





# **Aged Care Legislation Amendment (New Commissioner Functions) Act 2019**

**No. 116, 2019**

**An Act to amend legislation relating to aged care,  
and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation  
(<https://www.legislation.gov.au/>)



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## Contents

1	Short title.....	1
2	Commencement.....	2
3	Schedules.....	2
<b>Schedule 1—Approval of providers of aged care</b>		<b>3</b>
	<i>Aged Care (Accommodation Payment Security) Act 2006</i>	3
	<i>Aged Care (Accommodation Payment Security) Levy Act 2006</i>	3
	<i>Aged Care Act 1997</i>	3
	<i>Aged Care Quality and Safety Commission Act 2018</i>	10
	<i>Aged Care (Transitional Provisions) Act 1997</i>	25
	<i>A New Tax System (Goods and Services Tax) Act 1999</i>	26
	<i>Healthcare Identifiers Act 2010</i>	26
	<i>Social Security Act 1991</i>	26
	<i>Veterans' Entitlements Act 1986</i>	26
<b>Schedule 2—Responsibilities of approved providers etc.</b>		<b>28</b>
	<i>Aged Care Act 1997</i>	28
	<i>Aged Care Quality and Safety Commission Act 2018</i>	47
	<i>Aged Care (Transitional Provisions) Act 1997</i>	76
	<i>Social Security Act 1991</i>	77
	<i>Veterans' Entitlements Act 1986</i>	77
<b>Schedule 3—Reconsideration and review of decisions</b>		<b>78</b>
	<i>Aged Care Act 1997</i>	78
	<i>Aged Care Quality and Safety Commission Act 2018</i>	78
<b>Schedule 4—Transitional, application, saving and other provisions</b>		<b>83</b>
	Part 1—Introduction	83
	Part 2—Approval of providers of aged care	85
	Part 3—Responsibilities of approved providers etc.	89
	Division 1—Transitional etc. provisions relating to the imposition of sanctions on approved providers	89

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Division 2—Application provisions relating to Part 6.4 of the Aged Care Act	93
Division 3—Application etc. provisions relating to Parts 8 and 8A of the Commission Act	95
Division 4—Other matters	96
Part 4—Reconsideration and review of decisions	97
Part 5—Provisions relating to transferred functions	99
Part 6—Rules	100



# **Aged Care Legislation Amendment (New Commissioner Functions) Act 2019**

**No. 116, 2019**

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## **An Act to amend legislation relating to aged care, and for related purposes**

*[Assented to 11 December 2019]*

The Parliament of Australia enacts:

### **1 Short title**

*This Act is the Aged Care Legislation Amendment (New Commissioner Functions) Act 2019.*

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*No. 116, 2019 Aged Care Legislation Amendment (New Commissioner Functions) Act 2019 1*

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## 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. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	11 December 2019
2. Schedules 1 to 4	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	1 January 2020 (F2019N00109)

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 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Approval of providers of aged care**

### ***Aged Care (Accommodation Payment Security) Act 2006***

#### **1 Subsection 6(1) (definition of *approved provider*)**

Repeal the definition, substitute:

*approved provider* has the same meaning as in the *Aged Care Quality and Safety Commission Act 2018*.

### ***Aged Care (Accommodation Payment Security) Levy Act 2006***

#### **2 Section 5 (definition of *approved provider*)**

Repeal the definition, substitute:

*approved provider* has the same meaning as in the *Aged Care Quality and Safety Commission Act 2018*.

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

#### **3 Section 3-2**

Omit “a provider”, substitute “an approved provider”.

#### **4 Paragraph 3-2(a)**

Repeal the paragraph.

#### **5 At the end of section 3-2**

Add:

Note: For the approval of providers of aged care, see Part 7A of the \*Quality and Safety Commission Act.

**6 Section 3-4**

Omit all the words from and including “sanctions” to the end of the section, substitute “sanctions on an approved provider under Part 7B of the \*Quality and Safety Commission Act, which may affect amounts of \*subsidy payable to the approved provider.”.

**7 Section 5-1**

Omit “for the provision of care”, substitute “to an approved provider of \*aged care”.

**8 Section 5-1**

Omit:

- |   |
|---|
| <ul style="list-style-type: none"><li>• the provider of the service—the provider must be an approved provider (see Part 2.1);</li></ul> |
|---|

**9 Section 5-1 (note)**

Omit “Note”, substitute “Note 1”.

**10 At the end of section 5-1**

Add:

Note 2: For the approval of providers of aged care, see Part 7A of the \*Quality and Safety Commission Act.

**11 Section 5-2 (table item 1)**

Repeal the item.

**12 At the end of section 5-2**

Add:

Note 3: For the approval of providers of aged care, see Part 7A of the \*Quality and Safety Commission Act.

**13 Part 2.1 (heading)**

Repeal the heading, substitute:

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## **Part 2.1—Approved providers**

### **14 Sections 6-1 and 6-2**

Repeal the sections, substitute:

#### **6-1 What this Part is about**

A precondition to a provider of \*aged care receiving a \*subsidy under this Act for the provision of care is that the provider is an approved provider.

For the obligations that arise from being an approved provider, see Division 9 of this Part.

Division 10A of this Part sets out offences relating to disqualified individuals and when remedial orders may be obtained.

### **15 Paragraph 7-1(a)**

Repeal the paragraph, substitute:

- (a) the person is an approved provider; and
- (aa) the approval of the person is in effect; and

### **16 Paragraphs 7-1(b) and (c)**

Omit “is in force”, substitute “of the person is”.

### **17 At end of section 7-1**

Add:

Note: For the approval of providers of aged care, see Part 7A of the \*Quality and Safety Commission Act.

### **18 Division 8**

Repeal the Division.

### **19 Subsection 9-1(1)**

Omit “Secretary”, substitute “\*Quality and Safety Commissioner”.

**20 Subsection 9-1(1)**

Omit “(see section 8-3)”.

**21 Subsection 9-1(2)**

Omit “Secretary”, substitute “\*Quality and Safety Commissioner”.

**22 After subsection 9-1(3A)**

Insert:

(3B) The Approved Provider Principles may specify changes of circumstances that are taken, for the purposes of subsection (1), to materially affect an approved provider’s suitability to be a provider of \*aged care.

**23 Subsection 9-1(4)**

Omit “Secretary”, substitute “\*Quality and Safety Commissioner”.

**24 Subsection 9-2(1)**

Omit “The Secretary”, substitute “The \*Quality and Safety Commissioner”.

**25 Subsection 9-2(1)**

Omit “the Secretary”, substitute “the Commissioner”.

**26 Subsection 9-2(1)**

Omit “(see section 8-3)”.

**27 Subsection 9-3A(1)**

After “The Secretary”, insert “or \*Quality and Safety Commissioner”.

**28 Subsection 9-3A(1)**

After “the Secretary”, insert “or Commissioner”.

**29 Paragraph 9-3A(3)(a)**

After “Secretary”, insert “or \*Quality and Safety Commissioner”.

**30 Subsection 9-3B(1)**

After “Secretary”, insert “or \*Quality and Safety Commissioner”.

**31 Subsection 9-3B(2)**

After “The Secretary”, insert “or \*Quality and Safety Commissioner”.

**32 Subsection 9-3B(2)**

After “the Secretary”, insert “or Commissioner”.

**33 Paragraph 9-3B(2)(a)**

Omit “(see section 8-3)”.

**34 Subsections 9-3B(3) and (5)**

After “Secretary”, insert “or \*Quality and Safety Commissioner”.

**35 Section 9-4**

Omit “a person’s approval under section 8-1 is suspended for a period under Part 4.4”, substitute “a person’s approval as a provider of \*aged care under Part 7A of the \*Quality and Safety Commission Act is suspended for a period under Part 7B of that Act”.

**36 Division 10**

Repeal the Division.

**37 Section 10A-1**

Repeal the section.

**38 Subsection 10A-3(7)**

Repeal the subsection.

**39 Subsection 14-1(2)**

Repeal the subsection, substitute:

- (2) The \*places may only be allocated to a person if:
  - (a) the person is an approved provider and the person’s approval is in respect of the \*aged care in respect of which the places are allocated; or

(b) both of the following apply:

- (i) the person will be an approved provider at the time the allocation takes effect or, in the case of a provisional allocation, at the time that allocation begins to be in force;
- (ii) the person's approval will be in respect of the aged care in respect of which the places are allocated.

**40 Paragraph 16-2(4)(a)**

Omit "has been approved under section 8-1 as a provider of \*aged care", substitute "is an approved provider".

**41 Paragraph 16-2(4)(b)**

Omit "has not been approved under section 8-1 as a provider of aged care", substitute "is not an approved provider".

**42 Paragraph 16-13(4)(a)**

Omit "has been approved under section 8-1 as a provider of \*aged care", substitute "is an approved provider".

**43 Paragraph 16-13(4)(b)**

Omit "has not been approved under section 8-1 as a provider of aged care", substitute "is not an approved provider".

**44 Paragraph 33-3(1)(c)**

Repeal the paragraph, substitute:

- (c) the approval of the approved provider of the service ceases to have effect under section 63G of the \*Quality and Safety Commission Act.

**45 Paragraph 46-1(1)(a)**

Repeal the paragraph, substitute:

- (a) the approval of the approved provider is in respect of home care; and

**46 Subsection 63-1C(1)**

Omit “by the Secretary in a notice given under subsection 8-5(3) is to comply with subsection (2)”, substitute “in a notice given to the provider under subsection 63E(1) of the \*Quality and Safety Commission Act is to comply with subsection (2) of this section”.

**47 Subsection 63-1C(2)**

Omit “under subsection 8-5(3)”.

**48 Paragraph 72-1(4)(a)**

Repeal the paragraph, substitute:

(a) whose approval is in respect of \*residential care; and

**49 Subparagraph 86-1(b)(iii)**

Repeal the subparagraph.

**50 Clause 1 of Schedule 1 (definition of *approved provider*)**

Repeal the definition, substitute:

*approved provider* has the same meaning as in the \*Quality and Safety Commission Act.

**51 Clause 1 of Schedule 1 (definition of *authority of a State or Territory*)**

Repeal the definition.

**52 Clause 1 of Schedule 1 (definition of *disqualified individual*)**

Repeal the definition, substitute:

*disqualified individual* has the same meaning as in the \*Quality and Safety Commission Act.

**53 Clause 1 of Schedule 1 (definition of *key personnel*)**

Repeal the definition, substitute:

*key personnel* of a person or body has the same meaning as in the \*Quality and Safety Commission Act.

**54 Clause 1 of Schedule 1 (definition of *local government authority*)**

Repeal the definition.

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

**55 Subsection 5(1)**

Omit “(1)”.

**56 Subsection 5(2)**

Repeal the subsection.

**57 Section 6 (after paragraph (a))**

Insert:

(aa) the function of approving providers of aged care; and
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**58 Section 7 (definition of *approved provider*)**

Repeal the definition, substitute:

***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.

**59 Section 7**

Insert:

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

***disqualified individual*** has the meaning given by section 8A.

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

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***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.

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

***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.

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

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

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

## **60 After section 8**

Insert:

### **8A Meaning of *disqualified individual***

- (1) An individual is a ***disqualified individual*** if:
  - (a) the individual has been convicted of an indictable offence, whether before, on or after the commencement of this section; or
  - (b) the individual is an insolvent under administration; or

- (c) both of the following apply:
  - (i) the individual is one of the key personnel of a person or body;
  - (ii) a registered medical practitioner certifies that the individual is unable to perform the individual's duties as one of those key personnel because of mental incapacity.
- (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).

### **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 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.

**61 Section 14 (after paragraph (a))**

Insert:

(aa) approving providers of aged care; and
--

**62 After paragraph 16(1)(a)**

Insert:

- (aa) the functions conferred on the Commissioner by Part 7A (which deals with the approval of providers of aged care etc.);

**63 At the end of subsection 60(2)**

Add:

- ; or (c) relates to the affairs of an applicant for approval under section 63B.

**64 After Part 7**

Insert:

**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
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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.
- (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) none of the key personnel of the person is a disqualified individual.

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

**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);
  - (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:
- (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.
- (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;
  - (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.

### **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.

### ***Aged Care (Transitional Provisions) Act 1997***

#### **65 Section 3-2**

Omit “a provider”, substitute “an approved provider”.

#### **66 Paragraph 3-2(a)**

Repeal the paragraph.

#### **67 At the end of section 3-2**

Add:

Note: For the approval of providers of aged care, see Part 7A of the \*Quality and Safety Commission Act.

#### **68 Section 3-4**

Omit all the words from and including “sanctions” to the end of the section, substitute “sanctions on an approved provider under Part 7B of the \*Quality and Safety Commission Act, which may affect amounts of subsidy payable to the provider.”.

#### **69 Paragraph 46-1(1)(a)**

Repeal the paragraph, substitute:

- (a) the approval of the approved provider is in respect of home care; and

#### **70 Clause 1 of Schedule 1 (definition of *approved provider*)**

Repeal the definition, substitute:

***approved provider*** has the same meaning as in the \*Quality and Safety Commission Act.

**71 Clause 1 of Schedule 1**

Insert:

*Quality and Safety Commission Act* means the *Aged Care Quality and Safety Commission Act 2018*.

***A New Tax System (Goods and Services Tax) Act 1999***

**72 Section 195-1 (paragraph (d) of the definition of retirement village)**

Omit “that Act”, substitute “the *Aged Care Quality and Safety Commission Act 2018*”.

***Healthcare Identifiers Act 2010***

**73 Section 5 (paragraph (a) of the definition of aged care purpose)**

Omit “*Aged Care Act 1997*”, substitute “*Aged Care Quality and Safety Commission Act 2018*”.

***Social Security Act 1991***

**74 At the end of subsection 23(4CA)**

Add “(within the meaning of the *Aged Care Quality and Safety Commission Act 2018*)”.

**75 Subsection 23(4CB)**

Repeal the subsection, substitute:

(4CB) An expression used in subsection (4CA) and in the *Aged Care Act 1997* has the same meaning in that subsection as in that Act.

***Veterans’ Entitlements Act 1986***

**76 Paragraph 5H(8)(na)**

Omit “those Acts”, substitute “the *Aged Care Quality and Safety Commission Act 2018*”.

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**77 Subsection 5N(1) (definition of *residential care charge*)**

Repeal the definition, substitute:

*residential care charge* means an amount paid by, or on behalf of, a person to an approved provider (within the meaning of the *Aged Care Quality and Safety Commission Act 2018*) for the provision of care to the person, but does not include an accommodation bond (within the meaning of the *Aged Care Act 1997*).

**78 Subparagraph 5NC(5)(a)(i)**

After “provider”, insert “(within the meaning of the *Aged Care Quality and Safety Commission Act 2018*)”.

**79 Subsection 5NC(9)**

Repeal the subsection, substitute:

- (9) An expression used in subsection (5) and in the *Aged Care Act 1997* has the same meaning in that subsection as in that Act.

## **Schedule 2—Responsibilities of approved providers etc.**

### *Aged Care Act 1997*

#### **1 Section 7-2**

Repeal the section, substitute:

#### **7-2 Payment of subsidy if approval of provider is restricted to certain aged care services etc.**

(1) If:

- (a) a sanction has been imposed on an approved provider under section 63N of the \*Quality and Safety Commission Act; and
- (b) the sanction restricts the approval of the provider to certain \*aged care services conducted by the provider;

then, while the sanction is in effect, \*subsidy may only be paid to the provider in respect of care provided through those services.

(2) If:

- (a) a sanction has been imposed on an approved provider under section 63N of the \*Quality and Safety Commission Act; and
- (b) the sanction restricts the payment of \*subsidies to the provision of care by the provider to certain care recipients;

then, while the sanction is in effect, subsidy may only be paid to the provider in respect of care provided to those care recipients.

Note: Both subsections (1) and (2) may apply at the same time in relation to an approved provider.

#### **2 Subsections 9-1A(1), 9-1(1), 9-2(2), 9-3(2), 9-3A(2) and 9-3B(4) (note)**

Omit “Part 4.4”, substitute “Part 7B of the \*Quality and Safety Commission Act”.

#### **3 Subsection 14-1(2A)**

Repeal the subsection, substitute:

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(2A) The \*places must not be allocated to a person if:

- (a) a sanction has been imposed on the person under section 63N of the \*Quality and Safety Commission Act; and
- (b) the sanction prohibits the further allocation of places under this Part to the person; and
- (c) the sanction is in effect.

**4 Subsection 14-4(2)**

Omit “under Part 4.4”, substitute “by a notice given under section 63N of the \*Quality and Safety Commission Act”.

**5 Subsections 14-5(1), 14-6(3) and 16-11(2) (note)**

Omit “Part 4.4”, substitute “Part 7B of the \*Quality and Safety Commission Act”.

**6 Paragraph 18-1(1)(b)**

Omit “Part 4.4”, substitute “by a notice given under section 63N of the \*Quality and Safety Commission Act”.

**7 Subsection 18-1(3)**

Repeal the subsection, substitute:

(3) If:

- (a) a sanction has been imposed on a person under section 63N of the \*Quality and Safety Commission Act; and
- (b) the sanction suspends the allocation of a \*place that has taken effect under Division 15 of this Act;

then the allocation does not have effect while the suspension is in effect.

**8 Subsections 18-2(4) and 18-4(1) (note)**

Omit “Part 4.4”, substitute “Part 7B of the \*Quality and Safety Commission Act”.

**9 Paragraphs 25-4(1)(a) and (b)**

Repeal the paragraphs (not including the notes), substitute:

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- (a) the Secretary is satisfied that the approved provider, or a person acting on the approved provider's behalf, has not conducted an appraisal or reappraisal in a proper manner; or
- (b) both of the following apply:
  - (i) the Secretary is satisfied that the approved provider, or a person acting on the approved provider's behalf, gave false, misleading or inaccurate information in an appraisal or reappraisal connected with a classification reviewed under subsection 29-1(3);
  - (ii) the classification was changed under section 29-1.

**10 Subsection 32-8(6) (note)**

Omit "Part 4.4", substitute "Part 7B of the \*Quality and Safety Commission Act".

**11 Paragraph 33-1(c)**

Omit "Part 4.4", substitute "by a notice given under section 63N of the \*Quality and Safety Commission Act".

**12 Subsection 33-4(1) (note)**

Omit "Part 4.4 (see paragraph 66-1(g))", substitute "Part 7B of the \*Quality and Safety Commission Act".

**13 Section 36-4 (note)**

Omit "Part 4.4", substitute "Part 7B of the \*Quality and Safety Commission Act".

**14 Subsection 42-2(1)**

Omit "section 67A-5", substitute "section 63Q of the \*Quality and Safety Commission Act".

**15 Paragraph 52G-2(d)**

Repeal the paragraph, substitute:

- (d) an accommodation payment must not be charged by an approved provider if:
    - (i) a sanction has been imposed on the provider under section 63N of the \*Quality and Safety Commission Act; and
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- (ii) the sanction prohibits the charging of an accommodation payment for the service;

**16 Paragraph 52G-6(d)**

Repeal the paragraph, substitute:

- (d) an accommodation contribution must not be charged by an approved provider if:
  - (i) a sanction has been imposed on the provider under section 63N of the \*Quality and Safety Commission Act; and
  - (ii) the sanction prohibits the charging of an accommodation contribution for the service;

**17 Section 53-1**

Omit “Part 4.4”, substitute “Part 7B of the \*Quality and Safety Commission Act”.

**18 At the end of subsection 53-2(1)**

Add “and the \*Quality and Safety Commission Act”.

**19 Section 55-1**

Omit “Part 4.4”, substitute “Part 7B of the \*Quality and Safety Commission Act”.

**20 Paragraphs 63-1(1)(b) and (ba)**

Repeal the paragraphs, substitute:

- (b) to cooperate with any person who is performing functions, or exercising powers, in relation to the service under:
  - (i) Part 6.4 of this Act; or
  - (ii) Part 8 or 8A of the \*Quality and Safety Commission Act; or
  - (iii) Part 2 or 3 of the \*Regulatory Powers Act;

**21 Paragraph 63-1(1)(k)**

Repeal the paragraph, substitute:

- (k) if the approved provider has given an undertaking as required by a notice given to the provider under section 63T of the

Quality and Safety Commission Act—to comply with the undertaking;

- (l) if the approved provider has agreed to do one or more things as required by a notice given to the provider under section 63U of the Quality and Safety Commission Act—to comply with the agreement;

**22 Paragraphs 63-1AA(2)(b), (4)(b), (5)(e) and (7)(b)**

Omit “Secretary”, substitute “\*Quality and Safety Commissioner”.

**23 Subsection 63-1A(2)**

Omit “Sanctions Principles”, substitute “Accountability Principles”.

**24 Paragraph 63-2(2)(f)**

Omit “and” (second occurring).

**25 Paragraph 63-2(2)(g)**

Repeal the paragraph.

**26 Part 4.4**

Repeal the Part.

**27 Section 84-1**

Omit:

(d) powers of officers in relation to monitoring compliance and offences (see Part 6.4);
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substitute:

(d) the compliance and enforcement powers (see Part 6.4);
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**28 Subsections 88-1(1) and (2), 88-2(1) and 88-3(1) (note)**

Omit “Part 4.4”, substitute “Part 7B of the \*Quality and Safety Commission Act”.

**29 Part 6.4**

Repeal the Part, substitute:

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## **Part 6.4—Compliance and enforcement powers**

### **Division 90—Introduction**

#### **90-1 Simplified outline of this Part**

An APS employee in the Department may be appointed as an \*authorised officer.

An authorised officer may enter premises with consent of the occupier and exercise \*search powers there for the purposes of the Secretary:

- (a) making a decision on an application made under this Act or the *Aged Care (Transitional Provisions) Act 1997*; or
- (b) determining whether the conditions to which a grant under Chapter 5 of this Act is subject have been complied with.

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:

- (a) whether section 25-3 (which deals with the appraisal of the level of care needed by care recipients) or sections 27-3 and 27-5 (which deal with the reappraisal of the level of care needed by care recipients) of this Act have been complied with; or
- (b) whether information given in compliance, or purported compliance, with a provision of Chapter 3 of this Act or a provision of Chapter 3 of the *Aged Care (Transitional Provisions) Act 1997* (which both deal with \*subsidies) is correct.

An authorised officer may, under Part 3 of the Regulatory Powers Act, gather material that relates to the contravention of a \*civil penalty provision in this Act.

Parts 2 and 3 of the Regulatory Powers Act are applied by this Part with suitable modifications.

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

### Table of Divisions

90	Introduction
91	Entry and search powers relating to certain applications and grants
92	Regulatory Powers
93	Notice to attend to answer questions etc.
94	Appointment of authorised officers

## Division 91—Entry and search powers relating to certain applications and grants

### 91-1 Power to enter premises and exercise search powers in relation to certain applications and grants

- (1) This section applies if the Secretary considers that it is necessary for an \*authorised officer to exercise powers under this Division for the purposes of the Secretary:
  - (a) making a decision on an application made under this Act or the *Aged Care (Transitional Provisions) Act 1997*; or
  - (b) determining whether the conditions to which a grant under Chapter 5 of this Act is subject have been complied with.
- (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 Secretary making the decision or determination.
- (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 91-2).

## **91-2 Consent**

- (1) Before obtaining the consent of an occupier of premises for the purposes of subsection 91-1(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) 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 of the \*Quality and Safety Commission Act.

- (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 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.

## **91-3 Search powers**

- (1) If an \*authorised officer enters premises in accordance with section 91-1, the following are the **search powers** that the officer 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 requires for the purpose of exercising powers in relation to the premises;
  - (h) the powers set out in subsections (2) and (3).
- (2) The **search powers** include the power to:
- (a) operate electronic equipment on the premises entered in accordance with section 91-1; 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.
- (3) If information that is relevant to the purposes for which the \*authorised officer entered the premises under section 91-1 is found in the exercise of the power under subsection (2), the **search powers** include the following powers:
- (a) the power to operate electronic equipment on the premises to put the information 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 information 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.

- (4) An \*authorised officer may operate electronic equipment as mentioned in subsection (2) or (3) only if the officer believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.

#### **91-4 Asking questions and seeking production of documents**

- (1) If an \*authorised officer enters premises in accordance with section 91-1, 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) 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 of the \*Quality and Safety Commission Act.

- (3) A person is not required to comply with a request made under subsection (1).

### **Division 92—Regulatory powers**

#### **92-1 Monitoring powers**

##### *Provisions subject to monitoring*

- (1) The following provisions of this Act are subject to monitoring under Part 2 of the \*Regulatory Powers Act:
- (a) section 25-3 (which deals with the appraisal of the level of care needed by care recipients);
  - (b) sections 27-3 and 27-5 (which deal with the reappraisal of the level of care needed by care recipients).

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

*Information subject to monitoring*

- (2) Information given in compliance, or purported compliance, with the following provisions of this Act is subject to monitoring under Part 2 of the \*Regulatory Powers Act:
- (a) a provision of Chapter 3 of this Act (which deals with \*subsidies);
  - (b) a provision of Chapter 3 of the *Aged Care (Transitional Provisions) Act 1997* (which deals with subsidies).

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 Division 29A of this Act is related to the provisions mentioned in subsection (1).

*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 the provisions mentioned in subsection (1) and the information mentioned in subsection (2):
- (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 Secretary is the relevant chief executive; and
  - (e) each of the following is a relevant court:
    - (i) the \*Federal Court;
    - (ii) the Federal Circuit Court;
    - (iii) a court of a State or Territory that has jurisdiction in relation to matters arising under this 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 the provisions 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 the provisions 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 the provisions mentioned in subsection (1) and the information mentioned in subsection (2), extends to the same external Territories in which this Act applies.

Note: See section 4-1 for the external Territories in which this Act applies.

**92-2 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) the provisions mentioned in subsection 92-1(1) of this Act;
  - (b) the information mentioned in subsection 92-1(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 this Act to cooperate with a person who is performing functions, or exercising powers, under Part 2 of the Regulatory Powers Act.

## Schedule 2 Responsibilities of approved providers etc.

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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 this Act to cooperate with a 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.

## 92-3 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 \*civil penalty provision.

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 Secretary is the relevant chief executive; and
  - (e) each of the following is a relevant court:
    - (i) the \*Federal Court;
    - (ii) the Federal Circuit Court;
    - (iii) a court of a State or Territory that has jurisdiction in relation to matters arising under this 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 same external Territories in which this Act applies.

Note: See section 4-1 for the external Territories in which this Act applies.

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#### **92-4 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 92-3(1) of this Act.

*Securing electronic equipment etc.*

- (2) Sections 51 and 74 of the \*Regulatory Powers Act are taken to apply as if:
- (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 this Act to cooperate with a person who is performing functions, or exercising powers, under Part 3 of the Regulatory Powers Act.

### **Division 93—Notice to attend to answer questions etc.**

#### **93-1 Notice to attend to answer questions etc. relevant to certain matters**

- (1) This section applies if the Secretary believes on reasonable grounds that a person has information or documents relevant to any of the following matters (the *relevant matter*):
- (a) an application made under this Act or the *Aged Care (Transitional Provisions) Act 1997*;
  - (b) an appraisal of the level of care needed by care recipients made under section 25-3 of this Act;

- (c) a reappraisal of the level of care needed by care recipients made under sections 27-3 and 27-5 of this Act;
  - (d) a claim by an approved provider for payment of \*subsidy under Chapter 3 of this Act or Chapter 3 of the *Aged Care (Transitional Provisions) Act 1997*;
  - (e) whether the conditions to which a grant under Chapter 5 of this Act is subject have been complied with.
- (2) The Secretary 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 relevant matter;
  - (b) to give such information or documents (or copies of documents) as are specified in the notice.

*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.

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

- (5) A person is not required to comply with a requirement of a notice given to the person under subsection (2) if the requirement does not relate to the affairs of an approved provider that is a \*corporation.

*Offence*

- (6) 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; and
  - (c) the requirement relates to the affairs of an approved provider and the provider is a \*corporation.
-

Penalty: 30 penalty units.

*Reasonable compensation*

- (7) 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.

**93-2 Attending before authorised officer to answer questions**

- (1) This section applies if:
- (a) a person is given a notice under subsection 93-1(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
  - (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 that is a \*corporation.

Note: Approved providers have a responsibility under paragraph 63-1(1)(b) 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 the \*Quality and Safety Commission 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 and the provider is a \*corporation.

Penalty: 30 penalty units.

## **Division 94—Appointment of authorised officers**

### **94-1 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 Division 91 as an authorised officer.

Note: An authorised officer is also required to carry the officer's identity card when exercising powers under Part 2 or 3 of the \*Regulatory Powers Act (see subsections 35(6) and 76(6) of that Act).

### **94-2 Appointment of authorised officers**

- (1) The Secretary may, in writing, appoint a person who is an APS employee in the Department as an \*authorised officer for the purposes of this Part.
- (2) The Secretary must not appoint a person as an \*authorised officer under subsection (1) unless the Secretary 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 Secretary.
- (4) If a direction is given under subsection (3) in writing, the direction is not a legislative instrument.

### **30 Paragraph 95C-1(3)(a)**

Repeal the paragraph, substitute:

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(a) the \*Federal Court;

**31 Section 96-1 (table item 22)**

Repeal the item.

**32 Subparagraph 96-8(1)(b)(ii)**

Omit “Secretary”, substitute “\*Quality and Safety Commissioner”.

**33 Subsection 96-8(6) (note)**

Omit “Part 4.4”, substitute “Part 7B of the \*Quality and Safety Commission Act”.

**34 Clause 1 of Schedule 1 (definition of *authorised officer*)**

Repeal the definition, substitute:

*authorised officer* means a person appointed as an authorised officer under subsection 94-2(1).

**35 Clause 1 of Schedule 1**

Insert:

*Federal Court* means the Federal Court of Australia.

*identity card*, in relation to an \*authorised officer, means an identity card issued to the officer under section 35 or 76 of the \*Regulatory Powers Act.

**36 Clause 1 of Schedule 1 (definition of *monitoring powers*)**

Repeal the definition.

**37 Clause 1 of Schedule 1**

Insert:

*search powers* has the meaning given by section 91-3.

**38 Clause 1 of Schedule 1 (definition of *section 67-5 notice time*)**

Repeal the definition.

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

### **39 Section 6 (before paragraph (b))**

Insert:

- (ab) the functions of imposing sanctions on approved providers and lifting sanctions; and
- (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

### **40 Section 6 (paragraph beginning “This Act also”)**

Omit “information, confidentiality and powers to enter premises and exercise the search powers in relation to premises for certain purposes”, substitute “information and confidentiality”.

### **41 Section 7**

Insert:

***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.

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

### **42 Section 7 (definition of *authorised complaints officer*)**

Repeal the definition.

### **43 Section 7**

Insert:

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

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

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

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

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

#### 44 Section 7 (definition of *identity card*)

Repeal the definition, substitute:

**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.

#### 45 Section 7

Insert:

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

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

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

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

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

#### 46 Section 14 (before paragraph (b))

Insert:

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- (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

**47 Before paragraph 16(1)(b)**

Insert:

- (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;

**48 At the end of section 52**

Add:

- ; 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.

**49 Paragraphs 61(1)(a) to (g)**

Omit “; and”, substitute “; or”.

**50 After paragraph 61(1)(g)**

Insert:

- (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

**51 Paragraphs 61(1)(h) and (i)**

Omit “; and”, substitute “; or”.

**52 Before Part 8**

Insert:

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## **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.

*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;
  - (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
- (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
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- (c) no other sanction is to be imposed on the provider in relation to the non-compliance.
- (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.

- (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:
  - (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.

### **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
    - (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.
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**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
  - (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:
    - (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.

- (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;

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.

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.

#### *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).

**53 Part 8 (heading)**

Repeal the heading, substitute:

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

**54 Section 64**

Omit “powers of authorised complaints”, substitute “powers of authorised”.

**55 Section 64**

Omit:

The Commissioner is to appoint authorised complaints officers.  
The Commissioner must also ensure that identity cards are issued to authorised complaints officers and quality assessors.

substitute:

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

**56 Division 2 of Part 8 (heading)**

Omit “complaints”.

**57 Before section 65**

Insert:

**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).

## **58 Section 65**

Omit “complaints officer” (wherever occurring), substitute “officer”.

## **59 Subsection 66(1)**

Omit “65(3), an authorised complaints”, substitute “64A(3) or 65(3), an authorised”.

## **60 Paragraph 66(1)(b)**

Omit “paragraph 63-1(1)(ba) of the Aged Care Act to cooperate with a person who is exercising powers”, substitute “paragraph 63-1(1)(b) of the Aged Care Act to cooperate with a person who is performing functions, or exercising powers,”.

## **61 Subsection 66(1) (note)**

Omit “Part 4.4 of the Aged Care Act”, substitute “Part 7B”.

## **62 Subsection 66(5)**

Omit “complaints”.

## **63 Paragraph 66(6)(a)**

Omit “complaint”.

## **64 Subsection 67(1)**

Omit “complaints officer enters premises in accordance with section”, substitute “officer enters premises in accordance with section 64A or”.

**65 Subsection 67(2)**

Omit “complaints”.

**66 Subsection 67(2)**

Omit “paragraph 63-1(1)(ba) of the Aged Care Act to cooperate with a person who is exercising powers”, substitute “paragraph 63-1(1)(b) of the Aged Care Act to cooperate with a person who is performing functions, or exercising powers,”.

**67 Subsection 67(2) (note)**

Omit “Part 4.4 of the Aged Care Act”, substitute “Part 7B”.

**68 Paragraph 69(1)(b)**

Omit “paragraph 63-1(1)(ba) of the Aged Care Act to cooperate with a person who is exercising powers”, substitute “paragraph 63-1(1)(b) of the Aged Care Act to cooperate with a person who is performing functions, or exercising powers,”.

**69 Subsection 69(1) (note)**

Omit “Part 4.4 of the Aged Care Act”, substitute “Part 7B”.

**70 Subsection 70(2)**

Omit “paragraph 63-1(1)(ba) of the Aged Care Act to cooperate with a person who is exercising powers”, substitute “paragraph 63-1(1)(b) of the Aged Care Act to cooperate with a person who is performing functions, or exercising powers,”.

**71 Subsection 70(2) (note)**

Omit “Part 4.4 of the Aged Care Act”, substitute “Part 7B”.

**72 Paragraph 71(1)(a)**

Repeal the paragraph, substitute:

- (a) an authorised officer enters premises in accordance with section 64A or 65; or

**73 Subsection 71(2)**

Omit “complaints”.

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**74 Paragraph 72(1)(a)**

After “section”, insert “64A,”.

**75 Paragraph 72(3)(a)**

Omit “complaints officer entered the premises in accordance with section”, substitute “officer entered the premises in accordance with section 64A or”.

**76 Subsection 72(5)**

Omit “complaints”.

**77 Division 5 of Part 8 (heading)**

Repeal the heading, substitute:

**Division 5—Identity cards**

**78 Section 73**

Repeal the section, substitute:

**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.

**79 Section 74 (heading)**

Repeal the heading, substitute:

**74 Identity cards for quality assessors**

**80 Subsection 74(1)**

Repeal the subsection, substitute:

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

**81 Subsection 74(3)**

Repeal the subsection (not including the heading).

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**82 Subsection 74(5)**

Omit “(3) or”.

**83 Subsection 74(6)**

Omit “Subsections (3) and (4) do”, substitute “Subsection (4) does”.

**84 Subsection 74(7)**

Repeal the subsection (not including the heading).

**85 After Part 8**

Insert:

**Part 8A—Enforcement of responsibilities of approved providers**

**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:

- (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 offences against:

- (a) this Act or the Aged Care Act; or
- (b) the *Crimes Act 1914* or the *Criminal Code* that relates to this Act or the Aged Care Act.

Parts 2 and 3 of the Regulatory Powers Act are applied by this Part with suitable modifications.

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

## Division 2—Regulatory powers

### 74B Monitoring powers

#### *Provisions subject to monitoring*

- (1) 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 Chapter 4 of the Aged Care Act (which deals with the responsibilities of approved providers) 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 subsection (1) 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 the provision mentioned in subsection (1) and the information mentioned in subsection (2):
- (a) an authorised officer is an authorised applicant; and
  - (b) an authorised officer is an authorised person; and
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- (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 Court;
  - (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 the 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 the 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 the 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) the 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 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.

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 Court;
    - (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:
  - (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
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person who is performing functions, or exercising powers, under Part 3 of the Regulatory Powers Act.

### **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:
  - (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.

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

- (1) This section applies if:
  - (a) a person is given a notice under subsection 74F(1); 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
  - (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.

**86 Section 75**

After “such as”, insert “the appointment of authorised officers,”.

**87 After section 75**

Insert:

**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.

**88 Subsection 76(1)**

After “this Act”, insert “(other than Part 7B)”.

**89 Subsection 76(1) (note)**

Repeal the note.

**90 After subsection 76(1)**

Insert:

- (1A) The Commissioner may, in writing, delegate to the following all or any of the Commissioner’s functions or powers under Part 7B:
  - (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.

**91 At end of section 76**

Add:

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

***Aged Care (Transitional Provisions) Act 1997***

**92 Subsection 42-2(1)**

Omit “section 67A-5 of the *Aged Care Act 1997*”, substitute “section 63Q of the \*Quality and Safety Commission Act”.

**93 Paragraph 57-2(1)(o)**

Repeal the paragraph, substitute:

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- (o) the approved provider must not charge an accommodation bond if:
  - (i) a sanction has been imposed on the approved provider under section 63N of the \*Quality and Safety Commission Act; and
  - (ii) the sanction prohibits the charging of an accommodation bond for the entry;

**94 Paragraph 57A-2(1)(m)**

Repeal the paragraph, substitute:

- (m) the approved provider must not charge an accommodation charge if:
  - (i) a sanction has been imposed on the approved provider under section 63N of the \*Quality and Safety Commission Act; and
  - (ii) the sanction prohibits the charging of an accommodation charge for the entry;

***Social Security Act 1991***

**95 Subparagraphs 11A(8)(a)(i), (b)(i) and (ba)(i)**

Omit “Part 4.4 of the *Aged Care Act 1997*”, substitute “Part 7B of the *Aged Care Quality and Safety Commission Act 2018*”.

***Veterans’ Entitlements Act 1986***

**96 Subparagraphs 5LA(8)(a)(i), (b)(i) and (ba)(i)**

Omit “Part 4.4 of the *Aged Care Act 1997*”, substitute “Part 7B of the *Aged Care Quality and Safety Commission Act 2018*”.

## Schedule 3—Reconsideration and review of decisions

### *Aged Care Act 1997*

#### **1 Section 85-1 (table items 1, 3, 54 and 55)**

Repeal the items.

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

#### **2 Section 6 (paragraph (f))**

Repeal the paragraph, substitute:

- |   |
|---|
| <ul style="list-style-type: none"><li>(f) the education functions; and</li><li>(g) the function of reconsidering and reviewing certain decisions made under this Act.</li></ul> |
|---|

#### **3 Section 7**

Insert:

*affected person*: see section 74J.

*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).

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

*reviewable decision*: see section 74J.

#### **4 Section 14 (paragraph (f))**

Repeal the paragraph, substitute:

- |   |
|---|
| <ul style="list-style-type: none"><li>(f) the education functions; and</li><li>(g) reconsidering and reviewing certain decisions made under this Act.</li></ul> |
|---|

**5 After paragraph 16(1)(f)**

Insert:

(fa) to reconsider and review certain decisions made under this Act;

**6 Before Part 9**

Insert:

**Part 8B—Reconsideration and review of decisions****Division 1—Introduction****74H Simplified outline of this Part**

This Part deals with the reconsideration and review of certain decisions made under this Act.
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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.

<b>Reviewable decisions and affected persons</b>		
<b>Item</b>	<b>Column 1 Decision</b>	<b>Column 2 Affected person</b>
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

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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>
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

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**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.

**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 27A of the *Administrative Appeals Tribunal Act 1975* 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 27A of the *Administrative Appeals Tribunal Act 1975* 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).

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

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

## **Schedule 4—Transitional, application, saving and other provisions**

### **Part 1—Introduction**

#### **1 Definitions**

In this Schedule:

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

***Aged Care (TP) Act*** means the *Aged Care (Transitional Provisions) Act 1997*.

***Commission*** means the Aged Care Quality and Safety Commission.

***Commission Act*** means the *Aged Care Quality and Safety Commission Act 2018*.

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

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

***sanction notice*** means a notice given under section 67-5 of the Aged Care Act.

***transferred function*** means any of the following functions or powers:

- (a) a function or power relating to the approval of a provider of aged care under Division 8 of the Aged Care Act;
- (b) a function or power relating to the revocation of the approval of a provider of aged care under Division 10 of that Act;
- (c) a function or power relating to a reportable assault within the meaning of subsection 63-1AA(9) of that Act;
- (d) a function or power relating to the imposition of a sanction on an approved provider for non-compliance with the provider's responsibilities under Part 4.1, 4.2 or 4.3 of that Act;
- (e) a function or power relating to the reconsideration or review of a reviewable decision of a kind mentioned in item 1, 3, 54 or 55 of the table in section 85-1 of that Act;
- (f) a function performed, or a power exercised, under Part 6.4 of that Act to the extent that:

**Schedule 4** Transitional, application, saving and other provisions

**Part 1** Introduction

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- (i) the function was performed, or the power was exercised, for the purpose of assessing whether an approved provider is complying with the provider's responsibilities under Part 4.1, 4.2 or 4.3 of that Act; or
- (ii) the function or power relates to a warrant issued under section 92-3 of that Act;
- (g) any other function or power specified in the transition rules.

***transition rules*** means rules made under item 36 of this Schedule.

***transition time*** means the commencement of this Schedule.

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

### **2 Saving of approval of approved providers**

- (1) This item applies if:
  - (a) before the transition time, a person or body (the *entity*) was an approved provider within the meaning of the Aged Care Act; and
  - (b) immediately before that time, the entity's approval is in effect and either:
    - (i) the entity is conducting an aged care service; or
    - (ii) the entity is an entity of a kind specified in the transitional rules.
- (2) Despite the repeal of Division 8 of the Aged Care Act by Schedule 1 to this Act, the entity is taken, after the transition time, to be an approved provider within the meaning of the Commission Act.

### **3 Pending applications for approval as provider of aged care**

- (1) This item applies in relation to an application made under subsection 8-2(1) of the Aged Care Act if:
  - (a) the application was made before the transition time; and
  - (b) immediately before that time, the Secretary has not made a decision on the application.
- (2) The application is taken, after the transition time, to have been made to the Commissioner under subsection 63B(1) of the Commission Act and may be dealt with, or may continue to be dealt with, under Part 7A of that Act.
- (3) If paragraph 8-6(3)(a) of the Aged Care Act applied in relation to the application, then, after the transition time, paragraph 63F(3)(d) of the Commission Act is taken to apply in relation to the application.
- (4) If, before the transition time, a thing was done in relation to the application by the Secretary under, or for the purposes of, Division 8 of the Aged Care Act, then the thing has effect, after that time, as if it had been done by the Commissioner under, or for the purposes of, Part 7A of the Commission Act.

#### **4 Saving of notices requiring further information in relation to approval applications**

- (1) This item applies in relation to a notice given by the Secretary under subsection 8-4(1) of the Aged Care Act requiring a person to give information to the Secretary if:
  - (a) the notice was given before the transition time; and
  - (b) immediately before that time, the period for giving the information has not ended.
- (2) Despite the repeal of section 8-4 of the Aged Care Act by Schedule 1 to this Act, the notice continues to have effect, after the transition time, as if:
  - (a) it were a notice given by the Commissioner under subsection 63C(1) of the Commission Act; and
  - (b) the requirement to give information to the Secretary were a requirement to give information to the Commissioner.

#### **5 Saving of notices requesting further information from approved providers**

- (1) This item applies in relation to a notice given by the Secretary under subsection 9-2(1) of the Aged Care Act requesting an approved provider to give information to the Secretary if:
  - (a) the notice was given before the transition time; and
  - (b) immediately before that time, the period for giving the information has not ended.
- (2) Despite the amendments of subsection 9-2(1) of the Aged Care Act made by Schedule 1 to this Act, the notice continues to have effect, after the transition time, as if:
  - (a) it were a notice given by the Commissioner under that subsection, as amended by Schedule 1 to this Act; and
  - (b) the request to give information to the Secretary were a request to give information to the Commissioner.

## **6 Saving of notices inviting submissions in relation to revocation of approval**

- (1) This item applies in relation to a notice given by the Secretary under subsection 10-3(3) of the Aged Care Act inviting a person to make submissions to the Secretary if:
  - (a) the notice was given before the transition time; and
  - (b) immediately before that time, the period for making those submissions has not ended.
- (2) Despite the repeal of section 10-3 of the Aged Care Act by Schedule 1 to this Act, the notice continues to have effect, after the transition time, as if:
  - (a) it were a notice given by the Commissioner under subsection 63K(1) of the Commission Act; and
  - (b) the invitation to make submissions to the Secretary were an invitation to make submissions to the Commissioner.

## **7 Saving of notices relating to revocation of approval as a provider of aged care**

- (1) This item applies in relation to a notice of the following kind if, immediately before the transition time, the notice has not taken effect:
  - (a) a notice (the *decision notice*) given by the Secretary under subsection 10-3(5) of the Aged Care Act that notifies a person of the Secretary's decision (the *revocation decision*) to revoke, under subsection 10-3(1) of that Act, the person's approval as a provider of aged care;
  - (b) a notice (the *limitation notice*) given by the Secretary to that person under paragraph 10-3(7)(a) of that Act;
  - (c) a notice (the *revocation notice*) given by the Secretary to that person under paragraph 10-3(7)(b) of that Act.
- (2) Despite the repeal of section 10-3 of the Aged Care Act by Schedule 1 to this Act:
  - (a) the decision notice continues to have effect, after the transition time, as if it were a notice given by the Commissioner under subsection 63L(1) of the Commission Act; and

**Schedule 4** Transitional, application, saving and other provisions

**Part 2** Approval of providers of aged care

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- (b) the limitation notice continues to have effect, after that time, as if it were a notice given by the Commissioner under subsection 63L(5) of the Commission Act; and
  - (c) the revocation notice continues to have effect, after that time, as if it were a notice given by the Commissioner under subsection 63L(2) of the Commission Act.
- (3) Section 63L of the Commission Act applies, after the transition time, in relation to the revocation decision, as if it were a decision of the Commissioner to revoke, under section 63J of that Act, the person's approval as a provider of aged care.

## **Part 3—Responsibilities of approved providers etc.**

### **Division 1—Transitional etc. provisions relating to the imposition of sanctions on approved providers**

#### **8 Sanctions imposed on approved providers that have not come into effect immediately before transition time etc.**

- (1) This item applies in relation to a sanction imposed on an approved provider under Part 4.4 of the Aged Care Act if:
  - (a) the sanction was imposed before the transition time; and
  - (b) immediately before that time, either of the following apply:
    - (i) the sanction has not come into effect in accordance with the sanction notice given in relation to the sanction;
    - (ii) the sanction period for the sanction specified in the sanction notice given in relation to the sanction has started but not ended.
- (2) Despite the repeal of Part 4.4 of the Aged Care Act by Schedule 2 to this Act:
  - (a) the sanction is taken, after the transition time, to have been imposed under section 63N of the Commission Act; and
  - (b) the sanction notice continues to have effect, after that time, as if it were a notice given under that section; and
  - (c) if the approved provider agreed, before that time, to do one or more things specified in the sanction notice for the purposes of section 66-2 of the Aged Care Act—the agreement continues to have effect, after that time, as if it were an agreement made for the purposes of section 63U of the Commission Act; and
  - (d) if the approved provider agrees, after that time, to do one or more things specified in the sanction notice for the purposes of section 66-2 of the Aged Care Act—the agreement is taken to have been made for the purposes of section 63U of the Commission Act.

## **9 Imposition of sanctions on approved providers still under consideration by Secretary at transition time**

- (1) This item applies if:
  - (a) before the transition time, the Secretary was considering whether to impose a sanction on an approved provider under Part 4.4 of the Aged Care Act; and
  - (b) before that time, the Secretary complied with the requirements of Division 67 of that Act in relation to the imposition of the sanction on the provider; and
  - (c) immediately before that time, the Secretary is still considering whether to impose the sanction on the provider.
- (2) After the transition time, the Commissioner may decide to impose a sanction on the approved provider under section 63N of the Commission Act.
- (3) In deciding whether to impose a sanction on the approved provider under section 63N of the Commission Act, the Commissioner may:
  - (a) consider any relevant thing done before the transition time by, or in relation to, the Secretary under or for the purposes of Part 4.4 of the Aged Care Act; and
  - (b) may disregard Division 3 of Part 7B of the Commission Act if the Commissioner considers it is reasonable to do so in the circumstances.

## **10 Dealing with certain pre-transition notices of non-compliance**

- (1) This item applies if:
    - (a) before the transition time, the Secretary gave a notice under subsection 67-2(1) of the Aged Care Act relating to an approved provider's non-compliance with one or more of the provider's responsibilities under Part 4.1, 4.2 or 4.3 of that Act; and
    - (b) before that time, the approved provider made submissions to the Secretary in accordance with the notice and the Secretary considered that the submissions:
      - (i) proposed appropriate action to remedy the non-compliance; or
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- (ii) set out an acceptable reason for the non-compliance; or
    - (iii) were otherwise satisfactory; and
  - (c) immediately before that time, the Secretary has not given the approved provider a notice under subsection 67-4(1) of that Act in relation to the non-compliance.
- (2) After the transition time:
- (a) the notice is taken, for the purposes of Part 7B of the Commission Act, to be a non-compliance notice within the meaning of that Act; and
  - (b) the Commissioner may decide to give the approved provider a notice under section 63T of that Act in relation to the non-compliance.

## **11 Saving of notices of intention to impose sanctions**

- (1) This item applies in relation to a notice given by the Secretary under subsection 67-3(1) of the Aged Care Act inviting an approved provider to make submissions to the Secretary if:
- (a) the notice was given before the transition time; and
  - (b) immediately before that time, the period for making the submissions has not ended.
- (2) Despite the repeal of Part 4.4 of the Aged Care Act by Schedule 2 to this Act, the notice continues to have effect, after the transition time, as if:
- (a) it were a notice given by the Commissioner under subsection 63S(2) of the Commission Act; and
  - (b) the invitation to make submissions to the Secretary were an invitation to make submissions to the Commissioner.

## **12 Saving of notices to remedy non-compliance**

- (1) This item applies in relation to a notice given by the Secretary to an approved provider under subsection 67-4(1) of the Aged Care Act if:
- (a) the notice was given before the transition time; and
  - (b) immediately before that time, the period for giving the undertaking required by the notice to the Secretary has not ended.

- (2) Despite the repeal of Part 4.4 of the Aged Care Act by Schedule 2 to this Act, the notice continues to have effect, after the transition time, as if:
- (a) it were a notice given by the Commissioner under subsection 63T(2) of the Commission Act; and
  - (b) the requirement to give the required undertaking to the Secretary were a requirement to give the required undertaking to the Commissioner; and
  - (c) if the approved provider gives the required undertaking after the transition time—the undertaking is taken to have been given for the purposes of section 63T of the Commission Act.

### **13 Continued effect of undertaking given by approved provider to remedy non-compliance**

- (1) This item applies in relation to an undertaking given by an approved provider for the purposes of section 67-4 of the Aged Care Act before the transition time.
- (2) Despite the repeal of Part 4.4 of the Aged Care Act by Schedule 2 to this Act, the undertaking continues to have effect, after the transition time, as if it were an undertaking given for the purposes of section 63T of the Commission Act.
- (3) The transition rules may provide that subitem (2) does not apply in relation to a specified undertaking.

### **14 Pending applications for lifting of sanctions imposed on approved providers**

- (1) This item applies in relation to an application made under section 68-4 of the Aged Care Act if:
- (a) the application was made before the transition time; and
  - (b) immediately before that time, the Secretary has not made a decision on the application.
- (2) The application is taken, after the transition time, to have been made to the Commissioner under section 63V of the Commission Act and may be dealt with, or may continue to be dealt with, under Division 4 of Part 7B of that Act.

- (3) If, before the transition time, a thing was done in relation to the application by the Secretary under, or for the purposes of, Division 68 of the Aged Care Act, then the thing has effect, after that time, as if it had been done by the Commissioner under, or for the purposes of, Division 4 of Part 7B of the Commission Act.

### **15 Saving of notices requiring further information in relation to application to lift sanctions**

- (1) This item applies in relation to a notice given by the Secretary under subsection 68-5(1) of the Aged Care Act requiring a person to give information to the Secretary if:
- (a) the notice was given before the transition time; and
  - (b) immediately before that time, the period for giving the information has not ended.
- (2) Despite the repeal of Part 4.4 of the Aged Care Act by Schedule 2 to this Act, the notice continues to have effect, after the transition time, as if:
- (a) it were a notice given by the Commissioner under subsection 63W(1) of the Commission Act; and
  - (b) the requirement to give information to the Secretary were a requirement to give information to the Commissioner.

### **16 Application—Part 7B of the Commission Act**

Part 7B of the Commission Act, as inserted by Schedule 2 to this Act, applies in relation to a failure of an approved provider to comply with an aged care responsibility, whether that failure occurs before, at or after the transition time.

## **Division 2—Application provisions relating to Part 6.4 of the Aged Care Act**

### **17 Application—power to enter premises and exercise search powers in relation to certain applications and grants**

Section 91-1 of the Aged Care Act, as inserted by Schedule 2 to this Act, applies in relation to the following, whether made before, at or after the transition time:

- (a) an application under the Aged Care Act or the Aged Care (TP) Act;
- (b) a grant under Chapter 5 of the Aged Care Act.

### **18 Application—monitoring powers**

- (1) Subsection 92-1(1) of the Aged Care Act, as inserted by Schedule 2 to this Act, applies in relation to the following, whether made before, at or after the transition time:
  - (a) an appraisal under section 25-3 of the Aged Care Act;
  - (b) a reappraisal under sections 27-3 and 27-5 of the Aged Care Act.
- (2) Subsection 92-1(2) of the Aged Care Act, as inserted by Schedule 2 to this Act, applies in relation to information given before, at or after the transition time.

### **19 Application—investigation powers**

Subsection 92-3(1) of the Aged Care Act, as inserted by Schedule 2 to this Act, applies in relation to a contravention of a provision that occurs before, at or after the transition time.

### **20 Application—notices to attend to answer questions etc.**

Subsection 93-1(1) of the Aged Care Act, as inserted by Schedule 2 to this Act, applies in relation to the following, whether made before, at or after the transition time:

- (a) an application under the Aged Care Act or the Aged Care (TP) Act;
- (b) an appraisal under section 25-3 of the Aged Care Act;
- (c) a reappraisal under sections 27-3 and 27-5 of the Aged Care Act;
- (d) a claim for payment of subsidy under Chapter 3 of the Aged Care Act or Chapter 3 of the Aged Care (TP) Act;
- (e) a grant under Chapter 5 of the Aged Care Act.

### **21 Saving of appointment of certain authorised officers**

- (1) This item applies to a person if:
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- (a) immediately before the transition time, the person was appointed under section 90-3 of the Aged Care Act as an authorised officer; and
  - (b) immediately after that time, the person continues to be an APS employee in the Department.
- (2) The person is taken, after that time, to have been appointed under subsection 94-2(1) of the Aged Care Act as an authorised officer for the purposes referred to in that subsection.

### **Division 3—Application etc. provisions relating to Parts 8 and 8A of the Commission Act**

#### **22 Application—monitoring powers**

- (1) Subsection 74B(1) of the Commission Act, as inserted by Schedule 2 to this Act, applies in relation to conduct that occurs before, at or after the transition time.
- (2) Subsection 74B(2) of the Commission Act, as inserted by Schedule 2 to this Act, applies in relation to information given before, at or after the transition time.

#### **23 Application—investigation powers**

Subsection 74D(1) of the Commission Act, as inserted by Schedule 2 to this Act, applies in relation to a contravention of a provision that occurs before, at or after the transition time.

#### **24 Saving of appointment of authorised complaints officers**

- (1) This item applies to a person who was, immediately before the transition time, appointed under subsection 73(1) of the Commission Act as an authorised complaints officer.
- (2) The person is taken, after the transition time, to have been appointed under subsection 75A(1) of the Commission Act as an authorised officer for the purposes referred to in that subsection.
- (3) An identity card issued to the person under subsection 74(1) of the Commission Act before the transition time is taken, after that time, to have been issued under section 35 or 76 of the Regulatory Powers Act.

## **25 Saving of appointment of certain authorised officers**

- (1) This item applies to a person if:
  - (a) immediately before the transition time, the person was appointed under section 90-3 of the Aged Care Act as an authorised officer; and
  - (b) immediately after that time, the person becomes a member of the staff of the Commission.
- (2) The person is taken, after that time, to have been appointed under subsection 75A(1) of the Commission Act as an authorised officer for the purposes referred to in that subsection.

## **26 Saving of identity cards issued to quality assessors**

An identity card issued to a quality assessor under subsection 74(1) of the Commission Act before the transition time is taken, after that time, to have been issued under that subsection, as amended by Schedule 2 to this Act.

## **Division 4—Other matters**

### **27 Application—suspending approved providers from making appraisals and reappraisals**

Paragraph 25-4(1)(a) of the Aged Care Act, as substituted by Schedule 2 to this Act, applies in relation to an appraisal or reappraisal made before, at or after the transition time.

### **28 Transitional—annual report**

Despite the repeal of paragraph 63-2(2)(g) of the Aged Care Act by Schedule 2 to this Act, that paragraph continues to apply, after the transition time, in relation to the report for the year ending on 30 June 2020 as if that repeal had not happened.

## **Part 4—Reconsideration and review of decisions**

### **29 Request for reconsideration of pre-transition decisions relating to approval etc.**

- (1) This item applies in relation to a decision of a kind mentioned in item 1, 3, 54 or 55 of the table in section 85-1 of the Aged Care Act if:
  - (a) the decision was made before the transition time; and
  - (b) immediately before that time, the period (the *reconsideration period*) referred to in subparagraph 85-5(3)(a)(i) of that Act during which a person (the *relevant person*) may make a request for the reconsideration of the decision has not ended.
- (2) Sections 74K and 74L of the Commission Act apply, after the transition time, in relation to the decision as if:
  - (a) the decision were a reviewable decision of the same kind; and
  - (b) the relevant person were the affected person for the reviewable decision; and
  - (c) paragraph 74K(2)(c) of that Act were replaced with the following paragraph:

“(c) be given to the Commissioner before the end of the reconsideration period.”.

### **30 Pending requests for reconsideration of pre-transition decisions relating to approval etc.**

- (1) This item applies in relation to a request (the *pending request*) made under subsection 85-5(1) of the Aged Care Act for the reconsideration of a decision (the *original decision*) of a kind mentioned in item 1, 3, 54 or 55 of the table in section 85-1 of that Act if:
  - (a) the pending request was made before the transition time; and
  - (b) immediately before that time, the Secretary has not made a decision on the pending request.
- (2) The pending request is taken, after the transition time, to be a request made to the Commissioner under section 74K of the Commission Act and may be dealt with, or may continue to be dealt with, under Part 8B of that Act as if:

- (a) the original decision were a reviewable decision of the same kind; and
  - (b) the person who made the request were the affected person for the reviewable decision.
- (3) If, before the transition time, a thing was done by the Secretary in relation to the pending request, then the thing has effect, after that time, as if it had been done by the Commissioner.

**31 Reconsideration of pre-transition decisions relating to approval etc. at the Commissioner's own initiative**

- (1) This item applies if a decision of a kind mentioned in item 1, 3, 54 or 55 of the table in section 85-1 of the Aged Care Act is made before the transition time.
- (2) Section 74M of the Commission Act applies, after the transition time, in relation to the decision as if:
  - (a) the decision were a reviewable decision of the same kind; and
  - (b) the person to whom the decision relates were the affected person for the reviewable decision.

**32 Review by the Administrative Appeals Tribunal of certain pre-transition decisions**

- (1) This item applies to a decision made by the Secretary under subsection 85-4(4) or 85-5(5) of the Aged Care Act if:
    - (a) the decision was made before the transition time; and
    - (b) immediately before that time, both of the following apply:
      - (i) an application for review of the decision by the Administrative Appeals Tribunal has not been made;
      - (ii) the time for a person to make such an application has not ended (including any extensions of that time under section 29 of the *Administrative Appeals Tribunal Act 1975*).
  - (2) Section 74N of the Commission Act applies, after the transition time, in relation to the decision as if it were a reconsideration decision of the Commissioner.
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## **Part 5—Provisions relating to transferred functions**

### **33 Transfer of records**

- (1) This item applies to any records or documents that:
  - (a) relate to a transferred function; and
  - (b) immediately before the transition time, were in the possession of the:
    - (i) the Secretary; or
    - (ii) an APS employee in the Department; or
    - (iii) an authorised officer within the meaning of section 90-3 of the Aged Care Act; or
    - (iv) a delegate or subdelegate of the Secretary.
- (2) The records and documents are to be transferred to the Commissioner after the transition time.

### **34 Protected information**

- (1) This item applies to information that:
  - (a) relates to a transferred function; and
  - (b) immediately before the transition time, was protected information within the meaning of section 86-1 of the Aged Care Act.
- (2) For the purposes of the Commission Act, the information is taken, after the transition time, to be protected information within the meaning of that Act.

### **35 Legal proceedings**

If:

- (a) the Secretary is a party to proceedings in any court or tribunal; and
- (b) the proceedings relate to a transferred function; and
- (c) immediately before the transition time, the proceedings are still pending;

the Commissioner is substituted for the Secretary, from that time, as a party to those proceedings.

## Part 6—Rules

### 36 Rules

- (1) The Minister may, by legislative instrument, make rules prescribing matters:
  - (a) required or permitted by this Schedule to be prescribed by the rules; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Schedule.
- (2) Without limiting subitem (1), the rules may prescribe matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by this Act.
- (3) To avoid doubt, the rules may not do the following:
  - (a) create an offence or civil penalty;
  - (b) provide powers of:
    - (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.
- (4) This Schedule (other than subitem (3)) does not limit the rules that may be made for the purposes of subitems (1) and (2).

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*[Minister's second reading speech made in—  
Senate on 16 October 2019  
House of Representatives on 5 December 2019]*

(199/19)

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