

EXPLANATORY STATEMENT

Select Legislative Instrument No. 2015

Issued by the authority of the Minister for Aged Care

Aged Care Act 1997

*Aged Care Legislation Amendment (Independent Complaints Arrangements)
Principle 2015*

Purpose

This Principle makes changes to the *Accountability Principles 2014*, *Extra Service Principles 2014*, *Information Principles 2014* and *User Rights Principles 2014* that are consequential to amendments made to the *Aged Care Act 1997* (the Act) by the *Aged Care Amendment (Independent Complaints Arrangements) Act 2015* (the Complaints Arrangements Act).

Background

The Complaints Arrangements Act made amendments to the Act to reflect the implementation of the 2015 Budget measure, *Aged Care – Independent Aged Care Complaints Arrangements*, under which responsibility for aged care complaints transferred from the Secretary of the Department to the Aged Care Complaints Commissioner.

The Complaints Arrangements Act made a number of changes to the Act, including changing the name of the Aged Care Commissioner to the Aged Care Complaints Commissioner (the Commissioner), and changing the functions of the Commissioner to cover the functions previously undertaken by the Secretary. The purpose of these changes is to increase the independence of aged care complaints handling by separating responsibility for the management of aged care complaints from the Department of Health's aged care policy and regulatory functions.

In addition to changes to the Act, there are also changes required to a number of different Principles made under the Act to reflect the changes to the name and functions of the Commissioner.

Commencement

The Principle commences on 1 January 2016.

Consultation

In preparing this instrument, and other instruments made to support the changes arising from the Complaints Arrangements Act, the Department consulted with the Aged Care Commissioner, the Aged Care Pricing Commissioner and the Australian Aged Care Quality Agency on parts of the changes relevant to each body.

Regulation Impact Statement (RIS)

Following consultation with the Office of Best Practice Regulation (OBPR), a RIS is not required as per OPBR reference number 19883.

This instrument is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Explanation of the provisions

Section 1

This section provides how the proposed Principle is to be cited, that is, as the *Aged Care Legislation Amendment (Independent Complaints Arrangements) Principle 2015*.

Section 2

This section sets out the commencement of the Principle. The commencement of this Principle is 1 January 2016 to align with the commencement of the amendments made by the Complaints Arrangements Act.

Accordingly, all variations to the Principles set out in Schedule 1 will commence on 1 January 2016.

Section 3

This section confirms that section 96-1 of the Act provides the authority for making this Principle.

Under subsection 33(3) of the *Acts Interpretation Act 1901* (the Interpretation Act), where an Act confers a power to make, grant or issue any 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.

Accordingly, the power in section 96-1 of the Act to make Principles is relied on, in conjunction with subsection 33(3) of the Interpretation Act, to vary the four different Principles varied by this instrument.

Section 4

This section provides that 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.

Schedule 1 – Amendments

Accountability Principles 2014

Item 1 is a consequential amendment that reflects the repeal of subparagraph 4(a)(iv) by item 2 below.

Item 2 repeals subparagraph 4(a)(iv) of the Accountability Principles to change the definition of ‘relevant official’. The change means the Commissioner is no longer a relevant official. This reflects the changes made by the Complaints Amendment Act to create the roles of aged care ‘authorised complaints officers’, who are able to access aged care services on behalf of the Commissioner in the performance of the Commissioner’s functions.

Item 3 repeals the heading to Subdivision B of Division 1 of Part 2. This reflects the amendments made by item 6 below to repeal Subdivision C. With the repeal of Subdivision C there will not be any subdivisions required in Division 1 of Part 2.

Item 4 repeals the heading to section 9 to reflect that there will no longer be subdivisions in Division 1 of Part 2.

Item 5 removes the word ‘Subdivision’ from section 9 of the Accountability Principles and replaces it with the word ‘Division’ to reflect the change from two subdivisions to no subdivisions.

Item 6 repeals Subdivision C of Division 1 of Part 2 of the Accountability Principles to reflect the changes made by the Complaints Amendment Act to create the roles of authorised complaints officers, who are able to access aged care services on behalf of the Commissioner in the performance of the Commissioner’s functions.

Extra Service Principles 2014

Item 7 repeals Division 3 of Part 4 of the Extra Service Principles. This item repeals the division as it is no longer required in the Extra Service Principles. The additional function of the Aged Care Pricing Commissioner, to disclose information to the Secretary about extra services, will be included in the *Aged Care (Aged Care Pricing Commissioner—Other Functions) Instrument 2015*. This other instrument will also give the Aged Care Pricing Commissioner the power to disclose certain information to the Aged Care Complaints Commissioner.

Information Principles 2014

Item 8 inserts a new heading ‘Part 1 – Preliminary’ before section 1 of the Information Principles, to reflect the Principles will now be divided into three parts.

Item 9 inserts a new heading ‘Part 2 – Disclosure of protected information by Secretary’ before section 5 of the Information Principles to reflect that the Secretary’s existing additional powers, to disclose information, will be found in Part 2 of the Information Principles.

Item 10 repeals the heading to section 5 of the Information Principles and substitutes a new heading. The new heading is required as a result of the division of the Information Principles into three parts. Section 5 of the Information Principles now sets out the purpose of the Part, rather than the purpose of the principles as a whole.

Item 11 makes consequential changes to section 5 of the Information Principles to reflect the structural changes made to section 86-3 of the Act by the Complaints Arrangements Act. The Complaints Arrangements Act divided section 86-3 of the Act into two subsections. Accordingly, the Information Principles are amended by this item to correctly cross-reference the power to make an instrument granting additional disclosure powers.

Item 12 repeals the heading to section 6 of the Information Principles to confirm that section 6 only applies to disclosure of information by the Secretary of the Department. Disclosure of information by the Commissioner will be added by **item 14** below.

Item 13 makes consequential amendments to section 6 of the Information Principles to reflect the Commissioner's change of name from the Aged Care Commissioner to the Aged Care Complaints Commissioner.

Item 14 inserts a new Part into the Information Principles to give the Commissioner additional powers to disclose protected information obtained as a result of performing functions or exercising powers.

New section 7 of the Information Principles provides that the purpose of the new Part 3 is to set out to whom the Commissioner may disclose information and the purposes for which the information can be disclosed. The note at the end of new section 7 refers the reader to the definition of 'protected information' in the Act.

New section 8 of the Information Principles provides that the Commissioner may disclose information to the:

- CEO of the Quality Agency;
- Aged Care Pricing Commissioner; and
- Secretary of the Department.

In all cases the Commissioner can only disclose information to enable the recipient to perform their functions. New paragraph 8(c) makes it clear that disclosure of information to the Secretary of the Department must be for their functions relating to aged care, and not to any other functions the Secretary may have.

The note at the end of new section 8 reminds the reader that a person who receives information disclosed under this provision is restricted to only using the information for the same purpose as it was provided to them.

User Rights Principles 2014

Item 15 makes amendments to section 24 of the User Rights Principles to reflect that the complaints function has moved from the Secretary to the Commissioner. As a result of the changes in Item 15 approved providers will be required to allow 'authorised complaints officers' to access a service, rather than a person authorised by the Secretary. Authorised complaints officers are specific officers who have been appointed by the Commissioner to assist the Commissioner to perform his or her functions and exercise his or her powers.

Statement of Compatibility with Human Rights

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

Aged Care Legislation Amendment (Independent Complaints Arrangements) Principle 2015

This Principle is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Principle

The *Aged Care Legislation Amendment (Independent Complaints Arrangements) Principle 2015* amends the *Accountability Principles 2014*, *Information Principles 2014* and the *User Rights Principles 2014*.

Accountability Principles 2014

The *Accountability Principles* describe the responsibilities of approved providers in relation to accountability for the aged care they provide. This Principle amends the *Accountability Principles* to remove access of the Aged Care Commissioner to a residential or home care service for the purpose of fulfilling his or her functions.

Information Principles 2014

The *Information Principles* specify the kinds of people to whom protected information may be disclosed and the purposes for which the information may be disclosed. This Principle amends the *Information Principles* to specify that the Aged Care Complaints Commissioner may disclose protected information to the Secretary, the CEO of the Quality Agency, and the Aged Care Pricing Commissioner.

User Rights Principles 2014

The *User Rights Principles* describe the responsibilities of approved providers and care recipients who provide and receive aged care, respectively. This Principle amends the *User Rights Principles* to specify that an approved provider must allow an authorised complaints officer access to an aged care service to assist in the resolution of a complaint.

Human Rights Implications

This Principle engages the protection against arbitrary interference with privacy, as contained within article 17 of the International Covenant on Civil and Political Rights (ICCPR) and article 22 of the International Covenant on the Rights of Persons with Disabilities (CRPD).

The amendments to the User Rights Principles require an approved provider to allow authorised complaints officers access to a residential or home care service for the purpose of investigating and assisting in the resolution of a complaint in relation to the service. These amendments do not include access to an individual's home unless on the invitation of the care recipient. In the context of the Principle, 'home care services' refers to the premises of the approved provider.

The amendments to the Information Principles allow the Commissioner to release protected information to certain people, which may include personal or sensitive information that has been collected in the course of the Commissioner performing his or her duties under the Aged Care Act. The Commissioner will only collect this information in accordance with the Aged Care Act, *Privacy Act 1988* and the Australian Privacy Principles.

Conclusion

The Principle is compatible with human rights. To the extent that it may limit the protection against arbitrary interference with privacy, those limitations are reasonable and proportionate and this approach is compatible with human rights principles.

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Minister for Aged Care