



# **Aged Care Quality and Safety Commission Act 2018**

**No. 149, 2018**

## **Compilation No. 10**

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Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### This compilation

This is a compilation of the *Aged Care Quality and Safety Commission Act 2018* that shows the text of the law as amended and in force on 14 October 2024 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the Register for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the Register for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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# **An Act to establish the Aged Care Quality and Safety Commission, and for related purposes**

## **Part 1—Preliminary**

### **Division 1—Preliminary**

#### **1 Short title**

This Act is the *Aged Care Quality and Safety Commission Act 2018*.

#### **2 Commencement**

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. The whole of this Act	1 January 2019.	1 January 2019

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

#### **3 Act binds the Crown**

This Act binds the Crown in each of its capacities.

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### **4 Extension to external Territories**

This Act extends to the external Territories other than the Territory of Ashmore and Cartier Islands.

### **5 Object of this Act**

The object of this Act is to establish a regulatory framework that will:

- (a) protect and enhance the safety, health, well-being and quality of life of aged care consumers; and
- (b) promote aged care consumers' confidence and trust in the provision of aged care services and Commonwealth-funded aged care services; and
- (c) promote engagement with aged care consumers about the quality of care and services provided by:
  - (i) approved providers of aged care services; and
  - (ii) service providers of Commonwealth-funded aged care services.

### **6 Simplified outline of this Act**

This Act establishes the Aged Care Quality and Safety Commission and provides for there to be a Commissioner of the Commission.

A number of functions are conferred on the Commissioner, including:

- (a) the function of protecting and enhancing the safety, health, well-being and quality of life of aged care consumers; and
- (aa) the function of approving providers of aged care; and
- (ab) the functions of imposing sanctions on approved providers and lifting sanctions; and

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- (ac) the function of ensuring compliance with the aged care responsibilities of approved providers and provisions of this Act and the Aged Care Act; and
- (b) the function of promoting the provision of quality care and services by approved providers of aged care services and service providers of Commonwealth-funded aged care services; and
- (c) the consumer engagement functions; and
- (d) the complaints functions; and
- (da) the code functions; and
- (e) the regulatory functions; and
- (f) the education functions; and
- (g) the function of reconsidering and reviewing certain decisions made under this Act.

The Aged Care Quality and Safety Advisory Council is also established and has specified functions relating to the giving of advice in relation to the Commissioner's functions.

This Act also deals with the Code of Conduct, the sharing of information and confidentiality.

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## Division 2—Definitions

### 7 Definitions

In this Act:

**ABN** has the meaning given by the *A New Tax System (Australian Business Number) Act 1999*.

**accommodation bond** has the same meaning as in the Aged Care Act.

**accommodation charge** has the same meaning as in the Aged Care Act.

**accommodation contribution** has the same meaning as in the Aged Care Act.

**accommodation payment** has the same meaning as in the Aged Care Act.

**Advisory Council** means the Aged Care Quality and Safety Advisory Council established by section 37.

**Advisory Council member** means a member of the Advisory Council and includes the Chair.

**affected person**: see section 74J.

**aged care** has the same meaning as in the Aged Care Act.

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

**aged care consumer** means:

- (a) a care recipient; or
- (b) a person who is a recipient of a Commonwealth-funded aged care service.

**Aged Care Principles** means Principles made under section 96-1 of the Aged Care Act.

***aged care responsibility*** means a responsibility of an approved provider under Chapter 4 of the Aged Care Act.

***aged care service*** has the same meaning as in the Aged Care Act.

***aged care worker*** of an approved provider means:

- (a) an individual employed or otherwise engaged (including on a voluntary basis) by the provider; or
- (b) an individual:
  - (i) who is employed or otherwise engaged (including on a voluntary basis) by a contractor or subcontractor of the provider; and
  - (ii) who provides care or other services to the care recipients provided with aged care through an aged care service of the provider.

Note: An individual engaged by an approved provider includes an independent contractor.

***annual operational plan*** means the annual operational plan given to the Minister under section 54.

***approved provider***: a person or body is an ***approved provider*** if:

- (a) the person or body:
  - (i) has been approved as a provider of aged care under section 63D; or
  - (ii) is taken, under paragraph 63F(2)(a), to be an approved provider; and
- (b) the approval of the person or body is in effect.

Note: The approval of the person or body ceases to have effect if it is suspended or revoked under Division 4 of Part 7A or Part 7B.

***authorised officer*** means a person appointed as an authorised officer under subsection 75A(1).

***banning order*** means an order made under subsection 74GB(1) or (3).

***care*** has the same meaning as in the Aged Care Act.

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***care recipient*** means a person approved under Part 2.3 of the Aged Care Act as a recipient of aged care.

***Chair*** means the Chair of the Advisory Council.

***civil penalty order*** has the same meaning as in the Regulatory Powers Act.

***civil penalty provision*** has the same meaning as in the Regulatory Powers Act.

***code functions***: see section 18A.

***Code of Conduct*** means the code of conduct which the rules made for the purposes of subsection 74AE(1) make provision for or in relation to.

***Commission*** means the Aged Care Quality and Safety Commission established by section 11.

***Commissioner*** means the Commissioner of the Commission.

***Commonwealth-funded aged care service***: see subsection 8(1).

***complaints functions***: see section 18.

***compliance notice*** means a notice given under section 74EE.

***consumer engagement functions***: see section 17.

***corporation*** means a trading or financial corporation within the meaning of paragraph 51(xx) of the Constitution.

***distinct part***, in relation to a residential care service, has the same meaning as in the Aged Care Act.

***education functions***: see section 20.

***eligible adviser*** means a person other than:

- (b) an officer of the Commonwealth; or
- (c) a person specified in the rules.



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***extra service status*** has the same meaning as in the Aged Care Act.

***Federal Court*** means the Federal Court of Australia.

***flexible care*** has the same meaning as in the Aged Care Act.

***flexible care service*** has the same meaning as in the Aged Care Act.

***funding agreement*** that relates to a Commonwealth-funded aged care service: see subsection 8(2).

***governing person*** of an approved provider means an individual who is one of the key personnel of the provider under paragraph 8B(1)(a) or (b).

***home care*** has the same meaning as in the Aged Care Act.

***home care service*** has the same meaning as in the Aged Care Act.

***identity card*** means:

- (a) in relation to an authorised officer—an identity card issued to the authorised officer under section 35 or 76 of the Regulatory Powers Act; or
- (b) in relation to a quality assessor—an identity card issued to the quality assessor under section 74 of this Act.

***indictable offence*** means:

- (a) an indictable offence against a law of the Commonwealth or of a State or Territory; or
- (b) an offence that:
  - (i) is an offence against a law of a foreign country or of a part of a foreign country; and
  - (ii) when committed, corresponds to an indictable offence against a law of the Commonwealth or of a State or Territory.

***Inspector-General of Aged Care*** means the Inspector-General of Aged Care referred to in section 9 of the *Inspector-General of Aged Care Act 2023*.

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***internal decision reviewer*** means:

- (a) the Commissioner; or
- (b) a delegate of the Commissioner referred to in paragraph 74L(1)(b) or 74M(1)(b).

***key personnel*** of a person or body has the meaning given by section 8B.

***local government authority*** means a body established for the purposes of local government by or under a law of a State or Territory.

***NDIS banning order*** means a banning order made under section 73ZN of the *National Disability Insurance Scheme Act 2013*.

***non-compliance notice*** means a notice given under subsection 63S(2).

***occupied place*** of an approved provider: see subsection 63Q(5).

***paid work*** means work for financial gain or reward (whether as an employee, a self-employed person or otherwise).

***people with special needs*** has the same meaning as in the Aged Care Act.

***personal information*** means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

***place*** has the same meaning as in the Aged Care Act.

***Pricing Authority*** has the same meaning as in the *National Health Reform Act 2011*.

***protected information***: see subsection 60(2).

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**provisional allocation** has the same meaning as in the Aged Care Act.

**quality assessor** means a person registered as a quality assessor under the rules.

**reconsideration decision** means a decision made under subsection 74L(2) or 74M(3).

**regulatory functions**: see section 19.

**regulatory official** means the Commissioner or a quality assessor.

**Regulatory Powers Act** means the *Regulatory Powers (Standard Provisions) Act 2014*.

**relevant data**: see subsection 72(3).

**reportable incident** means:

- (a) for an approved provider—a reportable incident within the meaning of the Aged Care Act; or
- (b) for a service provider of a Commonwealth-funded aged care service—an incident that is a reportable incident under the funding agreement that relates to the service.

**residential care** has the same meaning as in the Aged Care Act.

**residential care service** has the same meaning as in the Aged Care Act.

**reviewable decision**: see section 74J.

**rules** means the rules made under section 77.

**search powers**: see sections 71 and 72.

**Secretary** means the Secretary of the Department.

**service provider** of a Commonwealth-funded aged care service: see subsection 8(3).

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**staff of the Commission** means the staff of the Commission referred to in section 33.

**State or Territory authority** means a body established for a public purpose by or under a law of a State or Territory.

**subsidy** has the same meaning as in the Aged Care Act.

**suitability matters** in relation to an individual has the meaning given by section 8C.

**vacancy**, in relation to the office of an Advisory Council member, has a meaning affected by section 9.

**vacant place** of an approved provider: see subsection 63Q(4).

### 8 Meaning of *Commonwealth-funded aged care service* etc.

- (1) A **Commonwealth-funded aged care service** is a service provided under a program that is a program (the **funded program**) of a kind specified in the rules for the purposes of this subsection.
- (2) A **funding agreement** that relates to a Commonwealth-funded aged care service is the agreement between a person or body and the Commonwealth that relates to a funded program under which the service is, or is to be, provided.
- (3) A **service provider** of a Commonwealth-funded aged care service is a person or body that is a party to the funding agreement that relates to the service.

### 8B Meaning of *key personnel* of a person or body

- (1) Each of the following is one of the key personnel of a person or body (the **entity**) at a particular time:
  - (a) if the entity is not a State or Territory—a member of the group of persons who is responsible for the executive decisions of the entity at that time;
  - (b) if the entity is not a State or Territory—any other person who has authority or responsibility for, or significant influence

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- over, planning, directing or controlling the activities of the entity at that time;
- (c) if, at that time, the entity conducts an aged care service:
- (i) any person who is responsible for the nursing services provided by the service and who holds a recognised qualification in nursing; and
  - (ii) any person who is responsible for the day-to-day operations of the service;
- whether or not the person is employed by the entity;
- (d) if, at that time, the entity proposes to conduct an aged care service:
- (i) any person who is likely to be responsible for the nursing services to be provided by the service and who holds a recognised qualification in nursing; and
  - (ii) any person who is likely to be responsible for the day-to-day operations of the service;
- whether or not the person is employed by the entity.
- (2) Without limiting paragraph (1)(a), a reference in that paragraph to a member of the group of persons who is responsible for the executive decisions of an entity includes:
- (a) if the entity is a body corporate that is incorporated, or taken to be incorporated, under the *Corporations Act 2001*—a director of the body corporate for the purposes of that Act; and
  - (b) in any other case—a member of the entity’s governing body.

**8C Meaning of *suitability matters* in relation to an individual**

- (1) Each of the following matters is a ***suitability matter*** in relation to an individual:
- (a) the individual’s experience in providing, at any time, aged care or other relevant forms of care;
  - (aa) whether a banning order against the individual is, or has at any time been, in force;

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- (b) whether a NDIS banning order against the individual is, or has at any time been, in force;
- (c) whether the individual has at any time been convicted of an indictable offence;
- (d) whether a civil penalty order against the individual has been made at any time;
- (e) whether the individual is, or has at any time been, an insolvent under administration;
- (f) whether the individual is or has at any time been the subject of adverse findings or enforcement action by any of the following:
  - (i) a Department of the Commonwealth or of a State or Territory;
  - (ii) the Australian Securities and Investments Commission;
  - (iii) the Australian Charities and Not-for-profits Commission;
  - (iv) the Australian Competition and Consumer Commission;
  - (v) the Australian Prudential Regulation Authority;
  - (vi) the Australian Crime Commission;
  - (vii) AUSTRAC;
  - (viii) another body established for a public purpose by or under a law of the Commonwealth;
  - (ix) a State or Territory authority (including, but not limited to, a body that is equivalent to a body mentioned in subparagraphs (ii) to (vii));
  - (x) a local government authority;
- (g) whether the individual:
  - (i) is, or has at any time been, the subject of any findings or judgment in relation to fraud, misrepresentation or dishonesty in any administrative, civil or criminal proceedings; or
  - (ii) is currently party to any proceedings that may result in the individual being the subject of such findings or judgment;

- (h) whether the individual is, or has at any time been, disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001*;
  - (i) any other matter specified in the rules.
- (2) This section does not affect the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them).

## **9 Vacancy in the office of an Advisory Council member**

For the purposes of a reference in:

- (a) this Act to a ***vacancy*** in the office of an Advisory Council member; or
- (b) the *Acts Interpretation Act 1901* to a ***vacancy*** in the membership of a body;

there are taken to be 10 offices of Advisory Council members in addition to the Chair.

## **Part 2—Aged Care Quality and Safety Commission**

### **Division 1—Introduction**

#### **10 Simplified outline of this Part**

This Part establishes the Commission.

The Commission consists of the Commissioner and the staff of the Commission. It has the function of assisting the Commissioner in the performance of the Commissioner's functions.



## **Division 2—Establishment etc. of the Commission**

### **11 Establishment of the Aged Care Quality and Safety Commission**

- (1) The Aged Care Quality and Safety Commission is established by this section.
- (2) For the purposes of the finance law (within the meaning of the *Public Governance, Performance and Accountability Act 2013*):
  - (a) the Commission is a listed entity; and
  - (b) the Commissioner is the accountable authority of the Commission; and
  - (c) the following persons are officials of the Commission:
    - (i) the Commissioner;
    - (ii) the staff of the Commission;
    - (iii) persons assisting the Commissioner referred to in section 34;
    - (iv) consultants engaged under section 35; and
  - (d) the purposes of the Commission include:
    - (i) the function of the Commission referred to in section 13; and
    - (ii) the functions of the Commissioner referred to in section 16.

### **12 Constitution of the Commission**

The Commission consists of:

- (a) the Commissioner; and
- (b) the staff of the Commission.

### **13 Function of the Commission**

The Commission's function is to assist the Commissioner in the performance of the Commissioner's functions.

## **Part 3—Commissioner**

### **Division 1—Introduction**

#### **14 Simplified outline of this Part**

There is to be a Commissioner of the Commission with functions that include:

- (a) protecting and enhancing the safety, health, well-being and quality of life of aged care consumers; and
- (aa) approving providers of aged care; and
- (ab) imposing sanctions on approved providers and lifting sanctions; and
- (ac) ensuring compliance with the aged care responsibilities of approved providers and provisions of this Act and the Aged Care Act; and
- (b) promoting the provision of quality care and services by approved providers of aged care services and service providers of Commonwealth-funded aged care services; and
- (c) the consumer engagement functions; and
- (d) the complaints functions; and
- (da) the code functions; and
- (e) the regulatory functions; and
- (f) the education functions; and
- (g) reconsidering and reviewing certain decisions made under this Act.

The Minister is to appoint the Commissioner and may give written directions about the performance of the Commissioner's functions.

The Commissioner may charge fees for services provided by the Commissioner in performing the Commissioner's functions.

## **Division 2—Functions and powers of the Commissioner**

### **15 Commissioner**

There is to be a Commissioner of the Commission.

### **16 Functions of the Commissioner**

- (1) The Commissioner has the following functions:
  - (a) to protect and enhance the safety, health, well-being and quality of life of aged care consumers;
  - (aa) the functions conferred on the Commissioner by Part 7A (which deals with the approval of providers of aged care etc.);
  - (ab) the functions conferred on the Commissioner by Part 7B (which deals with imposing sanctions on approved providers that have not complied, or are not complying, with the aged care responsibilities);
  - (ac) to ensure compliance with:
    - (i) the aged care responsibilities of approved providers; and
    - (ii) provisions of this Act and the Aged Care Act;
  - (b) to promote the provision of quality care and services by:
    - (i) approved providers of aged care services; and
    - (ii) service providers of Commonwealth-funded aged care services;
  - (c) the consumer engagement functions;
  - (d) the complaints functions;
  - (da) the code functions;
  - (e) the regulatory functions;
  - (f) the education functions;
  - (fa) to reconsider and review certain decisions made under this Act;
  - (g) such other functions as are conferred on the Commissioner by:

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- (i) this Act or the rules; or
    - (ii) the Aged Care Act or the Aged Care Principles; or
    - (iii) any other law of the Commonwealth;
  - (h) if the Commissioner considers it is appropriate to do so in particular circumstances—to seek and consider clinical advice that is relevant to the performance of any of the above functions;
  - (i) to provide, at the request of the Minister, advice to the Minister in relation to any of the above functions;
  - (j) to do anything incidental or conducive to the performance of any of the above functions.
- (2) The Commissioner has the power to do all things necessary or convenient to be done for, or in connection with, the performance of the Commissioner's functions.

## 17 Consumer engagement functions of the Commissioner

The *consumer engagement functions* of the Commissioner are:

- (a) to develop, in consultation with aged care consumers and their representatives, best practice models for the engagement of approved providers of aged care services, and service providers of Commonwealth-funded aged care services, with their aged care consumers and the representatives of those consumers; and
- (b) to promote those best practice models to such approved providers and service providers.

## 18 Complaints functions of the Commissioner

The *complaints functions* of the Commissioner are to, in accordance with rules, deal with complaints made, or information given, to the Commissioner about the following matters:

- (a) an approved provider's responsibilities under the Aged Care Act or the Aged Care Principles;

- (b) the responsibilities of a service provider of a Commonwealth-funded aged care service under the funding agreement that relates to the service.

## **18A Code functions of the Commissioner**

- (1) The *code functions* of the Commissioner are:
  - (a) to, in accordance with the rules, take action in relation to compliance by any of the following with the provisions of the Code of Conduct that apply or applied to them:
    - (i) an approved provider;
    - (ii) an individual who is or was an aged care worker of an approved provider;
    - (iii) an individual who is or was a governing person of an approved provider; and
  - (b) to do anything else relating to that matter that is specified in the rules.
- (2) Subsection (1), and any rules made for the purposes of that subsection, do not limit, or otherwise affect, the operation of any other provision of this Act in relation to the Code of Conduct.

## **19 Regulatory functions of the Commissioner**

The *regulatory functions* of the Commissioner are:

- (a) to accredit the following aged care services in accordance with the rules:
  - (i) residential care services;
  - (ii) any other aged care services of a kind specified in the rules; and
- (b) to conduct quality reviews of the following services in accordance with the rules:
  - (i) home care services;
  - (ii) any other aged care services of a kind specified in the rules;
  - (iii) Commonwealth-funded aged care services; and

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- (c) to monitor, in accordance with the rules, the quality of care and services provided by approved providers of the following aged care services:
  - (i) residential care services;
  - (ii) home care services;
  - (iii) any other aged care services of a kind specified in the rules; and
- (d) to monitor, in accordance with the rules, the quality of care and services provided by service providers of Commonwealth-funded aged care services; and
- (e) to register, in accordance with the rules, persons as quality assessors for the purposes of performing functions, or exercising powers, under this Act or the rules.

## 20 Education functions of the Commissioner

The *education functions* of the Commissioner are:

- (a) to provide information and education about matters relating to any one or more of the Commissioner's functions referred to in section 16 to any or all of the following:
  - (i) approved providers;
  - (ii) service providers of Commonwealth-funded aged care services;
  - (iii) aged care consumers;
  - (iv) representatives of aged care consumers;
  - (v) the public; and
- (b) to collect, correlate, analyse and disseminate information relating to any one or more of the Commissioner's functions referred to in section 16.

## 21 Rules may make provision for, or in relation to, the performance of a function of the Commissioner

- (1) The rules may make provision for, or in relation to, the performance of a function conferred on the Commissioner by section 16.

*Complaints functions*

- (2) Without limiting subsection (1), the rules may establish a scheme for dealing with complaints made, or information given, to the Commissioner about the following matters:
  - (a) an approved provider's responsibilities under the Aged Care Act or the Aged Care Principles;
  - (b) the responsibilities of a service provider of a Commonwealth-funded aged care service under the funding agreement that relates to the service.
- (3) Without limiting subsection (2), the rules may make provision in relation to any one or more of the following:
  - (a) how complaints about a matter referred to in that subsection may be made, managed and resolved;
  - (b) how information given to the Commissioner about a matter referred to in that subsection may be dealt with;
  - (c) the roles, rights and responsibilities of complainants, approved providers, service providers of Commonwealth-funded aged care services and any other relevant persons;
  - (d) the considerations relevant to resolving such complaints or dealing with such information;
  - (e) the actions that may be taken to address such complaints, or to deal with such information, which may include requiring an approved provider or service provider of a Commonwealth-funded aged care service to do something;
  - (f) the review or reconsideration of decisions made under the scheme.

*Code functions*

- (3A) Without limiting subsection (1), the rules may make provision for the taking of action in relation to compliance by any of the following with the provisions of the Code of Conduct that apply or applied to them:
  - (a) an approved provider;

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- (b) an individual who is or was an aged care worker of an approved provider;
  - (c) an individual who is or was a governing person of an approved provider.
- (3B) Without limiting subsection (3A), the rules may make provision for, or in relation to, any one or more of the following:
  - (a) how information about compliance with the Code of Conduct may be given to the Commissioner;
  - (b) the actions that may be taken by the Commissioner in relation to compliance with the Code of Conduct, which may include requiring an approved provider or other relevant person to do something;
  - (c) the roles, rights and responsibilities of:
    - (i) persons who give such information to the Commissioner; or
    - (ii) approved providers; or
    - (iii) individuals who are or were aged care workers, or governing persons, of approved providers; or
    - (iv) any other relevant persons;
  - (d) the review or reconsideration of decisions made in relation to compliance with the Code of Conduct.

*Regulatory functions*

- (4) Without limiting subsection (1), the rules may make provision for or in relation to:
  - (a) the accreditation of an aged care service referred to in paragraph 19(a); and
  - (b) the circumstances in which an aged care service is taken to be accredited for the purposes of the rules; and
  - (c) the conduct of quality reviews of a service referred to in paragraph 19(b); and
  - (d) the monitoring of the quality of care and services provided by approved providers of an aged care service referred to in paragraph 19(c); and



- (e) the monitoring of the quality of care and services provided by service providers of Commonwealth-funded aged care services; and
  - (f) the registration of persons as quality assessors for the purposes of performing functions, or exercising powers, under this Act or the rules; and
  - (g) the functions to be performed, or the powers to be exercised, by quality assessors; and
  - (h) the review or reconsideration of decisions relating to the accreditation of an aged care service or the registration of a quality assessor.
- (5) Without limiting paragraph (4)(d), the rules may do any or all of the following:
- (a) require approved providers of aged care services to have a written plan for continuous improvement in the quality of care and services they provide;
  - (b) make provision in relation to the setting of timetables for improvement in the quality of care and services provided by approved providers of aged care services;
  - (c) make provision in relation to forms of contact between approved providers of aged care services, and the Commissioner or a quality assessor, for specified purposes;
  - (d) provide for the conduct of audits of aged care services in specified circumstances.
- (6) Without limiting paragraph (4)(e), the rules may do any or all of the following:
- (a) require service providers of Commonwealth-funded aged care services to have a written plan for continuous improvement in the quality of care and services they provide;
  - (b) make provision in relation to the setting of timetables for improvement in the quality of care and services provided by service providers of Commonwealth-funded aged care services;
  - (c) make provision in relation to forms of contact between service providers of Commonwealth-funded aged care

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services, and the Commissioner or a quality assessor, for specified purposes;

- (d) provide for the conduct of audits of Commonwealth-funded aged care services in specified circumstances.

*Reportable incident functions*

- (7) Without limiting subsection (1), the rules may make provision for, or in relation to, how the Commissioner deals with a reportable incident for an approved provider, including in relation to one or more of the following:
  - (a) action that may be taken by the Commissioner in dealing with such a reportable incident, which may include requiring the approved provider to do something;
  - (b) the circumstances in which the Commissioner may authorise or carry out an inquiry in relation to such a reportable incident on the Commissioner's own initiative;
  - (c) how information given to the Commissioner about such a reportable incident may be dealt with.

Note: For responsibilities of approved providers in relation to reportable incidents, see Division 54 of the Aged Care Act.

- (8) Without limiting subsection (1), the rules may make provision for, or in relation to, how the Commissioner deals with a reportable incident for a service provider of a Commonwealth-funded aged care service, including in relation to one or more of the following:
  - (a) action that may be taken by the Commissioner in dealing with such a reportable incident, which may include requiring the service provider to do something;
  - (b) the circumstances in which the Commissioner may authorise or carry out an inquiry in relation to such a reportable incident on the Commissioner's own initiative;
  - (c) how information given to the Commissioner about such a reportable incident may be dealt with.

## **22 Minister may give directions to the Commissioner**

- (1) The Minister may, by legislative instrument, give written directions to the Commissioner about the performance of the Commissioner's functions.

Note: Section 42 (disallowance) and Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* do not apply to the directions (see regulations made for the purposes of paragraphs 44(2)(b) and 54(2)(b) of that Act).

- (2) A direction given by the Minister under subsection (1):
- (a) must be of a general nature only; and
  - (b) must not relate to a particular aged care consumer, approved provider or service provider of a Commonwealth-funded aged care service.
- (3) The Commissioner must comply with a direction under subsection (1).
- (4) Subsection (3) does not apply to the extent that the direction relates to the Commissioner's performance of functions, or exercise of powers, under the following Acts in relation to the Commission:
- (a) the *Public Service Act 1999*;
  - (b) the *Public Governance, Performance and Accountability Act 2013*.

## **23 Fees**

- (1) The Commissioner may charge fees for services provided by the Commissioner in performing the Commissioner's functions.
- (1A) However, the Commissioner must not charge:
- (a) an aged care consumer, or their representative, fees for services provided by the Commissioner in performing the consumer engagement functions; or
  - (b) a complainant fees for services provided by the Commissioner in performing the complaints functions.
- (2) A fee must not be such as to amount to taxation.

## **Division 3—Appointment of the Commissioner**

### **24 Appointment**

- (1) The Commissioner is to be appointed by the Minister by written instrument, on a full-time basis.

Note: The Commissioner may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

- (2) The Commissioner holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

### **25 Acting Commissioner**

The Minister may, by written instrument, appoint a person to act as the Commissioner:

- (a) during a vacancy in the office of the Commissioner (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the Commissioner:
  - (i) is absent from duty or from Australia; or
  - (ii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

## **Division 4—Terms and conditions of appointment**

### **26 Remuneration and allowances**

- (1) The Commissioner is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Commissioner is to be paid the remuneration that is specified in the rules.
- (2) The Commissioner is to be paid the allowances that are specified in the rules.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

### **27 Leave of absence**

- (1) The Commissioner has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant the Commissioner leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

### **28 Other paid work**

The Commissioner must not engage in paid work outside the duties of the Commissioner's office without the Minister's approval.

### **29 Other terms and conditions**

The Commissioner holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined, in writing, by the Minister.

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**30 Resignation**

- (1) The Commissioner may resign the Commissioner's appointment by giving the Minister a written resignation.
- (2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

**31 Termination of appointment**

- (1) The Minister may terminate the appointment of the Commissioner:
  - (a) for misbehaviour; or
  - (b) if the Commissioner is unable to perform the duties of the office because of physical or mental incapacity.
- (2) The Minister may terminate the appointment of the Commissioner if:
  - (a) the Commissioner:
    - (i) becomes bankrupt; or
    - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
    - (iii) compounds with the Commissioner's creditors; or
    - (iv) makes an assignment of the Commissioner's remuneration for the benefit of the Commissioner's creditors; or
  - (b) the Commissioner is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
  - (c) the Commissioner engages, except with the Minister's approval, in paid work outside the duties of the Commissioner's office (see section 28); or
  - (d) fails, without reasonable excuse, to comply with section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) or rules made for the purposes of that section.

## **Part 4—Staff of the Commission etc.**

### **32 Simplified outline of this Part**

The staff of the Commission are to be persons engaged under the *Public Service Act 1999*.

The Commissioner may also be assisted by certain other officers and employees.

The Commissioner may engage consultants to assist in the performance of the Commissioner's functions.

### **33 Staff**

- (1) The staff of the Commission are to be persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
  - (a) the Commissioner and the staff of the Commission together constitute a Statutory Agency; and
  - (b) the Commissioner is the Head of that Statutory Agency.

### **34 Persons assisting the Commissioner**

- (1) The Commissioner may also be assisted by:
  - (a) officers and employees of Agencies (within the meaning of the *Public Service Act 1999*), and of authorities of the Commonwealth, whose services are made available to the Commissioner in connection with the performance of any of the Commissioner's functions; and
  - (b) persons whose services are made available under arrangements made under subsection (2).

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- (2) The Commissioner may, on behalf of the Commonwealth, make an arrangement with the appropriate authority or officer of:
  - (a) a State or Territory government; or
  - (b) a State or Territory government authority;under which the government or authority makes officers or employees available to the Commissioner to perform services in connection with the performance of any of the Commissioner's functions.
- (3) An arrangement under subsection (2) may provide for the Commonwealth to reimburse a State or Territory with respect to the services of a person or persons to whom the arrangement relates.
- (4) When performing services for the Commissioner under this section, a person is subject to the directions of the Commissioner.

### **35 Consultants**

- (1) The Commissioner may, on behalf of the Commonwealth, engage consultants to assist in the performance of the Commissioner's functions.
- (2) The consultants are to be engaged on the terms and conditions that the Commissioner determines in writing.

### **35A Chief Clinical Advisor**

The Commissioner must, in writing, appoint a person who is a member of the staff of the Commission, or a consultant engaged under section 35, as the Chief Clinical Advisor to assist the Commissioner in the performance of the Commissioner's functions.



## **Part 5—Aged Care Quality and Safety Advisory Council**

### **Division 1—Introduction**

#### **36 Simplified outline of this Part**

This Part establishes the Advisory Council. It has the functions of providing:

- (a) on its own initiative or on request, advice to the Commissioner in relation to the Commissioner's functions; and
- (b) on request, advice to the Minister about matters arising in relation to the performance of those functions.

The Advisory Council is to consist of a Chair and at least 6, but not more than 10, other members. The members are to be appointed by the Minister and must have substantial experience or knowledge in a specified field.

The Minister may give written directions to the Advisory Council about the performance of its functions or the procedures to be followed in relation to its meetings.

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**Division 2—Establishment and functions of the Advisory Council**

**37 Establishment of the Aged Care Quality and Safety Advisory Council**

The Aged Care Quality and Safety Advisory Council is established by this section.

**38 Functions of the Advisory Council**

The functions of the Advisory Council are:

- (a) on its own initiative or at the request of the Commissioner, to provide advice to the Commissioner in relation to the Commissioner's functions; and
- (b) at the request of the Minister, to provide advice to the Minister about matters arising in relation to the performance of the Commissioner's functions.

**39 Minister may give directions about the Advisory Council's functions**

- (1) The Minister may, by legislative instrument, give written directions to the Advisory Council about the performance of the Advisory Council's functions.

Note: Section 42 (disallowance) and Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* do not apply to the directions (see regulations made for the purposes of paragraphs 44(2)(b) and 54(2)(b) of that Act).

- (2) A direction given by the Minister under subsection (1):
  - (a) must be of a general nature only; and
  - (b) must not relate to a particular aged care consumer, approved provider or service provider of a Commonwealth-funded aged care service.

- (3) The Advisory Council must comply with a direction under subsection (1).

## **Division 3—Membership of the Advisory Council**

### **40 Membership of the Advisory Council**

The Advisory Council consists of the following members:

- (a) a Chair;
- (b) at least 6, and not more than 10, other members.

### **41 Appointment of Advisory Council members**

- (1) Each Advisory Council member is to be appointed by the Minister by written instrument, on a part-time basis.

Note: An Advisory Council member may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

- (2) An Advisory Council member holds office for the period specified in the instrument of appointment. The period must not exceed 3 years.
- (3) A person is not eligible for appointment to the Advisory Council unless the Minister is satisfied that the person has substantial experience or knowledge in at least one of the following fields:
  - (a) evaluation of quality management systems;
  - (b) provision of care and services to aged care consumers, including provision of care and services to people with special needs;
  - (c) issues affecting aged care consumers or their representatives;
  - (d) geriatrics;
  - (e) gerontology;
  - (f) aged care nursing;
  - (g) psychiatry of the older person;
  - (h) adult education;
  - (i) public administration;
  - (j) management, including human resources management and information and data management;

- (k) law;
- (l) health consumer issues;
- (m) any other appropriate field of expertise.

## **42 Acting appointments**

### *Chair*

- (1) The Minister may appoint a person to act as the Chair:
  - (a) during a vacancy in the office of the Chair (whether or not an appointment has previously been made to the office); or
  - (b) during any period, or during all periods, when the Chair:
    - (i) is absent from duty or from Australia; or
    - (ii) is, for any reason, unable to perform the duties of the office.

### *Other Advisory Council members*

- (2) The Minister may appoint a person to act as an Advisory Council member (other than the Chair):
  - (a) during a vacancy in the office of an Advisory Council member (other than the Chair), whether or not an appointment has previously been made to the office; or
  - (b) during any period, or during all periods, when an Advisory Council member (other than the Chair):
    - (i) is absent from duty or from Australia; or
    - (ii) is, for any reason, unable to perform the duties of the office.

### *Eligibility*

- (3) A person is not eligible for appointment under subsection (1) or (2) unless the person is eligible for appointment as an Advisory Council member.

Note 1: For eligibility to be appointed as an Advisory Council member, see subsection 41(3).

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Note 2: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

### 43 Remuneration and allowances

- (1) An Advisory Council member is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that is specified in the rules.
- (2) However, an Advisory Council member is not entitled to be paid remuneration if the member holds an office or appointment, or is otherwise employed, on a full-time basis in the service or employment of:
  - (a) a State; or
  - (b) a corporation (a **public statutory corporation**) that:
    - (i) is established for a public purpose by a law of a State; and
    - (ii) is not a tertiary education institution; or
  - (c) a company limited by guarantee, where the interests and rights of the members in or in relation to the company are beneficially owned by a State; or
  - (d) a company in which all the stock or shares are beneficially owned by a State or by a public statutory corporation.

Note: A similar rule applies to an Advisory Council member who has a similar relationship with the Commonwealth or a Territory: see subsection 7(11) of the *Remuneration Tribunal Act 1973*.

- (3) An Advisory Council member is to be paid the allowances that are specified in the rules.
- (4) This section (other than subsection (2)) has effect subject to the *Remuneration Tribunal Act 1973*.

### 44 Leave of absence

- (1) The Minister may grant leave of absence to the Chair on the terms and conditions that the Minister determines.

- (2) The Chair may grant leave of absence to another Advisory Council member on the terms and conditions that the Chair determines.

#### **45 Disclosure of interests to the Minister**

An Advisory Council member must give written notice to the Minister of all interests, pecuniary or otherwise, that the member has or acquires and that conflict or could conflict with the proper performance of the member's functions.

#### **46 Disclosure of interests to the Advisory Council**

- (1) An Advisory Council member who has an interest, pecuniary or otherwise, in a matter being considered or about to be considered by the Advisory Council must disclose the nature of the interest to a meeting of the Advisory Council.
- (2) The disclosure must be made as soon as possible after the relevant facts have come to the Advisory Council member's knowledge.
- (3) The disclosure must be recorded in the minutes of the meeting of the Advisory Council.
- (4) Unless the Advisory Council otherwise determines, the Advisory Council member:
  - (a) must not be present during any deliberation by the Advisory Council on the matter; and
  - (b) must not take part in any decision of the Advisory Council with respect to the matter.
- (5) For the purposes of making a determination under subsection (4), the Advisory Council member:
  - (a) must not be present during any deliberation of the Advisory Council for the purpose of making the determination; and
  - (b) must not take part in making the determination.
- (6) A determination under subsection (4) must be recorded in the minutes of the meeting of the Advisory Council.

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### **47 Resignation**

- (1) An Advisory Council member may resign the member's appointment by giving the Minister a written resignation.
- (2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

### **48 Termination of appointment**

- (1) The Minister may terminate the appointment of an Advisory Council member:
  - (a) for misbehaviour; or
  - (b) if the Advisory Council member is unable to perform the duties of the office because of physical or mental incapacity.
- (2) The Minister may terminate the appointment of the Advisory Council member if:
  - (a) the Advisory Council member:
    - (i) becomes bankrupt; or
    - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
    - (iii) compounds with the member's creditors; or
    - (iv) makes an assignment of the member's remuneration for the benefit of the member's creditors; or
  - (b) the Advisory Council member is absent, except on leave of absence, from 3 consecutive meetings of the Advisory Council; or
  - (c) fails, without reasonable excuse, to comply with section 45 or 46 (which deal with the disclosure of interests).

### **49 Other terms and conditions**

An Advisory Council member holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined, in writing, by the Minister.



## **Division 4—Procedures of the Advisory Council**

### **50 Procedures of the Advisory Council**

- (1) The Minister may give the Advisory Council written directions about the procedures to be followed in relation to meetings of the Advisory Council.
- (2) A direction given under subsection (1) is not a legislative instrument.

## Part 6—Reporting and planning

### 51 Simplified outline of this Part

This Part makes provision in relation to the annual report and corporate plan for the Commission.

The Commissioner is also required to give the Minister an annual operational plan that meets the requirements of this Part.

### 52 Annual report

The annual report prepared by the Commissioner and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* for a period must include:

- (a) an assessment of the extent to which the Commission's operations during the period have contributed to the priorities set out in the annual operational plan for the period; and
- (b) particulars of any variations of the annual operational plan during the period; and
- (c) an evaluation of the Commission's overall performance during the period against the performance indicators set out in the annual operational plan for the period; and
- (d) information about sanctions imposed under Part 7B for non-compliance with aged care responsibilities, including the nature of the non-compliance and the sanctions imposed.

### 53 Consulting on corporate plans

In preparing a corporate plan under section 35 of the *Public Governance, Performance and Accountability Act 2013*, the Commissioner must consult the Minister and the Advisory Council.

**54 Annual operational plans**

- (1) The Commissioner must give the Minister a written annual operational plan for:
  - (a) the period beginning on the day this Act commences and ending on 30 June 2019; and
  - (b) the financial year starting on 1 July 2019 and each later financial year.
- (2) The plan must:
  - (a) set out particulars of the action that the Commissioner intends to take during the period to give effect to, or further, the objectives set out in the plan; and
  - (b) set out the Commissioner's priorities for work to be undertaken during the period; and
  - (c) set out how the Commissioner will apply the resources of the Commission to achieve those objectives; and
  - (d) include an assessment of risks faced by the Commission for the period together with a plan to manage those risks; and
  - (e) include such performance indicators as the Commissioner considers appropriate for assessing the performance of the Commissioner during the period.
- (3) In preparing the plan, the Commissioner must consult the Minister and the Advisory Council.
- (4) The plan is not a legislative instrument.

## **Part 7—Information sharing and confidentiality etc.**

### **Division 1—Introduction**

#### **55 Simplified outline of this Part**

Certain information must be shared by the Commissioner and Secretary for the purposes of their functions or powers. The Commissioner may also be required by the Minister to prepare reports, or give information, about matters relating to the performance of the Commissioner's functions.

The Commissioner may make specified information about an aged care service publicly available but that information must not include personal information.

Information acquired under, or for the purposes of, this Act or the rules will be protected information under this Act if the information:

- (a) is personal information; or
- (b) relates to the affairs of an approved provider or service provider of a Commonwealth-funded aged care service.

A person must not make a record of, or use or disclose, protected information except in accordance with Division 4 of this Part. The Commissioner is permitted to disclose protected information in certain circumstances.

## **Division 2—Information sharing**

### **56 Commissioner must give information to the Secretary in certain circumstances**

- (1) The Commissioner must, in circumstances specified in the rules, give information of a kind specified in the rules to the Secretary for the purposes of the Secretary's functions or powers.
- (2) If:
  - (a) the Secretary requests the Commissioner to give the Secretary information that the Secretary requires for the purposes of the Secretary's functions or powers; and
  - (b) the information is available to the Commissioner;the Commissioner must give the information to the Secretary.
- (3) Subsection (1) does not limit the information that the Secretary may request under subsection (2).

### **57 Secretary must give information to the Commissioner on request**

- If:
- (a) the Commissioner requests the Secretary to give the Commissioner information that the Commissioner requires for the purposes of the Commissioner's functions or powers; and
  - (b) the information is available to the Secretary;
- the Secretary must give the information to the Commissioner.

### **58 Minister may require the Commissioner to prepare reports or give information**

#### *Reports*

- (1) The Minister may, by written notice given to the Commissioner, require the Commissioner to:

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- (a) prepare a report about one or more specified matters relating to the performance of the Commissioner's functions; and
- (b) give the report to the Minister within the period specified in the notice.

*Information*

- (2) The Minister may, by written notice given to the Commissioner, require the Commissioner to:
  - (a) prepare a document setting out specified information relating to the performance of the Commissioner's functions; and
  - (b) give the document to the Minister within the period specified in the notice.

*Compliance*

- (3) The Commissioner must comply with a requirement under subsection (1) or (2).

*Publication of reports and documents*

- (4) The Minister may publish (whether on the internet or otherwise):
  - (a) a report given to the Minister under subsection (1); or
  - (b) a document given to the Minister under subsection (2).

**58A Additional purpose of NDIS worker screening database**

It is also a purpose of the NDIS worker screening database under subsection 181Y(3) of the *National Disability Insurance Scheme Act 2013* to share information in that database with the following:

- (a) the Commissioner, for the purpose of assisting in the performance of the functions, or the exercise of the powers, of the Commissioner;
- (b) the Secretary, for the purpose of assisting in the performance of the functions, or the exercise of the powers, of the Secretary under the Aged Care Act.

## **Division 3—Making information publicly available**

### **59 Information about an aged care service may be made publicly available**

- (1) The Commissioner may make publicly available the following information about an aged care service:
  - (a) the name and address of the service;
  - (b) the number of places (if any) included in the service;
  - (ba) if the service is a home care service—the number of care recipients provided with care through the service;
  - (c) the services provided by the service;
  - (d) the facilities and activities available to care recipients receiving care through the service;
  - (e) the name of the approved provider of the service;
  - (f) information about the variety and type of service provided by the approved provider;
  - (g) information about the service’s status under this Act or the Aged Care Act (for example, the service’s accreditation record);
  - (h) information about the approved provider’s performance in relation to the provider’s responsibilities under this Act or the Aged Care Act;
  - (i) any action taken, or intended to be taken, under this Act or the rules to protect the welfare of care recipients receiving care through the service, and the reasons for that action;
  - (j) any other information of a kind specified in the rules for the purposes of this paragraph.
- (2) Information disclosed under subsection (1) must not include personal information.

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**59A Information about Commonwealth-funded aged care service may be made publicly available**

- (1) The Commissioner may make publicly available the following information about a Commonwealth-funded aged care service:
  - (a) the name and address of the service;
  - (b) the number of persons who are recipients of the service;
  - (c) the services provided by the service;
  - (d) the facilities and activities available to persons who are recipients of the service;
  - (e) the name of the service provider of the service;
  - (f) information about the variety and type of service provided by the service provider;
  - (g) information about the service provider's performance in relation to the provider's responsibilities under the funding agreement that relates to the service;
  - (h) any action taken, or intended to be taken, under this Act or the rules to protect the welfare of persons who are recipients of the service, and the reasons for that action;
  - (i) any other information of a kind specified in the rules for the purposes of this paragraph.
- (2) Information disclosed under subsection (1) must not include personal information.



## Division 4—Protected information

### 60 Prohibition on use or disclosure etc. of protected information

#### *Offence*

- (1) A person commits an offence if:
- (a) the person obtains information in the course of performing functions, or exercising powers, under or for the purposes of this Act or the rules; and
  - (b) the information is protected information; and
  - (c) the person:
    - (i) makes a record of the information; or
    - (ii) uses the information; or
    - (iii) discloses the information to another person.

Penalty: Imprisonment for 2 years.

- (2) **Protected information** is information acquired under, or for the purposes of, this Act or the rules that:
- (a) is personal information; or
  - (b) relates to the affairs of an approved provider or a service provider of a Commonwealth-funded aged care service; or
  - (c) relates to the affairs of an applicant for approval under section 63B.

#### *Exceptions*

- (3) Subsection (1) does not apply if:
- (a) the person makes the record of, or uses or discloses, the information in the course of performing functions, or exercising powers, under or in relation to:
    - (i) this Act or the rules; or
    - (ii) the Aged Care Act or the Aged Care Principles; or
  - (b) the conduct is authorised by the person or body to whom the information relates; or

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- (c) the conduct is otherwise authorised under this Act, the rules or any other Act.

Note: A defendant bears an evidential burden in relation to the matters in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

- (4) Subsection (1) does not apply to a disclosure of information if:
  - (a) the disclosure is to the person or body to whom the information relates; or
  - (b) the disclosure is to the Minister or the Secretary.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

### **61 Permitted disclosures of protected information by Commissioner**

- (1) The Commissioner may disclose protected information:
  - (a) if the Commissioner determines, in writing, that it is necessary in the public interest to disclose the information in a particular case—to such persons and for such purposes as the Commissioner determines; or
  - (b) to a person who is, in the opinion of the Commissioner, expressly or impliedly authorised by the person or body to whom the information relates to obtain it; or
  - (ba) to the Inspector-General of Aged Care to assist in the performance of the functions, or the exercise of the powers, of the Inspector-General of Aged Care under the *Inspector-General of Aged Care Act 2023* or instruments made under that Act; or
  - (c) to the Secretary to assist in the performance of the functions, or the exercise of the powers, of the Secretary; or
  - (d) to the Chief Executive Medicare for the purposes of payment of subsidies under the Aged Care Act; or
  - (da) if the Commissioner believes, on reasonable grounds, that the information will assist in the performance of the functions, or the exercise of the powers, of a receiving Commonwealth body—to that body for the purposes of performing those functions or exercising those powers; or

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- (e) if the Commissioner believes, on reasonable grounds, that the disclosure is necessary to prevent or lessen a serious risk to the safety, health or well-being of an aged care consumer—to such persons as the Commissioner determines, for the purpose of preventing or lessening the risk; or
- (f) if the Commissioner believes, on reasonable grounds, that:
  - (i) a person's conduct breaches, or may breach, the standards of professional conduct of a profession of which the person is a member; and
  - (ii) the person should be reported to a body responsible for standards of conduct in the profession;to that body, for the purposes of maintaining standards of professional conduct in the profession; or
- (g) if a person has temporarily taken over the provision of care through a particular service to aged care consumers—to the person for the purposes of enabling the person to properly provide that care; or
- (ga) if an approved provider has appointed an eligible adviser as required by a notice given to the provider under section 63U—to the eligible adviser for the purposes of that appointment; or
- (h) if the Commissioner believes, on reasonable grounds, that disclosure of the information is necessary for:
  - (i) the enforcement of the criminal law; or
  - (ii) the enforcement of a law imposing a pecuniary penalty; or
  - (iii) the protection of the public revenue;to an agency whose functions include that enforcement or protection, for the purposes of that enforcement or protection; or
- (i) to the Pricing Authority to assist in the performance of the Aged Care Act functions (within the meaning of the *National Health Reform Act 2011*) of the Pricing Authority; or
- (ia) if:
  - (i) under a law of a State or Territory, a person or body has the function, or functions that include the function, of

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dealing with complaints or information about the provision of health or community services by a person or body; and

- (ii) the Commissioner believes, on reasonable grounds, that the information will assist in the performance of that function;

to the person or body for the purposes of performing that function; or

- (ib) if:

- (i) a person or body performs functions or exercises powers under, or for the purposes of, an NDIS worker screening law (within the meaning of the *National Disability Insurance Scheme Act 2013*); and

- (ii) the Commissioner believes, on reasonable grounds, that the information will assist in the performance of those functions or the exercise of those powers;

to the person or body for the purposes of performing those functions or exercising those powers; or

- (j) to a person of a kind specified in the rules, for the purposes specified in the rules in relation to persons of that kind.

- (2) If a determination under paragraph (1)(a) or (e) is made in writing, the determination is not a legislative instrument.

- (3) In this section:

***receiving Commonwealth body*** means any of the following:

- (a) the Military Rehabilitation and Compensation Commission;
- (b) the National Disability Insurance Scheme Launch Transition Agency;
- (c) the NDIS Quality and Safeguards Commission;
- (d) the Repatriation Commission;
- (e) the Department administered by the Minister administering the *Disability Services and Inclusion Act 2023*;
- (f) the Department administered by the Minister administering the *Veterans' Entitlements Act 1986*;
- (g) if:

- (i) another Department of State, or another authority, of the Commonwealth has regulatory, compliance or enforcement functions in relation to the provision of care, support, treatment or other related services or assistance (including care, support, treatment or other related services or assistance provided through an arrangement, including a contractual arrangement); and
- (ii) the Department or authority is prescribed in the rules; that Department or authority.

**Repatriation Commission** means the Repatriation Commission continued in existence by section 179 of the *Veterans' Entitlements Act 1986*.

## **62 Limits on use or disclosure etc. of protected information disclosed by the Commissioner**

A person commits an offence if:

- (a) the person makes a record of, or uses or discloses, information; and
- (b) the information is information that was disclosed to the person under section 61; and
- (c) the purpose for which the person makes the record of, or uses or discloses, the information is not the purpose for which the information was disclosed under that section.

Penalty: Imprisonment for 2 years.

## **63 Disclosure to court etc.**

A court, or any other body or person that has power to require the production of documents or the answering of questions, may require a person or body to disclose protected information only if one of the following applies:

- (a) the disclosure is required for the purposes of:
  - (i) this Act or the rules; or
  - (ii) the Aged Care Act or the Aged Care Principles;

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- (b) the information was originally disclosed to the person or body under section 61 of this Act and the disclosure is required for the purpose for which it was disclosed under that section;
- (c) the person or body to whom the information relates has consented, in writing, to the disclosure.

## **Division 5—Other matters**

### **63AA Authorisations for the purposes of the *Privacy Act 1988***

- (1) A collection of sensitive information (within the meaning of the *Privacy Act 1988*) is taken to be authorised by this Act for the purposes of paragraph 3.4(a) of Australian Privacy Principle 3 if:
  - (a) the information is collected by a service provider of a Commonwealth-funded aged care service; and
  - (b) the service provider has a responsibility under the funding agreement that relates to that service to manage and report incidents, and to take reasonable steps to prevent incidents, in accordance with that agreement; and
  - (c) the information is collected for the purposes of complying with that responsibility.
- (2) A use or disclosure of personal information (within the meaning of the *Privacy Act 1988*) is taken to be authorised by this Act for the purposes of paragraph 6.2(b) of Australian Privacy Principle 6 if:
  - (a) the use or disclosure is by a service provider of a Commonwealth-funded aged care service; and
  - (b) the service provider has a responsibility under the funding agreement that relates to that service to manage and report incidents, and to take reasonable steps to prevent incidents, in accordance with that agreement; and
  - (c) the use or disclosure is for the purposes of complying with that responsibility.

## **Part 7A—Approval of providers of aged care etc.**

### **Division 1—Introduction**

#### **63A Simplified outline of this Part**

Division 2 of this Part deals with approving providers of aged care. For when a State or Territory, a State or Territory authority or a local government authority is taken to be an approved provider of aged care, see Division 3 of this Part.

Division 4 of this Part deals with the cessation and revocation of an approval to be a provider of aged care. An approval may be revoked by the Commissioner under Division 4 of this Part or Part 7B. An approval ceases to have effect when the approval is revoked or, if the approval of the provider is suspended for a particular period under Part 7B, during the period of the suspension.



## **Division 2—Approval of providers of aged care**

### **63B Application for approval as provider of aged care**

- (1) A person may apply to the Commissioner to be approved as a provider of aged care.
- (2) The application must:
  - (a) be made in writing; and
  - (b) be in a form approved by the Commissioner; and
  - (c) be accompanied by any documents or information specified by the Commissioner; and
  - (d) be accompanied by any fee specified by the Commissioner.
- (3) The person may, in writing, withdraw the application at any time before the Commissioner makes a decision on the application.

### **63C Request for further information**

- (1) If:
  - (a) a person makes an application under subsection 63B(1); and
  - (b) the Commissioner needs further information to make a decision on the application;the Commissioner may, by written notice, request the person to give further information to the Commissioner within a specified period.
- (2) The specified period must not be shorter than 28 days after the notice is given.
- (3) However, the specified period may be shorter than 28 days after the notice is given if the circumstances specified in the rules apply in relation to the application.
- (4) The Commissioner may, at the person's request, extend the specified period.

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- (5) If the person does not give the requested further information within:
- (a) if the specified period has been extended under subsection (4)—the period as so extended; or
  - (b) otherwise—the specified period;
- the application is taken to be withdrawn at the end of the period.
- Note: If the application is taken to be withdrawn under this subsection, the person may make another application under section 63B.
- (6) A notice given under subsection (1) must set out the effect of subsection (5).

### **63D Commissioner must decide whether to approve person as provider of aged care**

- (1) If a person makes an application under subsection 63B(1), the Commissioner must decide whether to approve the person as a provider of aged care within:
- (a) if a request for further information in relation to the application has been made under subsection 63C(1)—90 days after receiving the further information; or
  - (b) otherwise—within 90 days after receiving the application.
- Note: See Part 8B for the reconsideration of a decision not to approve a person as a provider of aged care.

#### *Approval as provider of aged care*

- (2) The Commissioner must not approve the person as a provider of aged care unless the Commissioner is satisfied that:
- (a) the person is a corporation; and
  - (b) the person is suitable to provide aged care; and
  - (c) each individual who is one of the key personnel of the person is suitable to be involved in the provision of aged care.

*Suitability to provide aged care*

- (3) In deciding whether the person is suitable to provide aged care, the Commissioner must consider the following matters:
- (a) the person's experience in providing, at any time, aged care or other relevant forms of care;
  - (b) the person's demonstrated understanding of the person's responsibilities as a provider of the type of aged care for which approval is sought;
  - (c) the systems that the person has, or proposes to have, in place to meet the person's responsibilities as a provider of the type of aged care for which approval is sought;
  - (d) the person's record of financial management and the methods that the person uses, or proposes to use, in order to ensure sound financial management;
  - (e) if, at any time, the person has been a provider of aged care or other relevant forms of care—the person's conduct as such a provider and the person's compliance with:
    - (i) the person's responsibilities as a provider of that care; and
    - (ii) the person's obligations arising from the receipt of any payments from the Commonwealth for providing that care;
  - (ea) whether the person has at any time been convicted of an indictable offence;
  - (eb) whether a civil penalty order against the person has been made at any time;
  - (f) any other matters specified in the rules.
- (4) In considering a matter referred to in paragraph (3)(a), (b), (d), (e) or (f), the Commissioner may also consider the matter in relation to any or all of the key personnel of the person.
- (5) The rules may specify the matters to which the Commissioner must have regard in considering any of the matters set out in paragraphs (3)(a) to (f).

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- (6) Subsection (3) does not limit the matters the Commissioner may consider in deciding whether the person is suitable to provide aged care.

*Suitability of key personnel*

- (7) In deciding whether an individual who is one of the key personnel of the applicant is suitable to be involved in the provision of aged care, the Commissioner must consider the suitability matters in relation to the individual.
- (8) Subsection (7) does not limit the matters the Commissioner may consider in deciding the matter mentioned in that subsection.

**63E Notification of decision relating to approval of person as provider of aged care**

*Decision to approve person as a provider of aged care*

- (1) If the Commissioner decides to approve the person as a provider of aged care under section 63D, the Commissioner must, within 14 days after making the decision, give written notice of the following to the person:
- (a) the decision;
  - (b) the day the approval comes into effect;
  - (c) whether the approval is given in respect of all types of aged care or only in respect of a certain type or types of aged care;
  - (d) if the approval is in respect of residential care or flexible care—that the approval is in respect of each residential care service or flexible care service in respect of which:
    - (i) an allocation of a place to the person in respect of the service is in effect under Part 2.2 of the Aged Care Act (including a place transferred to the person under that Part); or
    - (ii) a provisional allocation of a place to the person in respect of the service is in force under that Part (including a place transferred to the person under that Part);

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- (e) if the approval is in respect of home care—that the approval is in respect of each home care service in relation to which the person notifies the Secretary of the information required by section 9-1A of the Aged Care Act;
  - (f) if the Commissioner is satisfied that there are one or more circumstances that materially affect the person's suitability to provide aged care—those circumstances and the steps the person must take to notify the Commissioner and obtain the Commissioner's agreement before there is any change to those circumstances.
- (2) The notice must also set out the following matters:
- (a) the obligations of approved providers under Division 9 of the Aged Care Act to notify of, or give, certain information;
  - (b) the circumstances in which the approval may be suspended or revoked under Division 4 of this Part, or Part 7B, of this Act;
  - (c) the circumstances in which the approval may be restricted under Part 7B of this Act and the effect of section 7-2 of the Aged Care Act.

Note: Under Part 7B of this Act, the Commissioner may restrict a person's approval as a provider of aged care to certain aged care services or to certain care recipients.

*Decision not to approve person as provider of aged care*

- (3) If the Commissioner decides not to approve the person as a provider of aged care under section 63D, the Commissioner must, within 14 days after making the decision, give written notice of the following to the person:
- (a) the decision;
  - (b) the reasons for the decision;
  - (c) how the person may apply for the reconsideration of the decision.

*Secretary must be given copy of notice*

- (4) The Commissioner must, as soon as is practicable, give the Secretary a copy of a notice given under subsection (1) or (3).

**Division 3—Deemed approval of States, Territories and local government etc.**

**63F States, Territories and local government etc. taken to be approved providers etc.**

- (1) Subject to subsection (3), a person or body of the following kind (the *entity*) may give the Commissioner a written notice requesting that this section applies in relation to the entity:
  - (a) a State or Territory;
  - (b) a State or Territory authority;
  - (c) a local government authority.
- (2) If the entity gives the Commissioner a notice under subsection (1), each of the following apply for the purposes of this Act, the rules, the Aged Care Act and the Aged Care Principles:
  - (a) the entity is taken to be an approved provider;
  - (b) the approval of the entity is taken to come into effect on the first day after the day the notice is received by the Commissioner;
  - (c) the approval of the entity is taken to be in respect of:
    - (i) all types of aged care; and
    - (ii) all types of aged care services that are provided, or will be provided, by the entity.

Note: As the entity is an approved provider, the entity's approval may be suspended or revoked under Division 4 of this Part, or Part 7B, of this Act.

- (3) If:
  - (a) an entity is taken to be an approved provider under paragraph (2)(a); and
  - (b) the approval of the entity is revoked under Division 4 of this Part or Part 7B;

then:

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- (c) the entity is not permitted to give the Commissioner another notice under subsection (1); and
- (d) if the entity subsequently applies under section 63B for approval as a provider of aged care—the entity is taken, for the purposes of the application, to be a corporation.

## **Division 4—Cessation and revocation of approval**

### **63G When approval as provider of aged care ceases to have effect**

#### *Suspension of approval*

- (1) If the approval of an approved provider is suspended for a particular period under Part 7B, the approval does not have effect during the period.

#### *Revocation of approval*

- (2) The approval of an approved provider ceases to have effect if the approval is revoked under this Division or Part 7B.

### **63H Revocation of approval on request of approved provider**

#### *Request for revocation*

- (1) An approved provider may request the Commissioner to revoke the approval of the provider.
- (2) The request must:
  - (a) be made in writing; and
  - (b) be in a form approved by the Commissioner; and
  - (c) be accompanied by any documents or information specified by the Commissioner; and
  - (d) be accompanied by any fee specified by the Commissioner; and
  - (e) specify the day (the **revocation day**) on which the revocation is to take effect; and
  - (f) be made at least 60 days, or such other number of days as specified in the rules, before the revocation day.



*Revocation of approval*

- (3) If an approved provider makes a request under subsection (1), the Commissioner must, within 28 days after the request is made, revoke the approval of the provider if the Commissioner is satisfied that:
- (a) if the provider provides a residential care service or flexible care service—the allocation of places to the provider in respect of the service either:
    - (i) has ceased to have effect under paragraph 18-1(1)(a) or (b) of the Aged Care Act; or
    - (ii) will cease to have effect under that paragraph before the revocation day; and
  - (b) if the provider provides a home care service—appropriate arrangements have been made to ensure that the care recipients (if any) to whom the provider will no longer be approved to provide home care after the revocation day will continue to be provided with care after that day.

*Notification of revocation decision*

- (4) If the Commissioner decides to revoke the approval of the approved provider under subsection (3), the Commissioner must give the provider written notice of the decision and the revocation day.
- (5) The notice under subsection (4) must be given at least 14 days before the revocation day.
- (6) If the Commissioner decides not to revoke the approval of the approved provider under subsection (3), the Commissioner must, within 14 days after making the decision, give written notice of the following to the provider:
- (a) the decision;
  - (b) the reasons for the decision;
  - (c) how the provider may apply for reconsideration of the decision.

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- (7) The Commissioner must, as soon as is practicable, give the Secretary a copy of a notice given under subsection (4) or (6).

**63J Revocation of approval of approved provider if Commissioner is satisfied of certain matters**

*Revocation of actual approval*

- (1) If an approved provider was approved under section 63D, the Commissioner must revoke the approval of the provider if the Commissioner is satisfied that:
- (a) in a case in which the provider was, or was taken to be, a corporation at the time of the approval—the provider has ceased to be a corporation; or
  - (b) the provider has ceased to be suitable to provide aged care; or
  - (c) the provider's application for approval contained information that was false or misleading in a material particular.

Note: The approved provider may request the Commissioner to reconsider the decision under Part 8B.

*Revocation of deemed approval*

- (2) If a person or body is taken, under section 63F, to be an approved provider, the Commissioner must revoke the approval of the person or body if the Commissioner is satisfied that the person or body is not suitable to provide aged care.

Note: The person or body may request the Commissioner to reconsider the decision under Part 8B.

*Suitability to provide aged care*

- (3) In deciding whether a person or body (the *entity*) has ceased to be, or is not, suitable to provide aged care, the Commissioner must consider the following matters:
- (a) the entity's experience in providing, at any time, aged care or other relevant forms of care;

- (b) the entity's demonstrated understanding of the entity's responsibilities as a provider of the type of aged care to which the entity's approval relates;
  - (c) the systems that the entity has in place to meet the entity's responsibilities as a provider of the type of aged care to which the entity's approval relates;
  - (d) the entity's record of financial management and the methods that the entity uses in order to ensure sound financial management;
  - (e) if, at any time, the entity has been a provider of aged care or other relevant forms of care—the entity's conduct as such a provider and the entity's compliance with:
    - (i) the entity's responsibilities as a provider of that care; and
    - (ii) the entity's obligations arising from the receipt of any payments from the Commonwealth for providing that care;
  - (ea) whether the entity has at any time been convicted of an indictable offence;
  - (eb) whether a civil penalty order against the entity has been made at any time;
  - (f) any other matters specified in the rules.
- (4) In considering a matter referred to in paragraph (3)(a), (b), (d), (e) or (f), the Commissioner may also consider the matter in relation to any or all of the key personnel of the entity.
- (5) The rules may specify the matters to which the Commissioner must have regard in considering any of the matters referred to in subsection (3).
- (6) Subsection (3) does not limit the matters the Commissioner may consider in deciding whether the entity is suitable to provide aged care.

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**63K Notice of intention to revoke approval as provider of aged care**

- (1) Before the Commissioner decides to revoke the approval of an approved provider under section 63J, the Commissioner must, by written notice, notify the provider that the revocation is being considered.
- (2) The notice must:
  - (a) set out the Commissioner's reasons for considering the revocation; and
  - (b) invite the approved provider to make submissions, in writing, to the Commissioner about the matter within 28 days after receiving the notice; and
  - (c) inform the provider that if no submissions are made within that period, any revocation may take effect as early as 7 days after the end of that period.
- (3) In deciding whether to revoke the approval of an approved provider under section 63J, the Commissioner must consider any submissions made by the provider to the Commissioner within the period referred to in paragraph (2)(b) of this section.
- (4) The Commissioner must decide whether to revoke the approval of an approved provider under section 63J within 28 days after the end of the period referred to in paragraph (2)(b) of this section.

**63L Notice of revocation of approval as provider of aged care etc.**

- (1) If the Commissioner decides, under section 63J, to revoke the approval of a person or body (the *entity*) as an approved provider, the Commissioner must, within 14 days after making the decision, give written notice of the following to the entity:
  - (a) the decision;
  - (b) the reasons for the decision;
  - (c) how the entity may apply for reconsideration of the decision.

*Notice of revocation day*

- (2) Subject to subsection (4), the Commissioner must also give the entity a written notice that specifies the day (the **revocation day**) on which the revocation of the entity's approval takes effect.

Note: A notice under this subsection may be given to the entity whether or not a notice has been given to the entity under subsection (5).

- (3) The notice under subsection (2):
- (a) must be given at least 7 days before the revocation day; and
  - (b) may be given at the same time the notice under subsection (1) is given to the entity or at a later time.
- (4) The Commissioner must not give a notice under subsection (2) to the entity unless the Commissioner is satisfied that appropriate arrangements have been made to ensure that the care recipients to whom the entity will no longer be approved to provide aged care after the revocation day will continue to be provided with care after that day.

*Notice of limitation on approval prior to revocation day*

- (5) Subject to subsection (8), the Commissioner may also give the entity a written notice that specifies:
- (a) that the entity's approval is limited, or further limited, to any one or more of the following:
    - (i) one or more specified types of aged care;
    - (ii) one or more specified aged care services;
    - (iii) one or more specified classes of care recipient; and
  - (b) the day (the **approval limitation day**) on which the limitation takes effect.
- (6) A notice under subsection (5):
- (a) must specify a day as the approval limitation day that is at least 7 days after the notice is given; and
  - (b) may be given at the same time the notice under subsection (1) is given to the entity or at a later time.

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- (7) The Commissioner may give the entity more than one notice under subsection (5).
- (8) The Commissioner must not give the entity a notice under subsection (5) unless the Commissioner is satisfied that appropriate arrangements have been made to ensure that the care recipients to whom the entity will no longer be approved to provide aged care after the approval limitation day specified in the notice will continue to be provided with care after that day.

## **Part 7B—Sanctions for non-compliance with aged care responsibilities of approved providers**

### **Division 1—Introduction**

#### **63M Simplified outline of this Part**

The Commissioner may impose sanctions under this Part on an approved provider that has not complied, or is not complying, with one or more of the aged care responsibilities of the provider. Certain procedures must be followed if sanctions are to be imposed.

An approved provider may be asked in certain circumstances to give an undertaking or to agree to do one or more things to avoid a sanction being imposed.

Certain sanctions may be lifted by the Commissioner on application by the approved provider.

## **Division 2—Imposition of sanctions by the Commissioner**

### **63N Commissioner may impose sanctions for non-compliance with aged care responsibilities**

- (1) The Commissioner may impose one or more sanctions of a kind mentioned in section 63R on an approved provider if:
- (a) the Commissioner is satisfied that the provider has not complied, or is not complying, with one or more of the aged care responsibilities of the provider; and
  - (b) the Commissioner is satisfied that it is appropriate to impose those sanctions on the provider.

Note 1: The approved provider may request the Commissioner to reconsider the decision under Part 8B.

Note 2: In certain circumstances, the Commissioner must give a notice under section 63S before deciding to impose a sanction under this section.

- (1A) The Commissioner may do so even if the Commissioner has given the approved provider a compliance notice in relation to the non-compliance (regardless of whether the provider has complied with the notice).

#### *Commissioner must consider certain matters*

- (2) In deciding whether an approved provider has not complied, or is not complying, with the aged care responsibility referred to in paragraph 63-1(1)(a) or (h) of the Aged Care Act, the Commissioner may have regard to any information provided by the Secretary in relation to that matter.
- (3) In deciding whether it is appropriate to impose sanctions on an approved provider for non-compliance with one or more of the aged care responsibilities of the provider, the Commissioner must consider the following matters:
- (a) whether the non-compliance is of a minor or serious nature;
  - (b) whether the non-compliance has occurred previously and, if so, how many times it has previously occurred;



- (c) whether the non-compliance threatens the health, welfare or interests of the care recipients to whom the provider is providing care;
  - (d) whether the non-compliance would threaten the health, welfare or interests of care recipients to whom the provider may provide care in the future;
  - (e) if the provider has given an undertaking as required by a notice given to the provider under section 63T—whether or not the provider has complied with the undertaking;
  - (f) if the provider has agreed to do one or more things as required by a notice given to the provider under section 63U—whether or not the provider has complied with the agreement;
  - (fa) if the provider has given an undertaking under section 114 of the Regulatory Powers Act in relation to the non-compliance (as applied by section 74EC of this Act)—whether or not the provider has complied with the undertaking;
  - (fb) if the provider has been given a compliance notice in relation to the non-compliance—whether or not the provider has complied with the notice;
  - (g) the desirability of deterring future non-compliance;
  - (h) any other matters specified in the rules.
- (4) However, the Commissioner must give paramount consideration to the matters specified in paragraphs (3)(c) and (d).

*Notice of decision to impose sanctions*

- (5) If the Commissioner decides to impose, under subsection (1), one or more sanctions on an approved provider in relation to the provider's non-compliance with one or more aged care responsibilities, the Commissioner must, within 14 days after making the decision, give the provider a written notice that:
- (a) sets out the decision; and
  - (b) sets out the reasons for the decision; and
  - (c) sets out the details of the provider's non-compliance; and

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- (d) specifies each of the sanctions and sets out the effect each sanction will have on the provider; and
- (e) if a sanction is to revoke or suspend the allocation of some or all of the places allocated to the provider under Part 2.2 of the Aged Care Act—specifies the number of those places subject to the sanction; and
- (f) specifies the day on which each of the sanctions comes into effect; and
- (g) if a sanction is to cease to have effect on a particular day:
  - (i) specifies that day; and
  - (ii) sets out the effect of Division 4 of this Part (which deals with the lifting of sanctions).

**Note:** In certain circumstances, the Commissioner must comply with sections 63P and 63Q in specifying a day for the purposes of paragraph (f) of this subsection.

- (6) The rules may specify matters that the Commissioner must have regard to in doing any one or more of the following:
  - (a) specifying a day under paragraph (5)(f) in relation to a sanction;
  - (b) deciding whether or not to specify a day under subparagraph (5)(g)(i) in relation to a sanction;
  - (c) specifying a day under subparagraph (5)(g)(i) in relation to a sanction.

**63P Period within which the revocation of approval of approved provider must take effect in certain circumstances**

- (1) This section applies if:
  - (a) the Commissioner decides to impose, under section 63N, a sanction on an approved provider in relation to the provider's non-compliance with one or more aged care responsibilities of the provider; and
  - (b) the sanction is to revoke the provider's approval; and
  - (c) no other sanction is to be imposed on the provider in relation to the non-compliance.

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- (2) The Commissioner must specify a day for the purposes of paragraph 63N(5)(f) in relation to the sanction that is no later than 14 days after the date of the notice given to the approved provider under subsection 63N(5) in relation to the sanction.

**63Q When the revocation or suspension of allocation of places is to take effect**

- (1) This section applies if:
- (a) the Commissioner decides to impose, under section 63N, a sanction on an approved provider in relation to the provider's non-compliance with one or more aged care responsibilities of the provider; and
  - (b) the sanction is to revoke or suspend a particular number of places (the *affected places*) allocated to the provider under Part 2.2 of the Aged Care Act; and
  - (c) immediately before the date (the *sanction notice date*) of the notice given to the provider under subsection 63N(5) in relation to the sanction, the affected places are not all vacant places of the provider.
- (2) If the sanction relates to an affected place that is a vacant place of the approved provider, the Commissioner must specify, for the purposes of paragraph 63N(5)(f), the sanction notice date as the day on which the sanction comes into effect for the vacant place.
- (3) If the sanction relates to an affected place that is an occupied place of the approved provider, the Commissioner must specify, for the purposes of paragraph 63N(5)(f), the first day after the day on which the provider ceases to provide aged care to a care recipient in respect of the occupied place as the day on which the sanction comes into effect for the occupied place.
- (4) A *vacant place* of the approved provider is a place allocated to the provider under Part 2.2 of the Aged Care Act in respect of which the provider is not providing aged care to a care recipient immediately before the sanction notice date.

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- (5) An ***occupied place*** of the approved provider is a place allocated to the provider under Part 2.2 of the Aged Care Act in respect of which the provider is providing aged care to a care recipient immediately before the sanction notice date.

Note: A care recipient who is on leave under section 42-2 of the Aged Care Act from a residential care service is taken to be provided with residential care by the approved provider of the service (see subsection 42-2(1) of that Act).

### **63R Kinds of sanctions that may be imposed on approved providers**

The following are the kinds of sanctions that may be imposed on an approved provider under section 63N:

- (a) revoking or suspending the approval of the provider;
- (b) restricting the approval of the provider to the aged care services conducted by the provider at a specified time;
- (c) restricting the payment of subsidies under the Aged Care Act to the provision of care to care recipients to whom the provider is providing care, through one or more, or all, specified aged care services, at a specified time;
- (d) revoking or suspending the allocation of some or all of the places allocated to the provider under Part 2.2 of the Aged Care Act;
- (e) varying the conditions to which the allocation of some or all of the places allocated to the provider under Part 2.2 of the Aged Care Act is subject under section 14-5 or 14-6 of that Act;
- (f) prohibiting the further allocation of places under Part 2.2 of the Aged Care Act to the provider;
- (g) revoking or suspending the extra service status in respect of a residential care service, or a distinct part of a residential care service, conducted by the provider;
- (h) prohibiting the granting of extra service status in respect of a residential care service, or a distinct part of a residential care service, conducted by the provider;
- (i) prohibiting the charging of an accommodation payment, or an accommodation contribution, for:

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- (i) one or more, or all, specified residential care services conducted by the provider; or
  - (ii) one or more, or all, specified flexible care services conducted by the provider;
- (j) prohibiting the charging of an accommodation bond, or an accommodation charge, for the entry (within the meaning of the Aged Care Act) of care recipients to:
  - (i) one or more, or all, specified residential care services conducted by the provider; or
  - (ii) one or more, or all, specified flexible care services conducted by the provider;
- (k) if the provider has charged an amount of accommodation payment or accommodation contribution that is more than the amount the provider is permitted to charge under Division 52G of the Aged Care Act—requiring the provider to refund, in accordance with that Division and within a specified period, an amount equal to the excess amount charged by the provider;
- (l) restricting, during a specified period, the use by the provider of a refundable deposit, or an accommodation bond, to one or more specified uses that are permitted under Division 52N of the Aged Care Act;
- (m) if the provider is required under Division 52P of the Aged Care Act to refund an amount in accordance with that Division and the provider has not done so—requiring the provider to refund the amount in accordance with that Division within a specified period;
- (n) requiring the provider to repay any or all of the amount of a grant paid to the provider under Chapter 5 of the Aged Care Act;
- (o) any other sanctions specified in the rules.

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### **Division 3—Notices that must, or may be given, before sanctions are imposed**

#### **63S Commissioner must notify approved provider of intention to impose sanctions on the provider**

- (1) This section applies if the Commissioner is satisfied that:
  - (a) an approved provider has not complied, or is not complying, with one or more of the aged care responsibilities of the provider (other than the responsibility referred to in paragraph 63-1(1)(k) or (l) of the Aged Care Act); and
  - (b) there is no immediate and severe risk to the safety, health and well-being of care recipients to whom the provider is providing care as a result of the non-compliance.
- (2) Before the Commissioner decides to impose, under section 63N, one or more sanctions on the approved provider in relation to the non-compliance, the Commissioner must, by written notice, notify the provider that the Commissioner is considering imposing those sanctions on the provider in relation to the non-compliance.
- (3) The notice must:
  - (a) set out details of the approved provider's non-compliance; and
  - (b) set out the reasons why the Commissioner is considering imposing, under section 63N, one or more sanctions on the provider in relation to the non-compliance; and
  - (c) set out the kinds of sanctions that the Commissioner is considering imposing on the provider and the effect those sanctions, if imposed, would have on the provider; and
  - (d) set out broadly what action the Commissioner requires the provider to take to remedy the non-compliance; and
  - (e) invite the provider to make submissions, in writing, to the Commissioner in relation to the matter within:
    - (i) 14 days after receiving the notice; or

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- (ii) if a shorter period is specified in the notice—that shorter period; and
- (f) inform the provider that the Commissioner may, after considering any submissions made by the provider:
  - (i) give the provider a notice under section 63T in relation to the non-compliance; or
  - (ii) decide to impose, under section 63N, one or more sanctions on the provider in relation to the non-compliance.
- (4) The Commissioner must consider any submissions made by the approved provider in accordance with the notice.

**63T Approved provider may be required to give undertaking about remedying non-compliance**

- (1) This section applies if:
  - (a) an approved provider is given a non-compliance notice in relation to the provider's non-compliance with one or more aged care responsibilities of the provider; and
  - (b) the provider makes submissions to the Commissioner as required by the notice; and
  - (c) the Commissioner considers that the submissions:
    - (i) propose appropriate action to remedy the non-compliance; or
    - (ii) set out an acceptable reason for the non-compliance; or
    - (iii) are otherwise satisfactory.
- (2) The Commissioner may, by written notice:
  - (a) require the approved provider to give the Commissioner an undertaking in relation to the non-compliance that complies with subsection (3) within:
    - (i) 14 days after receiving the notice; or
    - (ii) if a shorter period is specified in the notice—that shorter period; and

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- (b) inform the provider that the Commissioner may decide to impose, under section 63N, one or more sanctions on the provider in relation to the non-compliance if:
    - (i) the provider does not give the required undertaking; or
    - (ii) the provider does not comply with any such undertaking given by the provider.
- (3) An undertaking given by an approved provider in relation to the provider's non-compliance with one or more aged care responsibilities of the provider must:
  - (a) be given in writing; and
  - (b) be in a form approved by the Commissioner; and
  - (c) describe and acknowledge the non-compliance; and
  - (d) set out what action the provider proposes to take to remedy the non-compliance; and
  - (e) set out the period within which such action is to be taken; and
  - (f) include a statement acknowledging that the Commissioner may decide to impose, under section 63N, one or more sanctions on the provider if the provider does not comply with the undertaking; and
  - (g) meet any other requirements specified in the rules.

Note: Approved providers have a responsibility under paragraph 63-1(1)(k) of the Aged Care Act to comply with the undertaking. Failure to comply with that responsibility may result in a sanction being imposed under section 63N of this Act.

**63U Approved provider may be required to agree to certain matters if revocation of approval is being considered**

- (1) This section applies if:
  - (a) the Commissioner is satisfied that an approved provider has not complied, or is not complying, with one or more of the aged care responsibilities of the provider (other than the responsibility referred to in paragraph 63-1(1)(l) of the Aged Care Act); and
  - (b) the Commissioner is satisfied that:



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- (i) there is an immediate and severe risk to the safety, health and well-being of care recipients to whom the provider is providing care as a result of the non-compliance; or
  - (ii) if the provider made submissions to the Commissioner in relation to the non-compliance as required by a non-compliance notice given to the provider—the submissions do not satisfy any of subparagraphs 63T(1)(c)(i), (ii) or (iii); or
  - (iii) if the provider is required by a notice given to the provider under section 63T to give the Commissioner an undertaking in relation to the non-compliance—the provider has failed to give the undertaking; or
  - (iv) if the provider has given an undertaking as required by a notice given to the provider under section 63T—the provider has failed to comply with the undertaking; and
  - (c) the Commissioner is considering imposing, under section 63N, a sanction on the provider for the non-compliance; and
  - (d) the sanction (the *revocation sanction*) is the revocation of the approval of the provider.
- (2) Before the Commissioner decides to impose, under section 63N, the revocation sanction on the approved provider in relation to the non-compliance, the Commissioner may, by written notice:
- (a) require the provider to agree, in writing, to do any one or more things specified in the notice; and
  - (b) inform the provider that, if the provider does not agree to do those specified things in accordance with the notice, the Commissioner will impose the revocation sanction on the provider in relation to the non-compliance.

Note: Approved providers have a responsibility under paragraph 63-1(1)(l) of the Aged Care Act to comply with the agreement. Failure to comply with that responsibility may result in a sanction being imposed under section 63N of this Act.

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- (3) For the purposes of subsection (2), the following are the kinds of things that the Commissioner may require an approved provider to do in a notice given under that subsection:
- (a) to provide, at the provider's expense and within the period specified in the notice, such training as is specified in the notice for the provider's officers, employees and agents;
  - (b) to provide, within the period specified in the notice, such security as is specified in the notice for any debts owed by the provider to the Commonwealth;
  - (c) to appoint, within the period specified in the notice, an eligible adviser who has appropriate qualifications, skills or experience to assist the provider to comply with the provider's aged care responsibilities in relation to either or both of the following matters:
    - (i) the care and services provided by the provider;
    - (ii) the governance and business operations of the provider;
  - (d) to give an eligible adviser appointed by the provider for that purpose all the necessary information required by the adviser to provide that assistance;
  - (e) to transfer, within the period specified in the notice, any or all of the places allocated to the provider under Part 2.2 of the Aged Care Act to another approved provider;
  - (f) to do any other things specified in the rules.
- (4) The rules may specify matters that the Commissioner must take into account in specifying a period in a notice given under subsection (2) for the purposes of paragraph (3)(c).

## **Division 4—Lifting of sanctions imposed on approved providers**

### **63V Application for lifting of sanction imposed on approved provider**

- (1) If:
  - (a) a sanction has been imposed on an approved provider under section 63N; and
  - (b) the notice given to the provider under that section specified a day on which the sanction is to cease to have effect; and
  - (c) the sanction is still in effect;the provider may apply to the Commissioner for the sanction to be lifted.
- (2) The application must:
  - (a) be made in writing; and
  - (b) be in a form approved by the Commissioner; and
  - (c) be accompanied by any documents or information specified by the Commissioner; and
  - (d) be accompanied by any fee specified by the Commissioner.
- (3) The approved provider may, in writing, withdraw the application at any time before the Commissioner makes a decision on the application.

### **63W Request for further information**

- (1) If:
  - (a) an approved provider makes an application under subsection 63V(1); and
  - (b) the Commissioner needs further information to make a decision on the application;

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the Commissioner may, by written notice, request the provider to give further information to the Commissioner within a specified period.

- (2) The specified period must not be shorter than 28 days after the notice is given.
- (3) However, the specified period may be shorter than 28 days after the notice is given if the circumstances specified in the rules apply in relation to the application.
- (4) The Commissioner may, at the approved provider's request, extend the specified period.
- (5) If the approved provider does not give the requested further information within:
  - (a) if the specified period has been extended under subsection (4)—the period as so extended; or
  - (b) otherwise—the specified period;the application is taken to be withdrawn at the end of the period.

Note: If the application is taken to be withdrawn under this subsection, the approved provider may make another application under section 63V.
- (6) A notice given under subsection (1) must set out the effect of subsection (5).

**63X Commissioner must decide whether to lift sanction imposed on approved provider**

- (1) If an approved provider makes an application under subsection 63V(1) in relation to a sanction imposed on the provider, the Commissioner must decide whether to lift the sanction within:
  - (a) if a request for further information in relation to the application has been made under subsection 63W(1)—28 days after receiving the further information; or
  - (b) otherwise—28 days after receiving the application.

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Note: See Part 8B for the reconsideration of a decision not to lift the sanction.

- (2) The Commissioner must lift the sanction imposed on the approved provider if the Commissioner is satisfied that it is appropriate for the sanction to be lifted.
- (3) In deciding whether it is appropriate for the sanction imposed on the approved provider to be lifted, the Commissioner must have regard to:
  - (a) whether the approved provider is complying with the aged care responsibilities of the provider; and
  - (b) any other matters specified in the rules.

**63Y Notification of decision relating to lifting of sanction imposed on approved provider**

*Decision to lift sanction*

- (1) If the Commissioner decides, under section 63X, to lift a sanction imposed on an approved provider, the Commissioner must, within 14 days after making the decision, give written notice of the following to the provider:
  - (a) the decision;
  - (b) the day on which the sanction will cease to be in effect;
  - (c) any other matters specified in the rules.

*Decision not to lift sanction*

- (2) If the Commissioner decides, under section 63X, not to lift a sanction imposed on an approved provider, the Commissioner must, within 14 days after making the decision, give written notice of the following to the provider:
  - (a) the decision;
  - (b) the reasons for the decision;
  - (c) how the provider may apply for reconsideration of the decision.

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*Secretary must be given copy of notice*

- (3) The Commissioner must, as soon as is practicable, give the Secretary a copy of a notice given under subsection (1) or (2).

## **Part 8—Entry and search powers relating to provider approval applications etc.**

### **Division 1—Introduction**

#### **64 Simplified outline of this Part**

This Part deals with the powers of authorised officers, and regulatory officials, to enter premises and to exercise the search powers in relation to the premises.

Premises may only be entered with the consent of the occupier of the premises and only for specified purposes.

The Commissioner must cause identity cards to be issued to quality assessors.

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**Division 2—Powers of authorised officers in relation to premises**

**64A Power to enter premises and exercise search powers in relation to applications for approval as provider of aged care**

- (1) This section applies if:
  - (a) an application for approval as a provider of aged care is made under section 63B; and
  - (b) the Commissioner considers that, for the purposes of making a decision on the application, it is necessary for an authorised officer to exercise powers under this Division.
- (2) An authorised officer may:
  - (a) enter any premises; and
  - (b) exercise the search powers in relation to the premises;for the purposes of the Commissioner making a decision on the application.
- (3) However, an authorised officer is not authorised to enter premises unless the occupier of the premises has consented to the entry.

Note: An authorised officer must leave the premises if the consent ceases to have effect (see section 66).

**65 Power to enter premises and exercise search powers in relation to complaints etc.**

- (1) This section applies if:
  - (a) in accordance with the rules, the Commissioner is dealing with a complaint or information about:
    - (i) an approved provider's responsibilities under the Aged Care Act or the Aged Care Principles; or
    - (ii) the responsibilities of a service provider of a Commonwealth-funded aged care service under the funding agreement that relates to the service; and



- (b) the Commissioner considers that, for the purposes of resolving the complaint or dealing with the information, it is necessary for an authorised officer to exercise powers under this Division.
- (2) An authorised officer may:
  - (a) enter any premises; and
  - (b) exercise the search powers in relation to the premises; for the purposes of the Commissioner resolving the complaint or dealing with the information.
- (3) However, an authorised officer is not authorised to enter premises unless the occupier of the premises has consented to the entry.

Note: An authorised officer must leave the premises if the consent ceases to have effect (see section 66).

## 66 Consent

- (1) Before obtaining the consent of an occupier of premises for the purposes of subsection 64A(3) or 65(3), an authorised officer must:
  - (a) inform the occupier that the occupier may refuse to give consent or may withdraw consent; and
  - (b) if the occupier is an approved provider—inform the occupier that the occupier has a responsibility under paragraph 63-1(1)(b) of the Aged Care Act to cooperate with a person who is performing functions, or exercising powers, under this Part.

Note: Failure to comply with that responsibility may result in a sanction being imposed on the approved provider under Part 7B.
- (2) A consent has no effect unless the consent is voluntary.
- (3) A consent may be expressed to be limited to entry during a particular period. If so, the consent has effect for that period unless the consent is withdrawn before the end of that period.
- (4) A consent that is not limited as mentioned in subsection (3) has effect until the consent is withdrawn.

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- (5) If an authorised officer entered premises because of the consent of the occupier of the premises, the officer must leave the premises if the consent ceases to have effect.
- (6) If:
  - (a) an authorised officer enters premises because of the consent of the occupier of the premises; and
  - (b) the officer has not shown the occupier the officer's identity card before entering the premises;the officer must do so on, or as soon as is reasonably practicable after, entering the premises.

### **67 Asking questions and seeking production of documents**

- (1) If an authorised officer enters premises in accordance with section 64A or 65, the officer may request a person at the premises:
  - (a) to answer any questions put by the officer; and
  - (b) to produce any documents or records requested by the officer.
- (2) Before the authorised officer makes a request of an approved provider under subsection (1), the officer must inform the provider that the provider has a responsibility under paragraph 63-1(1)(b) of the Aged Care Act to cooperate with a person who is performing functions, or exercising powers, under this Part.

Note: Failure to comply with that responsibility may result in a sanction being imposed on the approved provider under Part 7B.
- (3) A person is not required to comply with a request made under subsection (1).

## **Division 3—Powers of regulatory officials in relation to premises**

### **68 Power to enter premises and exercise search powers for regulatory purposes**

- (1) This section applies if the Commissioner considers that it is necessary for a regulatory official to exercise powers under this Division for a purpose (the *regulatory purpose*) relating to:
  - (a) the accreditation of an aged care service; or
  - (b) a quality review of an aged care service or a Commonwealth-funded aged care service; or
  - (c) the monitoring of the quality of care and services provided by an approved provider of an aged care service; or
  - (d) the monitoring of the quality of care and services provided by a service provider of a Commonwealth-funded aged care service.
- (2) The regulatory official may do the following for the regulatory purpose:
  - (a) enter any premises;
  - (b) exercise the search powers in relation to the premises.
- (3) However, the regulatory official is not authorised to enter premises unless the occupier of the premises has consented to the entry.

**Note:** The regulatory official must leave the premises if the consent ceases to have effect (see section 69).

### **69 Consent**

- (1) Before obtaining the consent of an occupier of premises for the purposes of subsection 68(3), a regulatory official must:
  - (a) inform the occupier that the occupier may refuse to give consent or may withdraw consent; and
  - (b) if the occupier is an approved provider—inform the occupier that the occupier has a responsibility under

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paragraph 63-1(1)(b) of the Aged Care Act to cooperate with a person who is performing functions, or exercising powers, under this Part.

Note: Failure to comply with that responsibility may result in a sanction being imposed on the approved provider under Part 7B.

- (2) A consent has no effect unless the consent is voluntary.
- (3) A consent may be expressed to be limited to entry during a particular period. If so, the consent has effect for that period unless the consent is withdrawn before the end of that period.
- (4) A consent that is not limited as mentioned in subsection (3) has effect until the consent is withdrawn.
- (5) If a regulatory official entered premises because of the consent of the occupier of the premises, the official must leave the premises if the consent ceases to have effect.
- (6) If:
  - (a) the Commissioner enters premises because of the consent of the occupier of the premises; and
  - (b) the Commissioner has not shown the occupier evidence of the Commissioner's identity before entering the premises;the Commissioner must do so on, or as soon as is reasonably practicable after, entering the premises.
- (7) If:
  - (a) a quality assessor enters premises because of the consent of the occupier of the premises; and
  - (b) the assessor has not shown the occupier the assessor's identity card before entering the premises;the assessor must do so on, or as soon as is reasonably practicable after, entering the premises.

## 70 Asking questions and seeking production of documents

- (1) If a regulatory official enters premises in accordance with section 68, the official may request a person at the premises:
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- (a) to answer any questions put by the official; and
  - (b) to produce any documents or records requested by the official.
- (2) Before the regulatory official makes a request of an approved provider under subsection (1), the official must inform the provider that the provider has a responsibility under paragraph 63-1(1)(b) of the Aged Care Act to cooperate with a person who is performing functions, or exercising powers, under this Part.  

Note: Failure to comply with that responsibility may result in a sanction being imposed on the approved provider under Part 7B.
- (3) A person is not required to comply with a request made under subsection (1).

## **Division 4—Search powers**

### **71 Search powers**

- (1) This section applies if:
  - (a) an authorised officer enters premises in accordance with section 64A or 65; or
  - (b) a regulatory official enters premises in accordance with section 68.
- (2) The following are the *search powers* that the authorised officer or regulatory official may exercise in relation to the premises:
  - (a) the power to search the premises and any thing on the premises;
  - (b) the power to examine or observe any activity conducted on the premises;
  - (c) the power to inspect, examine, take measurements of or conduct tests on any thing on the premises;
  - (d) the power to make any still or moving image or any recording of the premises or any thing on the premises;
  - (e) the power to inspect any document on the premises;
  - (f) the power to take extracts from, or make copies of, any such document;
  - (g) the power to take onto the premises such equipment and materials as the officer or official (as the case may be) requires for the purpose of exercising powers in relation to the premises;
  - (h) the powers set out in subsections 72(1) and (4).

### **72 Operating electronic equipment**

- (1) The *search powers* include the power to:
  - (a) operate electronic equipment on the premises entered in accordance with section 64A, 65 or 68; and
  - (b) use a disk, tape or other storage device that:

- (i) is on the premises; and
  - (ii) can be used with the equipment or is associated with it.
- (2) The **search powers** include the powers referred to in subsection (4) if relevant data is found in the exercise of the power under subsection (1).
- (3) **Relevant data** means:
  - (a) if an authorised officer entered the premises in accordance with section 64A or 65—information that is relevant to the purposes for which the premises were so entered; or
  - (b) if a regulatory official entered premises in accordance with section 68—information that is relevant to the purposes for which the premises were so entered.
- (4) The powers are as follows:
  - (a) the power to operate electronic equipment on the premises to put the relevant data in documentary form and remove the documents so produced from the premises;
  - (b) the power to operate electronic equipment on the premises to transfer the relevant data to a disk, tape or other storage device that:
    - (i) is brought to the premises for the exercise of the power; or
    - (ii) is on the premises and the use of which for that purpose has been agreed in writing by the occupier of the premises;and remove the disk, tape or other storage device from the premises.
- (5) An authorised officer or regulatory official may operate electronic equipment as mentioned in subsection (1) or (4) only if the officer or official (as the case may be) believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.

## **Division 5—Identity cards**

### **73 Authorised officers must carry identity card**

An authorised officer must carry the officer's identity card at all times when performing functions, or exercising powers, under this Part as an authorised officer.

### **74 Identity cards for quality assessors**

- (1) The Commissioner must cause an identity card to be issued to a person who is a quality assessor.

#### *Form of identity card*

- (2) The identity card must:
- (a) be in the form prescribed by the rules; and
  - (b) include a photograph of the person that is no more than 5 years old.

#### *Offence*

- (4) A person commits an offence if:
- (a) the person has been issued with an identity card; and
  - (b) the person ceases to be a quality assessor; and
  - (c) the person does not return the identity card to the Commissioner within 14 days after ceasing to be a quality assessor.

Penalty: 1 penalty unit.

- (5) An offence against subsection (4) is an offence of strict liability.
- (6) Subsection (4) does not apply if the identity card was lost or destroyed.

Note: A defendant bears an evidential burden in relation to the matter in this subsection: see subsection 13.3(3) of the *Criminal Code*.



*Requirement to carry identity card*

- (8) A quality assessor must carry the assessor's identity card at all times when performing functions, or exercising powers, as a quality assessor.

## **Part 8AA—Code of Conduct**

### **Division 1—Introduction**

#### **74AA Simplified outline of this Part**

Approved providers, and their aged care workers and governing persons, must comply with the provisions of the Code of Conduct that apply to them.

Approved providers have a responsibility under the Aged Care Act to comply with the provisions of the Code of Conduct that apply to them. A failure to do so may result in a sanction being imposed under this Act. It may also result in a civil penalty order being made.

If an aged care worker, or a governing person, of an approved provider fails to comply with the provisions of the Code of Conduct that apply to them, it may result in a civil penalty order being made.

## **Division 2—Code of Conduct**

### **74AB Contravention of Code of Conduct by approved providers**

An approved provider contravenes this section if:

- (a) the provider is a corporation; and
- (b) the provider fails to comply with the provisions of the Code of Conduct that apply to the provider.

Note: Approved providers have a responsibility under paragraph 54-1(1)(g) of the Aged Care Act to comply with the Code of Conduct. Failure to comply with that responsibility may result in a sanction being imposed under section 63N of this Act.

Civil penalty: 250 penalty units.

### **74AC Aged care workers of approved providers must comply with Code of Conduct**

- (1) An aged care worker of an approved provider must comply with the provisions of the Code of Conduct that apply to the worker.
- (2) An aged care worker of an approved provider contravenes this subsection if:
  - (a) the provider is a corporation; and
  - (b) the worker fails to comply with the provisions of the Code of Conduct that apply to the worker.

Civil penalty: 250 penalty units.

### **74AD Governing persons of approved providers must comply with Code of Conduct**

- (1) A governing person of an approved provider must comply with the provisions of the Code of Conduct that apply to the person.
- (2) A governing person of an approved provider contravenes this subsection if:
  - (a) the provider is a corporation; and

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- (b) the person fails to comply with the provisions of the Code of Conduct that apply to the person.

Civil penalty:            250 penalty units.

**74AE Code of Conduct**

- (1) The rules may make provision for, or in relation to, a code of conduct that applies to the following:
  - (a) approved providers;
  - (b) aged care workers of approved providers;
  - (c) governing persons of approved providers.
- (2) Without limiting subsection (1), the rules may provide as follows:
  - (a) that a provision of the code of conduct applies to any or all of the following:
    - (i) approved providers;
    - (ii) aged care workers of approved providers;
    - (iii) governing persons of approved providers;
  - (b) that a provision of the code of conduct applies to the following:
    - (i) specified kinds of aged care workers of approved providers;
    - (ii) aged care workers of specified kinds of approved providers;
    - (iii) specified kinds of governing persons of approved providers;
    - (iv) governing persons of specified kinds of approved providers.

## Part 8A—Enforcement and compliance

### Division 1—Introduction

#### 74A Simplified outline of this Part

An authorised officer may enter premises under a warrant or with consent of the occupier and exercise monitoring powers there under Part 2 of the Regulatory Powers Act, for the purposes of determining the following:

- (aa) whether an aged care worker, or a governing person, of an approved provider has complied, or is complying, with the provisions of the Code of Conduct that apply to them;
- (a) whether a provision of Chapter 4 of the Aged Care Act has been, or is being, complied with;
- (b) whether information given in compliance or purported compliance with a provision of that chapter is correct.

An authorised officer may, under Part 3 of the Regulatory Powers Act, gather material that relates to the contravention of:

- (a) an offence provision of this Act or the Aged Care Act; or
- (b) an offence provision of the *Crimes Act 1914* or the *Criminal Code* that relates to this Act or the Aged Care Act; or
- (c) a civil penalty provision of this Act or Division 54 of the Aged Care Act.

Parts 2, 3 and 4 of the Regulatory Powers Act are applied by this Part with suitable modifications. The civil penalty provisions and some strict liability offence provisions are also subject to an infringement notice under Part 5 of the Regulatory Powers Act.

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The following may be enforced by enforceable undertakings and injunctions under Parts 6 and 7 of the Regulatory Powers Act:

- (a) compliance with the provisions of the Code of Conduct that apply to an aged care worker, or a governing person, of an approved provider;
- (b) an approved provider's responsibilities under Chapter 4 of the Aged Care Act.

The Commissioner may give an approved provider a compliance notice requiring the provider to take, or refrain from taking, action in order to address non-compliance with certain aged care responsibilities.

The Commissioner may require a person in certain circumstances to attend before an authorised officer to answer questions or give certain information or documents.

The Commissioner may, in certain circumstances, make a banning order against an individual who is or was an aged care worker, or a governing person, of an approved provider.

## Division 2—Regulatory powers

### 74B Monitoring powers

#### *Provisions subject to monitoring*

- (1) The following provisions are subject to monitoring under Part 2 of the Regulatory Powers Act:
  - (a) subsections 74AC(1) and 74AD(1) of this Act;
  - (b) a provision of Chapter 4 of the Aged Care Act.

Note: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether a provision has been complied with. It includes powers of entry and inspection.

#### *Information subject to monitoring*

- (2) Information given in compliance or purported compliance with a provision of Chapter 4 of the Aged Care Act is subject to monitoring under Part 2 of the Regulatory Powers Act.

Note: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether the information is correct. It includes powers of entry and inspection.

#### *Related provisions*

- (3) For the purposes of Part 2 of the Regulatory Powers Act, a provision of the Aged Care Act that is referred to in Chapter 4 of the Aged Care Act is related to the provision mentioned in paragraph (1)(b) and the information mentioned in subsection (2).

#### *Authorised applicant, authorised person, issuing officer, relevant chief executive and relevant court*

- (4) For the purposes of Part 2 of the Regulatory Powers Act as it applies in relation to a provision mentioned in subsection (1) and the information mentioned in subsection (2):
  - (a) an authorised officer is an authorised applicant; and

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- (b) an authorised officer is an authorised person; and
- (c) a magistrate is an issuing officer; and
- (d) the Commissioner is the relevant chief executive; and
- (e) each of the following is a relevant court:
  - (i) the Federal Court;
  - (ii) the Federal Circuit and Family Court of Australia (Division 2);
  - (iii) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act, the Aged Care Act or the *Aged Care (Transitional Provisions) Act 1997*.

*Persons assisting*

- (5) An authorised officer may be assisted by other persons in exercising powers or performing functions under Part 2 of the Regulatory Powers Act in relation to a provision mentioned in subsection (1) and the information mentioned in subsection (2).

*Use of force in executing warrant*

- (6) In executing a warrant issued under Part 2 of the Regulatory Powers Act, as it applies in relation to a provision mentioned in subsection (1) and the information mentioned in subsection (2):
  - (a) an authorised officer may use such force against things as is necessary and reasonable in the circumstances; and
  - (b) a person assisting the officer may use such force against things as is necessary and reasonable in the circumstances.

*Extension to external Territories*

- (7) Part 2 of the Regulatory Powers Act, as it applies in relation to a provision mentioned in subsection (1) and the information mentioned in subsection (2), extends to the external Territories other than the Territory of Ashmore and Cartier Islands.



## **74C Modifications of Part 2 of the Regulatory Powers Act**

- (1) This section applies in relation to Part 2 of the Regulatory Powers Act as that Part applies in relation to the following:
  - (a) a provision mentioned in subsection 74B(1) of this Act;
  - (b) the information mentioned in subsection 74B(2) of this Act.

### *Consent*

- (2) Before obtaining the consent of an occupier of premises who is an approved provider for the purposes of paragraph 18(2)(a) of the Regulatory Powers Act, an authorised officer must inform the occupier that the occupier has a responsibility under paragraph 63-1(1)(b) of the Aged Care Act to cooperate with a person who is performing functions, or exercising powers, under Part 2 of the Regulatory Powers Act.

Note: See section 25 of the Regulatory Powers Act for additional rules about consent.

### *Securing electronic equipment etc.*

- (3) Sections 21, 22 and 33 of the Regulatory Powers Act are taken to apply as if:
  - (a) a reference to “24 hours” in sections 21 and 22 of that Act were a reference to “48 hours”; and
  - (b) a reference to a “24-hour period” in sections 21 and 22 of that Act were a reference to a “48-hour period”.

### *Asking questions and seeking production of documents*

- (4) The second reference to the occupier of premises in subsection 24(2) of the Regulatory Powers Act is taken to include a reference to any other person on the premises.
- (5) Before requesting a person who is an approved provider to answer a question, or produce a document, under subsection 24(2) of the Regulatory Powers Act, an authorised officer must inform the person that the person has a responsibility under paragraph 63-1(1)(b) of the Aged Care Act to cooperate with a

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person who is performing functions, or exercising powers, under Part 2 of the Regulatory Powers Act.

- (6) If an authorised officer requests a person to answer a question, or produce a document, under subsection 24(2) of the Regulatory Powers Act, the person is not required to comply with the request.

**74D Investigation powers**

*Provisions subject to investigation*

- (1) A provision is subject to investigation under Part 3 of the Regulatory Powers Act if it is:
- (a) an offence against this Act or the Aged Care Act; or
  - (b) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act or the Aged Care Act; or
  - (c) a civil penalty provision of this Act or Division 54 of the Aged Care Act.

Note: Part 3 of the Regulatory Powers Act creates a framework for investigating whether a provision has been contravened. It includes powers of entry, search and seizure.

*Authorised applicant, authorised person, issuing officer, relevant chief executive and relevant court*

- (2) For the purposes of Part 3 of the Regulatory Powers Act as it applies in relation to evidential material that relates to a provision mentioned in subsection (1):
- (a) an authorised officer is an authorised applicant; and
  - (b) an authorised officer is an authorised person; and
  - (c) a magistrate is an issuing officer; and
  - (d) the Commissioner is the relevant chief executive; and
  - (e) each of the following is a relevant court:
    - (i) the Federal Court;
    - (ii) the Federal Circuit and Family Court of Australia (Division 2);

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- (iii) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act, the Aged Care Act or the *Aged Care (Transitional Provisions) Act 1997*.

*Persons assisting*

- (3) An authorised officer may be assisted by other persons in exercising powers or performing functions under Part 3 of the Regulatory Powers Act in relation to evidential material that relates to a provision mentioned in subsection (1).

*Use of force in executing warrant*

- (4) In executing a warrant issued under Part 3 of the Regulatory Powers Act, as it applies in relation to evidential material that relates to a provision mentioned in subsection (1):
- (a) an authorised officer may use such force against things as is necessary and reasonable in the circumstances; and
  - (b) a person assisting the officer may use such force against things as is necessary and reasonable in the circumstances.

*Extension to external Territories*

- (5) Part 3 of the Regulatory Powers Act, as it applies in relation to a provision mentioned in subsection (1), extends to the external Territories other than the Territory of Ashmore and Cartier Islands.

**74E Modifications of Part 3 of the Regulatory Powers Act**

- (1) This section applies in relation to Part 3 of the Regulatory Powers Act as that Part applies in relation to evidential material that relates to a provision mentioned in subsection 74D(1) of this Act.

*Securing electronic equipment etc.*

- (2) Sections 51 and 74 of the Regulatory Powers Act are taken to apply as if:

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- (a) a reference to “24 hours” in section 51 of that Act were a reference to “48 hours”; and
- (b) a reference to a “24-hour period” in section 51 of that Act were a reference to a “48-hour period”.

*Asking questions and seeking production of documents*

- (3) The second reference to the occupier of premises in subsection 54(2) of the Regulatory Powers Act is taken to include a reference to any other person on the premises.
- (4) Before requesting a person who is an approved provider to answer a question, or produce a document, under subsection 54(2) of the Regulatory Powers Act, an authorised officer must inform the person that the person has a responsibility under paragraph 63-1(1)(b) of the Aged Care Act to cooperate with a person who is performing functions, or exercising powers, under Part 3 of the Regulatory Powers Act.

**74EA Civil penalty provisions**

*Enforceable civil penalty provisions*

- (1) The following civil penalty provisions are enforceable under Part 4 of the Regulatory Powers Act:
  - (a) each civil penalty provision of this Act;
  - (b) each civil penalty provision of Division 54 of the Aged Care Act.

Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

*Authorised applicant*

- (2) For the purposes of Part 4 of the Regulatory Powers Act, the Commissioner is an authorised applicant in relation to the provisions mentioned in subsection (1).

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*Relevant court*

- (3) For the purposes of Part 4 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the provisions mentioned in subsection (1):
- (a) the Federal Court;
  - (b) the Federal Circuit and Family Court of Australia (Division 2);
  - (c) a court of a State or Territory that has jurisdiction in relation to the matter.

*Crown not liable to pecuniary penalty*

- (4) Despite section 3 of this Act and section 4-2 of the Aged Care Act, the Crown is not liable to a pecuniary penalty in relation to the provisions mentioned in subsection (1).

*Extension to external Territories*

- (5) Part 4 of the Regulatory Powers Act, as it applies in relation to the provisions mentioned in subsection (1), extends to the external Territories other than the Territory of Ashmore and Cartier Islands.

## **74EB Infringement notices**

*Provisions subject to an infringement notice*

- (1) The following provisions are subject to an infringement notice under Part 5 of the Regulatory Powers Act:
- (a) a civil penalty provision of this Act;
  - (b) a civil penalty provision of Division 54 of the Aged Care Act;
  - (c) an offence provision in section 74GA;
  - (d) an offence provision in Division 9, or section 52N-3, of the Aged Care Act.

Note: Part 5 of the Regulatory Powers Act creates a framework for using infringement notices in relation to provisions.

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*Infringement officer*

- (2) For the purposes of Part 5 of the Regulatory Powers Act, the Commissioner is an infringement officer in relation to the provisions mentioned in subsection (1).

*Relevant chief executive*

- (3) For the purposes of Part 5 of the Regulatory Powers Act, the Commissioner is the relevant chief executive in relation to the provisions mentioned in subsection (1).

*Crown not liable to be given an infringement notice*

- (4) Despite section 3 of this Act and section 4-2 of the Aged Care Act, the Crown is not liable to be given an infringement notice in relation to the provisions mentioned in subsection (1).

*Extension to external Territories*

- (5) Part 5 of the Regulatory Powers Act, as it applies in relation to the provisions mentioned in subsection (1), extends to the external Territories other than the Territory of Ashmore and Cartier Islands.

**74EC Enforceable undertakings**

*Enforceable provisions*

- (1) The following provisions are enforceable under Part 6 of the Regulatory Powers Act:
- (a) subsections 74AC(1) and 74AD(1) of this Act;
  - (b) a provision of Chapter 4 of the Aged Care Act.

Note: Part 6 of the Regulatory Powers Act creates a framework for accepting and enforcing undertakings relating to compliance with provisions.

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*Authorised person*

- (2) For the purposes of Part 6 of the Regulatory Powers Act, the Commissioner is an authorised person in relation to the provisions mentioned in subsection (1).

*Relevant court*

- (3) For the purposes of Part 6 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the provisions mentioned in subsection (1):
- (a) the Federal Court;
  - (b) the Federal Circuit and Family Court of Australia (Division 2);
  - (c) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

*Extension to external Territories*

- (4) Part 6 of the Regulatory Powers Act, as it applies in relation to the provisions mentioned in subsection (1) extends to the external Territories other than the Territory of Ashmore and Cartier Islands.

## **74ED Injunctions**

*Enforceable provisions*

- (1) The following provisions are enforceable under Part 7 of the Regulatory Powers Act:
- (a) subsections 74AC(1) and 74AD(1) of this Act;
  - (b) a provision of Chapter 4 of the Aged Care Act.

Note: Part 7 of the Regulatory Powers Act creates a framework for using injunctions to enforce provisions.

*Authorised person*

- (2) For the purposes of Part 7 of the Regulatory Powers Act, the Commissioner is an authorised person in relation to the provisions mentioned in subsection (1).

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*Relevant court*

- (3) For the purposes of Part 7 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the provisions mentioned in subsection (1):
- (a) the Federal Court;
  - (b) the Federal Circuit and Family Court of Australia (Division 2);
  - (c) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

*Consent injunctions*

- (4) A relevant court may grant an injunction under Part 7 of the Regulatory Powers Act in relation to the provisions mentioned in subsection (1) by consent of all the parties to proceedings brought under that Part, whether or not the court is satisfied that section 121 of that Act applies.

*Extension to external Territories*

- (5) Part 7 of the Regulatory Powers Act, as it applies in relation to the provisions mentioned in subsection (1), extends to the external Territories other than the Territory of Ashmore and Cartier Islands.



## Division 2A—Compliance notices

### 74EE Compliance notices

#### *Incident management provisions*

- (1) The Commissioner may give to an approved provider a written notice if the Commissioner:
- (a) is satisfied that an approved provider is not complying with the provider's responsibilities under paragraph 54-1(1)(e) of the Aged Care Act (the ***incident management provisions***); or
  - (b) is aware of information that suggests that an approved provider may not be complying with the incident management provisions.

#### *Use of restrictive practices*

- (1A) The Commissioner may give to an approved provider a written notice if the Commissioner:
- (a) is satisfied that an approved provider is not complying with the provider's responsibility under paragraph 54-1(1)(f) of the Aged Care Act; or
  - (b) is aware of information that suggests that an approved provider may not be complying with that responsibility.

#### *Code of Conduct*

- (1AA) The Commissioner may give to an approved provider a written notice if the Commissioner:
- (a) is satisfied that the approved provider is not complying with the provider's responsibility under paragraph 54-1(1)(g) or (ga) of the Aged Care Act; or
  - (b) is aware of information that suggests that the approved provider may not be complying with that responsibility.

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*Information relating to reporting period*

- (1B) The Commissioner may give to an approved provider a written notice if the Commissioner:
- (a) is satisfied that the approved provider is not complying with the provider's responsibility under section 63-1G of the Aged Care Act; or
  - (b) is aware of information that suggests that the approved provider may not be complying with that responsibility.

*Compliance notice*

- (2) The compliance notice must:
- (a) set out the name of the provider to which the notice is given; and
  - (b) set out brief details of the non-compliance or possible non-compliance; and
  - (c) specify action that the provider must take, or refrain from taking, in order to address the non-compliance or possible non-compliance; and
  - (d) specify a reasonable period within which the provider must take, or refrain from taking, the specified action; and
  - (e) if the Commissioner considers it appropriate—specify a reasonable period within which the provider must provide the Commissioner with evidence that the provider has taken, or refrained from taking, the specified action; and
  - (f) state that a failure to comply with the notice is subject to a civil penalty; and
  - (g) state that compliance with the notice will be considered in deciding whether to impose sanctions on the provider under Part 7B in relation to the non-compliance; and
  - (h) set out any other matters specified in the rules for the purposes of this paragraph.
- (3) An approved provider contravenes this subsection if the provider fails to comply with a compliance notice.

Civil penalty:            60 penalty units.

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- (4) The Commissioner may, by written notice given to an approved provider, vary or revoke a compliance notice given to the provider if the Commissioner considers that it is appropriate in all the circumstances to do so.
- (5) In deciding whether to vary or revoke the compliance notice, the Commissioner must consider any submissions that are received from the provider before the end of the period mentioned in paragraph (2)(d).

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**Division 3—Notice to attend to answer questions etc.**

**74F Notice to attend to answer questions etc. relevant to whether aged care responsibility is being complied with**

- (1) If the Commissioner believes on reasonable grounds that a person has information or documents relevant to whether an approved provider, or a former approved provider, is complying with an aged care responsibility of the provider or former provider, the Commissioner may, by written notice, require the person to attend before an authorised officer to do either or both of the following:
  - (a) to answer questions relating to that matter;
  - (b) to give such information or documents (or copies of documents) as are specified in the notice.

*Notice requirements*

- (2) If a notice is given to a person under subsection (1), the notice must:
  - (a) specify the authorised officer before whom the person is required to attend; and
  - (b) specify the day on which, and the time and place at which, the person is required to attend.
- (3) The day specified under paragraph (2)(b) must be at least 14 days after the notice is given.

*Circumstances in which a person is not required to comply*

- (4) A person is not required to comply with a requirement of a notice given to the person under subsection (1) if the requirement does not relate to the affairs of an approved provider, or former approved provider, that is a corporation.

*Offence*

- (5) A person commits an offence if:

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- (a) the person is given a notice under subsection (1); and
- (b) the person fails to comply with a requirement of the notice;  
and
- (c) the requirement relates to the affairs of an approved provider  
or former approved provider; and
- (d) the provider or former provider is a corporation.

Penalty: 30 penalty units.

*Reasonable compensation*

- (6) A person is entitled to be paid by the Commonwealth reasonable compensation for complying with a requirement of a notice given to the person under subsection (1) to give copies of documents.

**74FA Notice to attend to answer questions etc. relevant to  
compliance with Code of Conduct**

- (1) This section applies if the Commissioner believes on reasonable grounds that a person has information or documents relevant to either or both of the following matters:
  - (a) whether an individual who is or was an aged care worker of an approved provider that is a corporation is complying, or has complied, with a provision of the Code of Conduct that applies or applied to the individual;
  - (b) whether an individual who is or was a governing person of an approved provider that is a corporation is complying, or has complied, with a provision of the Code of Conduct that applies or applied to the individual.
- (2) The Commissioner may, by written notice, require the person to attend before an authorised officer to do either or both of the following:
  - (a) to answer questions relating to the matter;
  - (b) to give such information or documents (or copies of documents) as are specified in the notice.

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### *Notice requirements*

- (3) If a notice is given to a person under subsection (2), the notice must:
  - (a) specify the authorised officer before whom the person is required to attend; and
  - (b) specify the day on which, and the time and place at which, the person is required to attend.
- (4) The day specified under paragraph (3)(b) must be at least 14 days after the notice is given.

### *Offence*

- (5) A person commits an offence if:
  - (a) the person is given a notice under subsection (2); and
  - (b) the person fails to comply with a requirement of the notice.

Penalty: 30 penalty units.

### *Reasonable compensation*

- (6) A person is entitled to be paid by the Commonwealth reasonable compensation for complying with a requirement of a notice given to the person under subsection (2) to give copies of documents.

## **74G Attending before authorised officer to answer questions**

- (1) This section applies if:
  - (a) a person is given a notice under subsection 74F(1) or 74FA(2); and
  - (b) the notice requires the person to attend before an authorised officer to answer questions; and
  - (c) the person attends before the authorised officer for that purpose.
- (2) The authorised officer may question the person on oath or affirmation and may, for that purpose:
  - (a) require the person to take an oath or make an affirmation; and

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- (b) administer an oath or affirmation to the person.
- (3) The oath or affirmation to be taken or made by the person for the purposes of subsection (2) is an oath or affirmation that the statements that the person will make will be true.

*Circumstances in which a person is not required to take an oath etc.*

- (4) A person is not required to comply with a requirement under subsection (2) to take an oath or make an affirmation for the purposes of answering questions if those questions do not relate to the affairs of an approved provider, or former approved provider, that is a corporation.

Note: Approved providers have a responsibility under paragraph 63-1(1)(b) of the Aged Care Act to cooperate with a person who is performing functions, or exercising powers, under this Part. Failure to comply with that responsibility may result in a sanction being imposed on the provider under Part 7B of this Act.

*Offence*

- (5) A person commits an offence if:
- (a) the person is required by an authorised officer to take an oath or make an affirmation for the purposes of answering questions; and
  - (b) the person refuses or fails to comply with the requirement; and
  - (c) the questions relate to the affairs of an approved provider or former approved provider; and
  - (d) the provider or former provider is a corporation.

Penalty: 30 penalty units.

**74GA Power to require information or documents**

- (1) The Commissioner may, by notice in writing given to a person, require the person, within a reasonable time stated in the notice, to:
- (a) give the Commissioner any information; or

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- (b) produce to the Commissioner any documents (or copies of documents);
- specified in the notice that the Commissioner requires for the performance of the Commissioner's functions.
- (2) The Commissioner may, by notice in writing given to the person, extend the time within which the information must be given or documents or copies of documents must be produced in accordance with the notice under subsection (1).

*Circumstances in which a person is not required to comply*

- (3) A person is not required to comply with a requirement of a notice given to the person under subsection (1) if the performance of the Commissioner's functions relates to the affairs of an approved provider, or former approved provider, that is not a corporation.

*Offence*

- (4) A person commits an offence of strict liability if:
  - (a) the person is required to give the Commissioner information, or produce to the Commissioner documents or copies of documents, in accordance with a notice given to the person under subsection (1); and
  - (b) the person fails to comply with the requirement.

Penalty: 30 penalty units.

*Reasonable compensation*

- (5) A person is entitled to be paid by the Commonwealth reasonable compensation for complying with a requirement of a notice given to the person under subsection (1) to give copies of documents.

**74GAA Privilege against self-incrimination not abrogated**

- (1) Nothing in this Division affects the right of a person to refuse to answer a question, give information or give a document on the



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ground that answering the question, giving the information or giving the document might tend to incriminate the person.

- (2) The fact that this section is included in this Division does not imply that the privilege against self-incrimination is abrogated in any other Act.

## Division 4—Banning orders

### 74GB Banning orders—aged care workers and governing persons of approved providers etc.

*Current and former aged care workers etc.*

- (1) Subject to subsection (2), the Commissioner may make an order (the **banning order**) prohibiting or restricting an individual who is or was an aged care worker, or who is or was a governing person, of an approved provider:
  - (a) from being involved in the provision of any type of aged care or specified types of aged care; or
  - (b) from engaging in specified activities as an aged care worker, or as a governing person, of the provider.

Note: See section 74GE for when the Commissioner must give notice of an intention to make the banning order.

- (2) The Commissioner must not make the banning order against the individual under subsection (1) unless:
  - (a) the Commissioner reasonably believes that the individual did not comply, is not complying or is not likely to comply with a provision of the Code of Conduct that applies or applied to the individual; or
  - (b) the Commissioner reasonably believes that the individual is not suitable:
    - (i) to be involved, or to continue to be involved, in the provision of any type of aged care or the specified types of aged care; or
    - (ii) to engage, or to continue to engage, in the specified activities as an aged care worker, or as a governing person, of the approved provider; or
  - (c) the Commissioner reasonably believes there is an immediate or severe risk to the safety, health or well-being of one or more care recipients if the individual:

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- (i) is involved, or continues to be involved, in the provision of any type of aged care or the specified types of aged care; or
- (ii) engages, or continues to engage, in the specified activities as an aged care worker, or as a governing person, of the approved provider; or
- (d) the individual has at any time been convicted of an indictable offence involving fraud or dishonesty; or
- (e) the individual is an insolvent under administration.

*Individual not suitable to be involved in the provision of aged care etc.*

- (3) Subject to subsection (4), the Commissioner may make an order (the **banning order**) prohibiting or restricting an individual who has not previously been an aged care worker, or a governing person, of an approved provider:
  - (a) from being involved in the provision of any type of aged care or specified types of aged care; or
  - (b) from engaging in specified activities as an aged care worker, or as a governing person, of the provider.

Note: See section 74GE for when the Commissioner must give notice of an intention to make the banning order.

- (4) The Commissioner must not make the banning order against the individual under subsection (3) unless the Commissioner reasonably believes that the individual is not suitable:
  - (a) to be involved in the provision of any type of aged care or the specified types of aged care; or
  - (b) to engage in the specified activities as an aged care worker, or as a governing person, of the approved provider.

*Suitability matters*

- (5) In considering whether an individual is suitable to be involved in the provision of any type of aged care or specified types of aged care, the Commissioner must consider the suitability matters in relation to the individual.

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- (6) Subsection (5) does not limit the matters the Commissioner may consider in considering the matter mentioned in that subsection.

*Other*

- (7) A banning order is not a legislative instrument.

**74GC Application etc. of banning order made against an aged care worker etc.**

- (1) This section applies if a banning order is made against an individual who is or was:
- (a) an aged care worker of an approved provider; or
  - (b) a governing person of an approved provider.

*Application of banning order*

- (2) The banning order may:
- (a) apply generally or be of limited application; and
  - (b) be permanent or for a specified period; and
  - (c) be made subject to specified conditions.
- (3) If the banning order is made against an individual who is an aged care worker, or a governing person, of an approved provider, the order continues to have effect even if the individual ceases to be such a worker or person (as the case may be).

*Notice of banning order*

- (4) The Commissioner must, as soon as is practicable after deciding to make the banning order, give the individual a written notice that:
- (a) sets out the decision; and
  - (b) sets out the reasons for the decision; and
  - (c) specifies whether the order applies generally or the order is of limited application; and
  - (d) if the order is of limited application—specifies that limited application; and
  - (e) specifies the day on which the order takes effect; and

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- (f) if the order is to cease to have effect on a particular day—  
specifies that day; and
  - (g) specifies any conditions to which the order is subject; and
  - (h) sets out the effect of subsection (3); and
  - (i) states how the individual may apply for reconsideration of  
the decision.
- (5) If the Commissioner gives a notice under subsection (4) to an individual who is an aged care worker, or a governing person, of an approved provider, the Commissioner must, as soon as is practicable, give the provider a copy of the notice.

**74GD Contraventions of banning orders etc.**

- (1) An individual contravenes this subsection if:
- (a) a banning order against the individual is in force; and
  - (b) the individual engages in conduct; and
  - (c) the conduct breaches the banning order or a condition to  
which the order is subject.
- Civil penalty: 1,000 penalty units.
- (2) A corporation contravenes this subsection if:
- (a) the corporation is an approved provider; and
  - (b) an individual is an aged care worker, or a governing person,  
of the approved provider; and
  - (c) a banning order against the individual is in force; and
  - (d) the corporation fails to take reasonable steps to ensure that  
the individual does not engage in conduct that breaches the  
banning order or a condition to which the order is subject.
- Civil penalty: 1,000 penalty units.

**74GE Notice of intention to make a banning order**

- (1) Before the Commissioner makes a banning order against an individual, the Commissioner must, by written notice, notify the individual that the Commissioner is considering making the order.

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- (2) Subsection (1) does not apply if the Commissioner reasonably believes that there is an immediate and severe risk to the safety, health or well-being of one or more care recipients if the banning order is not made against the individual.
- (3) The notice must:
  - (a) set out the reasons why the Commissioner is considering making the banning order against the individual; and
  - (b) invite the individual to make submissions, in writing, to the Commissioner in relation to the matter within 14 days after receiving the notice; and
  - (c) inform the individual that the Commissioner may, after considering any submissions made by the individual, make the banning order against the individual.
- (4) The Commissioner must consider any submissions made by the individual in accordance with the notice.

**74GF Variation or revocation of a banning order etc. on the Commissioner's own initiative**

- (1) The Commissioner may, on the Commissioner's own initiative, vary or revoke a banning order made against an individual if the Commissioner is satisfied that it is appropriate to do so.
- (2) Without limiting subsection (1), the Commissioner may in varying a banning order do either or both of the following:
  - (a) vary, or revoke, a condition to which the order is subject;
  - (b) specify one or more new conditions to which the order is to be subject.
- (3) If the Commissioner decides to vary or revoke a banning order made against the individual, the Commissioner must, as soon as is practicable, give the individual a written notice that:
  - (a) sets out the decision; and
  - (b) sets out the reasons for the decision; and
  - (c) specifies the day on which the variation or revocation takes effect; and

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- (d) if a condition to which the order is subject is varied—sets out the condition as varied; and
  - (e) specifies any conditions to which the order is subject that have been revoked; and
  - (f) specifies any new conditions to which the order is to be subject; and
  - (g) states how the individual may apply for reconsideration of the decision.
- (4) If the Commissioner gives a notice under subsection (3) to an individual who is an aged care worker, or a governing person, of an approved provider, the Commissioner must, as soon as is practicable, give the provider a copy of the notice.
- (5) A variation or revocation of a banning order is not a legislative instrument.

**74GG Variation or revocation of a banning order on application made by an individual**

*Application for variation or revocation*

- (1) If a banning order has been made against an individual, the individual may apply to the Commissioner for the order to be varied or revoked.
- Note: See section 74GH for the variation or revocation of a condition to which a banning order is subject.
- (2) The application must:
- (a) be made in writing; and
  - (b) be in a form approved by the Commissioner; and
  - (c) be accompanied by any documents or information specified by the Commissioner.

*Variation or revocation of banning order*

- (3) If an application is made under subsection (1) for the variation or revocation of a banning order made against an individual, the

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Commissioner may vary or revoke the order if satisfied it is appropriate to do so.

*Notice of intention not to vary or revoke banning order*

- (4) If the Commissioner proposes not to vary or revoke the banning order, the Commissioner must give the individual a written notice that:
- (a) sets out the reasons why the Commissioner is proposing not to vary or revoke the order; and
  - (b) invites the individual to make submissions, in writing, to the Commissioner in relation to the matter within:
    - (i) 14 days after receiving the notice; or
    - (ii) if a shorter period is specified in the notice—that shorter period; and
  - (c) informs the individual that the Commissioner may, after considering any submissions made by the individual, decide not to vary or revoke the order.
- (5) The Commissioner must consider any submissions made by the individual in accordance with the notice.

*Notice of decision*

- (6) If the Commissioner decides to vary or revoke the banning order, the Commissioner must, as soon as is practicable, give the individual a written notice that:
- (a) sets out the decision; and
  - (b) sets out the reasons for the decision; and
  - (c) specifies the day on which the variation or revocation takes effect; and
  - (d) states how the individual may apply for reconsideration of the decision.
- (7) If the Commissioner decides not to vary or revoke the banning order, the Commissioner must, as soon as is practicable, give the individual a written notice that:
- (a) sets out the decision; and



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- (b) sets out the reasons for the decision; and
- (c) states how the individual may apply for reconsideration of the decision.

*Other*

- (8) A variation or revocation of a banning order is not a legislative instrument.

**74GH Variation or revocation of a condition to which a banning order is subject on application made by an individual**

*Application for variation or revocation of condition*

- (1) If a banning order has been made against an individual, the individual may apply to the Commissioner for a condition to which the order is subject to be varied or revoked.
- (2) The application must:
  - (a) be made in writing; and
  - (b) be in a form approved by the Commissioner; and
  - (c) be accompanied by any documents or information specified by the Commissioner.

*Variation or revocation of condition etc.*

- (3) If an application is made under subsection (1) for the variation or revocation of a condition to which a banning order made against an individual is subject, the Commissioner may do either or both of the following things if satisfied it is appropriate to do so:
  - (a) vary or revoke the condition;
  - (b) specify one or more new conditions to which the order is to be subject.

*Notice of intention not to vary or revoke condition etc.*

- (4) If the Commissioner proposes not to vary or revoke the condition to which the banning order is subject, or proposes to specify one or

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more new conditions to which the order is to be subject, the Commissioner must give the individual a written notice that:

- (a) sets out the reasons why the Commissioner is proposing not to vary or revoke the condition or is proposing to specify those new conditions; and
  - (b) invites the individual to make submissions, in writing, to the Commissioner in relation to the matter within:
    - (i) 14 days after receiving the notice; or
    - (ii) if a shorter period is specified in the notice—that shorter period; and
  - (c) informs the individual that the Commissioner may, after considering any submissions made by the individual, decide not to vary or revoke the condition or to specify those new conditions.
- (5) The Commissioner must consider any submissions made by the individual in accordance with the notice.

*Notice of decision*

- (6) If the Commissioner decides to do either or both of the things mentioned in subsection (3) in relation to the banning order, the Commissioner must, as soon as is practicable, give the individual a written notice that:
- (a) sets out the decision; and
  - (b) sets out the reasons for the decision; and
  - (c) if a condition to which the order is subject is varied—sets out the condition as varied and specifies the day on which the variation takes effect; and
  - (d) if a condition to which the order is subject is revoked—specifies the day on which the revocation takes effect; and
  - (e) specifies any new conditions to which the order is to be subject and when they take effect; and
  - (f) states how the individual may apply for reconsideration of the decision.

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- (7) If the Commissioner decides not to do either of the things mentioned in subsection (3) in relation to the banning order, the Commissioner must, as soon as is practicable, give the individual a written notice that:
- (a) sets out the decision; and
  - (b) sets out the reasons for the decision; and
  - (c) states how the individual may apply for reconsideration of the decision.

*Other*

- (8) A variation or revocation of a banning order is not a legislative instrument.

**74GI Register of banning orders**

- (1) The Commissioner must establish and maintain a register that includes the following information in relation to each individual against whom a banning order has been made at any time:
- (a) the name of the individual;
  - (b) the individual's ABN (if any);
  - (c) the details of the banning order made against the individual (including any conditions to which the order is subject);
  - (d) if an application has been made under subsection 74GG(1) for the revocation of the banning order, and the application has not been finally determined—a statement to that effect;
  - (e) if a request has been made under subsection 74K(1) for the reconsideration of a decision to make the banning order or not to revoke the banning order, and a reconsideration decision has not yet been made—a statement to that effect;
  - (f) if a decision has been made under subsection 74M(1) to reconsider a decision to make the banning order or not to revoke the banning order, and a reconsideration decision has not yet been made—a statement to that effect;
  - (g) if an application has been made to the Administrative Review Tribunal for review of a reconsideration decision that relates to a decision to make the banning order or not to revoke the

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- banning order, and the application has not been finally determined—a statement to that effect;
- (h) any other information specified in the rules.
- (2) Subsection (1) applies in relation to a banning order even if the banning order is no longer in force.
- (3) Despite subsection (2), subsection (1) does not apply in relation to a banning order that is no longer in force because:
- (a) the banning order has been revoked under section 74GG; or
  - (b) the decision to make the banning order has been set aside on reconsideration under Part 8B or on review.
- (4) The Commissioner must ensure that the register is kept up-to-date.
- (5) The register may be kept in any form that the Commissioner considers appropriate.
- (6) The rules must make provision for, or in relation to, the correction of information that is included in the register, including how an individual may access information about the individual that is included in the register and seek the correction of such information.
- (7) The rules may make provision for, or in relation to, the following matters:
- (a) making the register, in whole or in part, publicly available;
  - (b) making specified information that is included in the register publicly available;
  - (c) any other matter relating to the administration or operation of the register.

## **Part 8B—Reconsideration and review of decisions**

### **Division 1—Introduction**

#### **74H Simplified outline of this Part**

<p>This Part deals with the reconsideration and review of certain decisions made under this Act.</p>
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Division 2—Reconsideration and review of decisions

74J Reviewable decisions and affected persons

A decision by the Commissioner referred to in column 1 of an item of the following table is a **reviewable decision**. A person or body referred to in column 2 of the item is the **affected person** for the decision.

Reviewable decisions and affected persons		
Item	Column 1 Decision	Column 2 Affected person
1	A decision under section 63D not to approve a person or body as a provider of aged care	The person or body
2	A decision under section 63H not to revoke the approval of an approved provider	The approved provider
3	A decision under section 63J to revoke the approval of a person or body as a provider of aged care	A person whose interests are affected by the decision
4	A decision under section 63N to impose a sanction on a person or body	A person whose interests are affected by the decision
5	A decision under section 63X not to lift a sanction imposed on an approved provider under section 63N	A person whose interests are affected by the decision
6	A decision under section 74EE to give a compliance notice to an approved provider	A person whose interests are affected by the decision
6A	A decision to make a banning order against an individual	The individual
6B	A decision under section 74GF to vary a banning order made against an individual	The individual
6C	A decision under section 74GG not to vary or revoke a banning order made against an individual	The individual

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<b>Reviewable decisions and affected persons</b>		
<b>Item</b>	<b>Column 1 Decision</b>	<b>Column 2 Affected person</b>
6D	A decision under section 74GH not to vary or revoke a condition to which a banning order against an individual is subject	The individual
6E	A decision under section 74GH to specify one or more new conditions to which a banning order against an individual is subject	The individual
7	A decision to make a determination under subsection 10A-2(1) of the Aged Care Act in relation to an individual who is one of the key personnel of an approved provider	The individual or approved provider
8	A decision not to make a determination under subsection 63-1E(3) of the Aged Care Act in relation to an approved provider	The approved provider
9	A decision under subsection 63-1F(1) of the Aged Care Act to vary or revoke a determination made under subsection 63-1E(3) in relation to an approved provider	The approved provider

**74K Affected person may request reconsideration of reviewable decision**

- (1) An affected person for a reviewable decision may request the Commissioner to reconsider the decision.
- (2) The request must:
  - (a) be made in writing; and
  - (b) set out the reasons for the request; and
  - (c) be given to the Commissioner within 14 days after the affected person is notified of the reviewable decision.

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### **74L Reconsideration of reviewable decision on request**

- (1) If a request is made under section 74K by an affected person for a reviewable decision, the Commissioner must:
  - (a) personally reconsider the decision; or
  - (b) cause the decision to be reconsidered by a delegate of the Commissioner who:
    - (i) was not involved in making the decision; and
    - (ii) occupies a position that is at least the same level as that occupied by the person who made the decision.
- (2) After reconsidering the reviewable decision, the internal decision reviewer must:
  - (a) affirm the decision; or
  - (b) vary the decision; or
  - (c) set the decision aside and substitute a new decision.
- (3) After the internal decision reviewer makes the reconsideration decision, the reviewer must give written notice of the following to the affected person for the reviewable decision:
  - (a) the reconsideration decision;
  - (b) the date that decision takes effect;
  - (c) the reason for that decision.

Note: Section 266 of the *Administrative Review Tribunal Act 2024* requires the affected person to be notified of the person's review rights.
- (4) The internal decision reviewer is taken to have affirmed the reviewable decision if the reviewer does not give notice of the reconsideration decision to the affected person within 90 days after receiving the person's request.
- (5) The reconsideration decision is taken to have been made under the provision under which the reviewable decision was made other than for the purposes of section 74J.
- (6) The Commissioner must, as soon as is practicable, give the Secretary a copy of a notice given under subsection (3).



**74M Reconsideration of reviewable decision on own initiative of Commissioner etc.**

- (1) Either of the following persons may reconsider a reviewable decision if satisfied that there is sufficient reason to do so:
  - (a) the Commissioner personally;
  - (b) a delegate of the Commissioner who:
    - (i) was not involved in making the decision; and
    - (ii) occupies a position that is at least the same level as that occupied by the person who made the decision.
- (2) If an internal decision reviewer decides under subsection (1) to reconsider a reviewable decision, the internal decision reviewer must give written notice to the affected person for the decision that the decision is to be reconsidered.
- (3) After reconsidering the reviewable decision, the internal decision reviewer must:
  - (a) affirm the decision; or
  - (b) vary the decision; or
  - (c) set the decision aside and substitute a new decision.
- (4) After the internal decision reviewer makes the reconsideration decision, the reviewer must, within 90 days after the commencement of the reconsideration, give written notice of the following to the affected person for the reviewable decision:
  - (a) the reconsideration decision;
  - (b) the date that decision takes effect;
  - (c) the reason for that decision.

Note: Section 266 of the *Administrative Review Tribunal Act 2024* requires the affected person to be notified of the person's review rights.
- (5) The reconsideration decision is taken to have been made under the provision under which the reviewable decision was made other than for the purposes of section 74J.
- (6) The Commissioner must, as soon as is practicable, give the Secretary a copy of a notice given under subsection (4).

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**74N Review by the Administrative Review Tribunal**

Applications may be made to the Administrative Review Tribunal for review of a reconsideration decision of an internal decision reviewer.

## **Part 9—Miscellaneous**

### **75 Simplified outline of this Part**

This Part deals with miscellaneous matters such as the appointment of authorised officers, delegations and the making of rules.

#### **75A Appointment of authorised officers**

- (1) The Commissioner may, in writing, appoint a person who is a member of the staff of the Commission as an authorised officer for either or both of the following purposes:
  - (a) the purposes of this Act;
  - (b) the purposes of the rules.
- (2) The Commissioner must not appoint a person as an authorised officer under subsection (1) unless the Commissioner is satisfied that the person has suitable training or experience to properly perform the functions, or exercise the powers, of an authorised officer.
- (3) An authorised officer must, in performing the officer's functions or exercising the officer's powers, comply with any directions of the Commissioner.
- (4) If a direction is given under subsection (3) in writing, the direction is not a legislative instrument.

#### **76 Delegation by the Commissioner**

- (1) The Commissioner may, in writing, delegate to a member of the staff of the Commission all or any of the Commissioner's functions or powers under this Act (other than Part 7B) or the rules.
- (1A) The Commissioner may, in writing, delegate to the following all or any of the Commissioner's functions or powers under Part 7B:

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- (a) a member of the staff of the Commission;
  - (b) an APS employee in the Department.
- (1B) However, the Commissioner must not delegate a function or power to a person under subsection (1) or (1A) unless the Commissioner is satisfied that the person has suitable training or experience to properly perform the function or exercise the power.
- (2) In performing a delegated function or exercising a delegated power, the delegate must comply with any written directions of the Commissioner.

Note: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain provisions relating to delegations.

## 76A Review of operation of this Act and the rules

- (1) The Minister must cause an independent review of the operation of this Act and the rules to be conducted within 6 months after the fifth anniversary of the commencement of this Act.
- (2) The persons who conduct the review must give the Minister a written report of the review.
- (3) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the report is given to the Minister.

## 77 Rules

- (1) The Minister may, by legislative instrument, make rules prescribing matters:
  - (a) required or permitted by this Act to be prescribed by the rules; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) To avoid doubt, the rules may not do the following:
  - (a) create an offence or civil penalty;
  - (b) provide powers of:

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- (i) arrest or detention; or
    - (ii) entry, search or seizure;
  - (c) impose a tax;
  - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
  - (e) directly amend the text of this Act.
- (3) Despite subsection 14(2) of the *Legislation Act 2003*, the rules may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in any other instrument or other writing as in force or existing from time to time.

## Endnotes

### Endnote 1—About the endnotes

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## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

### Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe how an amendment is to be made. If, despite the misdescription, the amendment

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Endnote 1—About the endnotes

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can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and “(md not incorp)” is added to the amendment history.

## Endnotes

### Endnote 2—Abbreviation key

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#### Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced



## Endnote 3—Legislation history

## Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Aged Care Quality and Safety Commission Act 2018	149, 2018	10 Dec 2018	1 Jan 2019 (s 2(1) item 1)	
Aged Care Legislation Amendment (New Commissioner Functions) Act 2019	116, 2019	11 Dec 2019	Sch 1 (items 55–64), Sch 2 (items 39–91), Sch 3 (items 2–6) and Sch 4: 1 Jan 2020 (s 2(1) item 2)	Sch 4
Aged Care Legislation Amendment (Serious Incident Response Scheme and Other Measures) Act 2021	9, 2021	1 Mar 2021	Sch 1 (items 3, 13–15) and Sch 2 (items 1–3, 6–12): 1 Apr 2021 (s 2(1) item 2) Sch 3: 1 Sept 2021 (s 2(1) item 3)	Sch 1 (items 14, 15) and Sch 2 (item 12)
Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Act 2021	13, 2021	1 Mar 2021	Sch 4 (item 2): 1 Sept 2021 (s 2(1) item 6)	—
Aged Care and Other Legislation Amendment (Royal Commission Response No. 1) Act 2021	57, 2021	28 June 2021	Sch 1 (items 5–10): 1 July 2021 (s 2(1) item 2)	—

## Endnotes

### Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Aged Care and Other Legislation Amendment (Royal Commission Response) Act 2022	34, 2022	5 Aug 2022	Sch 3 (items 3–27) and Sch 5 (items 19–34, 39, 40): 1 Dec 2022 (s 2(1) items 4, 7) Sch 4 (items 10–16), Sch 6 (items 4–8, 19) and Sch 7 (item 14): 6 Aug 2022 (s 2(1) items 6, 8, 9) Sch 8 (items 119–122, 134): 12 Aug 2022 (s 2(1) item 10)	Sch 4 (item 16), Sch 5 (items 34, 39, 40), Sch 6 (item 19) and Sch 8 (items 122, 134)
Inspector-General of Aged Care (Consequential and Transitional Provisions) Act 2023	56, 2023	17 Aug 2023	Sch 1 (items 3, 4): 16 Oct 2023 (s 2(1) item 1)	—
Disability Services and Inclusion (Consequential Amendments and Transitional Provisions) Act 2023	103, 2023	28 Nov 2023	Sch 2 (item 2): 1 Jan 2024 (s 2(1) item 2)	—
Administrative Review Tribunal (Consequential and Transitional Provisions No. 2) Act 2024	39, 2024	31 May 2024	Sch 9 (items 1–5): 14 Oct 2024 (s 2(1) item 2)	—

## Endnote 4—Amendment history

## Endnote 4—Amendment history

Provision affected	How affected
<b>Part 1</b>	
<b>Division 1</b>	
s 5.....	am No 116, 2019
s 6.....	am No 116, 2019; No 34, 2022
<b>Division 2</b>	
s 7.....	am No 116, 2019; No 9, 2021; No 57, 2021; No 34, 2022; No 56, 2023
s 8A.....	ad No 116, 2019 rep No 34, 2022
s 8B.....	ad No 116, 2019
s 8C.....	ad No 34, 2022 am No 34, 2022
<b>Part 3</b>	
<b>Division 1</b>	
s 14.....	am No 116, 2019; No 34, 2022
<b>Division 2</b>	
s 16.....	am No 116, 2019; No 34, 2022
s 18A.....	ad No 34, 2022
s 21.....	am No 9, 2021; No 34, 2022 ed C5
<b>Part 6</b>	
s 52.....	am No 116, 2019
<b>Part 7</b>	
<b>Division 2</b>	
s 58A.....	ad No 34, 2022
<b>Division 4</b>	
s 60.....	am No 116, 2019
s 61.....	am No 116, 2019

## Endnotes

### Endnote 4—Amendment history

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Provision affected	How affected
	ed C1
	am No 34, 2022; No 56, 2023; No 103, 2023
<b>Division 5</b>	
Division 5 .....	ad No 34, 2022
s 63AA .....	ad No 34, 2022
<b>Part 7A</b>	
Part 7A .....	ad No 116, 2019
<b>Division 1</b>	
s 63A .....	ad No 116, 2019
<b>Division 2</b>	
s 63B .....	ad No 116, 2019
s 63C .....	ad No 116, 2019
s 63D .....	ad No 116, 2019
	am No 34, 2022
s 63E .....	ad No 116, 2019
<b>Division 3</b>	
s 63F .....	ad No 116, 2019
<b>Division 4</b>	
s 63G .....	ad No 116, 2019
s 63H .....	ad No 116, 2019
s 63J .....	ad No 116, 2019
	am No 34, 2022
s 63K .....	ad No 116, 2019
s 63L .....	ad No 116, 2019
<b>Part 7B</b>	
Part 7B .....	ad No 116, 2019
<b>Division 1</b>	
s 63M .....	ad No 116, 2019
<b>Division 2</b>	
s 63N .....	ad No 116, 2019
	am No 9, 2021

## Endnote 4—Amendment history

Provision affected	How affected
s 63P .....	ad No 116, 2019
s 63Q.....	ad No 116, 2019
s 63R .....	ad No 116, 2019
<b>Division 3</b>	
s 63S .....	ad No 116, 2019
s 63T .....	ad No 116, 2019
s 63U.....	ad No 116, 2019
<b>Division 4</b>	
s 63V.....	ad No 116, 2019
s 63W.....	ad No 116, 2019
s 63X.....	ad No 116, 2019
s 63Y.....	ad No 116, 2019
<b>Part 8</b>	
Part 8 heading .....	rs No 116, 2019
<b>Division 1</b>	
s 64.....	am No 116, 2019
<b>Division 2</b>	
Division 2 heading.....	am No 116, 2019
s 64A.....	ad No 116, 2019
s 65.....	am No 116, 2019
s 66.....	am No 116, 2019
s 67.....	am No 116, 2019
<b>Division 3</b>	
s 69.....	am No 116, 2019
s 70.....	am No 116, 2019
<b>Division 4</b>	
s 71.....	am No 116, 2019
s 72.....	am No 116, 2019
<b>Division 5</b>	
Division 5 heading.....	rs No 116, 2019
s 73.....	rs No 116, 2019

## Endnotes

### Endnote 4—Amendment history

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Provision affected	How affected
s 74.....	am No 116, 2019
<b>Part 8AA</b>	
Part 8AA .....	ad No 34, 2022
<b>Division 1</b>	
s 74AA .....	ad No 34, 2022
<b>Division 2</b>	
s 74AB .....	ad No 34, 2022
s 74AC .....	ad No 34, 2022
s 74AD .....	ad No 34, 2022
s 74AE .....	ad No 34, 2022
<b>Part 8A</b>	
Part 8A heading .....	rs No 34, 2022
Part 8A .....	ad No 116, 2019
<b>Division 1</b>	
s 74A .....	ad No 116, 2019 am No 9, 2021; No 57, 2021; No 34, 2022
<b>Division 2</b>	
s 74B .....	ad No 116, 2019 am No 13, 2021; No 34, 2022
s 74C .....	ad No 116, 2019 am No 34, 2022
s 74D .....	ad No 116, 2019 am No 9, 2021; No 13, 2021
s 74E .....	ad No 116, 2019
s 74EA .....	ad No 9, 2021 am No 9, 2021
s 74EB .....	ad No 9, 2021 am No 34, 2022
s 74EC .....	ad No 9, 2021 am No 9, 2021; No 34, 2022
s 74ED .....	ad No 9, 2021

## Endnote 4—Amendment history

Provision affected	How affected
	am No 9, 2021; No 34, 2022
<b>Division 2A</b>	
Division 2A.....	ad No 9, 2021
s 74EE.....	ad No 9, 2021
	am No 57, 2021; No 34, 2022
<b>Division 3</b>	
s 74F .....	ad No 116, 2019
s 74FA.....	ad No 34, 2022
s 74G.....	ad No 116, 2019
	am No 34, 2022
s 74GA .....	ad No 9, 2021
s 74GAA .....	ad No 34, 2022
<b>Division 4</b>	
Division 4 .....	ad No 34, 2022
s 74GB .....	ad No 34, 2022
s 74GC .....	ad No 34, 2022
s 74GD.....	ad No 34, 2022
s 74GE .....	ad No 34, 2022
s 74GF.....	ad No 34, 2022
s 74GG.....	ad No 34, 2022
s 74GH.....	ad No 34, 2022
s 74GI .....	ad No 34, 2022
	am No 39, 2024
<b>Part 8B</b>	
Part 8B .....	ad No 116, 2019
<b>Division 1</b>	
s 74H.....	ad No 116, 2019
<b>Division 2</b>	
s 74J .....	ad No 116, 2019
	am No 9, 2021; No 57, 2021; No 34, 2022
s 74K.....	ad No 116, 2019

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
s 74L .....	ad No 116, 2019
	am No 39, 2024
s 74M .....	ad No 116, 2019
	am No 39, 2024
s 74N .....	ad No 116, 2019
	am No 39, 2024
Part 9	
s 75 .....	am No 116, 2019
s 75A .....	ad No 116, 2019
s 76 .....	am No 116, 2019