*. The AIHW is subject to certain confidentiality and information protection provision described in the *Australian Institute of Health and Welfare Act 1987*.

Insofar as the Principles interfere with the privacy of individuals receiving care under the Act, the interference is reasonable, necessary and proportionate to the ends sought, which are:

- determining the eligibility of a care recipient to receive an additional amount under the *Veterans' Entitlements Act 1986* in the form of rent assistance; or
- enabling the Aged Care Commissioner to examine a complaint about the care being provided by an approved provider to a care recipient; or
- increasing the availability, accessibility and coordination of aged care data for statistical and research purposes.

In addition to the confidentiality provisions contained in the legislation under which the persons to whom the Secretary may disclose protected information operate, under section 86-5 of the Act it is an offence punishable by imprisonment for up to 2 years if a person to whom protected information is disclosed by the Secretary under paragraph 86-3(j) of the Act makes a record of, discloses or otherwise uses the protected information for a purpose that is not the purpose for which the information was disclosed.

### **Conclusion**

This legislative instrument is compatible with human rights as it promotes the human right to an adequate standard of living and the highest attainable standard of physical and mental health. Insofar as the legislative instrument limits the right to privacy, the limitations are necessary, reasonable and proportionate.

**Senator the Hon Mitch Fifield**  
**Assistant Minister for Social Services**