Australian Government
Department of Health

Serious Incident Response Scheme for Commonwealth funded in-home aged care services

Consultation Paper

July 2021

Contents

Making a submission

This paper has been prepared by the Australian Government Department of Health (Department) as a basis for consultation on the details of a Serious Incident Response Scheme (SIRS) for Commonwealth funded in-home aged care services. This includes Home Care packages, the Commonwealth Home Support Program (CHSP) and flexible care delivered in a home setting (including Multi-Purpose services (MPS) in a home setting, short term restorative care, National Aboriginal and Torres Strait Islander Flexible Aged Care Program (NATSIFACP) and transition care program (TCP) in a home setting).

The Department is keen to consult widely and engage with as many individuals and organisations (with an interest in the SIRS) as possible. These include:

- consumers, their families and carers
- key sector groups
- aged care providers (providers)
- staff of aged care providers, health and disability services providers
- advocacy groups and
- other government stakeholders.

The Department invites your comments on this consultation paper.

You can submit your comments via the Department's consultation hub at https://consultations.health.gov.au/

All comments will be carefully considered. With your consent, your comments will be de-identified and made publicly available.

If you are having difficulty completing an online submission, please contact SIRS@health.gov.au for assistance.

You must ensure that the Department receives your comments by 9 August 2021.

Late submissions will not be accepted.

Thank you for your interest and taking the time to provide your feedback.

Context and purpose of this consultation paper

The establishment of a Serious Incident Response Scheme

Australians have a right to live free from abuse and neglect. Older Australians also have specific rights and expectations when receiving Commonwealth funded aged care.

Establishing a SIRS for aged care was a recommendation of the 2017 Australian Law Reform Commission report Elder Abuse - A National Legal Response (ALRC report), and was endorsed by the 2017 Review of National Aged Care Quality Regulatory Processes.

The ALRC report recommended changing the emphasis from requiring providers to report assaults, to an emphasis on investigation and response to incidents by those providers. The ALRC report also recommended that the definition of 'serious incidents' in respect of in-home aged care services should mean physical, sexual or financial abuse committed by a staff member against a consumer (Recommendation 4-4).

Serious Incident Response Scheme for residential aged care

The SIRS for residential aged care (including flexible care delivered in a residential setting) commenced on 1 April 2021. Under the SIRS, providers have the responsibility to manage incidents and take reasonable steps to prevent incidents, including through implementing and maintaining an incident management system.

In addition to managing incidents through the use of an incident management system, providers are required to report actual, alleged and suspected serious incidents involving consumers to the Aged Care Quality and Safety Commission (Commission). There are eight kinds of reportable incidents, namely:

- unreasonable use of force against a consumer
- unlawful sexual contact or inappropriate sexual conduct inflicted on a consumer
- psychological or emotional abuse of a consumer
- unexpected death of a consumer
- stealing from, or financial coercion of, a consumer by a staff member
- neglect of a consumer
- use of a restrictive practices in relation to the consumer (other than in accordance with the Quality of Care Principles) or
- unexplained absence of a consumer from the residential aged care services of the provider

Mandatory incident reporting under the SIRS has a phased implementation. From 1 April 2021, all 'priority 1' reportable incidents must be reported within 24 hours of the provider becoming aware of the incident, and if requested by the Commission, a follow up incident report must be provided within five days after the start of the 24 hours (or another date specified by the Commission). Priority 1 reportable incidents are those that result in, or could reasonably have been expected to have resulted in, physical or psychological injury or discomfort to a consumer requiring medical or psychological treatment.

From 1 October 2021, providers will also be required to report all 'priority 2' reportable incidents within 30 days of becoming aware of the incident. Priority 2 reportable incidents include any reportable incident that does not come within the priority 1 category, so in general, this is where there is low or no physical or psychological injury to the consumer.

Independent of these reporting requirements, providers must identify, record, manage and take reasonable steps to prevent incidents as a fundamental responsibility under the SIRS.

Royal Commission into Aged Care Quality and Safety

On 1 March 2021, the Royal Commission into Aged Care Quality and Safety (Royal Commission) Final Report: Care Dignity and Respect (Final Report) was publicly released. The Final Report recommended that the SIRS be extended to cover all serious incidents, regardless of whether the alleged perpetrator has a cognitive or mental impairment and noted it must be extended to cover serious incidents perpetrated by aged care workers against people receiving aged care in home settings (Recommendation 100). Extending SIRS to home settings would be consistent with arrangements under the National Disability Insurance Scheme (NDIS) whereby the incident management scheme applies irrespective of setting as long as there is a connection to the provision of NDIS supports or services.

The Final Report also noted that where an incident occurs in the home but does not have a connection with care, it should fall outside the scope of SIRS so that these incidents need not be reported to the Commission. However, it noted that these matters should be reported to the police or other State and Territory authorities which can address elder abuse, and that home care providers should have a safeguarding regime. This is because workers may observe conduct or circumstances such as signs of abuse, neglect or exploitation by another person that no one else may be aware of. However, the Final Report noted that expanding the SIRS to in-home aged care services needs to be sufficiently targeted to reduce the risk of the scheme becoming overwhelmed.

In-home services

For the purposes of this paper, in-home services refers to any Commonwealth funded aged care services delivered in the home or community and includes care delivered through home hare packages, the Commonwealth Home Support Program (CHSP) and flexible care delivered in a home setting (including Multi-Purpose services (MPS) in a home setting, short term restorative care (STRC) in a home setting, National Aboriginal and Torres Strait Islander Flexible Aged Care Program (NATSIFACP) in a home setting and transition care program (TCP) in a home setting.

Current arrangements for in-home services

Under Standard 8 of the Aged Care Quality Standards, aged care providers (including providers of in-home aged care services) are required to have effective risk management systems and practices including to identify and respond to abuse and neglect of consumers. From 1 April 2021, the Aged Care Quality Standards were amended to require providers (including providers of certain in-home services) to manage and prevent incidents including through the use of an incident management system.[1]

There are not currently any compulsory reporting requirements that apply to providers of in-home services under the aged care law.

As part of the 2021-22 Budget, the Government announced an initial $14 million in funding, to expand the SIRS to in-home services from 1 July 2022. The SIRS is being expanded to hold

[1] Subparagraphs 8(3)(d)(ii) and (iv) of Schedule 2 to the *Quality of Care Principles 2014*

providers to account for protecting and safeguarding consumers, in accordance with reasonable expectations from the Australian community.

Preparatory work on SIRS for in-home services

KPMG was commissioned by the Department to undertake a prevalence and feasibility study to inform Government decisions on a SIRS for in-home services.

Providers of in-home services were invited to participate in the prevalence study. Data collection occurred over a period of six months from November 2020 to April 2021.

KPMG also undertook consultation with a range of stakeholders during March and April 2021 to assist in developing options.

KPMG's final report, *Improving Aged Care Quality Protections: Options for a Serious Incident Response Scheme (SIRS) in home and community aged care* (KPMG report), summarises the findings from the prevalence and feasibility study conducted. The KPMG report identified four policy options for expanding the SIRS to in-home services:

Option 1	No change to the current arrangements (SIRS for residential aged care only)
Option 2	SIRS for residential aged care is implemented in the home and community care setting with amendments to acknowledge the different care setting
Option 3	SIRS for residential aged care is implemented in the home and community care setting, to the extent possible, although incidents associated with low or no harm are not reportable incidents.
Option 4	Expanded scope and definition for SIRS for residential aged care is implemented

The KPMG report highlights the unique characteristics associated with the delivery of aged care in the home and community, including the size of the cohort, the diversity of needs of consumer, the level of control and supervision of providers, and the capability and supply of the workforce. The KPMG report's options revise the arrangements under the SIRS for residential aged care to take into account these differences.

Purpose of this consultation paper

This consultation paper draws on the KPMG study and outlines issues and options for SIRS for in-home services. The feedback received through consultation on this paper will be used to inform further advice to Government including how the SIRS should be operationalised for in-home services including the legislative and resourcing implications.

Proposed Serious Incident Response Scheme

Overview

The proposed SIRS for in-home services is intended to:

- support providers to engage in risk management and continuous improvement activities to deliver safe quality care to aged care consumers
- place a greater focus on how providers investigate and respond to incidents by introducing more detailed responsibilities for providers to manage and take reasonable steps to prevent incidents
- introduce requirements for providers to notify the Commission of certain reportable incidents. The Commission will administer the SIRS in the context of a risk based, end-to-end quality and safety regulatory framework, with a focus on assessing the actions taken by a provider to ensure the safety, health and well-being of a consumer, than is present under the current arrangements.

Proposed model

It is proposed that the SIRS for in-home services be based on the SIRS for residential aged care.

The key benefits of this are:

- providers operating across different aged care contexts will be familiar with the arrangements already existing in residential care and
- there will be common frameworks operating across all care types.

However, it is also recognised that there are significant contextual differences between residential care and in-home services, and that this may mean the SIRS will need to differ in some ways for in-home services. The purpose of this Consultation Paper is to draw out these differences and seek stakeholder advice on any adjustments that need to be made to the SIRS in the in-home services context.

Consistent with the SIRS for residential aged care, there are five aspects to the SIRS which require consideration in the context of in-home services:

1. the proposed responsibility for managing incidents and taking reasonable steps to prevent incidents, including through implementing and maintaining an incident management system (including notifying others of incidents, such as police).
2. the proposed requirements for notifying the Commission of reportable incidents (including who will have a responsibility to notify and when)
3. the proposed scope of incidents to be reported to the Commission and
4. proposed reporting timeframes and priority categories.

Each of these areas is discussed below.

1. Proposed responsibility to manage and prevent incidents

Providers of in-home services are already required to have effective risk management systems and practices for preventing and managing incidents, including the use of an incident management system (requirement 8(3)(d)(iv) of the Aged Care Quality Standards). Many providers of in-home services will also be familiar with the Commission's 'Effective incident management systems: Best practice guidance'.

In residential aged care, providers have a number of specific responsibilities relating to incident management and prevention. These are described in Divisions 1 – 3 of Part 4B of the Quality of Care Principles and include responsibilities to:

- manage incidents, with a focus on the safety, health and wellbeing and quality of life of care recipients
- respond to incidents by taking certain actions
- assess the incident
- collect data relating to incidents to enable the provider to continuously improve its management and prevention of incidents
- include certain procedures in its incident management system and ensure that roles and responsibilities of staff are clear in relation the management, resolution and prevention of incidents and
- keep certain records.

It is proposed that these responsibilities also apply to providers of in-home services. A key issue for consultation is whether any of the responsibilities described above would not be applicable or appropriate in the in-home services context.

It is recognised that providers have less control over the care environment within a home setting than they do when providing residential aged care. For example, providers of in-home services have limited knowledge or control over the nature or set-up of the home, where the consumer goes outside of their home and who visits the consumer. These factors can influence the extent to which a provider can reasonably prevent, identify and respond to incidents.

Incident management and prevention

One area in which adjustments may be required is the scope of incidents to form part of the responsibilities relating to incident management and prevention.

> Any act, omission, event or circumstance that occurs **in connection with the provision of care or services** that:
>
> - has (or could reasonably be expected to have) caused harm to a consumer or another person (such as a staff member), or
> - is suspected or alleged to have (or could reasonably be expected to have) caused harm to a consumer or another person, or
> - the provider becomes aware of and that has caused harm to the consumer.

'In connection with' is a broad phrase used to capture incidents that have occurred during the course of providing care and services, or due to the omission of care and services. This is intended to include incidents that:

- may have occurred during the course of supports or services being provided
- arise out of the provision, alteration or withdrawal of supports or services or and
- may not have occurred during the provision of supports or services but are connected because it arose out of the provision of supports or services.

Given the policy intent of the SIRS, it is proposed that for the purposes of a provider's responsibilities relating to incident management and prevention, the focus be on incidents in connection with the provision of care and services, or the omission of care and services, that have caused harm to the consumer, or another person such as their staff member.

Adopting the definition of 'incident' used for SIRS in residential care would mean if a consumer discloses to a staff member providing in-home services, that they have been harmed by others, such as family, friends, neighbours or a member of the public, the staff member/provider would be expected to manage this incident. This could mean capturing incidents that may not reasonably be within the provider's capacity to address. Examples may include:

- a staff member witnessing a consumer having a dispute with a neighbour and the neighbour experiencing visible emotional distress because of the dispute and
- a consumer with bruises disclosing to a staff member that they fell over while out shopping.

There is a community concern about the vulnerability of older people, particularly elder abuse in home settings. Adopting the definition of 'incident' used for residential care would go some way to addressing this concern, in that, if a consumer has experienced elder abuse and discloses this to a staff member providing in-home services, this would be an incident that a provider would be responsible for managing. An example of managing one of these incidents may be assisting the consumer in contacting police or an elder abuse agency for support.

Questions

- Should the requirements described in Divisions 1 – 3 of Part 4A of the Quality of Care Principles (relating to incident management and prevention) also apply to providers of in-home services?
- Are there any adjustments that need to be made to these requirements to reflect the different in-home services context?

Proposed requirements to notify others, such as police, of incidents

Notifying the police

Consistent with current arrangements for residential aged care (and under any applicable state and territory laws) it is proposed that if there are reasonable grounds to report an incident to police, a provider of in-home services will be required to notify police of the incident within 24 hours of becoming aware of the incident, irrespective of if they are responsible for the incident.

Similarly, if the provider is aware of an incident, although later becomes aware of reasonable grounds to report the incident to police (later than 24 hours of becoming aware of the incident), the provider must notify police of the incident within 24 hours of becoming aware of those grounds.

'Reasonable grounds' may include a scenario where the provider is aware of facts or circumstances (alleged or known) that lead them to believe that it is likely that the incident is of a criminal nature and therefore should be reported to police (e.g. if the provider suspects the incident involves an indecent assault or if there is an ongoing danger).

Also consistent with arrangements for residential aged care, upon receiving a notice about a reportable incident the Commission can refer the incident to the police if this has not been done by the provider.

Notifying other persons or bodies

Consistent with arrangements for residential aged care, it is proposed that as part of the requirements for managing incidents, a provider must respond to an incident by assessing whether other persons or bodies should be notified of the incident and notifying them if appropriate. This may include contacting, for example:

- the consumer's representative or family
- the Australian Health Practitioner Regulation Agency (AHPRA) or
- a State or Territory based elder abuse authority or service.

Under the SIRS in-home services, elder abuse that is observed or identified during the course of delivering care, but which is not connected to the provider (e.g. abuse by family), will not be reportable to the Commission. This is because the Commission's powers or functions are focused on issues connected with the delivery of care and services, and therefore may not be the most appropriate agency to respond to this type of abuse.

The provider may report this abuse through other existing channels, such as state and territory elder abuse agencies as noted above. This is consistent with the findings of the ALRC Report which stated that abuse of older people must not be treated the same way as for children and that professionals should not be required to report all types of elder abuse. The ALRC Report noted that older people should generally be free to decide whether to report abuse they have suffered to the police or a safeguarding authority, or to not report the abuse at all.

Upon receiving a notice about a reportable incident, the Commission is also able to refer the incident to the other bodies.

Questions

- Are the requirements for reporting to police and others (as described above) also able to be implemented for in-home services?
- Should providers report incidents to police, family or other bodies without the consumer's consent, or should reports only be made with the consumer's consent?

2. Proposed responsibility to notify the Commission of reportable incidents

In residential care, a subset of incidents must also be reported to the Commission (reportable incidents). Likewise it is proposed that certain incidents that occur in connection with the provision of in-home services also be notified to the Commission (see further discussion below).

It is proposed that providers of in-home services will have the same overarching responsibility to notify the Commission of reportable incidents as in residential aged care. Staff members of providers will be required to alert the provider of alleged, suspected or actual reportable incidents as soon as practicable and in alignment with the provider's incident management system procedures.

Any person, including staff, who are concerned that the care of a consumer is being compromised, should raise their concerns directly with the provider in the first instance. If a person alerts the provider of a reportable incident, the provider will be responsible for notifying the Commission within the relevant timeframe (commencing from the time that the provider becomes aware of the reportable incident).

There are some key differences between residential aged care and in-home services that may mean some adjustments or additional detail is required around notification obligations for in-home services providers.

For example:

- in the in-home services context, there will be situations where staff members from multiple providers are delivering care, such as where a consumer is receiving in-home services through a home care package and also through the CHSP. Where an allegation is made or a suspicion is raised it may not always be clear which provider is responsible for managing the incident, and/or notifying the Commission of the incident. For example:
    - staff member of provider A is in the consumer's home providing services and witnesses the staff member of provider B pushing the consumer
    - a consumer discloses to the staff member of provider A that staff member of provider B sexually assaulted them on their last home visit
    - staff member of provider A notices that consumer has a large bruise and their family member alleges that this was the result of rough handling by a staff member but the family is not sure which staff member it was (provider A or provider B)

- the provider may rely heavily on subcontracted service providers. Where subcontracted providers become aware of incidents, there must be systems in place to enable timely reporting and escalation of these issues to the provider so that support can be provided to the consumer, the incident can be investigated and managed and notified to the Commission

- the provider may have more limited opportunity to investigate and prevent incidents in a consumer's home, particularly where the provider has only limited involvement with the consumer, where there are multiple parties (providers and family members) responsible for the care of the consumer and/or where the consumer does not want the incident investigated further

In each of the above scenarios there needs to be clarity about who is responsible for supporting the consumer, managing the incident and reporting the incident.

Consistent with residential aged care, it is proposed that the provider who receives the allegation or suspects or witnesses the reportable incident should notify the Commission of the incident.

The key difference for in-home services is that the organisation who reports the incident may not be the same organisation as the one responsible for investigating and managing the incident. This is because one provider may make a report about another provider, for example, where a consumer makes an allegation to provider A about a staff member of provider B, such that provider B is the one that needs to investigate and manage the incident, and to take steps to mitigate the risk of it recurring.

A key question for stakeholder consideration is whether the responsibility to notify the other provider (provider B) should rest with the provider who became aware of the allegation (provider A) to enable timely management of the incident or whether this should be facilitated by the Commission.

Questions

- Does the different in-home services context mean that there needs to be adjustments to the requirements for notifying the Commission of reportable incidents?
- If so, what should these adjustments be?
- Specifically, if a provider suspects or is aware of an allegation about another provider (relating to the care of a consumer to whom both providers deliver services) should that provider be responsible for notifying the other provider, as well as the Commission?

Non-providers notifying the Commission of incidents

Where an incident of abuse or neglect is reported directly to the Commission by a consumer or another person (other than the provider), this will continue to be handled through the Commission's existing complaints framework, rather than the SIRS. This is consistent with arrangements under the SIRS for residential aged care.

The Commission's complaints framework allows for anyone to raise concerns about the quality of care or services delivered to consumers of Commonwealth funded aged care services. There are strict confidentiality and anonymity provisions within aged care legislation that ensure people who request confidentiality when making a complaint are protected from having their identity disclosed. A person may also decide to make a complaint anonymously.

3. Proposed scope of reportable incidents

Reportable incidents

It is proposed that the definition of a reportable incident under the SIRS for in-home aged care services be consistent as possible with current arrangements for residential aged care. Some details, including certain types of incidents, reporting timeframes, may need to be refined to apply

to a in-home services context, which is what feedback on this consultation paper will inform. In summary, the arrangements for the SIRS in residential aged care are:

> A reportable incident is any of the following incidents that have occurred, are alleged to have occurred, or are suspected of having occurred, **in connection with the provision of care to a consumer**:
>
> - unreasonable use of force against the consumer
> - unlawful sexual contact, or inappropriate sexual conduct, inflicted on the consumer
> - psychological or emotional abuse of the consumer
> - unexpected death of the consumer
> - stealing from, or financial coercion of, the consumer by a staff member of the provider
> - neglect of the consumer
> - inappropriate use of restrictive practices in relation to the consumer
> - unexplained absence of the consumer from the care of the provider.
>
> Providers must notify the Commission of reportable incidents within:
>
> - **24 hours** of **becoming aware** of a **priority 1 reportable incident**; or
> - **30 days** of **becoming aware** of a **priority 2 reportable incident**.

Reportable incident definition

Reportable incidents are a subset of the incidents that providers are expected to manage and prevent through their broader responsibility to manage and prevent incidents, including through the use of their incident management system. The definition of 'reportable incident' will be limited to incidents that the consumer is the subject of (for example, the incident is inflicted on them or the consumer is the person affected). This is because the health, safety and well-being of consumers is of utmost importance from a quality of care perspective.

Similar to the broader definition of incidents, the term 'in connection with the provision of care' is proposed to be included in the definition of 'reportable incident'. As noted above, this means that it includes incidents that:

- may have occurred during the course of supports or services being provided
- arise out of the provision, alteration or withdrawal of supports or services or
- may not have occurred during the provision of supports or services but are connected because it arose out of the provision of supports or services.

The term 'in connection with the provision of care' is intentionally broad to capture incidents that would impact on the consumer's health, safety and wellbeing.

It is recognised that most in-home service providers have much less day-to-day contact with consumers (compared to residential aged care), and some providers may only deliver care weekly or infrequently.

This may mean that it is more challenging to identify the impact of an incident.

Incidents that are not reportable incidents

Consistent with arrangements for residential aged care, it is proposed that if an incident results from the consumer refusing to receive care or services offered by the provider would not be a reportable incident. It is important for providers and their staff members to maintain the rights of consumers, including their autonomy and choice.

Questions

- Are there other circumstances where the Commission should not be notified of a reportable incident for in-home services?

Unreasonable use of force

The definition of 'unreasonable use of force' proposed to be used for the in-home services context is:

> ***Unreasonable use of force*** *against the consumer includes conduct ranging from a deliberate and violent physical attack to use of unwarranted physical force.*

The definition is consistent with the current definition under the SIRS for residential aged care. Based on consultation feedback on that scheme this definition captures the full range of physical abuse from rough handling, through to physical assaults such as punching. Other examples of 'unreasonable use of force' may include kicking, hitting, pushing, and shoving. This does not include circumstances where a person is gently touching the consumer to provide care, attract their attention, guide them, or provide comfort when they are distressed.

Questions

- Is the definition of unreasonable use of force equally applicable in the in-home services context?
- If not, what adjustments are required and why?

Unlawful sexual contact or inappropriate sexual conduct

The definition of 'unlawful sexual contact, or inappropriate sexual conduct' proposed to be used for the in-home services context is:

> ***Unlawful sexual contact, or inappropriate sexual conduct****, inflicted on the consumer includes:*
>
> - *If the contact or conduct is inflicted by a staff member or other person providing care on behalf of the provider (such as a volunteer), the following:*
> - *any conduct or contact of a sexual nature inflicted on the consumer, including (without limitation) sexual assault, an act of indecency or sharing of an intimate image of the consumer; or*
> - *any touching of the consumer's genital area, anal area or breast in circumstances where this is not necessary to provide care or services to the consumer.*

- *any non-consensual contact or conduct of a sexual nature, including (without limitation) sexual assault, an act of indecency, or sharing of an intimate image of the consumer; and*
- *engaging in conduct relating to the consumer with the intention of making it easier to procure the consumer to engage in sexual contact or conduct.*

However, this does not include consensual contact or conduct of a sexual nature between a consumer and a person who is not a staff member, including another consumer, or a volunteer providing care on behalf of the provider (other than when that person is providing care or services).

The definition is consistent with the current definition under the SIRS for residential aged care and aims to capture different forms of sexual abuse and indecency. Examples may include:

- showing their own genitals to a consumer
- masturbating in front of a consumer
- using sexual innuendo, or explicit comments that are vulgar or would cause the consumer discomfort in ordinary circumstances
- forcing a consumer to view pornography
- touching a consumer's genitals, breasts or anus without a care need.

Based on feedback from consultation on the SIRS for residential aged care, and in recognition of consumer's rights to sexual freedom and to independence and control to make choices about personal and social life (as contained in the Charter of Aged Care Rights[2]), this definition ensures that where there is a consensual relationship between consumers, displays of affection are not reportable incidents. It also allows for consensual relationships between a consumer and a volunteer, provided that contact or conduct of a sexual nature does not occur when the volunteer is providing care or services. It should be noted that in the context of this definition, a 'volunteer' would be limited to a person who formally volunteers for the provider to deliver care and services on behalf of the provider, and this does not include an informal carer.

Questions

- Is the definition of unlawful sexual conduct and inappropriate sexual conduct equally applicable in the in-home services context?
- If not, what adjustments are required and why?

Psychological or emotional abuse

The definition of 'psychological or emotional abuse' proposed to be used for the in-home services context is:

Psychological or emotional abuse *of a consumer includes conduct that has caused, or could reasonably be expected to have caused, the consumer psychological or emotional distress.*

Conduct that is psychological or emotional abuse includes:

- *taunting, bullying, harassment or intimidations;*

[2] Schedule 1 to the *User Rights Principles 2014.*

- *threats of maltreatment or retribution, including in relation to making complaints;*
- *humiliation;*
- *unreasonable refusal to interact with the consumer or acknowledge the consumer's presence;*
- *unreasonable restriction of the consumer's ability to engage socially or otherwise interact with people; or*
- *repetitive conduct or contact which does not constitute unreasonable use of force but the repetition of which:*
    - *has caused the consumer psychological or emotional distress; or*
    - *could reasonably have caused a consumer psychological or emotional distress.*

This definition aims to capture different forms of emotional abuse and is consistent with the SIRS for residential aged care. Based on feedback received through consultation on that scheme the definition has been developed to include unreasonable behaviors against a consumer that would normally cause emotional or psychological distress.

Examples may include yelling, name-calling, threatening gestures, making disparaging comments about a person's gender, sexual orientation, sexual identity, cultural identity or religious identity, or repeatedly flicking, tapping, or bumping of the consumer.

Questions

- Is the definition of psychological pr emotional abuse equally applicable in the in-home services context?
- If not, what adjustments are required and why?

Unexpected death

The definition of 'unexpected death' proposed to be used for the in-home services context is:

Unexpected death *of the consumer includes death in circumstances where:*

- *reasonable steps were not taken by the provider to prevent the death; or*
- *the death is the result of:*
    - *care or services provided by the provider; or*
    - *a failure of the provider to provide care or services.*

This definition is consistent with the current definition under the SIRS for residential aged care. In the in-home services context this may include the following examples (noting that both of these examples may also be considered 'neglect'):

- a consumer has a fall while being moved or shifted improperly by a staff member of the provider providing nursing services and the consumer sustains injuries during the fall resulting in the consumer's death and
- a provider failing to backfill the shifts of a staff member of the provider on leave, causing a bedbound consumer a pressure injury, resulting in infection and the death of the consumer.

While the KPMG report did not raise any issues with this kind of reportable incident, consideration needs to be given to whether providers of in-home services are able to assess whether the death of a consumer is considered an 'unexpected death'. Unlike residential aged care, the frequency of contact with consumers varies, and without day-to-day contact a provider may not be aware of the details of the death of the consumer, or of other factors that may have led to the death of a consumer. In addition, the types of care and services provided by providers of in-home services vary greatly (e.g. a lawn mowing service), meaning that what would be considered 'reasonable steps' could also vary considerably across providers.

If this kind of reportable incident was not included under the SIRS for in-home aged care services, many incidents that could lead to unexpected death may fit into other categories of reportable incidents (e.g. neglect or unreasonable use of force). In addition, consistent with arrangements for residential aged care, it is proposed that providers will be required to advise the Commission if significant new information becomes available after they have notified a reportable incident, for example where a consumer dies following a reportable incident.

Questions

- Should 'unexpected death' be a reportable incident under the SIRS for in-home aged care services?
- If so, does the in-home services context necessitate adjustments to the proposed definition of 'unexpected death'? If so what and why?

Stealing or financial coercion by a staff member

The definition of 'stealing or financial coercion by a staff member' proposed to be used for the in-home services context is:

> ***Stealing from, or financial coercion of, the consumer by a staff member*** *of the provider includes stealing from the consumer by a staff member of the provider; or*
>
> *Conduct by a staff member of the provider that is coercive or deceptive in relation to the consumer's financial affairs, or unreasonably controls the financial affairs of the consumer.*

This definition is consistent with current arrangements under the SIRS for residential aged care. In the in-home services context this may include the following examples:

- a staff member of the provider coercing a consumer to change their will in the staff member's favour and
- a staff member of the provider stealing money from a consumer's wallet while at their home providing care or services.

Based on feedback from consultation on the SIRS for residential aged care, this definition was limited to incidents of stealing or financial coercion perpetrated by a staff member. This was due to concerns from providers that they would have limited, or no authority over, financial abuse perpetrated by family members and others.

Questions

- Is the definition of 'stealing or financial coercion by a staff member' equally applicable in the in-home services context?
- If not, what adjustments are required and why?

Neglect

The definition of 'neglect' proposed to be used for the in-home services context is:

> ***Neglect** of a consumer includes:*
>
> - *a breach of duty of care owed by the provider, or a staff member of the provider, to the consumer, or*
> - *a gross breach of professional standards by a staff member of a provider providing care or services to the consumer.*

This definition is consistent with current arrangements under the SIRS for residential aged care. The term 'breach of duty of care' refers to the obligation to take reasonable care to avoid injury to a person who, it can be reasonably foreseen, might be injured by an act or omission. A 'gross breach of professional standards' may occur where a staff member has an obligation to provide care and services in accordance with their role, although they have failed to perform their duties in line with the relevant standards, and to the level a reasonable person would expect them in their role.

Currently, not all staff will have professional standards tied to their role. For example, personal care workers do not have a universal professional code of practice or standards. However, staff members may be subject to codes of behaviour or practice relevant to their role under their terms of employment. In addition, the Government has announced that from 1 July 2022, it will be implementing a care and support sector code of conduct. The code of conduct will mean workers will be expected to meet the same high standards of behavior no matter where they work in the care and support sector.

In the in-home services context 'neglect' may include the following examples:

- a reckless act or a failure to act by the provider, such as supervisory neglect by the provider (e.g. failing to roster staff members of the provider to undertake home visits to consumers with high needs) or
- grossly inadequate care by the provider such as a staff member of the provider withholding personal care such as showering or oral care, or ongoing errors in care (e.g. lifting incorrectly, untreated wounds, poor hygiene).

Whether an incident constitutes neglect will depend on a number of factors. There may be circumstances where a staff member fails to attend home visits and due to the vulnerability and individual needs of the consumer, this could be neglect. In other circumstances, such as where the consumer is more autonomous or the nature of the service is less critical to the consumer's health or wellbeing, missing visits may not constitute neglect.

The concept of neglect is a challenging one both in residential aged care and in the context of in-home services. There is opportunity to clarify the definition further including by referencing that

neglect should consider the impact that a breach of the duty of care or gross breach of professional standards (be that an act or omission) has on the consumer.

As noted previously it would not be a reportable incident if an incident results from the consumer deciding to refuse to receive care or services offered by the provider.

Questions

- Should the definition of 'neglect' be clarified by including reference to the impact on the consumer? If so, should this adjustment also be made in relation to SIRS residential aged care?
- Is there anything else about the in-home services context that would require adjustment to the proposed definition of 'neglect'? If so, what and why?

Inappropriate use of restrictive practices

In the in-home services context, 'inappropriate use of restrictive practices' may include the following examples:

- a staff member of the provider tying (physically restraining) a consumer to a park bench on a community outing, without consent or alternatives considered, while the consumer was unaccompanied for a period of time
- a staff member of the provider giving a consumer sedative medication that was not prescribed for the consumer, to assist with administering personal care during a home visit

The current definition of 'inappropriate use of restrictive practices' under the SIRS for residential aged care refers to requirements in legislation that only apply to providers of residential aged care. As such, consideration needs to be given to how this should be applied to providers of in-home services.

This could be addressed by defining 'inappropriate use of restrictive practices' as use of restrictive practices inconsistent with the legislative requirements for providers of residential aged care (even though these requirements do not apply to providers of in-home services).

Broadly this would mean that use of restrictive practices by the provider would be a reportable incident unless the restrictive practice has been used as a last resort and to the extent necessary to prevent serious harm to the consumer or others; and a number of other conditions have been satisfied (relating to care plan documentation, consent, rights, state and territory requirements etc.). However, the result of introducing this as a type of reportable incident for providers of in-home services would essentially impose the legislative requirements regarding restrictive practices on these providers.

Another option is not to include this kind of reportable incident under the SIRS for in-home aged care services, where restrictive practices have been used inappropriately by a provider. Instead, this could be reported under other categories of reportable incidents (e.g. neglect, unreasonable use of force).

Questions

- Should inappropriate use of restrictive practices be a reportable incident under the SIRS for in-home aged care services?
- If so, how should the existing definition in residential aged care be applied for in-home services (noting that the current definition is linked to obligations on providers in residential aged care that do not apply to in-home services)?
- Could inappropriate use of restrictive practices for in-home services instead be reported under a different category of reportable incident?

Unexplained absence

The definition of 'unexplained absence' proposed to be used for the in-home services context is:

> ***Unexplained absence*** *of the consumer from the care of the provider means an absence of the consumer from the care in circumstances where there are reasonable grounds to report the absence to police.*

This definition is consistent with current arrangements under the SIRS for residential aged care. In the in-home services context, this may include the following examples:

- a staff member of the provider arriving for a home visit and finding that the consumer is not answering the door, cannot be contacted on their mobile phone and has not been absent from a home visit in the past (out of character in the circumstances)
- a consumer not being able to be located during a community outing facilitated by a service and does not have sufficient mental or physical capacity to care for themselves

There is a level of discretion that sits with the provider under this definition. It would be left to the provider to decide whether there are reasonable grounds to report an absence to police, and if so then it is a reportable incident. The definition was structured this way to avoid the need to report absences that are not unusual, or are considered to be a low risk given the individual circumstances.

Consumers who receive in-home services are more likely to have a higher level of autonomy than those in residential care. A way to simplify the definition could be to revise it so that an unexplained absence is only a reportable incident where it occurs in a in-home service that does not operate at the consumer's home such as cottage respite, community transport and outing services.

Questions

- Is the 'reasonable ground to report the absence to police' threshold appropriate for the in-home services context?
- Should the definition be revised in the in-home services context and if so, how?
- Should this only be a reportable incident for certain in-home services that do not operate in the consumer's home (for example cottage respite, community transport and outing services)?

4. Reporting timeframes and priority categories

Under the current arrangements, providers of residential aged care must notify the Commission of **priority 1 reportable incidents within 24 hours** of becoming aware of the incident.

A priority 1 reportable incident **is a reportable incident** that has caused, or could reasonably have been expected to have caused, a consumer physical or psychological injury or discomfort that **requires medical or psychological treatment to resolve**. A reportable incident is always categorised as a priority 1 reportable incident where there are reasonable grounds for the reportable incident to be **reported to police**, or the reportable incident involves an **unexplained absence** or **unexpected death** of the consumer.

From 1 October 2021, providers of residential aged care will also be required to notify the Commission of **priority 2 reportable incidents within 30 days** of becoming aware of the incident. A **priority 2** reportable incident **is a reportable incident** that is **not a priority 1 reportable incident**. In general terms, this means a reportable incident where the consumer was not caused psychological injury or discomfort that requires medical or psychological treatment to resolve, where there were not reasonable grounds to report the incident to police, or the incident did not involve an **unexplained absence** or **unexpected death** of the consumer.

Tiered prioritisation

Option 2 of the KPMG report included two sub options in relation to reporting under a SIRS for in-home aged care services. The first proposes that a tiered reporting approach be implemented (consistent with residential aged care), whereby the provider would notify the Commission of reportable incidents determined to be priority 1 reportable incidents in a shorter timeframe than priority 2 reportable incidents.

This approach could be beneficial in the sense that consistent arrangements are easier to understand and implement.

The alternative proposed would remove the tiered reporting arrangements for in-home services. This would mean that providers of in-home services would not need to assess the level of harm to the consumer for the purposes of determining the reporting timeframes. As outlined previously, unlike residential aged care, in the in-home services context the provider does not have the same level of contact with the consumer, which could make assessment of harm more challenging. Further, the KPMG report notes that assessing impact or harm of a consumer would require skills, knowledge or experience that some staff members providing in-home services (such as maintenance workers) are less likely to have.

Removing the tiered arrangements would also address strong views by some stakeholders (as noted in the KPMG report) that certain incidents would always be serious and should always be reported as a matter of priority, regardless of a provider's assessment of harm. For example, for incidents of inappropriate sexual contact or conduct. However, removing tiered reporting arrangements will increase burden on providers.

Reporting timeframes

The KPMG report raised issues that warrant further consideration in terms of adopting the 24 hour timeframe under the SIRS for in-home aged care services. 72 hours is the alternative timeframe proposed in the KPMG report.

The 24 hour timeframe may be considered too short due to a number of factors related to the care setting. Providers of in-home services are more likely to operate during business hours, rather than across 24 hours like in residential aged care. The time required to allow for basic fact gathering may also be longer, as staff members are not generally co-located (although noting that further information can be provided following the initial report).

Adopting different timeframes for in-home services may also risk the perception that incidents that occur in a home setting are not as important, which is not the case.

Questions

- Should tiered reporting categories be adopted under a SIRS for in-home aged care services?
    - If yes, should the reporting timeframe remain 24 hours for priority 1 reportable incidents?
    - If no, should all incidents be reported within 24 hours if tiered reporting were removed? If not, what other timeframe would you suggest and why?

Information included in notification

Consistent with arrangements for residential aged care, it is expected that a reportable incident notification will be made through the My Aged Care Provider Portal using the SIRS reporting tile. Providers will be prompted to complete a dynamic form in the portal which requests relevant information.

Additional information

Following the initial report, the second stage of the reporting process may involve providing the Commission with any additional information within five days (if the timeframes for residential aged care are adopted), or another timeframe specified by the Commission. If additional information is required, the Commission will notify the provider. Additional information may include any outstanding or relevant information that was not provided in the first notification, for example remedial action taken or supports put in place to minimise harm to the victim.

A provider must also notify the Commissioner of significant new information relating to a reportable incident as soon as reasonably practicable after becoming aware of the information. Significant new information may include information such as the level of harm being different from

that originally assessed, or later determining that the incident could also be considered as another kind of reportable incident.

The provider may also be required to submit a final report within 12 weeks of originally notifying the Commission of the incident. The Commission will determine on a case by case basis if a final report is required and if so, the parameters of the report. It will likely include matters relating to investigation of the critical incident, and corrective actions being taken.

Questions

- Are the additional information timeframes suitable in a in-home services context? If not, what alternative timeframes would you suggest?

Whistleblower protections

It is proposed that the strengthened protections implemented through the SIRS for residential aged care be extended for the SIRS for in home aged care services. These protections apply to both existing and former staff members of providers as well as current and past consumers, their families and others supporting them including volunteers and advocates.

The protections will ensure that when disclosing details of reportable incidents, the person is not subject to civil or criminal liability for making the disclosure. The arrangements also make it clear that no contractual or other remedy may be enforced and no contractual or other right may be exercised, including termination for breach of contract, where such a disclosure is made. Providers will also have a responsibility for ensuring compliance with the new arrangements and protecting the identities of disclosers.

Role and powers of the Commission in relation to reportable incidents

The Commission is the national regulator of aged care services, and the primary point of contact for consumers and providers in relation to quality and safety. The Commission independently accredits, assesses, investigates and monitors aged care services subsidised by the Australian Government, and determines responses to non-compliance by providers (such as sanctions)[3]. It also helps consumers resolve complaints about a provider's responsibilities or actions.[4]

The Commission's role is to protect and enhance the safety, health, well-being and quality of life of people receiving aged care. The Commission has a risk based approach to regulation, with an end-to-end quality and safety regulatory framework.

The Commission will also be responsible for administering the SIRS and ensuring aged care providers are meeting their obligations under the scheme. The Commission will receive notifications about reportable incidents. Following assessment of a reportable incident, the Commission may respond by taking a number of actions, including (and not limited to) requiring a provider to give information, further reports or documents, or requiring the provider to complete remedial action(s) in relation to the incident.

[3] Schedule 2 of the *Quality of Care Principles 2014*
[4] Paragraph 16(1)(a) *Aged Care Quality and Safety Commission Act 2018*

Resources and guidance will be offered to providers to enable their compliance with legal requirements, and regulatory resources and efforts will be targeted to the highest risks.

The Commission will focus on driving continuous improvement at the system level, including through education and capacity building of providers, as well as sector-wide learning.

It is proposed that, consistent with arrangements for the SIRS for residential aged care, the Commission will be provided with powers to respond to reportable incidents. The Commission will be able to:

- refer matters to police or other bodies, such as AHPRA or a state or territory elder abuse body
- require remedial action to be undertaken by the provider
- require a provider to undertake an internal investigation or to engage an independent expert to carry out an investigation
- carry out an inquiry into incidents (this is not limited to reportable incidents, and can include multiple incidents)
- take other action in response to a reportable incident.

From an enforcement perspective, it is proposed that new powers introduced through the SIRS for residential aged care will be extended to apply to SIRS for in home aged care services.

These additional powers allow for more graduated and proportionate responses to non-compliance, and are also intended to have a deterrent effect.

Under the new arrangements, the Commission can issue a compliance notice if a provider is not complying (or something would suggest they are not complying) with their new responsibilities under SIRS. The enforcement powers allow for the Commissioner (or their delegate) to apply to court for a civil penalty to be imposed if a provider fails to comply with the compliance notice. The Commissioner (or delegate) is also able to issue infringement notices, accept enforceable undertakings, or apply to a court for an injunction.

These enforcement powers would not apply to providers of care that operates outside of legislation, including providers of CHSP and NATSIFACP, and instead any enforcement action against the provider would be taken by the Department under the relevant grant agreement.

Next steps

This consultation paper is an element of preparatory work to ensure the scheme implemented is fit for purpose. Enabling legislation for the scheme is being considered and is expected to be introduced to Parliament soon after the consultation process has been completed. Much of the operational details of the SIRS for in home aged care services will be contained in delegated legislation (through amendments to the *Quality of Care Principles 2014* and the *Aged Care Quality and Safety Commission Rules 2018*) as was done for the SIRS for residential aged care.

Further consultations are expected to be undertaken with key stakeholder groups on the detailed design elements of the SIRS (subject to timing considerations and Government approvals).

Questions

- Are there any other matters you would like to raise in relation to the design or operation of the SIRS for in home aged care services?

Glossary

Term	Definition
Aged Care Act 1997 (the Act)	The Act is the overarching legislation that outlines the obligations and responsibilities that aged care providers must follow to receive subsidies from the Australian Government
Aged Care Quality and Safety Commission (Commission)	The role of the Commission is to protect and enhance the safety, health, well-being and quality of life of people receiving aged care. The Commission independently accredits, assesses and monitors aged care services subsidised by the Australian Government, and also resolve complaints about these services
Aged Care Quality Standards	Organisations providing Commonwealth subsidised aged care services are required to comply with, and are assessed against, the Aged Care Quality Standards. The Standards focus on outcomes for consumers and reflect the level of care and services the community can expect from organisations that provide Commonwealth subsidised aged care services
Another person	In the context of this may include, this is any other person who is not a consumer. This may include, but is not limited to, a staff member of the provider, a family member, a friend, a neighbour, or a member of the public
Australian Law Reform Commission (ALRC)	The ALRC undertakes research, and provides recommendations to reform the law, on topics selected by the Attorney-General of Australia
Consumer	Person who is in receipt of Commonwealth funded in-home aged care services
Department	Australian Government Department of Health
Final Report	The Royal Commission into Aged Care Quality and Safety's Final Report: Care Dignity and Respect
In-home aged care services	Includes Home Care packages and the CHSP and flexible care delivered in a home setting (including MPS in a home setting, short term restorative care, NATSIFACP and TCP in a home setting).
KPMG report	KPMG's final report on the prevalence and feasibility study, *Improving Aged Care Quality Protections: Options for a Serious Incident Response Scheme (SIRS) in home and community aged care*.

Term	Definition
Open disclosure	The open discussion that an aged care provider has with people receiving aged care services when something goes wrong that has harmed or had the potential to cause harm to a person receiving an aged care service.
Priority 1 reportable incident	A priority 1 reportable incident is a reportable incident that has caused, or could reasonably have been expected to have cause, a consumer physical or psychological injury or discomfort that requires medical or psychological treatment to resolve. A reportable incident is always categorised as a priority 1 reportable incident where there are reasonable grounds for the reportable incident to also be reported to police, or the reportable incident involves an unexplained absence or unexpected death of the consumer.
Priority 2 reportable incident	A priority 2 reportable incident is a reportable incident that is not a priority 1 reportable incident. In general terms, this means a priority 2 reportable incident is a reportable incident where the consumer was not caused psychological injury or discomfort that requires medical or psychological treatment to resolve
Provider	An approved provider of a Home Care package or flexible care delivered in a home setting, or a provider of CHSP
Representative	A person nominated by a consumer, who may act on a consumer's behalf. This may include a family member, other significant other, or an independent advocate.
Residential aged care	Provides a range of care options and accommodation for older people who are unable to continue living independently in their own homes.
Royal Commission	Royal Commission into Aged Care Quality and Safety
Staff member	Staff member is defined in Clause 1 of Schedule 1 to the Act to mean 'an individual who is employed, hired, retained or contracted by the provider (whether directly or through an employment or recruiting agency) to provide care or other services'
Whistle blower	A person who informs on a person or organisation as engaging in an unlawful or immoral activity