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**Division 2—Key concepts**

**8 Aged care service list**

- (1) The rules must prescribe a list of services for which funding may be payable under this Act. The rules must:
- (a) list each service; and
  - (b) describe each service; and
  - (c) specify the service type that the service is in; and
  - (d) specify the service group that the service type is in; and
  - (e) specify, for the service groups home support, assistive technology and home modifications, that all service types in those service groups must be delivered in a home or community setting; and
  - (f) specify, for the service group residential care, that all service types in the service group must be delivered in a residential care home; and
  - (g) specify, for each service that is in a service type (other than a service type referred to in paragraph (i)) that is specified as a service type that is in the service group home support, assistive technology or home modifications:
    - (i) the means testing category for the service; and
    - (ii) the subsidy basis for the service; and
    - (iii) if the subsidy basis for the service is efficient price or unit price—the base efficient price or base unit price for the service; and
    - (iv) the loading type (if any) that applies to the service; and
    - (v) the cap (if any) on the service for a calendar year; and
  - (h) specify any specialist aged care program under which a service type can be delivered; and
  - (i) specify any service type that can only be delivered under a specialist aged care program; and
  - (j) specify each provider registration category under which a service type can be delivered.

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- 1 (2) For the purposes of paragraph (1)(c), a **service type** means a service  
2 type prescribed by the rules.
- 3 (3) For the purposes of paragraph (1)(d), a **service group** means any of  
4 the following:  
5 (a) home support;  
6 (b) residential care;  
7 (c) assistive technology;  
8 (d) home modifications.
- 9 (4) For the purposes of subparagraph (1)(g)(i), each of the following is  
10 a **means testing category** for a service type delivered in a home or  
11 community setting:  
12 (a) clinical supports;  
13 (b) independence;  
14 (c) everyday living.
- 15 *Matters that must be considered before prescribing services*
- 16 (5) The Minister must ensure that for the service group residential care  
17 nursing is a listed service that is in at least one service type that is  
18 in that group.
- 19 (6) The Minister must ensure that funded aged care services in a  
20 service type that is specified as a service type that is delivered in a  
21 residential care home for the purposes of paragraph (1)(f) are  
22 services of the following kind:  
23 (a) services for the care of persons who are experiencing  
24 sickness;  
25 (b) services incidental or conducive to the care of persons who  
26 are experiencing sickness.

27 **9 Funded aged care services and who they are delivered to**

- 28 (1) A **funded aged care service** means a service included on the list  
29 referred to in subsection 8(1) delivered to an individual who can  
30 access the service through a service group as referred to in  
31 subsection (2) of this section and for which funding is paid under  
32 this Act.

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- 1 (2) An individual can access a funded aged care service through a  
2 service group if:
- 3 (a) the individual makes an application for access to funded aged  
4 care services under section 56; and
- 5 (b) the System Governor makes an eligibility determination for  
6 the individual and that determination is in effect; and
- 7 (c) the individual undergoes an aged care needs assessment; and
- 8 (d) an access approval that covers the service is in effect for the  
9 individual; and
- 10 (e) a classification decision establishing a classification level in a  
11 classification type for the service group is in effect for the  
12 individual; and
- 13 (f) if a priority category decision is required under section 86 for  
14 the classification type for the service group—such a decision  
15 under section 86 has been made for the individual for the  
16 classification type for the service group; and
- 17 (g) if the classification type for the service group or the  
18 classification level in the classification type for the service  
19 group is one for which the System Governor must allocate  
20 the individual a place under Division 1 of Part 5 of  
21 Chapter 2—a place has been allocated to the individual under  
22 that Division for that classification type, or classification  
23 level in that classification type, for the service group; and
- 24 (h) if accessing the service under a specialist aged care program  
25 for which the System Governor must allocate the registered  
26 provider a place under Division 2 of Part 5 of Chapter 2—a  
27 place has been allocated to the registered provider under that  
28 Division and is in effect.
- 29 Note: Depending on what the funded aged care service is and the kind of  
30 registered provider that delivers the service, the Commonwealth  
31 funding of the service may be through a subsidy or grant under this  
32 Act.

33 **10 Where funded aged care services are delivered**

- 34 (1) A funded aged care service can be delivered in:
- 35 (a) an approved residential care home; or
- 36 (b) a home or community setting.

*Residential care home*

- (2) A ***residential care home*** means a place that:
- (a) is the place of residence of individuals who, by reason of sickness, have a continuing need for aged care services, including nursing services; and
  - (b) is fitted, furnished and staffed for the purpose of providing those services.
- (3) To avoid doubt, a ***residential care home*** includes any of the following places:
- (a) a place within, or co-located with, a hospital or other health service that is covered by an agreement with the Commonwealth to deliver aged care services alongside health services as a part of an integrated service arrangement;
  - (b) a place within a retirement village that is a place described by subsection (2);
  - (c) a place which is a complex of buildings;
  - (d) any other place prescribed by the rules.
- (4) To avoid doubt, a ***residential care home*** does not include any of the following places:
- (a) a private home;
  - (b) a retirement village (other than a place referred to in paragraph (3)(b));
  - (c) a facility for which a declaration under subsection 121-5(6) of the *Private Health Insurance Act 2007* is in force (other than a place referred to in paragraph (3)(a));
  - (d) a hospice or facility that primarily provides palliative care;
  - (e) any other place prescribed by the rules.
- (5) For the purposes of subsection (2), the rules may prescribe:
- (a) circumstances where a place is taken to be 2 or more separate places; and
  - (b) circumstances where 2 or more separate places are taken to be a single place.

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### *Home or community setting*

- (6) A **home or community setting** means a place in a home, or in the community, where funded aged care services are delivered.
- (7) Despite subsection (6), a **home or community setting** does not include any of the following places:
- (a) a group home funded under the National Disability Insurance Scheme;
  - (b) a hospital;
  - (c) a psychiatric facility;
  - (d) a prison or detention centre;
  - (e) a hospice or facility that primarily provides palliative care;
  - (f) any other place prescribed by the rules.

## 11 Who delivers funded aged care services

- (1) Funded aged care services are delivered by registered providers (and associated providers of registered providers) and the aged care workers of registered providers.

### *Registered providers*

- (2) A **registered provider** means an entity that:
- (a) is registered as a registered provider (whether under paragraph 105(1)(a) or because of a renewal under paragraph 108(1)(a), or because of a determination made by the System Governor under subsection 117(1)); and
  - (b) the registration period has not ended; and
  - (c) that registration has not been revoked under a provision of Part 3 of Chapter 3.

Note: A registered provider's registration is not in effect while suspended: see section 130. This means most provisions of this Act still apply to the registered provider unless a provision expressly requires that the registered provider's registration is in effect for the provision to apply.

- (3) A registered provider is registered in one or more **provider registration categories** which are:
- (a) the residential care category; and

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(b) any other category prescribed by the rules.

*Aged care workers*

(4) An **aged care worker** of a registered provider means:

(a) an individual employed or otherwise engaged (including as a volunteer) by the registered provider to deliver funded aged care services; or

(b) an individual who:

(i) is employed or otherwise engaged (including as a volunteer) by an associated provider of the registered provider; and

(ii) is engaging in conduct under the associated provider's arrangement with the registered provider relating to the registered provider's delivery of funded aged care services; or

(c) an individual who is a registered provider.

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

(5) An **aged care worker** of a registered provider does not include a responsible person of the provider unless the responsible person is an individual who is employed or otherwise engaged (including as a volunteer) by the registered provider, or by an associated provider of the registered provider, to deliver funded aged care services.

*Associated providers*

(6) If an entity (an **associated provider**) engages in conduct under an arrangement with a registered provider relating to the registered provider's delivery of funded aged care services, this Act applies in relation to the registered provider as if the registered provider had engaged in the conduct.

Note: This means that a registered provider may contravene subsection 142(3) or (4) or another provision of this Act because of conduct engaged in by an associated provider.

(7) To avoid doubt, a registered provider **delivers** a funded aged care service for the purposes of this Act even if some or all of the work

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involved in delivering the service to an individual is done by one or more associated providers of the registered provider.

### 12 Meaning of *responsible person*

- (1) Each of the following is a *responsible person* of a registered provider:
- (a) if the registered provider is not a government entity—any person who is responsible for the executive decisions of the registered provider;
  - (b) if the registered provider is not a government entity—any other person who has authority or responsibility for (or significant influence over) planning, directing or controlling the activities of the registered provider;
  - (c) for any registered provider (including a government entity)—if the registered provider delivers, or proposes to deliver, a funded aged care service:
    - (i) any person who has responsibility for overall management of the nursing services delivered by the registered provider, or overall management of the nursing services delivered at an approved residential care home of the registered provider, and who is a registered nurse; and
    - (ii) any person who is responsible for the day-to-day operations of an approved residential care home or service delivery branch of the registered provider.
- (2) Without limiting paragraph (1)(a), a person who is responsible for the executive decisions of a registered provider includes a member of the governing body of the provider.

### 13 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, funded aged care services or other similar services;
  - (b) whether a banning order against the individual is, or has at any time been, in force;

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- 1 (c) whether an NDIS banning order against the individual is, or  
2 has at any time been, in force;  
3 (d) whether the individual has at any time been convicted of an  
4 indictable offence;  
5 (e) whether a civil penalty order against the individual has been  
6 made at any time;  
7 (f) whether the individual is, or has at any time been, an  
8 insolvent under administration;  
9 (g) whether the individual is, or has at any time been, the subject  
10 of adverse findings or enforcement action by any of the  
11 following:  
12 (i) a Department of the Commonwealth or of a State or  
13 Territory;  
14 (ii) the Australian Securities and Investments Commission;  
15 (iii) the Australian Charities and Not-for-profits  
16 Commission;  
17 (iv) the Australian Competition and Consumer Commission;  
18 (v) the Australian Prudential Regulation Authority;  
19 (vi) the Australian Crime Commission;  
20 (vii) AUSTRAC (within the meaning of the *Anti-Money*  
21 *Laundering and Counter-Terrorism Financing Act*  
22 *2006*);  
23 (viii) the Australian Health Practitioner Regulation Agency;  
24 (ix) another body established for a public purpose by or  
25 under a law of the Commonwealth;  
26 (x) a State or Territory authority (including, but not limited  
27 to, a body that is equivalent to a body mentioned in  
28 subparagraphs (ii) to (viii));  
29 (xi) a local government authority;  
30 (xii) a body responsible for maintaining standards of conduct  
31 in a profession that is involved in the delivery of funded  
32 aged care services;  
33 (h) whether the individual:  
34 (i) is, or has at any time been, the subject of any findings or  
35 judgment in relation to fraud, misrepresentation or  
36 dishonesty in any administrative, civil or criminal  
37 proceedings; or



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- 1 (ii) is currently party to any proceedings that may result in  
2 the individual being the subject of such findings or  
3 judgment;  
4 (i) whether the individual is, or has at any time been,  
5 disqualified from managing corporations under Part 2D.6 of  
6 the *Corporations Act 2001*;  
7 (j) if circumstances prescribed by the rules apply in relation to  
8 the individual—the individual is a person in respect of whom  
9 the worker screening requirements prescribed for the  
10 purposes of section 152 are met;  
11 (k) any other matter prescribed by the rules.
- 12 (2) This section does not affect the operation of Part VIIC of the  
13 *Crimes Act 1914* (which includes provisions that, in certain  
14 circumstances, relieve persons from the requirement to disclose  
15 spent convictions and require persons aware of such convictions to  
16 disregard them).

17 **14 Aged Care Code of Conduct**

- 18 The rules may prescribe requirements relating to the conduct of the  
19 following:  
20 (a) registered providers;  
21 (b) aged care workers of registered providers;  
22 (c) responsible persons of registered providers.
- 23 Note: These requirements are the *Aged Care Code of Conduct*: see  
24 section 7.

25 **15 Aged Care Quality Standards**

- 26 (1) The rules may prescribe standards relating to the quality of funded  
27 aged care services delivered by a registered provider.
- 28 Note 1: These standards are the *Aged Care Quality Standards*: see section 7.
- 29 Note 2: Only registered providers in certain registration categories are  
30 required to be audited against these standards before registration: see  
31 paragraph 109(2)(d). Certain registered providers are required to  
32 comply with the standards as a condition of registration: see  
33 sections 142 and 146.

- 1 (2) Without limiting subsection (1), the rules may prescribe standards  
2 about the following matters:
- 3 (a) how registered providers must treat, and engage with,  
4 individuals seeking to access, or accessing, funded aged care  
5 services;
- 6 (b) how registered providers must deliver funded aged care  
7 services, including governance arrangements and  
8 arrangements for planning and delivery of palliative care;
- 9 (c) the physical environments in which funded aged care  
10 services are required to be delivered;
- 11 (d) how registered providers must deliver quality and safe  
12 clinical care to individuals, including infection prevention  
13 and control procedures and arrangements;
- 14 (e) how registered providers must deliver food and drink to meet  
15 the nutritional needs and preferences of individuals;
- 16 (f) how registered providers must support individuals accessing  
17 funded aged care services in approved residential care  
18 homes;
- 19 (g) how registered providers must manage and respond to  
20 feedback and complaints;
- 21 (h) how registered providers must monitor and drive  
22 improvements to their delivery of funded aged care services.
- 23 (3) Without limiting subsection (1), the rules may provide that a  
24 provision of the Aged Care Quality Standards applies to the  
25 following:
- 26 (a) all registered providers;
- 27 (b) registered providers in specified provider registration  
28 categories;
- 29 (c) specified kinds of registered providers.

30 **16 Meaning of *reportable incident***

- 31 (1) A ***reportable incident*** is any of the following incidents that have  
32 occurred, are alleged to have occurred, or are suspected of having  
33 occurred, in connection with the delivery of funded aged care  
34 services to an individual by a registered provider:
- 35 (a) unreasonable use of force against the individual;

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- 1 (b) unlawful sexual contact, or inappropriate sexual conduct,  
2 inflicted on the individual;
- 3 (c) psychological or emotional abuse of the individual;
- 4 (d) unexpected death of the individual;
- 5 (e) stealing from, or financial coercion of, the individual by an  
6 aged care worker of the provider;
- 7 (f) neglect of the individual;
- 8 (g) use of a restrictive practice in relation to the individual (other  
9 than in accordance with any requirements prescribed by the  
10 rules);
- 11 (h) unexplained absence of the individual in the course of the  
12 delivery of funded aged care services to the individual.
- 13 (2) The rules may prescribe definitions or clarifications of an  
14 expression used in paragraph (1)(a), (b), (c), (d), (e), (f) or (h).
- 15 (3) Despite subsection (1), the rules may prescribe:  
16 (a) that a specified act, omission or event involving an individual  
17 to whom a registered provider is delivering funded aged care  
18 services is a *reportable incident*; or  
19 (b) that a specified act, omission or event involving an individual  
20 to whom a registered provider is delivering funded aged care  
21 services is not a *reportable incident*.

22 **17 Restrictive practice in relation to an individual**

- 23 (1) A *restrictive practice* in relation to an individual is any practice or  
24 intervention that has the effect of restricting the rights or freedom  
25 of movement of that individual.
- 26 (2) Without limiting subsection (1), the rules may provide that a  
27 practice or intervention is a *restrictive practice* in relation to an  
28 individual.

29 **18 Restrictive practice requirements**

- 30 (1) The rules made for the purposes of section 162 relating to the use  
31 of restrictive practices in relation to an individual to whom a  
32 registered provider is delivering funded aged care services must:

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- 1 (a) require that a restrictive practice in relation to the individual  
2 is used only:  
3 (i) as a last resort to prevent harm to the individual or other  
4 persons; and  
5 (ii) after consideration of the likely impact of the use of the  
6 practice on the individual; and  
7 (b) require that, to the extent possible, alternative strategies are  
8 used before a restrictive practice in relation to the individual  
9 is used; and  
10 (c) require that alternative strategies that have been considered  
11 or used in relation to the individual are documented; and  
12 (d) require that a restrictive practice in relation to the individual  
13 is used only to the extent that it is necessary and in  
14 proportion to the risk of harm to the individual or other  
15 persons; and  
16 (e) require that, if a restrictive practice in relation to the  
17 individual is used, it is used in the least restrictive form, and  
18 for the shortest time, necessary to prevent harm to the  
19 individual or other persons; and  
20 (f) require that informed consent is given to the use of a  
21 restrictive practice in relation to the individual; and  
22 (g) make provision for, or in relation to, the monitoring and  
23 review of the use of a restrictive practice in relation to the  
24 individual.
- 25 (2) The rules made for the purposes of section 162 may make  
26 provision for, or in relation to, the persons or bodies who may give  
27 informed consent to the use of a restrictive practice in relation to an  
28 individual to whom a registered provider is delivering funded aged  
29 care services if that individual lacks capacity to give that consent.
- 30 (3) The rules made for the purposes of section 162 may provide that a  
31 requirement prescribed by those rules does not apply if the use of a  
32 restrictive practice in relation to an individual to whom a registered  
33 provider is delivering funded aged care services is necessary in an  
34 emergency.
- 35 (4) Subsections (1), (2) and (3) do not limit the matters that may be  
36 prescribed by the rules made for the purposes of section 162.

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**19 Meaning of *significant failure* and *systematic pattern of conduct***

- (1) A registered provider's or responsible person of a registered provider's conduct involves a ***significant failure*** if the conduct represents a significant departure from the conduct that could reasonably be expected from a registered provider or responsible person, having regard to the requirements registered providers and responsible persons are subject to under this Act.
- (2) In determining whether a registered provider's or responsible person of a registered provider's conduct is part of a ***systematic pattern of conduct***, regard must be had to the following:
- (a) the number of times the provider's or responsible person's conduct has not complied with a provision of this Act (the ***relevant contraventions***);
  - (b) the period over which the relevant contraventions occurred;
  - (c) the number of individuals affected by the relevant contraventions;
  - (d) the provider's or responsible person's response, or failure to respond, to any complaints about the relevant contraventions.

**20 Meaning of *high quality care***

The delivery of a funded aged care service by a registered provider to an individual is ***high quality care*** if the service is delivered in a manner that:

- (a) puts the individual first; and
- (b) upholds the rights of the individual under the Statement of Rights; and
- (c) prioritises the following:
  - (i) kindness, compassion and respect for the life experiences, self-determination, dignity, quality of life, mental health and wellbeing of the individual;
  - (ii) the timely and responsive delivery of the service to the individual;
  - (iii) specific tailoring of care to the personal needs, aspirations and preferences of the individual, including preferences regarding the time when the service is delivered;

- 1 (iv) respecting the individual's preferences regarding  
2 privacy and time alone;
- 3 (v) supporting the improvement of the individual's  
4 wellbeing, independence, autonomy and physical and  
5 cognitive capacity through reablement approaches,  
6 where the individual chooses to, including by keeping  
7 the individual mobile and engaged if they are living in  
8 an approved residential care home;
- 9 (vi) supporting the individual to participate in meaningful  
10 and respectful activities and remain connected to  
11 friends, family, carers and the community, where the  
12 individual chooses to;
- 13 (vii) supporting the individual to remain connected to the  
14 natural environment, and animals and pets, where the  
15 individual chooses to;
- 16 (viii) implementing inclusive policies and procedures, in  
17 partnership with Aboriginal or Torres Strait Islander  
18 persons, family and community to ensure that culturally  
19 safe, culturally appropriate and accessible care is  
20 delivered to those persons at all times, which  
21 incorporates flexibility and recognises the unique  
22 experience of those persons;
- 23 (ix) adapting policy, practices and environments to ensure  
24 that services are culturally appropriate for the diverse  
25 life experiences of individuals, including by engaging  
26 workers with lived experience of diversity in the  
27 provider's workforce and governing body;
- 28 (x) bilingual aged care workers and interpreters being made  
29 available if required by the individual;
- 30 (xi) training of the aged care workers to facilitate the  
31 delivery of the service by well-skilled and empowered  
32 aged care workers who are able to develop and maintain  
33 a relationship with the individual;
- 34 (xii) recruitment and retention of aged care workers to ensure  
35 the needs of individuals are able to be met;
- 36 (xiii) the delivery of high quality nursing services by  
37 sufficient numbers of qualified and experienced direct  
38 care staff members.