

# **EXPLANATORY STATEMENT**

## ***Aged Care Act 1997***

### ***Information Amendment (Enrolled Nurse Staff Members) Principles 2025***

The *Aged Care Act 1997* (the Aged Care Act) provides for the funding of aged care services and the responsibilities of approved providers of residential care.

#### **Purpose and operation**

The *Information Amendment (Enrolled Nurse Staff Members) Principles 2025* (Amending Instrument) amends the *Information Principles 2014* (Information Principles) to require the Secretary to make publicly available information about the provision of ‘direct care’ by enrolled nurse staff members of approved providers of residential care at their residential care services.

#### **Background**

The Amending Instrument is required to align publication of information about provision of direct care with amendments to the *Quality of Care Principles 2014* (Quality of Care Principles) that commenced 1 October 2024, through the *Aged Care Legislation Amendment (Subsidy and Other Measures) Instrument 2024* (‘Subsidy and Other Measures Instrument’). Those amendments introduced a new approved provider responsibility from the October-December 2024 quarter onward with respect to the direct care provided by registered nurse staff members and enrolled nurse staff members.

Under paragraph 54-1(1)(h) of the Aged Care Act and sections 9 and 10 of the Quality of Care Principles, approved providers of residential care have responsibilities to provide ‘required amounts of direct care’ each quarter at each residential care service.

‘Direct care’ is defined in section 4 of the Quality of Care Principles as care provided to an individual care recipient that is of a kind described in items 1.11, 2.1, 2.3, 2.4, 2.5, 2.7, 2.8, 2.9 or 3.8 of Schedule 1 of the Quality of Care Principles (other than the planning or delivery of activities to a group of care recipients).

Approved provider direct care responsibilities are positive obligations that specified staff of the approved provider must deliver at least a certain amount of specified minutes of direct care to the care recipients of a residential care service over a quarter.

Since 1 October 2024, approved providers have had three responsibilities with respect to direct care:

- direct care provided by direct care staff members
- direct care provided by registered nurse staff members
- direct care provided by registered nurse staff members and enrolled nurse staff members.

Section 8B of the Information Principles, made for the purposes of subsection 86-10(1) of the Aged Care Act, currently requires that the Secretary must make publicly available information in relation to a residential care service, for a quarter of a financial year, for

the approved provider of the service. This includes information about direct care provided by all direct care staff members and separately by registered nurse staff members.

The Amending Instrument will require that the Secretary must also make publicly available, in relation to a residential care service for a quarter of a financial year for the approved provider of the service, information about the average amount of direct care provided through the service by enrolled nurse staff members of the provider per counted care recipient per day during the quarter.

### **Authority**

Under section 96-1 of the Aged Care Act the Minister may, by legislative instrument make Information Principles providing for matters required or permitted by Part 6.2 of the Aged Care Act, or necessary or convenient in order to carry out or give effect to Part 6.2.

The Amending Instrument is made pursuant to subsection 86-10(1) of the Aged Care Act.

### **Reliance on subsection 33(3) of the *Acts Interpretation Act 1901***

Under subsection 33(3) of the *Acts Interpretation Act 1901*, 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.

### **Commencement**

The Amending Instrument commences the day after registration.

### **Consultation**

In September 2024, officials of the Department of Health and Aged Care discussed the measures that were to come into effect through the Subsidy and Other Measures Instrument with the representatives of the residential aged care sector. These discussions were facilitated through a meeting with the Residential Aged Care Funding Reform Working Group and, separately, through a webinar. This included discussion that publication of information about delivery of direct care would be updated to include data with respect to the new direct care responsibility when data about delivery of direct care for the October-December 2024 quarter was available.

### **Impact Analysis**

The amendments in the Amending Instrument are consequential to amendments to the direct care responsibility through Schedule 4 of the Subsidy and Other Measures Instrument. The Office of Impact Analysis has advised that a detailed impact analysis is not required (OIA25-08966).

### **General**

The Amending Instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

Details of the Amending Instrument are set out in **Attachment A**.

The Amending Instrument is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in **Attachment B**.

**Details of the Information Amendment (Enrolled Nurse Staff Members) Principles 2025**

**Section 1** provides that the name of the instrument is the *Information Amendment (Enrolled Nurse Staff Members) Principles 2025* (Amending Instrument).

**Section 2** provides that the whole of the Amending Instrument commences the day after the instrument is registered.

**Section 3** provides that the authority for making the Amending Instrument is the *Aged Care Act 1997* (Aged Care Act).

**Section 4** provides that each instrument that is specified in a Schedule to the Amending Instrument is amended or repealed as set out in the applicable items in the relevant Schedule and other items in the Schedules have effect according to its terms.

**SCHEDULE 1—Amendments**

***Information Principles 2014***

**Item 1 – after paragraph 8B(1)(d)**

This item inserts new paragraph 8B(1)(e) that requires the Secretary to make publicly available the following information in relation to a residential care service, for a quarter of a financial year for the approved provider of the service:

- the average amount of direct care provided through the service by enrolled nurse staff members of the provider per counted care recipient per day during the quarter.

This amendment ensures that information will be published about the actual average amount of direct care provide by enrolled nurses at residential care services, which aligns with current paragraphs 8B(1)(c) and (d) (which require that information is published about the total average amount and the registered nurse amount of direct care provided). The intended effect is to increase transparency of information about approved providers responsibilities in relation to direct care. Public availability of this information will assist current and prospective care recipients and their families to be better informed about the care minutes responsibilities of approved providers of residential care services, including the average amounts of direct care that are being provided across residential care services.

**Item 2 – Subsection 8B(3)**

This item inserts a new definition that:

- ***enrolled nurse staff member*** has the meaning given by section 4 of the *Quality of Care Principles 2014*.

The *Quality of Care Principles 2014* defines an enrolled nurse staff member as a staff member of an approved provider who is an enrolled nurse.

## Statement of Compatibility with Human Rights

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

*Information Amendment (Enrolled Nurse Staff Members) Principles 2025*

This instrument 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 the instrument

The *Information Amendment (Enrolled Nurse Staff Members) Principles 2025* (Amending Instrument) amends the *Information Principles 2014* (Information Principles), requiring the Secretary to make information about the provision of ‘direct care’ by enrolled nurse staff members of approved providers of residential care at residential care services publicly available.

### Human rights implications

#### Right to access information

The right to access information is contained in article 19(2) of the International Covenant on Civil and Political Rights which provides that everyone has the right to freedom of expression which includes the right to seek and receive information of all kinds, either orally or in writing. Article 21 of the Convention on the Rights of Persons with Disabilities (CRPD) provides a similar right for persons with disabilities, in that that parties to the CRPD shall take appropriate measures to ensure people with disabilities can exercise their right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice. Such measures include providing information in accessible formats and technologies, in a timely manner, and without additional cost.

The Amending Instrument promote the right to access information by requiring the Secretary of the Department of Health and Aged Care to make publicly available the information specified in the Amending Instrument about approved providers of residential care services through which residential care is provided to care recipients, including those with disabilities.

This information, which relates to approved providers’ direct care responsibilities and the average amounts of direct care provided against those responsibilities at each residential care service each quarter of a financial year, will provide care recipients who may have impediments to their full and effective participation in society and their families with clear, timely and meaningful information about residential care services.

This information about residential care services will assist current and prospective care recipients and their families to make better informed decisions about aged care. Providing access to this information will help care recipients to choose an approved provider and residential care service that is right for them, encouraging a holistic

approach to care and support better health outcomes.

It is intended that this information will be made available in one location and at no cost to care recipients or their families who may wish to access the information. In addition, all information required to be published by the Amending Instrument will be designed in accordance with the World Wide Web Consortium's Web Content Accessibility Guidelines (WCAG) 2.0 standard, making the information on the website accessible for a wider audience.

### **Conclusion**

The Amending Instrument is compatible with human rights as it promotes the right to access information.

**The Hon Anika Wells MP**  
**Minister for Aged Care**