Aged Care Act 1997

No. 112, 1997

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Prepared by the Office of Parliamentary Counsel, Canberra

About this compilation

This compilation

This is a compilation of the *Aged Care Act 1997* that shows the text of the law as amended and in force on 21 February 2025 (the ***compilation date***).

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

Uncommenced amendments

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

Application, saving and transitional provisions for provisions and amendments

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

Editorial changes

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

Modifications

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

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

Contents

An Act relating to aged care, and for other purposes

Chapter 1—Introduction

Division 1—Preliminary matters

1-1 Short title

This Act may be cited as the *Aged Care Act 1997*.

1-2 Commencement

(1) This Division commences on the day on which this Act receives the Royal Assent.

(2) Subject to subsection (3), the provisions of this Act (other than the provisions of this Division) commence on a day or days to be fixed by Proclamation.

(3) If a provision of this Act does not commence under subsection (2) within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

1-3 Identifying defined terms

(1) Many of the terms in this Act are defined in the Dictionary in Schedule 1.

(2) Most defined terms are identified by an asterisk appearing at the start of the term: as in "*aged care service". The footnote that goes with the asterisk contains a signpost to the Dictionary.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(3) An asterisk usually identifies the first occurrence of a term in a subsection, note or definition. Later occurrences of the term in the same subsection, note or definition are not asterisked.

(4) Terms are not asterisked in headings, tables or diagrams.

(5) The following basic terms used throughout the Act are not identified with an asterisk:

Terms that are not identified		
Item	**This term:**	**is defined in:**
1	approved provider	Schedule 1
2	care	Schedule 1
3	home care	section 45-3
4	home care service	Schedule 1
5	flexible care	section 49-3
6	flexible care service	Schedule 1
7	provide	section 96-4
8	residential care	section 41-3
9	residential care service	Schedule 1
10	Secretary	Schedule 1

1-4 Tables of Divisions and Subdivisions do not form part of this Act

Tables of Divisions and tables of Subdivisions do not form part of this Act.

1-5 Application to continuing care recipients

Chapters 3 and 3A of this Act do not apply in relation to a *continuing care recipient.

Note: Subsidies, fees and payments for continuing care recipients are dealt with in the *Aged Care (Transitional Provisions) Act 1997*.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 2—Objects

2-1 The objects of this Act

(1) The objects of this Act are as follows:

(a) to provide for funding of *aged care that takes account of:

(i) the quality of the care; and

(ii) the *type of care and level of care provided; and

(iii) the need to ensure access to care that is affordable by, and appropriate to the needs of, people who require it; and

(iv) appropriate outcomes for recipients of the care; and

(v) accountability of the providers of the care for the funding and for the outcomes for recipients;

(b) to promote a high quality of care and accommodation for the recipients of *aged care services that meets the needs of individuals;

(c) to protect the health and well-being of the recipients of aged care services;

(d) to ensure that aged care services are targeted towards the people with the greatest needs for those services;

(e) to facilitate access to aged care services by those who need them, regardless of race, culture, language, gender, economic circumstance or geographic location;

(f) to provide respite for families, and others, who care for older people;

(g) to encourage diverse, flexible and responsive aged care services that:

(i) are appropriate to meet the needs of the recipients of those services and the carers of those recipients; and

(ii) facilitate the independence of, and choice available to, those recipients and carers;

(h) to help those recipients to enjoy the same rights as all other people in Australia;

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(i) to plan effectively for the delivery of aged care services that:
  (i) promote the targeting of services to areas of the greatest need and people with the greatest need; and
  (ii) avoid duplication of those services; and
  (iii) improve the integration of the planning and delivery of aged care services with the planning and delivery of related health and community services;

(j) to promote ageing in place through the linking of care and support services to the places where older people prefer to live.

(2) In construing the objects, due regard must be had to:
  (a) the limited resources available to support services and programs under this Act; and
  (b) the need to consider equity and merit in accessing those resources.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 3—Overview of this Act

3-1 General

(1) This Act provides for the Commonwealth to give financial support:

(a) through payment of *subsidies for the provision of *aged care; and

(b) through payment of grants for other matters connected with the provision of aged care.

Subsidies are paid under Chapter 3 (but Chapters 2 and 4 are also relevant to subsidies), and grants are paid under Chapter 5.

(2) *Subsidies are also paid under Chapter 3 of the *Aged Care (Transitional Provisions) Act 1997*.

3-2 Preliminary matters relating to subsidies (Chapter 2)

Before the Commonwealth can pay *subsidy to an approved provider of *aged care, a number of approvals and similar decisions may need to have been made under Chapter 2. These may relate to:

(b) the *aged care service in question (for example, for residential care services and flexible care services the requirement that *places have been allocated in respect of the service); or

(c) the recipient of aged care (for example, the requirement that the recipient has been approved as a recipient of the type of aged care that is provided).

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

3-3 Subsidies

A number of different kinds of *subsidy can be paid. They are paid for *aged care that has been provided. Eligibility for a subsidy depends on:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(a) particular approvals and similar decisions having been made under Chapter 2; and

(b) the circumstances in which the care is provided (for example, whether the care is provided in a residential care service that meets its *accreditation requirement).

3-3A Fees and payments

Care recipients may be required to pay for, or contribute to, the costs of their care and accommodation. Fees and payments are dealt with in Chapter 3A of this Act, and in Divisions 57, 57A, 58 and 60 of the *Aged Care (Transitional Provisions) Act 1997*.

3-4 Responsibilities of approved providers (Chapter 4)

Approved providers have certain responsibilities under Chapter 4. These responsibilities relate to:

(a) the quality of care they provide; and

(b) user rights for the people to whom care is provided; and

(c) accountability for the care that is provided, and the basic suitability of their *key personnel.

Failure to meet these responsibilities can lead to the imposition of 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.

3-5 Grants (Chapter 5)

The Commonwealth makes grants under Chapter 5 to contribute to costs associated with:

(a) the establishment or enhancement of *aged care services (for example, *residential care grants); or

(c) support services related to the provision of aged care (for example, *advocacy grants).

The grants are (in most cases) payable under agreements with the recipients of the grants, and may be subject to conditions.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 4—Application of this Act

4-1 Application of this Act

(1) This Act applies in all the States and Territories.

(2) However, this Act does not apply in any external Territory, except Norfolk Island, the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands.

(3) Despite subsection (1), Parts 2.2, 2.5 and 3.1 apply in relation to the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands as if those Territories were part of Western Australia and were not Territories.

Note: This has the effect that references in Parts 2.2, 2.5 and 3.1 to a Territory do not apply to the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands, and that references in those Parts to a State will be relevant to Western Australia as if it included those Territories.

(4) Despite subsection (1), Parts 2.2, 2.5 and 3.1 apply in relation to Norfolk Island as if Norfolk Island were part of New South Wales and were not a Territory.

Note: This has the effect that references in Parts 2.2, 2.5 and 3.1 to a Territory do not apply to Norfolk Island, and that references in those Parts to a State will be relevant to New South Wales as if it included Norfolk Island.

4-2 Binding the Crown

(1) This Act binds the Crown in each of its capacities.

(2) This Act does not make the Crown liable to be prosecuted for an offence.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Chapter 2—Preliminary matters relating to subsidies

Division 5—Introduction

5-1 What this Chapter is about

Before the Commonwealth can pay a *subsidy to an approved provider of *aged care, a number of approvals and similar decisions may need to have been made. These relate to:

- the *aged care service in question—for residential care services and flexible care services, *places must have been allocated in respect of the service (see Part 2.2). In addition, decisions can be made under Part 2.5 allowing places in a residential care service to become *extra service places (enabling higher fees to be charged for those places);

- the recipient of the care—the recipient must (in most cases) be approved in respect of the type of *aged care provided (see Part 2.3). In the case of home care, the recipient must be a *prioritised home care recipient (see Part 2.3A). In the case of residential care or some kinds of flexible care, the recipient can be classified in respect of the level of care that is required (see Parts 2.4 and 2.4A).

Note 1: Not all of these approvals and decisions are needed in respect of each kind of subsidy.

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

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

5-2 Which approvals etc. may be relevant

The following table shows, in respect of each kind of payment under Chapter 3 of this Act or Chapter 3 of the *Aged Care (Transitional Provisions) Act 1997*, which approvals and similar decisions under this Chapter may be relevant.

Which approvals etc. may be relevant

	Approvals or decisions	**Kind of payment**		
		Residential care subsidy	**Home care subsidy**	**Flexible care subsidy**
2	Allocation of places	Yes	No	Yes
3	Approval of care recipients	Yes	Yes	Yes
3A	Prioritisation of home care recipients	No	Yes	No
4	Classification of care recipients	Yes	No	Yes
5	Decisions relating to extra service places	Yes	No	No

Note 1: Classification of care recipients is relevant to *flexible care subsidy only in respect of some kinds of flexible care services.

Note 2: Allocation of funding for grants is dealt with in Chapter 5.

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

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 2.1—Approved providers

Division 6—Introduction

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 deals with the *key personnel of approved providers and sets out when remedial orders may be obtained.

Table of Divisions

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 7—What is the significance of approval as a provider of aged care?

7-1 Pre-conditions to receiving subsidy

Payments of *subsidy cannot be made to a person for providing *aged care unless:

(a) the person is an approved provider; and

(aa) the approval of the person is in effect; and

(b) the approval of the person is in respect of the type of aged care provided, at the time it is provided; and

(c) the approval of the person is in respect of the *aged care service through which the aged care is provided, at the time it is provided.

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

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.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

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

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 9—What obligations arise from being an approved provider?

9-1A Obligation to notify Secretary about home care services

(1) An approved provider must notify the Secretary of the following information in relation to each home care service through which the approved provider proposes to provide home care:

(a) the name and address of the service;

(b) any other information of a kind specified in the Approved Provider Principles for the purposes of this section.

Note: Approved providers have a responsibility under Part 4.3 to comply with this obligation. Failure to comply with a responsibility can result in a sanction being imposed under Part 7B of the *Quality and Safety Commission Act.

(2) The notification must be made before the approved provider first provides home care through the home care service.

(3) The notification must be in the form approved by the Secretary.

(4) If there is a change in any of the information notified under subsection (1), the approved provider must, within 28 days of the change, notify the Secretary of the change.

9-1 Obligation to notify of a change of circumstances that materially affects the suitability of an approved provider

(1) An approved provider must notify the *Quality and Safety Commissioner of a change of circumstances that materially affects the approved provider's suitability to be a provider of *aged care. The notification must occur within 14 days after the change occurs.

Note: Approved providers have a responsibility under Part 4.3 to comply with this obligation. Failure to comply with a responsibility can result in a sanction being imposed under Part 7B of the *Quality and Safety Commission Act.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(2) The notification must be in the form approved by the *Quality and Safety Commissioner.

(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.

(4) An approved provider that is a *corporation commits an offence if the approved provider fails to notify the *Quality and Safety Commissioner of such a change within the 14 day period.

Penalty: 30 penalty units.

(5) Strict liability applies to subsection (4).

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For ***strict liability***, see section 6.1 of the *Criminal Code*.

9-2A Obligation to notify of the occurrence of certain events relating to key personnel of an approved provider

(1) An approved provider must notify the *Quality and Safety Commissioner if any of the following events occurs:

(a) an individual becomes one of the *key personnel of the provider;

(b) an individual ceases to be one of the key personnel of the provider;

(c) the provider becomes aware of a change of circumstances that relates to a *suitability matter in relation to an individual who is one of the key personnel of the provider.

Note: Approved providers have a responsibility under Part 4.3 to comply with this obligation. Failure to comply with a responsibility can result in a sanction being imposed under Part 7B of the *Quality and Safety Commission Act.

(2) The notification must:

(a) be given within 14 days after the event occurs; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(b) be in the form approved by the *Quality and Safety Commissioner; and

(c) if the notification relates to an event of a kind referred to in paragraph (1)(a)—state:

(i) whether the approved provider has considered the *suitability matters in relation to the individual; and

(ii) whether, after considering those matters, the provider is reasonably satisfied that the individual is suitable to be involved in the provision of *aged care; and

(d) if the notification relates to an event of a kind referred to in paragraph (1)(b)—set out the reasons the individual ceased to be one of the *key personnel of the approved provider; and

(e) if the notification relates to an event of a kind referred to in paragraph (1)(c)—set out:

(i) details of the change of circumstances that relates to a suitability matter in relation to the individual; and

(ii) whether the approved provider has considered the suitability matters in relation to the individual; and

(iii) whether, after considering those matters, the approved provider is reasonably satisfied that the individual continues to be suitable to be involved in the provision of aged care; and

(iv) what, if any, action the provider has taken, or proposes to take, in relation to the individual.

(3) A *corporation commits an offence of strict liability if:

(a) the corporation is an approved provider; and

(b) the corporation fails to comply with subsection (1).

Penalty: 30 penalty units.

9-2 Obligation to give information relevant to an approved provider's status etc. when requested

(1) The *Quality and Safety Commissioner may, at any time, request an approved provider to give the Commissioner such information,

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

relevant to the approved provider's suitability to be a provider of *aged care, as is specified in the request. The request must be in writing.

(1A) The *Quality and Safety Commissioner may, at any time, request an approved provider to give the Commissioner such information, relevant to the suitability of an individual who is one of the *key personnel of the provider to be involved in the provision of *aged care, as is specified in the request. The request must be in writing.

(2) The approved provider must comply with a request made under subsection (1) or (1A) within 28 days after the request was made, or within such shorter period as is specified in the notice.

Note: Approved providers have a responsibility under Part 4.3 to comply with this obligation. Failure to comply with a responsibility can result in a sanction being imposed under Part 7B of the *Quality and Safety Commission Act.

(3) An approved provider that is a *corporation commits an offence if it fails to comply with a request made under subsection (1) or (1A) within the period referred to in subsection (2).

Penalty: 30 penalty units.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(3A) Strict liability applies to subsection (3).

(4) A request made under subsection (1) or (1A) must contain a statement setting out the effect of subsections (2) and (3).

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

9-3 Obligation to give information relevant to payments

(1) The Secretary may, at any time, request an approved provider to give to the Secretary such information relating to payments made under this Act or the *Aged Care (Transitional Provisions) Act 1997* as is specified in the request. The request must be in writing.

(2) The approved provider must comply with the request within 28 days after the request was made, or within such shorter period as is specified in the notice.

Note: Approved providers have a responsibility under Part 4.3 to comply with this obligation. Failure to comply with a responsibility can result in a sanction being imposed under Part 7B of the *Quality and Safety Commission Act.

(3) The request must contain a statement setting out the effect of subsection (2).

9-3A Obligation to give information relating to refundable deposits, accommodation bonds, entry contributions etc.

(1) The Secretary or *Quality and Safety Commissioner may, at any time, request a person who is or has been an approved provider to give to the Secretary or Commissioner specified information relating to any of the following:

(a) *refundable deposits or *accommodation bonds charged by the person;

(b) the amount of one or more *refundable deposit balances or *accommodation bond balances at a particular time;

(c) the amount equal to the total of the refundable deposit balances and accommodation bond balances that the person would have had to refund at a specified earlier time if certain assumptions specified in the request were made;

(d) *entry contributions given or loaned under a *formal agreement binding the person;

(e) the amount of one or more *entry contribution balances at a particular time;

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(f) the amount equal to the total of the entry contribution balances that the person would have had to refund at a specified earlier time if certain assumptions specified in the request were made;

(g) *unregulated lump sums paid to the person;

(h) the amount of one or more *unregulated lump sum balances at a particular time.

The request must be in writing.

(2) The person must comply with the request within 28 days after the request was made, or within such shorter period as is specified in the request.

Note: Approved providers have a responsibility under Part 4.3 to comply with this obligation. Failure to comply with a responsibility can result in a sanction being imposed under Part 7B of the *Quality and Safety Commission Act.

(3) A person commits an offence if:

(a) the Secretary or *Quality and Safety Commissioner requests the person to give information under subsection (1); and

(b) the person is required under subsection (2) to comply with the request within a period; and

(c) the person fails to comply with the request within the period; and

(d) the person is a *corporation.

Penalty: 30 penalty units.

(3A) Strict liability applies to subsection (3).

(4) The request must contain a statement setting out the effect of subsections (2) and (3).

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

9-3B Obligation to give information or documents about ability to refund balances

(1) This section applies if the Secretary or *Quality and Safety Commissioner believes, on reasonable grounds, that an approved provider:

(a) has not refunded, or is unable or unlikely to be able to refund, a *refundable deposit balance or an *accommodation bond balance; or

(b) is experiencing financial difficulties; or

(c) has used a *refundable deposit or an *accommodation bond for a use that is not *permitted.

(2) The Secretary or *Quality and Safety Commissioner may request the approved provider to give the Secretary or Commissioner information or documents specified in the request relating to any of the following:

(a) the approved provider's suitability to be a provider of *aged care;

(b) the approved provider's financial situation;

(c) the amount of one or more *refundable deposit balances or *accommodation bond balances at a particular time;

(d) how *refundable deposits or *accommodation bonds have been used by the approved provider;

(da) the use of a refundable deposit or accommodation bond by the approved provider to make a loan;

(e) the approved provider's policies and procedures relating to managing, monitoring and controlling the use of refundable deposits and accommodation bonds;

(f) the roles and responsibilities of *key personnel in relation to managing, monitoring and controlling the use of refundable deposits and accommodation bonds.

The request must be in writing.

(2A) Without limiting paragraph (2)(da), the following kinds of information or documents may be specified in a request relating to

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

the use of a *refundable deposit or *accommodation bond by an approved provider to make a loan:

(a) a copy of the agreement relating to the loan that has been executed, or entered into, by the parties to the agreement;
(b) the amount of the loan;
(c) details of any security in respect of the loan;
(d) details of the term or life of the loan;
(e) details of the rate of interest payable on the loan;
(f) evidence that the rate of interest payable on the loan has been set on a commercial basis;
(g) details of the loan repayments (including the amounts and frequency of those repayments);
(h) details of any review of the loan that must or may be conducted;
(i) details of any other conditions or terms of the loan;
(j) details of the commercial basis of the loan;
(k) evidence of the use of the money loaned;
(l) a copy of the financial statements (however described) of the borrower (including any such statements that have been audited);
(m) any other information or documents relating to the loan.

(3) The Secretary or *Quality and Safety Commissioner may request the approved provider to give the specified information or documents on a periodic basis.

(4) The approved provider must comply with the request:
(a) within 28 days after the request was made, or within such shorter period as is specified in the request; or
(b) if the information or documents are to be given on a periodic basis—before the time or times worked out in accordance with the request.

Note: Approved providers have a responsibility under Part 4.3 to comply with this obligation. Failure to comply with a responsibility can result in a sanction being imposed under Part 7B of the *Quality and Safety Commission Act.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(5) An approved provider commits an offence if:

(a) the Secretary or *Quality and Safety Commissioner requests the approved provider to give information or documents under subsection (2); and

(b) the approved provider is required under subsection (4) to comply with the request within a period or before a particular time; and

(c) the approved provider fails to comply with the request within the period or before the time; and

(d) the approved provider is a *corporation.

Penalty: 30 penalty units.

(5A) Strict liability applies to subsection (5).

(5B) Subsection (5) does not apply if the information or documents requested under subsection (2) are not in the possession, custody or control of the approved provider.

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

(6) The request must contain a statement setting out the effect of subsections (4) and (5).

(7) If the operation of this section would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.

(8) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court of Australia, or the Supreme Court of a State or Territory, for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

9-4 Obligations while approval is suspended

If 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, the obligations under this Division apply to the person as if the person were an approved provider during that period.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 10A—Key personnel of approved providers

10A-1 Key personnel of an approved provider must notify of change of circumstances relating to suitability

(1) If:

(a) an individual is one of the *key personnel of an approved provider; and

(b) the provider is a *corporation; and

(c) the individual becomes aware of a change of circumstances that relates to a *suitability matter in relation to the individual;

the individual must notify the provider of the change.

(2) The notification must:

(a) be given in writing; and

(b) be given within 14 days after the individual becomes aware of the change of circumstances; and

(c) set out the details of the change of circumstances that relates to a *suitability matter in relation to the individual.

(3) An individual commits an offence of strict liability if:

(a) the individual is one of the *key personnel of an approved provider; and

(b) the provider is a *corporation; and

(c) the individual fails to comply with subsection (1).

Penalty: 30 penalty units.

10A-2 Determination relating to suitability of key personnel of an approved provider

Determination relating to suitability of key personnel

(1) If an approved provider is a *corporation, the *Quality and Safety Commissioner may, at any time, determine that an individual who

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

is one of the *key personnel of the provider is not suitable to be involved in the provision of *aged care.

(2) In deciding whether to make the determination under subsection (1), the *Quality and Safety Commissioner must consider the *suitability matters in relation to the individual.

(3) Subsection (2) does not limit the matters the *Quality and Safety Commissioner may consider in deciding whether to make the determination under subsection (1) in relation the individual.

Notice of intention to make determination

(4) Before the *Quality and Safety Commissioner makes the determination in relation to an individual who is one of the *key personnel of the approved provider, the Commissioner must, by written notice, notify the individual and the provider that the Commissioner is considering making such a determination.

(5) The notice must:

(a) set out the reasons why the *Quality and Safety Commissioner is considering making the determination in relation to an individual who is one of the *key personnel of the approved provider; and

(b) invite the individual and 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

(c) inform the individual and the provider that the Commissioner may, after considering any submissions made by them, decide to make the determination.

(6) The *Quality and Safety Commissioner must consider any submissions made by the individual and the approved provider in accordance with the notice.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Notice of determination

(7) If the *Quality and Safety Commissioner decides to make the determination in relation to an individual who is one of the *key personnel of the approved provider, the Commissioner must, within 14 days after making the decision, give the individual and the provider a written notice that:

(a) sets out the decision; and

(b) sets out the reasons for the decision; and

(c) states that the provider must, within a specified period, take specified action to ensure that the individual ceases to be one of the key personnel of the provider; and

(d) sets out the effect of sections 10A-2A and 10A-3.

Note: The approved provider may request the *Quality and Safety Commissioner to reconsider the decision under Part 8B of the *Quality and Safety Commission Act.

10A-2A Offence relating to failure to take action as required by determination

A *corporation commits an offence if:

(a) the corporation is an approved provider; and

(b) the *Quality and Safety Commissioner makes a determination under subsection 10A-2(1) in relation to an individual who is one of the *key personnel of the corporation; and

(c) the corporation fails to take the action specified in the notice of the determination within the period specified in that notice.

Note: Section 4K of the *Crimes Act 1914*, which deals with continuing and multiple offences, applies to this offence.

Penalty: 300 penalty units.

10A-2B Offence relating to failure to comply with responsibility to consider suitability matters relating to key personnel

A *corporation commits an offence if:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(a) the corporation is an approved provider; and
(b) the corporation fails to comply with the responsibility under subparagraph 63-1A(a)(i).

Penalty: 300 penalty units.

10A-3 Remedial orders

Unacceptable key personnel situation

(1) For the purposes of this section, an ***unacceptable key personnel situation*** exists if:
(a) the *Quality and Safety Commissioner makes a determination under subsection 10A-2(1) in relation to an individual who is one of the *key personnel of an approved provider; and
(b) the provider fails to take the action specified in the notice of the determination within the period specified in that notice.

Grant of orders

(2) If an unacceptable key personnel situation exists, the Federal Court may, on application by the Secretary, make such orders as the court considers appropriate for the purpose of ensuring that that situation ceases to exist.

(3) In addition to the Federal Court's power under subsection (2), the court:
(a) has power, for the purpose of securing compliance with any other order made under this section, to make an order directing any person to do or refrain from doing a specified act; and
(b) has power to make an order containing such ancillary or consequential provisions as the court thinks just.

Grant of interim orders

(4) If an application is made to the Federal Court for an order under this section, the court may, before considering the application,

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

grant an interim order directing any person to do or refrain from doing a specified act.

Notice of applications

(5) The Federal Court may, before making an order under this section, direct that notice of the application be given to such persons as it thinks fit or be published in such manner as it thinks fit, or both.

Discharge etc. of orders

(6) The Federal Court may, by order, rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 2.2—Allocation of places

Division 11—Introduction

11-1 What this Part is about

An approved provider can only receive *subsidy for providing residential care or flexible care in respect of which a *place has been allocated. The Commonwealth plans the distribution between *regions of the available places in respect of the types of subsidies. It then invites applications and allocates the places to approved providers.

Table of Divisions

11-2 The Allocation Principles

Allocation of *places is also dealt with in the Allocation Principles. The provisions of this Part indicate when a particular matter is or may be dealt with in these Principles.

Note: The Allocation Principles are made by the Minister under section 96-1.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

11-3 Meaning of *people with special needs*

For the purposes of this Act, the following people are ***people with special needs***:

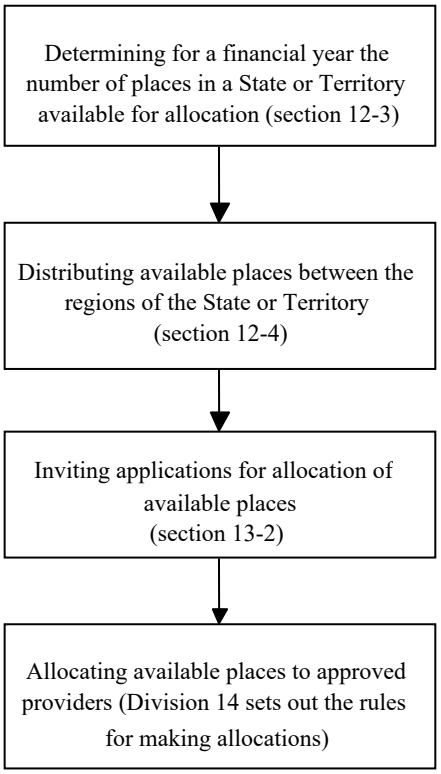
(a) people from Aboriginal and Torres Strait Islander communities;
(b) people from culturally and linguistically diverse backgrounds;
(c) people who live in rural or remote areas;
(d) people who are financially or socially disadvantaged;
(e) veterans;
(f) people who are homeless or at risk of becoming homeless;
(g) care-leavers;
(ga) parents separated from their children by forced adoption or removal;
(h) lesbian, gay, bisexual, transgender and intersex people;
(i) people of a kind (if any) specified in the Allocation Principles.

11-4 Explanation of the allocation process

This diagram sets out the steps that the Commonwealth takes in allocating *places to an approved provider under this Part in respect of *residential care subsidy or *flexible care subsidy.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 11-4



Division 13 sets out the requirements for a valid application

Allocations take effect immediately, or are provisional allocations having effect as provided for in Division 15

Allocated places can be transferred (Division 16), varied (Division 17) or relinquished (Division 18)

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 12—How does the Commonwealth plan its allocations of places?

12-1 The planning process

(1) The Secretary must, for each financial year, carry out the planning process under this Division for *residential care subsidy and *flexible care subsidy.

(2) In carrying out the planning process, the Secretary:
  (a) must have regard to the objectives set out in section 12-2; and
  (b) must comply with the Minister's determination under section 12-3; and
  (c) may comply with sections 12-4 to 12-6.

12-2 Objectives of the planning process

The objectives of the planning process are:
  (a) to provide an open and clear planning process; and
  (b) to identify community needs, particularly in respect of *people with special needs; and
  (c) to allocate *places in a way that best meets the identified needs of the community.

12-3 Minister to determine the number of places available for allocation

(1) The Minister must, in respect of *residential care subsidy and *flexible care subsidy, determine for the financial year how many *places are available for allocation in each State or Territory.

(2) The determination must be published on the Department's website.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

12-4 Distributing available places among regions

(1) The Secretary may, in respect of *residential care subsidy and *flexible care subsidy, distribute for the financial year the *places *available for allocation in a State or Territory among the *regions within the State or Territory.

Note: *Regions are determined under section 12-6.

(2) In distributing the places, the Secretary must comply with any requirements specified in the Allocation Principles.

(3) If, in respect of *residential care subsidy or *flexible care subsidy:

(a) the Secretary does not, under subsection (1), distribute for the financial year the *places *available for allocation in the State or Territory; or

(b) the whole of the State or Territory comprises one *region;

the Secretary is taken to have distributed for that year the places to the whole of the State or Territory as one region.

12-5 Determining proportion of care to be provided to certain groups of people

(1) The Secretary may, in respect of *residential care subsidy and *flexible care subsidy, determine for the *places *available for allocation the proportion of care that must be provided to people of kinds specified in the Allocation Principles.

(2) In determining the proportion, the Secretary must consider any criteria specified in the Allocation Principles.

12-6 Regions

(1) The Secretary may, in respect of *residential care subsidy and *flexible care subsidy, determine for each State and Territory the regions within the State and Territory.

(1A) If the Secretary determines the *regions within Western Australia, he or she must determine that one of those regions consists of the

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Territory of Christmas Island and the Territory of Cocos (Keeling) Islands.

(1B) If the Secretary determines the *regions within New South Wales, he or she must determine that one of those regions consists of Norfolk Island.

(2) If the Secretary does not determine the regions within a State or Territory in respect of *residential care subsidy or *flexible care subsidy, the whole of the State or Territory comprises the region in respect of that type of *subsidy.

(3) The determination must be published on the Department's website.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 13—How do people apply for allocations of places?

13-1 Applications for allocations of places

A person may apply in writing for an allocation of *places. However, the application is valid only if:

(a) it is in response to an invitation to apply for allocation of places published by the Secretary under section 13-2; and

(b) it is made on or before the closing date specified in the invitation; and

(c) it is in a form approved by the Secretary; and

(ca) it is accompanied by the statements and other information required by that form; and

(d) it is accompanied by the application fee (see section 13-3); and

(e) the applicant complies with any requests for information under section 13-4.

Note: These requirements can be waived under section 14-4.

13-2 Invitation to apply

(1) If:

(a) *places are *available for allocation for a financial year; and

(b) those places have been distributed, or taken to have been distributed, to a *region under section 12-4;

the Secretary may, during or before that financial year, invite applications for allocations of those places.

(2) The invitation may relate to more than one type of *subsidy, and to *places in respect of more than one *region.

(3) The invitation must specify the following:

(a) all of the *regions in respect of which allocations will be considered;

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(b) the types of *subsidy in respect of which allocations will be considered;
(c) the number of *places *available for allocation in respect of each type of subsidy;
(d) the closing date after which applications will not be accepted;
(e) the proportion of care (if any), in respect of the places available for allocation, that must be provided to people of kinds specified in the Allocation Principles.

(4) The invitation must be:
(a) published in such newspapers; or
(b) published or notified by such other means;
as the Secretary thinks appropriate.

13-3 Application fee

(1) The Allocation Principles may specify:
(a) the application fee; or
(b) the way the application fee is to be worked out.

(2) The amount of any application fee:
(a) must be reasonably related to the expenses incurred or to be incurred by the Commonwealth in relation to the application; and
(b) must not be such as to amount to taxation.

13-4 Requests for further information

(1) If the Secretary needs further information for a purpose connected with making an allocation under Division 14, the Secretary may give an applicant a notice requesting the applicant to give the further information within 28 days after receiving the notice, or within such shorter period as is specified in the notice.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(2) The application is taken to be withdrawn if the applicant does not give the further information within 28 days, or within the shorter period, as the case requires. However, this does not stop the applicant from reapplying, either:

(a) in response to the invitation in question (on or before the closing date); or

(b) in response to a later invitation to apply for allocation of places.

Note: The period for giving the further information can be extended—see section 96-7.

(3) The Secretary's request must contain a statement setting out the effect of subsection (2).

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 14—How are allocations of places decided?

14-1 Allocation of places

(1) The Secretary may allocate *places, in respect of *residential care subsidy or *flexible care subsidy, to a person to provide *aged care services for a *region.

(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.

(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.

(3) The allocation:

(a) must be the one that the Secretary is satisfied would best meet the needs of the aged care community in the *region (see section 14-2); and

(b) may be made subject to conditions (see sections 14-5 and 14-6).

(4) In order for an allocation to be made to a person:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(a) the person must have made a valid application in respect of the allocation (see Division 13); and
(b) the allocation must comply with the terms of an invitation published under Division 13 (see section 14-3);

except so far as the Secretary waives these requirements under section 14-4.

Note: However, paragraph (3)(a) and subsection (4) will not apply to an allocation of *places in a situation of emergency (see section 14-9).

14-2 Competitive assessment of applications for allocations

In deciding which allocation of *places would best meet the needs of the aged care community in the *region, the Secretary must consider, in relation to each application, the matters set out in the Allocation Principles.

14-3 Compliance with the invitation

The allocation complies with the terms of the invitation if:

(a) *places that are specified in the invitation as being *available for allocation in respect of a particular type of *subsidy have been allocated only in respect of that type of subsidy; and
(b) places that are specified in the invitation as being available for allocation in respect of a particular *region have been allocated only in that region; and
(c) the total number of places that have been allocated does not exceed the number of places specified in the invitation as being available for allocation; and
(d) the Secretary has considered all valid applications made in respect of the allocation, together with any further information given under section 13-4 in relation to those applications; and
(e) the allocation was made after the closing date.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

14-4 Waiver of requirements

(1) The Secretary may waive the requirement under paragraph 14-1(4)(a) that each person who is allocated *places must have made a valid application in respect of the allocation if:

(a) each of the persons made an application in respect of the allocation; and

(b) the Secretary is satisfied that there are exceptional circumstances justifying the waiver.

(2) The Secretary may waive:

(a) the requirement under paragraph 14-1(4)(a) that each person who is allocated *places must have made a valid application in respect of the allocation; and

(b) the requirement under paragraph 14-1(4)(b) that the allocation must comply with the terms of an invitation published under Division 13;

if the places being allocated are places that have been *relinquished under section 18-2 or that were included in an allocation, or a part of an allocation, revoked by a notice given under section 63N of the *Quality and Safety Commission Act.

Note: If, because of this subsection, an allocation does not have to comply with the terms of an invitation published under Division 13, it will not be limited to places that are determined by the Minister under section 12-3 to be available for allocation.

(3) The Secretary may waive:

(a) the requirement under paragraph 14-1(4)(a) that each person who is allocated *places must have made a valid application in respect of the allocation; and

(b) the requirement under paragraph 14-1(4)(b) that the allocation must comply with the terms of an invitation published under Division 13;

if the Secretary is satisfied that there are exceptional circumstances justifying the waiver, and that only places that are *available for allocation are allocated.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

14-5 Conditions relating to particular allocations

(1) The Secretary may make an allocation of *places to a person subject to such conditions as the Secretary specifies in writing.

Note: Approved providers have a responsibility under Part 4.3 to comply with the conditions to which the allocation is subject. Failure to comply with a responsibility can result in a sanction being imposed under Part 7B of the *Quality and Safety Commission Act.

(2) The Secretary may specify which of the conditions (if any) must be met before a determination can be made under section 15-1.

Note: An allocation takes effect when a determination is made under section 15-1. Until an allocation takes effect, it is a *provisional allocation.

(3) It is a condition of every allocation of a *place that:

(a) the place is allocated in respect of a specified location; and

(b) the place is allocated in respect of a particular *aged care service; and

(c) any care provided, in respect of the place, must be provided at that location and through that service.

Lump sums paid by continuing care recipients

(5) If:

(a) a condition imposed on an allocation of *places to a person requires:

(i) the refund by the person to a *continuing care recipient, with the consent of the continuing care recipient, of a *pre-allocation lump sum or part of such a sum; or

(ii) the forgiveness by the person of an obligation (including a contingent obligation) by a continuing care recipient, with the consent of the continuing care recipient, in relation to a pre-allocation lump sum or part of such a sum; and

(b) the continuing care recipient continues, on the day on which the allocation was made, to be provided with *aged care through the residential care service in relation to entry to

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

which the pre-allocation lump sum was paid or became payable;

then the continuing care recipient and the pre-allocation lump sum holder have the same rights, duties and obligations in relation to the charging of an *accommodation bond or an *accommodation charge as the continuing care recipient and the pre-allocation lump sum holder would have under this Act and the *Aged Care (Transitional Provisions) Act 1997* if:

(c) the continuing care recipient had *entered the residential care service or flexible care service on the day on which the allocation was made; and

(d) the pre-allocation lump sum were an accommodation bond paid in respect of aged care provided through another residential care service or flexible care service.

Lump sums paid by care recipients other than continuing care recipients

(5A) If:

(a) a condition imposed on an allocation of *places to a person requires:

(i) the refund by the person to a care recipient (the ***non-continuing care recipient***) who is not a *continuing care recipient, with the consent of the non-continuing care recipient, of a *pre-allocation lump sum or part of such a sum; or

(ii) the forgiveness by the person of an obligation (including a contingent obligation) by a non-continuing care recipient, with the consent of the non-continuing care recipient, in relation to a pre-allocation lump sum or part of such a sum; and

(b) the non-continuing care recipient continues, on the day on which the allocation was made, to be provided with *aged care through the residential care service in relation to entry to which the pre-allocation lump sum was paid or became payable;

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

then the non-continuing care recipient and the pre-allocation lump sum holder have the same rights, duties and obligations in relation to the charging of a *refundable deposit as the non-continuing care recipient and the pre-allocation lump sum holder would have under this Act if:

(c) the non-continuing care recipient had *entered the residential care service or flexible care service on the day on which the allocation was made; and

(d) the pre-allocation lump sum were a refundable deposit paid in respect of aged care provided through another residential care service or flexible care service.

(6) A ***pre-allocation lump sum*** is an amount paid or payable to a person (the ***pre-allocation lump sum holder***) by a care recipient in the following circumstances:

(a) the amount does not accrue daily;

(b) the amount is for the care recipient's *entry to a residential care service or flexible care service conducted by the pre-allocation lump sum holder;

(c) the amount is not a *refundable deposit, an *accommodation bond, an *entry contribution or an *unregulated lump sum.

14-6 Conditions relating to allocations generally

(1) An allocation of *places to a person is also subject to such conditions as are from time to time determined by the Secretary, in writing, in respect of:

(a) allocations of places generally; or

(b) allocations of places of a specified kind that includes the allocation of places in question.

(2) In making a determination under subsection (1), the Secretary must have regard to any matters specified in the Allocation Principles.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(3) Conditions determined under this section apply to allocations that occurred before or after the determination is made, unless the determination specifies otherwise.

Note: Approved providers have a responsibility under Part 4.3 to comply with the conditions to which the allocation is subject. Failure to comply with a responsibility can result in a sanction being imposed under Part 7B of the *Quality and Safety Commission Act.

14-7 Allocation of places to services with extra service status

(1) The Secretary must not approve the allocation of *places to a residential care service that has, or a *distinct part of which has, *extra service status unless subsection (2) or (3) applies to the allocation.

(2) The Secretary may approve the allocation if satisfied that the *places other than the allocated places could, after the allocation, form one or more *distinct parts of the residential care service concerned.

Note: The allocated places would not have *extra service status because of the operation of section 31-3.

(3) The Secretary may approve the allocation if satisfied that:

(a) granting the allocation would be reasonable, having regard to the criteria set out in section 32-4; and

(b) granting the allocation would not result in the maximum proportion of *extra service places under section 32-7, for the State, Territory or region concerned, being exceeded; and

(c) any other requirements set out in the Allocation Principles are satisfied.

Note: These *places would have *extra service status because of the operation of section 31-1. (Section 31-3 would not apply.)

14-8 Notification of allocation

(1) The Secretary must notify each applicant in writing whether or not any *places have been allocated to the applicant.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(2) If *places have been allocated to an applicant, the notice must set out:

(a) the number of places that have been allocated; and

(b) the types of *subsidy in respect of which the places have been allocated; and

(c) the *region for which the places have been allocated; and

(d) if the Secretary determines that the allocation takes effect immediately—a statement of the consequences of the allocation taking effect immediately; and

(e) if the allocation is a *provisional allocation—a statement of the effect of the allocation being a provisional allocation; and

(f) the conditions to which the allocation is subject; and

(g) if the allocation is a provisional allocation—which of those conditions (if any) must be met before the allocation can take effect.

14-9 Allocations in situations of emergency

(1) The Secretary may declare that an allocation of *places to a person is made in a situation of emergency.

(2) Paragraph 14-1(3)(a) and subsection 14-1(4) do not apply to an allocation that is the subject of such a declaration.

Note: The effect of subsection (2) is that the process of inviting applications under Division 13 does not apply, valid applications for the allocation are not required, and there is no competitive assessment of applications.

(3) The Secretary must not make such a declaration unless the Secretary is satisfied that:

(a) a situation of emergency exists that could result in, or has resulted in, *aged care ceasing to be provided to a group of care recipients; and

(b) an allocation of *places under this Division would ensure that the provision of that care did not cease, or would resume; and

(c) there is insufficient time, in making the allocation, to comply with paragraph 14-1(3)(a) and subsection 14-1(4).

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(4) A declaration must specify a period at the end of which the allocation in question is to cease to have effect.

Note: If, because of this section, an allocation does not have to comply with the terms of an invitation published under Division 13, it will not be limited to places that are determined by the Minister under section 12-3 to be available for allocation.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 15—When do allocations of places take effect?

15-1 When allocations take effect

(1) An allocation of *places to a person takes effect when the Secretary determines that the person is in a position to provide care, in respect of those places, for which *subsidy may be paid.

(2) The Secretary may so determine at the same time that the allocation is made. If the Secretary does not do so, the allocation is taken to be a ***provisional allocation***.

Note: *Subsidy cannot be paid in respect of places covered by an allocation that is only a provisional allocation.

(3) If the allocation was made subject to conditions under section 14-5 that must be met before a determination is made, the Secretary must not make the determination unless he or she is satisfied that all of those conditions have been met.

(4) In deciding whether to make the determination, the Secretary must have regard to any matters specified in the Allocation Principles.

15-2 Provisional allocations

A *provisional allocation remains in force until the end of the *provisional allocation period (see section 15-7) unless, before then:

(a) a determination is made under section 15-1 relating to the provisional allocation; or
(b) the provisional allocation is revoked under section 15-4; or
(c) the provisional allocation is surrendered under section 15-6.

15-3 Applications for determinations

(1) The person may, at any time before the end of the *provisional allocation period, apply to the Secretary for a determination under section 15-1.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(2) The application must be in the form approved by the Secretary.

(3) The Secretary must, within 28 days after receiving the application:
   (a) make a determination under section 15-1; or
   (b) reject the application;
   and, within that period, notify the person accordingly.

   Note: Rejections of applications are reviewable under Part 6.1.

(4) Rejection of the application does not prevent the person making a fresh application at a later time during the *provisional allocation period.

15-4 Variation or revocation of provisional allocations

(1) The Secretary may vary or revoke a *provisional allocation if the Secretary is satisfied that a condition to which the provisional allocation is subject under section 14-5 or 14-6 has not been met.

   Note: Variations or revocations of *provisional allocations are reviewable under Part 6.1.

(2) A variation of the *provisional allocation must be a variation of a condition to which the allocation is subject under section 14-5 or 14-6.

(3) Before deciding to vary or revoke the *provisional allocation, the Secretary must notify the person that variation or revocation is being considered. The notice:
   (a) must be in writing; and
   (b) must invite the person to make written submissions to the Secretary, within 28 days after receiving the notice, as to why the provisional allocation should not be varied or revoked; and
   (c) must inform the person that, if no submissions are made within that period, the variation or revocation takes effect on the day after the last day for making submissions.

(4) In deciding whether to vary or revoke the *provisional allocation, the Secretary must consider:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(a) any submissions made within that period; and
(b) any matters specified in the Allocation Principles.

(5) The Secretary must notify, in writing, the person of the decision.

(6) The notice must be given to the person within 28 days after the end of the period for making submissions. If the notice is not given within this period, the Secretary is taken to have decided not to vary or revoke the *provisional allocation.

(7) If the Secretary has decided to vary the *provisional allocation, the notice must include details of the variation.

(8) A variation or revocation has effect:
(a) if no submissions were made under subsection (3)—on the day after the last day for making submissions; or
(b) if such a submission was made—on the day after the person receives a notice under subsection (5).

15-5 Variation of provisional allocations on application

(1) If the allocation is a *provisional allocation, the person may apply to the Secretary for a variation of the provisional allocation.

(2) A variation of the *provisional allocation may be:
(a) a reduction in the number of *places to which the provisional allocation relates; or
(b) a variation of any of the conditions to which the provisional allocation is subject under section 14-5; or
(c) a variation that has the effect of moving *provisionally allocated places to a different *region within the same State or Territory.

(3) The application must:
(a) be in the form approved by the Secretary; and
(b) be made before the end of the *provisional allocation period.

(4) The Secretary must, within 28 days after receiving the application:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(a) make the variation; or
(b) reject the application;

and, within that period, notify the person accordingly.

Note: Rejections of applications are reviewable under Part 6.1.

(5) If the Secretary has decided to vary the *provisional allocation, the notice must include details of the variation.

(6) Rejection of the application does not prevent the person making a fresh application at a later time during the *provisional allocation period.

(7) In deciding whether to vary the *provisional allocation as mentioned in paragraph (2)(a) or (b), the Secretary must have regard to any matters specified in the Allocation Principles.

(8) In deciding whether to vary the *provisional allocation as mentioned in paragraph (2)(c), the Secretary must be satisfied that the variation is justified in the circumstances, having regard to the following:
(a) whether the variation would meet the objectives of the planning process set out in section 12-2;
(b) the financial viability of the *aged care service in respect of which the *places were *provisionally allocated;
(c) if the places were provisionally allocated to meet the needs of a particular group—whether those needs would be met after the variation;
(d) if the places were provisionally allocated to provide a particular type of *aged care—whether that type of aged care would be provided after the variation;
(e) if, after the variation, the places would be provisionally allocated in respect of a different aged care service:
(i) the financial viability of that aged care service; and
(ii) the suitability of the premises used, or proposed to be used, to provide care through that aged care service;
(f) the extent to which the needs of the aged care community in the different *region and the region for which the places were

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

provisionally allocated have changed since the provisional allocation was made;

(g) the extent to which the needs of the aged care community in the different region and the region for which the places were provisionally allocated would be better met by making the variation than by not making the variation;

(h) how the development of the aged care service, in respect of which the places were provisionally allocated, has progressed;

(i) whether the allocation of places would take effect within a shorter period of time and within the existing provisional allocation period, if the variation were to be made;

(j) any other matters set out in the Allocation Principles.

15-5A Variation of region that involves moving provisionally allocated places to a service with extra service status

(1) The Secretary must not vary a *provisional allocation of *places to move places to a different *region as mentioned in paragraph 15-5(2)(c) if:

(a) the variation would result in residential care in respect of the places being provided through a residential care service in the different region; and

(b) that residential care service has, or a *distinct part of that service has, *extra service status;

unless subsection (2) or (3) applies to the variation.

(2) The Secretary may make the variation if the Secretary is satisfied that the *places other than the *provisionally allocated places to which the variation relates could, after the variation, form one or more *distinct parts of the residential care service concerned.

Note: The places to which the variation relates would not have *extra service status because of the operation of section 31-3.

(3) The Secretary may make the variation if the Secretary is satisfied that:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(a) granting the variation would be reasonable, having regard to the criteria set out in section 32-4; and

(b) granting the variation would not result in the maximum proportion of *extra service places under section 32-7, for the State, Territory or region concerned, being exceeded; and

(c) any other requirements set out in the Allocation Principles are satisfied.

Note: These *places would have *extra service status because of the operation of section 31-1. (Section 31-3 would not apply.)

15-6 Surrendering provisional allocations

If the allocation is a *provisional allocation, the person may, at any time before the end of the *provisional allocation period, surrender the allocation by notice in writing to the Secretary.

15-7 Provisional allocation periods

(1) The ***provisional allocation period*** is the period of 4 years after the day on which the allocation is made.

(2) However, the *provisional allocation period:

(a) may be extended; and

(b) if an application under section 15-3 is pending at the end of the 4 years, or the 4 years as so extended—continues until the Secretary makes a determination under section 15-1 or rejects the application.

(3) The Secretary must extend the *provisional allocation period if:

(a) the person applies to the Secretary, in accordance with subsection (4), for an extension; and

(b) one of the following applies:

(i) the applicant has not previously sought an extension and the Secretary is satisfied that the extension is justified in the circumstances;

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(ii) the applicant has been granted an extension once previously and the Secretary is satisfied that the further extension is justified in the circumstances;

(iii) the applicant has been granted an extension more than once previously and the Secretary is satisfied that exceptional circumstances justify the granting of a further extension; and

(d) the Secretary is satisfied that granting the extension meets any requirements specified in the Allocation Principles.

(3A) The Allocation Principles may specify matters to which the Secretary must have regard in considering whether exceptional circumstances justify the granting of a further extension.

(4) The application:

(a) must be in the form approved by the Secretary; and

(b) must be made at least 60 days, or such lesser number of days as the Secretary allows, before what would be the end of the *provisional allocation period if it were not extended.

(5) The Secretary must, within 28 days after receiving an application for an extension:

(a) grant an extension; or

(b) reject the application.

Note: Extending provisional allocation periods and rejections of applications for extensions are reviewable under Part 6.1.

(5A) The Secretary must notify the person of the decision to grant an extension or reject the application by a time that is:

(a) 14 days or more before the end of the *provisional allocation period; and

(b) within 28 days after receiving the application for the extension.

(6) The period of the extension is 12 months. The Secretary must specify the period of the extension in the notice of the granting of the extension.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(7) Despite this section, if the Secretary rejects an application for an extension, the *provisional allocation period ends at the later of:

(a) the end of the day that is 28 days after the person is notified of the decision; or

(b) the time when there is no further reconsideration or review of the decision pending.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 16—How are allocated places transferred from one person to another?

Subdivision 16-A—Transfer of places other than provisionally allocated places

16-1 Application of this Subdivision

This Subdivision applies to an allocated *place, other than a *provisionally allocated place.

16-2 Transfer notice

(1) An approved provider to whom the *place has been allocated under Division 14 may give the Secretary a notice (the ***transfer notice***) relating to the transfer of the place to another person.

(2) The notice must:
  (a) be in a form approved by the Secretary; and
  (b) include the information referred to in subsection (3); and
  (c) be signed by the transferor and the transferee; and
  (d) set out any variation of the conditions to which the allocation is subject under section 14-5, for which approval is being sought as part of the transfer; and
  (e) if, after the transfer, the *place would relate to a different *aged care service—set out the proposals for ensuring that care needs are appropriately met for care recipients who are being provided with care in respect of a place of that kind.

(3) The information to be included in the notice is as follows:
  (a) the transferor's name;
  (b) the number of *places to be transferred;
  (c) the *aged care service to which the places currently relate, and its location;
  (d) the proposed transfer day;

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(e) the transferee's name;

(f) if, after the transfer, the places would relate to a different aged care service—that aged care service, and its location;

(g) whether any of the places are places included in a residential care service, or a *distinct part of a residential care service, that has *extra service status;

(h) such other information as is specified in the Allocation Principles.

(4) The notice must be given:

(a) if the transferee is an approved provider—no later than 60 days, or such other period as the Secretary determines under subsection (5), before the proposed transfer day specified in the notice; or

(b) if the transferee is not an approved provider—no later than 90 days, or such other period as the Secretary determines under subsection (5), before the proposed transfer day specified in the notice.

(5) The Secretary may, at the request of the transferor and the transferee, determine another period under paragraph (4)(a) or (b) if the Secretary is satisfied that it is justified in the circumstances.

(6) In deciding whether to make a determination, and in determining another period, the Secretary must consider any matters set out in the Allocation Principles.

(7) The Secretary must give written notice of his or her decision under subsection (5) to the transferor and the transferee.

(8) If the information included in a transfer notice changes, the notice is taken not to have been given under this section unless the transferor and the transferee give the Secretary written notice of the changes.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

16-3 Consideration of notices

(1) If the Secretary receives a transfer notice, the Secretary must consider whether the Secretary is satisfied of the following:

(a) whether the transfer would meet the objectives of the planning process set out in section 12-2;

(b) if the places were allocated to meet the needs of *people with special needs—whether those needs would continue to be met after the transfer;

(c) the suitability of the transferee to provide the aged care to which the places to be transferred relate;

(d) if, after the transfer, the *places would relate to a different *aged care service:

(i) the financial viability, if the transfer were to occur, of the aged care service in which the places are currently included; and

(ii) the financial viability, if the transfer were to occur, of the aged care service in which the places would be included; and

(iii) the suitability of the premises being used, or proposed to be used, to provide care through that aged care service; and

(iv) the adequacy of the standard of care, accommodation and other services provided, or proposed to be provided, by that aged care service; and

(v) whether the proposals set out in the notice, for ensuring that care needs are appropriately met for care recipients who are being provided with care in respect of those places, are satisfactory;

(e) if the transferee has been a provider of aged care—its satisfactory conduct as such a provider, and its compliance with its responsibilities as such a provider and its obligations arising from the receipt of any payments from the Commonwealth for providing that aged care;

(f) if the transferee has relevant *key personnel in common with a person who is or has been an approved provider—the

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

satisfactory conduct of that person as a provider of aged care, and its compliance with its responsibilities as such a provider and its obligations arising from the receipt of any payments from the Commonwealth for providing that aged care;

(g) any other matters set out in the Allocation Principles.

(2) The reference in paragraphs (1)(e) and (f) to aged care includes a reference to any care for the aged, whether provided before or after the commencement of this subsection, in respect of which any payment was or is payable under a law of the Commonwealth.

(3) For the purposes of paragraph (1)(f), the transferee has ***relevant key personnel in common*** with a person who is or has been an approved provider if:

(a) at the time the person provided *aged care as an approved provider, another person was one of its *key personnel; and

(b) that other person is one of the key personnel of the transferee.

16-4 Notice to resolve

(1) If the Secretary receives a transfer notice and any issues relating to the transfer are of concern to the Secretary, then no more than 28 days after receiving the transfer notice the Secretary may issue the transferor and transferee a notice to resolve.

(2) The notice to resolve must:

(a) be in writing; and

(b) specify the issue of concern to the Secretary; and

(c) specify the person who is to resolve the issue; and

(d) specify the action the Secretary requires the person to take to resolve the issue; and

(e) invite the transferee and transferor to make submissions addressing the matters, in writing, to the Secretary within 28 days after receiving the notice or such shorter period as is specified in the notice; and

(f) state that, if any matters specified in that notice remain of concern to the Secretary after the submissions (if any) have

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

been considered, the Secretary may issue a veto notice under section 16-6.

16-5 Change to proposed transfer day

(1) A proposed transfer day (the ***changing proposed transfer day***) becomes a later day if one of the following occurs:

(a) the Secretary is given a notice under subsection 16-2(8) no more than 28 days before the changing proposed transfer day;

(b) the Secretary issues the transferor and transferee a notice to resolve under section 16-4.

Note: This section may operate multiple times in respect of one transfer.

(2) Subject to subsection (3), the proposed transfer day becomes the 29th day after the changing proposed transfer day.

(3) However, if before the end of the 28th day after the changing proposed transfer day:

(a) the transferor and transferee agree, in writing, to another proposed transfer day that is later than the 29th day after the changing proposed transfer day; and

(b) the Secretary agrees, in writing, to the other proposed transfer day;

the other proposed transfer day becomes the proposed transfer day.

16-6 Veto notice

(1) If the Secretary receives a transfer notice relating to a *place, the Secretary may, at least 7 days before the proposed transfer day, give the transferor and transferee a veto notice rejecting the transfer if:

(a) a notice to resolve has been given in respect of the transfer and issues specified in that notice remain of concern to the Secretary; or

(b) the Secretary is not satisfied of the matters in section 16-3 in relation to the transfer; or

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(c) for cases where the transfer would result in residential care in respect of the place being provided through a residential care service in a different location where that residential care service has, or a *distinct part of that service has, *extra service status—neither subsection 16-7(1) nor (2) applies in relation to the transfer; or

(d) the proposed transfer would result in the place being transferred to another State or Territory; or

(e) circumstances specified in the Allocation Principles exist.

Note: Decisions to give a veto notice are reviewable under Part 6.1.

(2) A veto notice must:

(a) be in writing; and

(b) contain a statement that it is a notice under this section; and

(c) state the reasons for giving the veto notice.

16-7 Transfer of places to service with extra service status

(1) This subsection applies in relation to a transfer if the Secretary is satisfied that the *places other than the places to be transferred could, after the allocation, form one or more distinct parts of the residential care service.

(2) This subsection applies in relation to a transfer if the Secretary is satisfied that:

(a) granting the transfer would be reasonable, having regard to the criteria set out in section 32-4; and

(b) granting the transfer would not result in the maximum proportion of *extra service places under section 32-7, for the State, Territory or region concerned, being exceeded; and

(c) any other requirements set out in the Allocation Principles are satisfied.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

16-8 Transfer day

(1) Subject to this section, a transfer of a *place to which this Subdivision applies from one person to another takes effect on the transfer day.

(2) The transfer day is the day that is:
  (a) the proposed transfer day specified in the transfer notice; or
  (b) if another day is, by operation of this Act, the proposed transfer day—that other day.

(3) The transfer of a *place does not occur if a veto notice has been given rejecting the transfer and the notice is in effect on the transfer day.

(4) The transfer of a *place does not occur if the transferee is not an approved provider on the transfer day.

16-9 Effect of transfer on certain matters

If a transfer of a *place takes effect under this Subdivision on the transfer day:
  (a) the transferee is taken, from the transfer day, to be the person to whom the place is allocated; and
  (b) any entitlement of the transferor to an amount of *subsidy, in respect of the *place being transferred, that is payable but has not been paid passes to the transferee; and
  (c) any responsibilities under Part 4.2 that the transferor had, immediately before that transfer day, in relation to a *refundable deposit balance or *accommodation bond balance connected with the place become responsibilities of the transferee under Part 4.2; and
  (d) the transferee is subject to any obligations to which the transferor was subject, immediately before that day, under a *resident agreement or *home care agreement entered into with a care recipient provided with care in respect of the place; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(e) if, as part of the transfer, the transfer notice sought approval for one or more variations of the conditions to which the allocation is subject under section 14-5—the Secretary is taken to have made the variations of the conditions, or such other conditions as have been agreed to as the result of matters relating to the issue of a notice to resolve.

16-10 Information to be given to transferee

(1) The Secretary may give to the transferee information specified in the Allocation Principles at such times as are specified in those Principles.

(2) The Allocation Principles must not specify information that would, or would be likely to, disclose the identity of any care recipient.

16-11 Transferors to provide transferee with certain records

(1) If the transfer is completed, the transferor must give to the transferee such records, or copies of such records, as are necessary to ensure that the transferee can provide care in respect of the *places being transferred.

(2) These records must include the following:

(a) the assessment and classification records held by the transferor of care recipients receiving care from the *aged care service to which the *places being transferred relate;

(b) the individual care plans of those care recipients;

(c) the medical records, progress notes and other clinical records of those care recipients;

(d) the schedules of fees and charges for those care recipients;

(e) any agreements between those care recipients and the transferor;

(f) the accounts of those care recipients;

(g) where applicable, the prudential requirements for *refundable deposits and accommodation bonds for that aged care service;

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(h) the records specified in the Allocation Principles.

Note: Approved providers have a responsibility under Part 4.3 to comply with this obligation. Failure to comply with a responsibility can result in a sanction being imposed under Part 7B of the *Quality and Safety Commission Act.

Subdivision 16-B—Transfer of provisionally allocated places

16-12 Application of this Subdivision

This Subdivision applies to a *provisionally allocated place.

16-13 Transfer notice

(1) An approved provider to whom the *place has been *provisionally allocated under Division 14 may give the Secretary a notice (the ***transfer notice***) relating to the transfer of the place to another person.

(2) The notice must:
(a) be in a form approved by the Secretary; and
(b) include the information referred to in subsection (3); and
(c) be signed by the transferor and the transferee; and
(d) set out any variation of the conditions to which the *provisional allocation is subject under section 14-5, for which approval is being sought as part of the transfer.

(3) The information to be included in the notice is as follows:
(a) the transferor's name;
(b) the number of *places to be transferred;
(c) the *aged care service to which the places currently relate, and its location;
(d) the proposed transfer day;
(e) the transferee's name;
(f) if, after the transfer, the places would relate to a different aged care service—that aged care service, and its location;

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(g) the day on which, if the transfer were to take place, the transferee would be in a position to provide care in respect of a place of that kind;

(h) whether any of the places are places included in a residential care service, or a *distinct part of a residential care service, that has *extra service status;

(i) evidence of the progress made by the transferor towards being in a position to provide care in respect of the places;

(j) such other information as is specified in the Allocation Principles.

(4) The notice must be given:

(a) if the transferee is an approved provider—no later than 60 days, or such other period as the Secretary determines under subsection (5), before the proposed transfer day specified in the notice; or

(b) if the transferee is not an approved provider—no later than 90 days, or such other period as the Secretary determines under subsection (5), before the proposed transfer day specified in the notice.

(5) The Secretary may, at the request of the transferor and the transferee, determine another period under paragraph (4)(a) or (b) if the Secretary is satisfied that it is justified in the circumstances.

(6) In deciding whether to make a determination, and in determining another period, the Secretary must consider any matters set out in the Allocation Principles.

(7) The Secretary must give written notice of his or her decision under subsection (5) to the transferor and the transferee.

(8) If the information included in a transfer notice changes, the notice is taken not to have been given under this section unless the transferor and the transferee give the Secretary written notice of the changes.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

16-14 Consideration of notices

(1) If the Secretary receives a transfer notice, the Secretary must consider whether the Secretary is satisfied of the following:

(a) whether the transfer would meet the objectives of the planning process set out in section 12-2;

(b) the adequacy of the standard of care, accommodation and other services proposed to be provided by the *aged care service in which the places would be included if the transfer were to occur;

(c) the suitability of the transferee to provide the *aged care to which the places to be transferred relate;

(d) the suitability of the premises proposed to be used to provide care through the aged care service in which the places would be included if the transfer were to occur;

(e) if the places were allocated to meet the needs of *people with special needs—whether those needs would be met once the allocation of the places to be transferred took effect;

(f) if the transferee has been a provider of aged care—its satisfactory conduct as such a provider, and its compliance with its responsibilities as such a provider and its obligations arising from the receipt of any payments from the Commonwealth for providing that aged care;

(g) if the transferee has relevant *key personnel in common with a person who is or has been an approved provider—the satisfactory conduct of that person as a provider of aged care, and its compliance with its responsibilities as such a provider and its obligations arising from the receipt of any payments from the Commonwealth for providing that aged care;

(h) the financial viability, if the transfer were to occur, of the transferee and the aged care service in which the places would be included if the transfer were to occur;

(i) the location in respect of which the place is provisionally allocated will not change as a result of the transfer;

(j) any other matters set out in the Allocation Principles.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(2) The reference in paragraphs (1)(f) and (g) to aged care includes a reference to any care for the aged, whether provided before or after the commencement of this subsection, in respect of which any payment was or is payable under a law of the Commonwealth.

(3) For the purposes of paragraph (1)(g), the transferee has ***relevant key personnel in common*** with a person who is or has been an approved provider if:

(a) at the time the person provided *aged care as an approved provider, another person was one of its *key personnel; and

(b) that other person is one of the key personnel of the transferee.

16-15 Notice to resolve

(1) If the Secretary receives a transfer notice and any issues relating to the transfer are of concern to the Secretary, then no more than 28 days after receiving the transfer notice the Secretary may issue the transferor and transferee a notice to resolve.

(2) The notice to resolve must:

(a) be in writing; and

(b) specify the issue of concern to the Secretary; and

(c) specify the person who is to resolve the issue; and

(d) specify the action the Secretary requires the person to take to resolve the issue; and

(e) invite the transferee and transferor to make submissions addressing the matters, in writing, to the Secretary within 28 days after receiving the notice or such shorter period as is specified in the notice; and

(f) state that, if any matters specified in that notice remain of concern to the Secretary after the submissions (if any) have been considered, the Secretary may issue a veto notice under section 16-17.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

16-16 Change to proposed transfer day

(1) A proposed transfer day (the ***changing proposed transfer day***) becomes a later day if one of the following occurs:

(a) the Secretary is given a notice under subsection 16-13(8) no more than 28 days before the changing proposed transfer day;

(b) the Secretary issues the transferor and transferee a notice to resolve under section 16-15.

Note: This section may operate multiple times in respect of one transfer.

(2) Subject to subsection (3), the proposed transfer day becomes the 29th day after the changing proposed transfer day.

(3) However, if before the end of the 28th day after the changing proposed transfer day:

(a) the transferor and transferee agree, in writing, to another proposed transfer day that is later than the 29th day after the changing proposed transfer day; and

(b) the Secretary agrees, in writing, to the other proposed transfer day;

the other proposed transfer day becomes the proposed transfer day.

16-17 Veto notice

(1) If the Secretary receives a transfer notice relating to a *provisionally allocated place, the Secretary may, at least 7 days before the proposed transfer day, give the transferor and transferee a veto notice rejecting the transfer if:

(a) a notice to resolve has been given in respect of the transfer and issues specified in that notice remain of concern to the Secretary; or

(b) the Secretary is not satisfied of the matters in section 16-14 in relation to the transfer; or

(c) for cases where the transfer would result in residential care in respect of the place being provided through a different residential care service where that residential care service

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

has, or a *distinct part of that service has, *extra service status—neither subsection 16-18(1) nor (2) applies in relation to the transfer; or

(d) the proposed transfer would result in the place being transferred to another State or Territory; or

(e) circumstances specified in the Allocation Principles exist.

Note: Decisions to give a veto notice are reviewable under Part 6.1.

(2) A veto notice must:

(a) be in writing; and

(b) contain a statement that it is a notice under this section; and

(c) state the reasons for giving the veto notice.

16-18 Transfer of places to service with extra service status

(1) This subsection applies in relation to a transfer if the Secretary is satisfied that the provisionally allocated places other than the places to be transferred could, after the allocation, form one or more distinct parts of the residential care service.

(2) This subsection applies in relation to a transfer if the Secretary is satisfied that:

(a) granting the transfer would be reasonable, having regard to the criteria set out in section 32-4; and

(b) granting the transfer would not result in the maximum proportion of *extra service places under section 32-7, for the State, Territory or region concerned, being exceeded; and

(c) any other requirements set out in the Allocation Principles are satisfied.

16-19 Transfer day

(1) Subject to this section, a transfer of a *provisionally allocated place to which this Subdivision applies from one person to another takes effect on the transfer day.

(2) The transfer day is the day that is:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(a) the proposed transfer day specified in the transfer notice; or
(b) if another day is, by operation of this Act, the proposed transfer day—that other day.

(3) The transfer of a *place does not occur if a veto notice has been given rejecting the transfer and the notice is in effect on the transfer day.

(4) The transfer of a *place does not occur if the transferee is not an approved provider on the transfer day.

16-20 Effect of transfer on certain matters

If a transfer of a *provisionally allocated place takes effect under this Subdivision on the transfer day the transferee is taken, from the transfer day, to be the person to whom the place is allocated.

16-21 Information to be given to transferee

The Secretary may give to the transferee information specified in the Allocation Principles at such times as are specified in those Principles.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 17—How are the conditions for allocations of places varied?

17-1 Variation of allocations

(1) The Secretary must approve a variation of the conditions to which the allocation of a *place is subject under section 14-5 if and only if:

(a) the allocation has taken effect under Division 15; and

(b) an application for variation is made under section 17-2; and

(c) the Secretary is satisfied under section 17-4 that the variation is justified in the circumstances; and

(d) the variation would not have the effect of the care to which the place relates being provided in a different State or Territory.

Note: An allocation of a place can also be varied under Division 16 as part of a transfer of the allocation from one person to another.

(2) If the variation is approved, it takes effect on the variation day (see section 17-7).

17-2 Applications for variation of allocations

(1) An approved provider to whom a *place has been allocated under Division 14 may apply in writing to the Secretary to vary the conditions to which the allocation is subject under section 14-5.

(2) The application must:

(a) be in a form approved by the Secretary; and

(b) include such information as is specified in the Allocation Principles.

(4) The application must be made no later than 60 days, or such other period as the Secretary determines under subsection (5), before the proposed variation day.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(5) The Secretary may determine, at the applicant's request, another period under subsection (4) if the Secretary is satisfied that it is justified in the circumstances.

Note: Determinations of periods and refusals to determine periods are reviewable under Part 6.1.

(6) In deciding whether to make a determination, and in determining another period, the Secretary must consider any matters set out in the Allocation Principles.

(7) The Secretary must give written notice of the decision under subsection (5) to the applicant.

(8) If the information that an applicant has included in an application changes, the application is taken not to have been made under this section unless the applicant gives the Secretary written notice of the changes.

17-3 Requests for further information

(1) If the Secretary needs further information to determine the application, the Secretary may give to the applicant a notice requesting the applicant to give the further information within 28 days after receiving the notice.

(2) The application is taken to be withdrawn if the applicant does not give the further information within 28 days.

Note: The period for giving the further information can be extended—see section 96-7.

(3) The notice must contain a statement setting out the effect of subsection (2).

17-4 Consideration of applications

In deciding whether the variation is justified in the circumstances, the Secretary must consider:

(a) whether the variation will meet the objectives of the planning process set out in section 12-2; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(b) the financial viability of the *aged care service to which the allocation being varied relates; and

(c) if the *places have been allocated to meet the needs of a particular group—whether those needs would continue to be met after the variation; and

(d) if the places have been allocated to provide a particular type of *aged care—whether that type of aged care would continue to be provided after the variation; and

(e) if, after the variation, the places would be included in a different aged care service—the financial viability of the aged care service; and

(f) if, after the variation, care provided in respect of the places would be provided at a different location:

(i) the suitability of the premises used, or proposed to be used, to provide care through that aged care service; and

(ii) the proposals for ensuring that care needs are appropriately met for care recipients who are being provided with care in respect of those places; and

(g) any other matters set out in the Allocation Principles.

17-5 Time limit for decisions on applications

The Secretary must, at least 14 days before the proposed variation day:

(a) approve the variation; or

(b) reject the application;

and, within that period, notify the applicant accordingly.

Note: Rejections of applications are reviewable under Part 6.1.

17-6 Notice of decisions

If the variation is approved, the notice must include statements setting out the following matters:

(a) the number of *places to which the variation relates;

(b) details of the variation of the conditions to which the allocation in question is subject;

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(c) if, after the variation, care provided in respect of the places would be provided at a different location:
  (i) the address of that location; and
  (ii) the proposals for ensuring that care needs are appropriately met for care recipients who are being provided with care in respect of those places;
(d) any other matters specified in the Allocation Principles.

17-7 Variation day

(1) The variation day is the proposed variation day specified in the application if the variation is made on or before that day.

(2) If the variation is not made on or before the proposed variation day, the applicant may apply, in writing, to the Secretary to approve a day as the variation day.

(3) The Secretary must, within 28 days after receiving the application:
  (a) approve a day as the variation day; or
  (b) reject the application;
and, within that period, notify the applicant accordingly.

Note: Approvals of days and rejections of applications are reviewable under Part 6.1.

(4) However, the day approved by the Secretary as the variation day must not be earlier than the day on which the variation is made.

17-8 Variation involving relocation of places to service with extra service status

(1) The Secretary must not approve the variation of the conditions to which an allocation of places is subject, if:
  (a) the variation would result in residential care in respect of the *places being provided through a residential care service in a different location; and
  (b) that residential care service has, or a *distinct part of that service has, *extra service status;

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

unless subsection (2) or (3) applies to the variation.

(2) The Secretary may approve the variation if the Secretary is satisfied that the *places other than the places to which the variation relates could, after the variation, form one or more *distinct parts of the residential care service concerned.

Note: The places to which the variation relates would not have *extra service status because of the operation of section 31-3.

(3) The Secretary may approve the variation if the Secretary is satisfied that:

(a) granting the variation would be reasonable, having regard to the criteria set out in section 32-4; and

(b) granting the variation would not result in the maximum proportion of *extra service places under section 32-7, for the State, Territory or region concerned, being exceeded; and

(c) any other requirements set out in the Allocation Principles are satisfied.

Note: These places would have *extra service status because of the operation of section 31-1. (Section 31-3 would not apply.)

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 17A—Revocation of certain conditions for allocations of places

17A-1 Revocation of certain conditions for allocations of places

(1) If:

(a) an allocation of *places to a person is subject to conditions under subsection 14-5(1); and

(b) immediately before the commencement of this section, the effect of such a condition is that *respite care must be provided in respect of those places for a minimum or maximum number of days in a particular period;

the condition is taken to be revoked at the commencement of this section.

(2) Nothing in this section affects the application of Part 7B of the *Quality and Safety Commission Act in relation to an approved provider who failed to comply with a condition of a kind mentioned in paragraph (1)(b) of this section before the commencement of this section.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 18—When do allocations cease to have effect?

18-1 Cessation of allocations

(1) The allocation of a *place that has taken effect under Division 15 ceases to have effect if any of the following happens:
  (a) the place is relinquished (see section 18-2);
  (b) the allocation is revoked under section 18-5 or by a notice given under section 63N of the *Quality and Safety Commission Act;
  (c) the person to whom the place is allocated ceases to be an approved provider.

(2) Without limiting subsection (1), if the allocation of a *place is the subject of a declaration under section 14-9, the allocation ceases to have effect at the end of the period specified, under subsection 14-9(4), in the declaration.

(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.

18-2 Relinquishing places

(1) If an allocation of *places has taken effect under Division 15, the approved provider to whom the places are allocated may *relinquish all or some of the places by notice in writing to the Secretary.

(2) The notice must include the following information:
  (a) the approved provider's name;

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(b) the *aged care service in which the *places to be *relinquished are included, and its location;
(c) the date of the proposed relinquishment of the places;
(d) the number of places to be relinquished;
(e) the approved provider's proposals for ensuring that care needs are appropriately met for those care recipients (if any) who are being provided with care in respect of the places to be relinquished;
(f) the approved provider's proposals for ensuring that the provider meets the provider's responsibilities for any:
(i) *accommodation bond balance; or
(ii) *entry contribution balance; or
(iii) *refundable deposit balance;
held by the provider in respect of the places to be relinquished.

(3) The proposals referred to in paragraph (2)(e) must deal with the matters specified in the Allocation Principles.

(4) An approved provider must not *relinquish a *place that has taken effect under Division 15 without giving a notice of the relinquishment under this section at least 60 days before the proposed date of relinquishment.

Note: Approved providers have a responsibility under Part 4.3 to comply with this obligation. Failure to comply with a responsibility can result in a sanction being imposed under Part 7B of the *Quality and Safety Commission Act.

(5) If an approved provider that is a *corporation fails to comply with subsection (4), the approved provider commits an offence punishable, on conviction, by a fine not exceeding 30 penalty units.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

18-3 Proposals relating to the care needs of care recipients

(1) The Secretary must decide whether any proposals for ensuring that care needs are appropriately met for care recipients who are being provided with care in respect of the *places being *relinquished, set out in the notice under subsection 18-2(1), are satisfactory.

(2) In deciding if the proposals are satisfactory, the Secretary must take into account any matters specified in the Allocation Principles.

(3) The Secretary must give notice to the approved provider, in writing, of the Secretary's decision within 14 days after receiving the notice under subsection 18-2(1).

(4) If the Secretary decides that the proposals are not satisfactory, the Secretary may, in the notice given under subsection (3), request the approved provider to modify the proposals as specified in the notice within the period specified in the notice.

(5) If the approved provider does not, within the period specified in the notice, modify the proposals in accordance with the request, the Secretary may give notice, in writing, to the approved provider:
  (a) rejecting the proposals set out in the notice under subsection 18-2(1); and
  (b) setting out new proposals acceptable to the Secretary for ensuring that care needs are appropriately met for care recipients who are being provided with care in respect of the *places being *relinquished.

18-4 Approved providers' obligations relating to the care needs of care recipients

(1) An approved provider must not *relinquish *places in respect of which care recipients are being provided with care without complying with any proposal, for ensuring that care needs are appropriately met for those care recipients, that was:
  (a) accepted by the Secretary under section 18-3; or

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(b) modified by the approved provider as requested by the Secretary under subsection 18-3(4); or

(c) set out by the Secretary in a notice under subsection 18-3(5).

Note: Approved providers have a responsibility under Part 4.3 to comply with this obligation. Failure to comply with a responsibility can result in a sanction being imposed under Part 7B of the *Quality and Safety Commission Act.

(2) If an approved provider that is a *corporation fails to comply with this section, the approved provider commits an offence punishable, on conviction, by a fine not exceeding 1,000 penalty units.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

18-5 Revocation of unused allocations of places

(1) The Secretary may revoke the allocation of a *place if the approved provider to whom the place is allocated has not, for a continuous period of 12 months, or such other period as is set out in the Allocation Principles:

(a) if the allocation is in respect of residential care subsidy—provided residential care in respect of the place; or

(c) if the allocation is in respect of flexible care subsidy—provided flexible care in respect of the place.

Note: Revocations of allocations are reviewable under Part 6.1.

(2) Before deciding to revoke the allocation, the Secretary must notify the approved provider that revocation is being considered. The notice must be in writing and must:

(a) include the Secretary's reasons for considering the revocation; and

(b) invite the approved provider to make written submissions to the Secretary within 28 days after receiving the notice; and

(c) inform the approved provider that if no submission is made within that period, any revocation will take effect on the day after the last day for making submissions.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(3) In deciding whether to revoke the allocation, the Secretary must consider:
   (a) any submissions given to the Secretary within that period; and
   (b) any matters specified in the Allocation Principles.

(4) The Secretary must notify, in writing, the approved provider of the decision.

(5) The notice must be given to the approved provider within 28 days after the end of the period for making submissions. If the notice is not given within this period, the Secretary is taken to have decided not to revoke the allocation.

(6) A revocation has effect:
   (a) if no submission was made under subsection (2)—on the day after the last day for making submissions; or
   (b) if such a submission was made—7 days after the day on which the notice was given under subsection (4).

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 2.3—Approval of care recipients

Division 19—Introduction

19-1 What this Part is about

A person must be approved under this Part to receive either residential care or home care before an approved provider can be paid *residential care subsidy or *home care subsidy for providing that care. In some cases, approval under this Part to receive flexible care is required before *flexible care subsidy can be paid.

Table of Divisions

19-2 The Approval of Care Recipients Principles

Approval of care recipients is also dealt with in the Approval of Care Recipients Principles. The provisions of this Part indicate when a particular matter is or may be dealt with in these Principles.

Note: The Approval of Care Recipients Principles are made by the Minister under section 96-1.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 20—What is the significance of approval as a care recipient?

20-1 Care recipients must be approved before subsidy can be paid

(1) *Subsidy cannot be paid to an approved provider for providing residential care to a person unless the person is approved under this Part as a recipient of residential care.

(2) *Subsidy cannot be paid to an approved provider for providing home care to a person unless the person is approved under this Part as a recipient of home care.

(3) *Subsidy cannot be paid to an approved provider for providing flexible care unless:

(a) the person is approved under this Part as a recipient of that kind of flexible care; or

(b) the person is included in a class of people who, under the Subsidy Principles made for the purposes of subparagraph 50-1(1)(b)(ii), do not need approval in respect of flexible care.

(4) For the purposes of this Act, if a particular kind of flexible care also constitutes residential care or home care, a person who is approved under this Part as a recipient of residential care or home care (as the case requires) is also taken to be approved under this Part as a recipient of that kind of flexible care.

20-2 Effect of limitation of approvals

If a person's approval as a recipient of a type of *aged care is limited under section 22-2, payments cannot be made under Chapter 3 of this Act or Chapter 3 of the *Aged Care (Transitional Provisions) Act 1997* to an approved provider for providing care to the person unless the care was provided in accordance with the limitation.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 21—Who is eligible for approval as a care recipient?

21-1 Eligibility for approval

A person is eligible to be approved under this Part if the person is eligible to receive one or more of the following:

(a) residential care (see section 21-2);
(b) home care (see section 21-3);
(c) flexible care (see section 21-4).

21-2 Eligibility to receive residential care

A person is eligible to receive ***residential care*** if:

(a) the person has physical, medical, social or psychological needs that require the provision of care; and
(b) those needs can be met appropriately through residential care services; and
(c) the person meets the criteria (if any) specified in the Approval of Care Recipients Principles as the criteria that a person must meet in order to be eligible to be approved as a recipient of residential care.

21-3 Eligibility to receive home care

A person is eligible to receive ***home care*** if:

(a) the person has physical, medical, social or psychological needs that require the provision of care; and
(b) those needs can be met appropriately through home care services; and
(c) the person meets the criteria (if any) specified in the Approval of Care Recipients Principles as the criteria that a person must meet in order to be eligible to be approved as a recipient of home care.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

21-4 Eligibility to receive flexible care

A person is eligible to receive ***flexible care*** if:

(a) the person has physical, medical, social or psychological needs that require the provision of care; and

(b) those needs can be met appropriately through flexible care services; and

(c) the person meets the criteria (if any) specified in the Approval of Care Recipients Principles as the criteria that a person must meet in order to be eligible to be approved as a recipient of flexible care.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 22—How does a person become approved as a care recipient?

22-1 Approval as a care recipient

(1) A person can be approved as a recipient of one or more of the following:
  (a) residential care;
  (b) home care;
  (c) flexible care.

(2) The Secretary must approve a person as a recipient of one or more of those types of *aged care if:
  (a) an application is made under section 22-3; and
  (b) the Secretary is satisfied that the person is eligible to receive that type of aged care (see Division 21).

Note: Rejections of applications are reviewable under Part 6.1.

22-2 Limitation of approvals

(1) The Secretary may limit an approval to one or more of the following:
  (a) care provided by an *aged care service of a particular kind;
  (b) care provided during a specified period starting on the day after the approval was given;
  (c) the provision of *respite care for the period specified in the limitation;
  (d) any other matter or circumstance specified in the Approval of Care Recipients Principles.

The Secretary is taken to have limited an approval to the provision of care other than *respite care, unless the approval expressly covers the provision of respite care.

Note: Limitations of approvals are reviewable under Part 6.1.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(2) A period specified under paragraph (1)(b) must not exceed the period (if any) specified in the Approval of Care Recipients Principles.

(3) The Secretary may limit the approval to one or more levels of care.

Note: Limitations of approvals to one or more levels of care are reviewable under Part 6.1.

(4) The Secretary may, at any time, vary any limitation under this section of an approval, including any limitation varied under this subsection.

Note: Variations of limitations are reviewable under Part 6.1.

(5) Any limitation of an approval under this section, including any limitation as varied under subsection (4), must be consistent with the care needs of the person to whom the approval relates.

22-2A Priority for home care services

(1) If the Secretary approves a person as a recipient of home care, the Secretary must determine the person's priority for home care services.

Note: The determination is reviewable under Part 6.1.

(2) The Secretary may, at any time, vary a person's priority for home care services determined under subsection (1), including any priority for home care services varied under this subsection.

Note: The variation is reviewable under Part 6.1.

(3) Any determination of a person's priority for home care services under this section, including any determination as varied under subsection (2), must be consistent with the care needs of the person.

22-3 Applications for approval

(1) A person may apply in writing to the Secretary for the person to be approved as a recipient of one or more types of *aged care.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(2) However, the fact that the application is for approval of a person as a recipient of one or more types of *aged care does not stop the Secretary from approving the person as a recipient of one or more other types of aged care.

(3) The application must be in a form approved by the Secretary. It may be made on the person's behalf by another person.

22-4 Assessments of care needs

(1) Before deciding whether to approve a person under this Part, the Secretary must ensure the care needs of the person have been assessed.

(2) Subject to subsection (2A), the Secretary may limit the assessment to assessing the person in relation to:

(a) the person's eligibility to receive one or more specified types of *aged care; or

(b) the person's eligibility to receive a specified level or levels of care.

(2A) If the person has applied for approval as a recipient of home care, the assessment must include an assessment of the person's priority for home care services.

(3) However, the Secretary may make the decision without the person's care needs being assessed if the Secretary is satisfied that there are exceptional circumstances that justify making the decision without an assessment.

(4) A person to whom the Secretary's function of deciding whether to approve the person is delegated may be the same person who assessed the person.

22-5 Date of effect of approval

(1) An approval takes effect on the day on which the Secretary approves the person as a care recipient.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(2) However, an approval of a person who is provided with care before being approved as a recipient of that type of *aged care is taken to have had effect from the day on which the care started if:

(a) the application for approval is made within 5 business days (or that period as extended under subsection (3)) after the day on which the care started; and

(b) the Secretary is satisfied, in accordance with the Approval of Care Recipients Principles, that the person urgently needed the care when it started, and that it was not practicable to apply for approval beforehand.

Note: Decisions about when a person urgently needed care are reviewable under Part 6.1.

(3) A person may apply in writing to the Secretary for an extension of the period referred to in subsection (2). The Secretary must, by written notice given to the person:

(a) grant an extension of a duration determined by the Secretary; or

(b) reject the application.

Note: Determinations of periods and rejections of applications are reviewable under Part 6.1.

22-6 Notification of decisions

(1) The Secretary must notify, in writing, the person who applied for approval whether that person, or the person on whose behalf the application was made, is approved as a recipient of one or more specified types of *aged care.

(2) If the person is approved, the notice must include statements setting out the following matters:

(a) the day from which the approval takes effect (see section 22-5);

(b) any limitations on the approval under subsection 22-2(1);

(c) whether the approval is limited to a level or levels of care (see subsection 22-2(3));

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(ca) if the person is approved as a recipient of home care—the person's priority for home care services (see section 22-2A);
(d) when the approval will expire (see section 23-2);
(e) when the approval will lapse (see section 23-3);
(f) the circumstances in which the approval may be revoked (see section 23-4).

(3) The Secretary must notify, in writing, a person who is already approved as a recipient of one or more types of *aged care if the Secretary:
(a) limits the person's approval under subsection 22-2(1) or (3); or
(b) varies a limitation on the person's approval under subsection 22-2(4); or
(c) varies the person's priority for home care services under subsection 22-2A(2).

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 23—When does an approval cease to have effect?

23-1 Expiration, lapse or revocation of approvals

An approval as a recipient of residential care, home care or flexible care ceases to have effect if any of the following happens:

(a) the approval expires under section 23-2;

(b) in the case of flexible care—the approval lapses under section 23-3;

(c) the approval is revoked under section 23-4.

23-2 Expiration of time limited approvals

If a person's approval is limited to a specified period under paragraph 22-2(1)(b), the approval expires when that period ends.

23-3 Circumstances in which approval for flexible care lapses

Care not received within a certain time

(1) A person's approval as a recipient of flexible care lapses if the person is not provided with the care within:

(a) the entry period specified in the Approval of Care Recipients Principles; or

(b) if no such period is specified—the period of 12 months starting on the day after the approval was given.

(2) Subsection (1) does not apply if the care is specified for the purposes of this subsection in the Approval of Care Recipients Principles.

Person ceases to be provided with care in respect of which approved

(3) A person's approval as a recipient of flexible care lapses if the person ceases, in the circumstances specified in the Approval of

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Care Recipients Principles, to be provided with the care in respect of which he or she is approved.

23-4 Revocation of approvals

(1) The Secretary may revoke a person's approval if, after ensuring that the person's care needs have been assessed, the Secretary is satisfied that the person has ceased to be eligible to receive a type of *aged care in respect of which he or she is approved.

Note 1: Revocations of approval are reviewable under Part 6.1.

Note 2: For eligibility to receive types of *aged care, see Division 21.

(2) In deciding whether to revoke the person's approval, the Secretary must consider the availability of such alternative care arrangements as the person may need if the care currently being provided to the person ceases.

(3) Before deciding to revoke the approval, the Secretary must notify the person, and the approved provider (if any) providing care to the person, that revocation is being considered. The notice must be in writing and must:

(a) include the Secretary's reasons for considering the revocation; and

(b) invite the person and the approved provider (if any) to make submissions, in writing, to the Secretary within 28 days after receiving the notice; and

(c) inform them that if no submissions are made within that period, any revocation will take effect on the day after the last day for making submissions.

(4) In deciding whether to revoke the approval, the Secretary must consider any submissions given to the Secretary within that period.

(5) The Secretary must notify, in writing, the person and the approved provider (if any) of the decision.

(6) The notice must be given to the person and the approved provider (if any) within 28 days after the end of the period for making

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

submissions. If the notice is not given within this period, the Secretary is taken to have decided not to revoke the approval.

(7) A revocation has effect:

(a) if no submission was made under subsection (3)—on the day after the last day for making submissions; or

(b) if such a submission was made, and the person and the approved provider (if any) received notice under subsection (5) on the same day—the day after that day; or

(c) if such a submission was made, and they received the notice on different days—the day after the later of those days.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 2.3A—Prioritisation of home care recipients

Division 23A—Introduction

23A-1 What this Part is about

A person must be determined to be a *prioritised home care recipient before an approved provider can be paid *home care subsidy for providing home care to the person.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 23B—Prioritised home care recipients

23B-1 Determination that a person is a prioritised home care recipient

(1) The Secretary may, by written notice given to a person who is approved under Part 2.3 as a recipient of home care, determine:
  (a) that the person is a *prioritised home care recipient; and
  (b) the person's level of care as a prioritised home care recipient.

Note: The determined level of care may affect any amount of *home care subsidy payable in respect of the person: see paragraph 48-2(3)(a).

(2) If the approval of the person as a recipient of home care is limited under subsection 22-2(3) to one or more levels of care, the level of care determined under paragraph (1)(b) of this section may be different from, but must not be higher than, the highest level of care in relation to which the approval is limited under subsection 22-2(3).

(3) The determination takes effect on the day the determination is made.

(4) In deciding whether to make a determination under subsection (1) in relation to a person, the Secretary must consider the following:
  (a) the period of time since:
    (i) the day the person was approved under Part 2.3 as a recipient of home care; or
    (ii) if the Prioritised Home Care Recipients Principles specify a later day—that day;
  (b) the person's priority for home care services determined under section 22-2A;
  (c) any other matters specified in the Prioritised Home Care Recipients Principles.

(5) In deciding whether to make a determination under subsection (1) in relation to a person, the Secretary may also consider whether

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

there are exceptional circumstances that justify making the determination.

(6) A determination under subsection (1) not a legislative instrument.

23B-2 Variation of level of care in relation to which a person is a prioritised home care recipient

(1) The Secretary may, by written notice given to a person who is a *prioritised home care recipient, vary the determination made under subsection 23B-1(1) in relation to the person to increase the person's level of care as a prioritised home care recipient.

(2) If the approval of the person as a recipient of home care is limited under subsection 22-2(3) to one or more levels of care, the level of care as varied under subsection (1) of this section may be different from, but must not be higher than, the highest level of care in relation to which the approval is limited under subsection 22-2(3).

(3) The variation takes effect on the day the variation is made.

(4) Before deciding to vary a determination under subsection (1), the Secretary must consider the following:

(a) the period of time since:

(i) the day the person was approved under Part 2.3 as a recipient of home care; or

(ii) if the Prioritised Home Care Recipients Principles specify a later day—that day;

(b) the person's priority for home care services determined under section 22-2A;

(c) any other matters specified in the Prioritised Home Care Recipients Principles.

(5) Before deciding to vary a determination under subsection (1), the Secretary may also consider whether there are exceptional circumstances that justify varying the determination.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

23B-3 Cessation of determinations

A determination that a person is a *prioritised home care recipient ceases to have effect if:

(a) the person dies; or

(b) the person's approval as a recipient of home care ceases to have effect; or

(c) the person is not provided with home care within the period specified in the Prioritised Home Care Recipients Principles; or

(d) the person ceases, in the circumstances specified in the Prioritised Home Care Recipients Principles, to be provided with home care.

23B-4 Use of computer programs to make decisions

(1) The Secretary may arrange for the use, under the Secretary's control, of computer programs for making decisions on the making or varying of determinations under this Division.

(2) A decision made by the operation of a computer program under an arrangement made under subsection (1) is taken to be a decision made by the Secretary.

(3) The Secretary may substitute a decision for a decision (the ***initial decision***) made by the operation of a computer program under an arrangement under subsection (1) if the Secretary is satisfied that the initial decision is incorrect.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 2.4—Classification of care recipients before the transition day

Division 24—Introduction

24-1 What this Part is about

Care recipients approved under Part 2.3 for residential care, or for some kinds of flexible care, are classified according to the level of care they need. The classifications may affect the amounts of *residential care subsidy or *flexible care subsidy payable to approved providers for providing care on a day before the *transition day.

Note: Care recipients who are approved under Part 2.3 for home care only are not classified under this Part.

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24-2 The Classification Principles

The classification of care recipients is also dealt with in the Classification Principles. The provisions of this Part indicate when a particular matter is or may be dealt with in these Principles.

Note: The Classification Principles are made by the Minister under section 96-1.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 25—How are care recipients classified?

25-1 Classification of care recipients

(1) If the Secretary receives an appraisal under section 25-3 in respect of:

(a) a care recipient who is approved under Part 2.3 for residential care; or

(b) a care recipient who is approved under Part 2.3 for flexible care and whose flexible care is of a kind specified in the Classification Principles;

the Secretary must classify the care recipient according to the level of care the care recipient needs, relative to the needs of other care recipients.

(1A) However, the Secretary is not required to classify the care recipient if the classification would take effect, or would be taken to have had effect, from or on a day that is on or after the *transition day.

(2) The classification must specify the appropriate *classification level for the care recipient (see section 25-2). The Classification Principles may specify methods or procedures that the Secretary must follow in determining the appropriate classification level for the care recipient.

(3) In classifying the care recipient, the Secretary:

(a) must take into account the appraisal made in respect of the care recipient under section 25-3; and

(c) must take into account any other matters specified in the Classification Principles.

(3A) Without limiting paragraph (3)(c), the Classification Principles may require the Secretary to take into account (including as part of a method or procedure specified for the purposes of subsection (2)) specified matters relating to care provided, or to be provided, to the care recipient, including:

(a) the manner in which the care was, is or is to be provided; or

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(b) the qualifications of any person involved in providing the care.

(4) If there is no classification of the care recipient, the care recipient is taken to be classified at the *lowest applicable classification level under the Classification Principles (see subsection 25-2(3)).

(5) The Classification Principles may exclude a class of care recipients from classification under this Part. A care recipient who is in such a class cannot be classified under this Part for the period specified in the Classification Principles in relation to that class.

25-2 Classification levels

(1) The Classification Principles may set out the *classification levels for care recipients being provided with residential care or flexible care.

(2) The Classification Principles may provide for any of the following:
(a) for only some of the *classification levels to be available when care is provided as *respite care;
(b) for different classification levels to apply when residential care is provided as respite care;
(c) for different classification levels to apply in respect of flexible care.

(3) The Classification Principles may specify the *lowest applicable classification level. They may provide that a different level is the lowest applicable classification level when care is provided as *respite care.

(4) The Classification Principles may specify the criteria, in respect of each *classification level, for determining which level applies to a care recipient.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

25-3 Appraisals of the level of care needed

(1) An appraisal of the level of care needed by a care recipient, relative to the needs of other care recipients, must be made by:

(a) the approved provider that is providing care to the care recipient, or a person acting on the approved provider's behalf; or

(b) if a person has been authorised under section 25-5 to make those appraisals—that person.

However, this subsection does not apply if the care recipient is being provided with care as *respite care.

(1A) However, the appraisal must not be made if the classification of the care recipient that would be made under subsection 25-1(1) would take effect, or would be taken to have had effect, from or on a day that is on or after the *transition day.

(2) The appraisal:

(a) must not be made during the period of 7 days starting on the day on which the approved provider began providing care to the care recipient; and

(b) must not be given to the Secretary during the period of 28 days starting on the day on which the approved provider began providing care to the care recipient.

(2A) However, if the Classification Principles specify:

(a) circumstances in which subsection (2) does not apply in relation to an appraisal; and

(b) an alternative period during which the appraisal may be made in those circumstances;

the times when the appraisal may be made and given to the Secretary are to be determined in accordance with the Classification Principles.

(3) The appraisal must be in a form approved by the Secretary, and must be made in accordance with the procedures (if any) specified in the Classification Principles.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(3A) The Secretary may approve forms which must be used in the course of making an appraisal.

(4) If a care recipient is being, or is to be, provided with care as *respite care, an assessment of the care recipient's care needs made under section 22-4 is taken:

(a) to be an appraisal of the level of care needed by the care recipient; and

(b) to have been received by the Secretary under subsection 25-1(1) as such an appraisal.

(5) However, subsection (4) does not apply to the assessment if the classification of the care recipient that would be made under subsection 25-1(1) would take effect, or would be taken to have had effect, from or on a day that is on or after the *transition day.

25-4 Suspending approved providers from making appraisals and reappraisals

(1) The Secretary may suspend an approved provider from making appraisals under section 25-3 and reappraisals under section 27-4 at one or more *aged care services operated by the approved provider if:

(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.

Note 1: Suspensions of approved providers from making assessments are reviewable under Part 6.1.

Note 2: See also section 27-3 (reappraisal required by Secretary) and Division 29A (civil penalty for incorrect classifications).

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(3) Before deciding to suspend an approved provider from making appraisals and reappraisals, the Secretary must notify the approved provider that suspension is being considered. The notice must be in writing and must:
  (a) specify the period proposed for the suspension; and
  (b) invite the approved provider to make submissions, in writing, to the Secretary within 28 days after receiving the notice; and
  (c) inform the approved provider that if no submissions are made within that period, any suspension will take effect on the day after the last day for making submissions.

(4) In making the decision whether to suspend the approved provider, the Secretary must consider any submissions given to the Secretary within that period.

(5) The Secretary must notify the approved provider, in writing, of the decision:
  (a) not to suspend the approved provider from making appraisals and reappraisals; or
  (b) to suspend the approved provider from making appraisals and reappraisals for the period specified in the notice.

(6) The notice must be given to the approved provider within 28 days after the end of the period for making submissions. If the notice is not given within this period, the Secretary is taken to have decided not to suspend the approved provider.

(6A) The Secretary may specify in the notice that the suspension will not take effect if, within the period specified in the notice, the approved provider enters into an agreement with the Secretary (see section 25-4A).

(6B) If the Secretary does so:
  (a) the suspension does not take effect if the approved provider enters into the agreement within the period specified in the notice (unless the Secretary later decides under subsection 25-4B(1) that it is to take effect); and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(b) the suspension takes effect on the day after the last day of the period specified in the notice, if the approved provider does not enter into the agreement within that period.

(7) If the Secretary does not do so, the suspension takes effect:
(a) if no submission was made under subsection (3)—on the day after the last day for making submissions; or
(b) if such a submission was made—7 days after the day on which the notice under subsection (5) was given.

25-4A Stay of suspension agreements

(1) An agreement entered into for the purposes of subsection 25-4(6A) may require the approved provider to do either or both of the following:
(a) provide, at its expense, such training as is specified in the agreement for its officers, employees and agents within the period specified in the agreement;
(b) appoint an adviser to assist the approved provider to conduct, in a proper manner, appraisals and reappraisals of the care needs of care recipients.

(3) If the agreement requires the approved provider to appoint an adviser, the approved provider must appoint the adviser within the period specified in the agreement.

(4) The Classification Principles may exclude a class of persons from being appointed as an adviser.

(5) The Classification Principles may specify matters that the Secretary must take into account in specifying, in the agreement, the period within which an approved provider that is required to appoint an adviser must appoint an adviser.

25-4B Stayed suspension may take effect

(1) The Secretary may decide that the suspension is to take effect, if the Secretary is satisfied that:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(a) if the agreement requires the approved provider to appoint an adviser—the approved provider has not complied with subsection 25-4A(3); or

(b) the approved provider has not complied with the agreement; or

(c) despite having complied with the agreement, the approved provider has continued not to conduct in a proper manner appraisals and reappraisals of the care needs of care recipients provided with care through the aged care service.

(2) If the Secretary decides that the suspension is to take effect, the Secretary must notify the approved provider, in writing, of the decision.

(3) The suspension takes effect 7 days after the day on which that notice is given and has effect from that day for the whole of the suspension period specified in the notice under subsection 25-4(5).

(4) The Secretary must not give an approved provider a notice under subsection (2) after the last day on which the suspension would have had effect had the approved provider not entered into the agreement.

25-4C Applications for lifting of suspension

(1) The Secretary may lift the suspension of an approved provider from making appraisals and reappraisals if the approved provider applies, in writing, to the Secretary to do so.

(2) Subsection (1) applies whether or not the suspension has taken effect.

(3) The application must:

(a) be in a form approved by the Secretary; and

(b) meet any requirements specified in the Classification Principles.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(4) In deciding whether it is appropriate for the suspension to be lifted, the Secretary must have regard to any matters specified in the Classification Principles.

25-4D Requests for further information

(1) If the Secretary needs further information to decide the application, the Secretary may give the applicant a written notice requiring the applicant to give the further information within 28 days after receiving the notice, or within such shorter period as is specified in the notice.

(2) The application is taken to be withdrawn if the applicant does not give the further information within the 28 days, or within the shorter period. However, this does not stop the applicant from reapplying.

Note: The period for giving the further information can be extended—see section 96-7.

(3) The notice must contain a statement setting out the effect of subsection (2).

25-4E Notification of Secretary's decision

(1) The Secretary must notify the approved provider, in writing, of the Secretary's decision whether to lift the suspension. The notice must be given:
  (a) within 28 days after receiving the application; or
  (b) if the Secretary has requested further information under section 25-4D—within 28 days after receiving the information.

(2) If the Secretary decides that the suspension is to be lifted, the notice must:
  (a) inform the approved provider when the suspension will cease to apply; and
  (b) set out any other matters specified in the Classification Principles.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

25-5 Authorisation of another person to make appraisals or reappraisals

(1) If the Secretary suspends an approved provider from making appraisals and reappraisals, the Secretary may, in writing, authorise another person to make appraisals or reappraisals of care recipients to whom the approved provider provides care.

(2) The Secretary must inform the approved provider, in writing, of the name of the person who has been authorised to make appraisals or reappraisals of care recipients to whom the approved provider provides care.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 26—When do classifications take effect?

26-1 Appraisals received within the appropriate period—care other than respite care

A classification of a care recipient under this Part (other than a classification in relation to care provided as *respite care) is taken to have had effect from the day on which the approved provider began providing care to the care recipient, if the appraisal by that approved provider is received by the Secretary:

(a) within the period specified in the Classification Principles; or

(b) if no such period is so specified—within 2 months after the day on which provision of the care to the care recipient began.

26-2 Appraisals not received within the appropriate period—care other than respite care

(1) A classification of a care recipient under this Part (other than a classification in relation to care provided as *respite care) takes effect from the day an appraisal of the care recipient is received by the Secretary if the appraisal is received outside the period in paragraph 26-1(a) or (b) (whichever is applicable).

(2) However, if the Secretary is satisfied that the appraisal was sent in sufficient time to be received by the Secretary, in the ordinary course of events, within that period, the classification is taken to have had effect from the day the care recipient began being provided with the level of care specified in the appraisal.

Note: A decision that the Secretary is not satisfied an appraisal was sent in sufficient time is reviewable under Part 6.1.

(3) In considering whether an appraisal received outside that period was sent in sufficient time, the Secretary may have regard to any information, relevant to that question, that the approved provider gives to the Secretary.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(4) The Secretary must notify the approved provider, in writing, if the Secretary is not satisfied that the appraisal received outside that period was sent in sufficient time.

26-3 When respite care classifications take effect

A classification of a care recipient under this Part in relation to care provided as *respite care takes effect on a day specified in the Classification Principles.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 27—Expiry and renewal of classifications

27-1 When do classifications cease to have effect?

(1) A classification that has an *expiry date under section 27-2 ceases to have effect on that date, unless it is renewed under section 27-6.

(2) A classification that does not have an *expiry date under section 27-2 continues to have effect but may be renewed under section 27-6 if a reappraisal is made under section 27-4.

(3) Despite subsections (1) and (2), a classification under this Part has no effect in relation to a day that is on or after the *transition day.

27-2 Expiry dates and reappraisal periods

(1) The following table sets out:
   (a) when a classification has an *expiry date; and
   (b) when that expiry date occurs; and
   (c) for the purposes of renewing the classification, the reappraisal period for the expiry date:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Expiry dates and reappraisal periods

Item	If this circumstance applies in relation to the care recipient ...	the *expiry date* for the care recipient's classification is ...	and the *reappraisal period* for that *expiry date is ...
1	The care recipient: (a) ceases being provided with residential care or flexible care through a residential care service or a flexible care service (other than because the recipient is on *leave); and (b) has not *entered an *aged care service that is a residential care service or a flexible care service within 28 days after ceasing to be provided with that care.	The day on which the care recipient ceased being provided with that care.	No reappraisal period.
2	The care recipient has taken *extended hospital leave.	The day on which that *leave ends.	The period: (a) beginning 7 days after the day on which the care recipient next began receiving residential care from an approved provider; and (b) ending 2 months after that day.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 27-2

Expiry dates and reappraisal periods			
Item	**If this circumstance applies in relation to the care recipient ...**	**the *expiry date* for the care recipient's classification is ...**	**and the *reappraisal period* for that *expiry date is ...**
3	Both: (a) an approved provider began providing the care recipient with residential care (other than residential care provided as *respite care) on the day after the end of an in-patient hospital episode (see subsection (7)); and (b) the care recipient was not on *leave at the time of that attendance.	The day that occurs 6 months after the day on which the approved provider began providing care to the care recipient.	The period: (a) beginning one month before the *expiry date for the classification; and (b) ending one month after that date.
4	The care recipient has taken *extended hospital leave.	The day that occurs 6 months after the first day on which an approved provider began providing care to the care recipient after the end of that *leave.	The period: (a) beginning one month before the *expiry date for the classification; and (b) ending one month after that date.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Expiry dates and reappraisal periods

Item	If this circumstance applies in relation to the care recipient ...	the *expiry date* for the care recipient's classification is ...	and the *reappraisal period* for that *expiry date is ...
5	The care recipient's classification has been renewed under section 27-5 because the care recipient's care needs have changed significantly.	The day that occurs 6 months after the day on which the renewal took effect.	The period: (a) beginning one month before the *expiry date for the classification; and (b) ending one month after that date.
6	The Secretary has given the approved provider a notice under section 27-3 requiring a reappraisal of the level of care needed by the care recipient to be made.	Either: (a) the day after the last day of the period specified in the notice within which the reappraisal is to be made; or (b) if the reappraisal is received by the Secretary before the end of that period—the date of receipt.	The period specified in the notice within which the reappraisal is to be made.
7	The care recipient is being provided with residential care as *respite care.	The day on which the period during which the care recipient was provided with the respite care ends.	No reappraisal period.

Note: If a classification has an expiry date but no reappraisal period, the classification cannot be renewed (see subsection 27-6(1)).

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Reappraisal period deferred if care recipient on leave

(2) If:

(a) the *expiry date for the classification occurs:

(i) while the care recipient is on *leave (other than *extended hospital leave) from a residential care service; or

(ii) within one month after the residential care service began providing residential care to the care recipient after that leave ended; and

(b) the classification does not have that expiry date because of item 6 of the table in subsection (1);

then, despite subsection (1), the reappraisal period for the classification is the period of 2 months beginning on the day on which the residential care service began providing residential care to the care recipient after that leave ended.

If more than one expiry date applies

(3) If:

(a) a classification has an *expiry date (the ***first expiry date***) because a particular circumstance specified in the table in subsection (1) applies in relation to the care recipient; and

(b) another circumstance specified in that table starts to apply in relation to the care recipient before the first expiry date;

then, subject to subsection (4):

(c) the first expiry date ceases to apply in relation to the classification; and

(d) the expiry date for the other circumstance applies in relation to the classification.

(4) If the other circumstance is that specified in item 6 of the table:

(a) the first expiry date continues to apply in relation to the classification, unless the relevant notice under section 27-3 is given before the start of the reappraisal period for the first expiry date; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(b) the *expiry date for the circumstance specified in item 6 of the table does not apply.

If reappraisal made at initiative of approved provider before expiry date

(5) If:

(a) a classification has an *expiry date because a particular circumstance specified in the table in subsection (1) applies in relation to the care recipient; and

(b) before the start of the reappraisal period for that expiry date, the Secretary receives a reappraisal of the level of care needed by the care recipient made under section 27-4;

that expiry date ceases to apply in relation to the classification.

Classification Principles may specify different expiry date or reappraisal period

(6) The Classification Principles may specify that:

(a) a different *expiry date applies in relation to a classification to that provided for under this section; or

(b) a different reappraisal period applies in respect of an expiry date to that provided for under this section.

*Meaning of **in-patient hospital episode***

(7) In this section, ***in-patient hospital episode***, in relation to a care recipient, means a continuous period during which the care recipient:

(a) is an in-patient of a hospital; and

(b) is provided with medical or related care or services.

27-3 Reappraisal required by Secretary

False, misleading or inaccurate information

(1) If:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(a) the Secretary is satisfied that an approved provider, or a person acting on an 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); and

(b) the classification was changed under section 29-1;

the Secretary may give the approved provider a written notice requiring a reappraisal to be made of the level of care needed by one or more care recipients to whom the approved provider provides care.

Note: See also section 25-4 (suspending approved providers from making appraisals and reappraisals) and Division 29A (civil penalty for incorrect classifications).

(3) The notice must specify a period for each care recipient within which the reappraisal of the level of care needed by the care recipient is to be made.

Significant decrease in care needs

(3A) The Secretary may give an approved provider a written notice requiring a reappraisal to be made of the level of care needed by a care recipient if:

(a) the approved provider provides care to the care recipient; and

(b) the Secretary reasonably suspects that the care needs of the care recipient have decreased significantly since the last appraisal under section 25-3, or reappraisal under section 27-4, of the level of care needed by the care recipient.

(3B) The Classification Principles may specify the circumstances in which the care needs of a care recipient are taken to decrease significantly.

(3C) The notice must specify a period within which the reappraisal is to be made.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Varying or revoking notice

(4) The Secretary may, at his or her own initiative or on application from the approved provider, give the approved provider a notice varying or revoking a notice under subsection (1) or (3A). The Secretary may vary a notice more than once.

Authorised reappraisers

(5) The Secretary may, in writing, authorise a person or persons (other than the approved provider) to make the reappraisals required by the notice under subsection (1) or (3A).

(6) The Secretary must inform the approved provider, in writing, of the name of a person who has been authorised under subsection (5).

27-4 Reappraisal at initiative of approved provider

(1) A reappraisal of the level of care needed by a care recipient may be made at the initiative of an approved provider in accordance with this section.

(1A) However, the reappraisal must not be made if the renewal of the classification of the care recipient that would be made under subsection 27-6(1) would take effect, or would be taken to have had effect, from a day that is on or after the *transition day.

Reappraisal after first year of effect of classification or renewal

(2) A reappraisal of the level of care needed by a care recipient may be made if:

(a) the classification of the care recipient has been in effect for more than 12 months; or

(b) if the classification of the care recipient has been renewed—the most recent renewal of the classification has been in effect for more than 12 months.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Reappraisal if needs of care recipient have changed significantly

(3) A reappraisal of the level of care needed by a care recipient may be made if the care needs of the care recipient change significantly.

(4) The Classification Principles may specify the circumstances in which the care needs of a care recipient are taken to change significantly.

Reappraisal if care recipient enters another aged care service

(5) If a care recipient *enters an *aged care service (the ***later service***) that is a residential care service or a flexible care service within 28 days after another residential care service or flexible care service ceased to provide residential care or flexible care to the care recipient (other than because the care recipient was on *leave), a reappraisal of the level of care needed by the care recipient may be made during the period:
  (a) beginning 7 days after the day on which the care recipient entered the later service; and
  (b) ending 2 months after the day on which the care recipient entered the later service.

Reappraisal if care recipient classified at lowest applicable classification level

(6) A reappraisal of the level of care needed by a care recipient may be made if the care recipient is classified at the *lowest applicable classification level.

(7) Subsections (2), (3) and (6) do not apply if the care recipient is classified at the *lowest applicable classification level because of the operation of subsection 25-1(4).

27-5 Requirements for reappraisals

(1) A reappraisal of the level of care needed by a care recipient must be made in accordance with the Classification Principles applying to an appraisal under Division 25.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(2) The reappraisal must be made by:
  (a) the approved provider that is providing care to the care recipient, or a person acting on the approved provider's behalf; or
  (b) if a person has been authorised under subsection 25-5(1) or 27-3(5) to make the reappraisal—that person.

(3) The reappraisal must be in a form approved by the Secretary.

(4) The Secretary may approve forms which must be used in the course of making a reappraisal.

27-5A Certain expiry date reappraisals must not be made

Despite anything in this Division, a reappraisal must not be made in respect of an *expiry date for a care recipient's classification if the renewal of the classification that would be made under subsection 27-6(1) would take effect, or would be taken to have had effect, from a day that is on or after the *transition day.

27-6 Renewal of classifications

(1) The Secretary may renew the classification of a care recipient (other than a classification to which item 1 or 7 of the table in subsection 27-2(1) applies) if:
  (a) the Secretary receives a reappraisal of the level of care needed by the care recipient; and
  (b) either:
    (i) the reappraisal is made in respect of an expiry date for the classification; or
    (ii) the reappraisal is made under section 27-4.

Note: Refusals to renew the classifications of care recipients are reviewable under Part 6.1.

(1A) However, the Secretary is not required to renew the classification of the care recipient if the renewal would take effect, or would be taken to have had effect, from a day that is on or after the *transition day.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(2) The renewal of the classification must specify the appropriate *classification level for the care recipient. The Classification Principles may specify methods or procedures that the Secretary must follow in determining the appropriate classification level for the care recipient.

(3) In renewing the classification, the Secretary must take into account:
  (a) the reappraisal made in respect of the care recipient; and
  (b) any other matters specified in the Classification Principles.

27-7 Date of effect of renewal of classification that has an expiry date—reappraisal received during reappraisal period

(1) This section applies if:
  (a) a reappraisal is made in respect of an *expiry date for a care recipient's classification; and
  (b) the reappraisal is received by the Secretary during the reappraisal period for the expiry date (see subsection 27-2(1)).

(2) The renewal of the classification takes effect from the *expiry date for the classification.

(3) Despite subsection (2), if the *expiry date for the classification occurs:
  (a) while the care recipient is on *leave from a residential care service; or
  (b) within one month after a residential care service began providing residential care to the care recipient after that leave ended;

the renewal of the classification takes effect from the day on which the care recipient next began receiving residential care after that leave ended.

(4) Despite subsections (2) and (3), if the Secretary has given a notice under section 27-3 requiring the reappraisal to be made, the

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

renewal of the classification takes effect from the day on which the reappraisal is received by the Secretary.

27-8 Date of effect of renewal of classification that has an expiry date—reappraisal received after reappraisal period

(1) If:

(a) a reappraisal is made in respect of an *expiry date for a care recipient's classification; and

(b) the reappraisal is received by the Secretary after the end of the reappraisal period for that expiry date (see subsection 27-2(1));

the renewal of the classification takes effect from the day on which the reappraisal is received by the Secretary.

(2) However, if the Secretary is satisfied that the reappraisal was sent in sufficient time to be received by the Secretary, in the ordinary course of events, within that period, the renewal is taken to have had effect from the *expiry date for the classification.

Note: A decision that the Secretary is not satisfied a reappraisal was sent in sufficient time is reviewable under Part 6.1.

(3) In considering whether a reappraisal received after that period was sent in sufficient time, the Secretary may have regard to any information, relevant to that question, that the approved provider gives to the Secretary.

(4) The Secretary must notify the approved provider, in writing, if the Secretary is not satisfied that a reappraisal received outside that period was sent in sufficient time.

(5) Subsections (2), (3) and (4) do not apply if the Secretary has given a notice under section 27-3 requiring the reappraisal to be made.

27-9 Date of effect of renewal—reappraisals at initiative of approved provider

If:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(a) a reappraisal of the level of care needed by the care recipient is made under section 27-4; and

(b) if there is an *expiry date for the care recipient's classification—the reappraisal is received by the Secretary before the start of the reappraisal period in respect of that expiry date;

the renewal of the classification takes effect:

(c) if the reappraisal is made under subsection 27-4(2), (3) or (6)—from the day on which the reappraisal is received by the Secretary; or

(d) if the reappraisal is made under subsection 27-4(5)—from the day on which the care recipient *entered the *aged care service.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 29—How are classifications changed?

29-1 Changing classifications

(1) The Secretary must change a classification made under this Part if the Secretary is satisfied that:

(a) the classification was based on an incorrect or inaccurate appraisal under section 25-3 or reappraisal under section 27-5; or

(b) the classification was, for any other reason, incorrect.

Note: Changes of classifications are reviewable under Part 6.1.

(2) A classification cannot be changed in any other circumstances, except when classifications are renewed under section 27-6.

(3) Before changing a classification under subsection (1), the Secretary must review it, having regard to:

(a) any material on which the classification was based that the Secretary considers relevant; and

(b) any matters specified in the Classification Principles as matters to which the Secretary must have regard; and

(c) any other material or information that the Secretary considers relevant (including material or information that has become available since the classification was made).

(4) If the Secretary changes the classification under subsection (1), the Secretary must give written notice of the change to the approved provider that is providing care to the care recipient.

29-2 Date of effect of change

A change of a classification under subsection 29-1(1) is taken to have had effect from the day on which the classification took effect.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 29A—Civil penalty for incorrect classifications

29A-1 Warning notices

(1) The Secretary may notify an approved provider in writing if the Secretary:

(a) reasonably suspects that the approved provider, or a person acting on the approved provider's behalf, gave false or misleading information in an appraisal or reappraisal connected with a classification reviewed under subsection 29-1(3); and

(b) changes the classification under section 29-1.

Note: See also sections 25-4 (suspending approved providers from making appraisals and reappraisals) and 27-3 (reappraisal required by Secretary).

(2) The Secretary may also notify an approved provider in writing if:

(a) the approved provider makes 2 or more of any of the following:

(i) an appraisal under section 25-3;

(ii) a reappraisal under section 27-4; and

(b) the Secretary changes 2 or more classifications under section 29-1 because the Secretary is satisfied that the appraisals or reappraisals were incorrect or inaccurate; and

(c) the Secretary is satisfied that the changes, taken together, are significant (see section 29A-3).

(3) A notice under this section must:

(a) specify the classification or classifications the Secretary changed; and

(b) include a statement that the Secretary suspects the matter mentioned in paragraph (1)(a), or is satisfied of the matter mentioned in paragraph (2)(c), and the Secretary's reasons for this; and

(c) include a statement of the effect of section 29A-2.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

29A-2 Civil penalty

(1) An approved provider is liable to a civil penalty if:

(a) the Secretary changes a classification under section 29-1; and

(b) the change occurs in the following circumstances:

(i) the change occurs within 2 years (the ***warning period***) after the Secretary gives a notice to the approved provider under subsection 29A-1(1) or (2);

(ii) during the warning period, the approved provider, or a person acting on the approved provider's behalf, gives false or misleading information in an appraisal under section 25-3, or reappraisal under section 27-4, connected with the classification.

Civil penalty: 60 penalty units.

(2) An approved provider is liable to a civil penalty if:

(a) the Secretary changes a classification under section 29-1; and

(b) the change occurs in the following circumstances:

(i) the change occurs within 2 years (the ***warning period***) after the Secretary gives a notice to the approved provider under subsection 29A-1(1) or (2);

(ii) during the warning period, the approved provider makes one or more appraisals under section 25-3 or reappraisals under section 27-4;

(iii) the Secretary changes the classification as mentioned in paragraph (a) of this subsection because the Secretary is satisfied that any of the appraisals or reappraisals mentioned in subparagraph (ii) of this paragraph was incorrect or inaccurate;

(iv) the Secretary changes one or more other classifications under section 29-1 during the warning period because the Secretary is satisfied that any of the appraisals or reappraisals mentioned in subsection (ii) of this paragraph was incorrect or inaccurate;

(v) the changes mentioned in subparagraphs (iii) and (iv), taken together, are significant (see section 29A-3).

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Civil penalty: 60 penalty units.

(3) To avoid doubt, the approved provider may be liable to a separate civil penalty under subsection (1) or (2) for each classification the Secretary changes under section 29-1 during the warning period.

29A-3 When changes are significant

In determining, for the purposes of paragraph 29A-1(2)(c) or subparagraph 29A-2(2)(b)(v), whether changes, taken together, are significant, regard must be had to the following matters:

(a) the number of classifications changed, relative to the number of care recipients to whom the approved provider provides care;
(b) the significance of each change;
(c) the frequency of the incorrect or inaccurate appraisals and reappraisals that led to the changes;
(d) any other matters specified by the Classification Principles.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 2.4A—Classification of care recipients on or after the transition day

Division 29B—Introduction

29B-1 What this Part is about

The Secretary may classify care recipients approved under Part 2.3 for residential care, or for some kinds of flexible care, according to the level of care they need. The classifications affect the amount of *residential care subsidy, or *flexible care subsidy, payable to approved providers for providing that kind of care on or after the *transition day.

Note: Care recipients who are approved under Part 2.3 for home care only are not classified under this Part.

Table of Divisions

29B-2 The Classification Principles

The classification of care recipients under this Part is also dealt with in the Classification Principles. The provisions of this Part indicate when a particular matter is or may be dealt with in these Principles.

Note: The Classification Principles are made by the Minister under section 96-1.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 29C—How are care recipients classified?

29C-1 Application of this Division

This Division applies in relation to the following:

(a) a care recipient who is approved under Part 2.3 for residential care;

(b) a care recipient who is approved under Part 2.3 for flexible care and whose flexible care is of a kind specified in the Classification Principles.

Note: The Classification Principles may exclude a class of care recipients from classification under this Part—see section 29C-6.

29C-2 Classification of care recipients

How care recipients may be classified

(1) The Secretary may classify a care recipient for *respite care or *non-respite care (the ***relevant kind of care***) according to the level of care the care recipient needs, relative to the needs of other care recipients, if:

(a) there is no classification of the care recipient for the relevant kind of care under this Part; or

(b) the Secretary decides to reclassify the care recipient for the relevant kind of care under this Part (see section 29D-1).

Note: Classifications are reviewable under Part 6.1.

(2) However, the Secretary must not classify the care recipient unless the level of care needed by the care recipient, relative to the needs of other care recipients, has been assessed under section 29C-3 for the purposes of making the classification.

Requirements for classification

(3) The classification must specify the appropriate *classification level for the care recipient for the relevant kind of care (see

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

section 29C-5). The Classification Principles may specify methods or procedures that the Secretary must follow in determining the appropriate classification level for the care recipient.

(4) In classifying the care recipient, the Secretary must take into account:
   (a) the assessment of the care needs of the care recipient mentioned in subsection (2); and
   (b) any other matters specified in the Classification Principles.

Notice of classification

(5) The Secretary must notify the care recipient, and any approved provider that is providing care to the care recipient, of the following in writing:
   (a) whether the classification is for *respite care or *non-respite care;
   (b) the classification of the care recipient;
   (c) the day the classification takes effect;
   (d) if the classification of the care recipient is a reclassification (see section 29D-1)—that it is a reclassification.

When classification takes effect

(6) The classification takes effect on the day specified in the Classification Principles.

(7) For the purposes of subsection (6), the Classification Principles may specify a day before the classification was made, so long as the day is not before the commencement of this Part.

29C-3 Secretary may assess care recipient

(1) If a care recipient is being provided, or was provided, with *respite care or *non-respite care (the ***relevant kind of care***), the Secretary may assess the level of care needed by the care recipient, relative to the needs of other care recipients, for the following purposes:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(a) classifying (including reclassifying) the care recipient under this Part for the relevant kind of care;
(b) deciding whether to reclassify the care recipient under this Part for the relevant kind of care (see section 29D-1);
(c) reconsidering, under section 85-4 or 85-5, a decision made under subsection 29C-2(1), 29D-1(1) or 29E-1(1).

(2) The Classification Principles may specify:
(a) where the Secretary may or must make the assessment; and
(b) the procedures that the Secretary must follow in making the assessment.

(3) If the approval of a care recipient under Part 2.3 covers the provision of *respite care and the circumstances specified in the Classification Principles apply:
(a) an assessment of the care recipient's care needs made under section 22-4 for the purposes of the approval is taken to be an assessment of the level of care needed by the care recipient under this section; and
(b) the assessment is taken to have been made for the purposes of classifying (or reclassifying) the care recipient under this Part for respite care.

29C-4 Care recipients may have classifications for both respite and non-respite care

A classification of a care recipient under this Part for *respite care, and a classification of the care recipient under this Part for *non-respite care, may both be in effect at the same time.

29C-5 Classification levels

(1) The Classification Principles may set out the *classification levels for classifications of care recipients under this Part.

(2) Without limiting subsection (1), the Classification Principles may set out different *classification levels for classifications for *respite care and classifications for *non-respite care.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(3) The Classification Principles may specify the criteria, in respect of each *classification level, for determining which level applies to a care recipient.

29C-6 Exclusion of classes of care recipients

(1) The Classification Principles may exclude a class of care recipients from classification under this Part. A care recipient who is in such a class cannot be classified under this Part for the period specified in the Classification Principles in relation to that class.

(2) A classification of a care recipient under this Part does not cease merely because, under subsection (1), the care recipient becomes excluded from classification under this Part.

29C-7 Classifications of persons who cease to be care recipients

(1) A classification of a person under this Part is not in effect if the person has ceased to be a care recipient in relation to whom this Division applies (see section 29C-1).

(2) However, if the person becomes such a care recipient again at a time, the classification continues from that time.

29C-8 Use of computer programs to make decisions

(1) The Secretary may arrange for the use, under the Secretary's control, of computer programs for making decisions on the classification of care recipients under section 29C-2.

(2) A decision made by the operation of a computer program under such an arrangement is taken to be a decision made by the Secretary.

(3) The Secretary may, under section 29C-2, substitute a decision for a decision the Secretary is taken to have made under subsection (2) if the Secretary is satisfied that the decision made by the operation of the computer program is incorrect.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(4) Subsection (3) does not limit any other provision of this Act that provides for the review or reconsideration of a decision.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 29D—How are care recipients reclassified?

29D-1 Reclassification of care recipients

(1) The Secretary may reclassify a care recipient under section 29C-2 for *respite care or *non-respite care if the care recipient, or an approved provider that is providing that kind of care to the care recipient, requests that the Secretary reclassify the care recipient.

Note: A decision not to reclassify a care recipient is reviewable under Part 6.1.

(1A) The request must:

(a) if made by the approved provider—be made in writing; and

(b) if made by the care recipient—be made orally or in writing; and

(c) be accompanied by the application fee (if any) specified in, or worked out in accordance with, the Classification Principles.

(1B) The amount of the fee must not be such as to amount to taxation.

(2) The Secretary must not reclassify the care recipient unless the Secretary is satisfied that the care needs of the care recipient have changed significantly.

Note: The Secretary may assess the care needs of the care recipient for the purposes of deciding whether to reclassify the care recipient—see paragraph 29C-3(1)(b).

(3) For the purposes of subsection (2), the Classification Principles may specify the circumstances in which the care needs of the care recipient are taken to have changed significantly.

(4) If the Secretary decides not to reclassify the care recipient, the Secretary must notify the care recipient and the approved provider of the decision in writing.

Note: For notice requirements if the Secretary decides to reclassify the care recipient, see subsection 29C-2(5).

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 29E—How are classifications changed?

29E-1 Changing classifications

(1) The Secretary must change a classification of a care recipient under this Part if the Secretary is satisfied that:

(a) the assessment of the level of care needed by the care recipient, relative to the needs of other care recipients, that was made for the purposes of the classification (see section 29C-3) was incorrect or inaccurate; or

(b) the classification was, for any other reason, incorrect.

Note: Changes of classifications are reviewable under Part 6.1.

(2) The classification cannot be changed under this section in any other circumstances.

Note: The Secretary may reclassify the care recipient in certain circumstances—see section 29D-1.

(3) Before changing the classification, the Secretary must review it, having regard to:

(a) any material on which the classification was based that the Secretary considers relevant; and

(b) any matters specified in the Classification Principles as matters to which the Secretary must have regard; and

(c) any other material or information that the Secretary considers relevant (including material or information that has become available since the classification was made).

(4) If the Secretary changes the classification:

(a) the change takes effect on the same day that the classification took effect (see subsection 29C-2(6)); and

(b) the Secretary must notify the care recipient, and any approved provider that is providing care to the care recipient, in writing, of the change.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 2.5—Extra service places

Division 30—Introduction

30-1 What this Part is about

A *place in respect of which residential care is provided may become an extra service place. Extra service places involve providing a significantly higher standard of accommodation, food and services to care recipients. Extra service places can attract higher resident fees.

Table of Divisions

30-2 The Extra Service Principles

Extra service places are also dealt with in the Extra Service Principles. The provisions of this Part indicate where a particular matter is or may be dealt with in these Principles.

Note: The Extra Service Principles are made by the Minister under section 96-1.

30-3 Meaning of *distinct part*

(1) For the purposes of this Part, ***distinct part***, in relation to a residential care service, means a specific area of the service that:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(a) is physically identifiable as separate from all the other *places included in the service; and

(c) meets any other requirements specified in the Extra Service Principles.

Example: A wing of a service with a separate living and dining area for residents living in the wing might constitute a "distinct part" of the service. An individual resident's room might also constitute a "distinct part" of the service.

(2) The Extra Service Principles may specify characteristics that must be present in order for an area to be physically identifiable as separate for the purposes of paragraph (1)(a).

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 31—When is a place an extra service place?

31-1 Extra service place

A *place is an ***extra service place*** on a particular day if, on that day:

(a) the place is included in a residential care service, or a *distinct part of a residential care service, which has *extra service status (see Divisions 32 and 33); and

(b) an extra service fee is in force for the place (see Division 35); and

(c) residential care is provided, in respect of the place, to a care recipient on an extra service basis (see Division 36); and

(d) the place meets any other requirements set out in the Extra Service Principles.

31-3 Effect of allocation, transfer or variation of places to services with extra service status

(1) If:

(a) *places are allocated or transferred to a service that has *extra service status, or a *distinct part of which has extra service status; and

(b) the allocation or transfer was in accordance with subsection 14-7(2) or Division 16;

the allocated or transferred places are taken, for the purposes of this Part, not to have extra service status.

(1A) If:

(a) the Secretary varies a *provisional allocation of *places as mentioned in paragraph 15-5(2)(c); and

(b) as a result of the variation, care in respect of the places would be provided through a residential care service in a different *region; and

(c) the variation was in accordance with subsection 15-5A(2);

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

the provisionally allocated places are taken, for the purposes of this Part, not to have *extra service status.

(2) If:

(a) the Secretary approves a variation, under Division 17, of the conditions to which an allocation of *places is subject; and

(b) as a result of the variation, care in respect of the places is provided through a residential care service in a different location; and

(c) the variation was in accordance with subsection 17-8(2);

the places are taken, for the purposes of this Part, not to have *extra service status.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 32—How is extra service status granted?

32-1 Grants of extra service status

(1) An application may be made to the Secretary in accordance with section 32-3 for *extra service status in respect of a residential care service, or a *distinct part of a residential care service. The application must be in response to an invitation under section 32-2.

(2) The Secretary must, by notice in writing, grant *extra service status in respect of the residential care service, or a distinct part of the residential care service, if:

(a) the Secretary is satisfied, having considered the application in accordance with sections 32-4 and 32-5, that extra service status should be granted; and

(b) the application is accompanied by the application fee (see section 32-6); and

(c) granting the extra service status would not result in the number of extra service places exceeding the maximum proportion (if any) determined by the Minister under section 32-7 for the State, Territory or region in which the residential care service is located.

(3) The grant of *extra service status is subject to such conditions as are set out by the Secretary in the notice given to the applicant under subsection 32-9(1). The conditions may include conditions that must be satisfied before the extra service status becomes effective.

32-2 Invitations to apply

(1) The Secretary may invite applications for *extra service status in respect of residential care services, or *distinct parts of residential care services, in a particular State or Territory, or in a particular region within a State or Territory.

(2) The invitation must specify:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(a) the closing date; and
(b) if the Minister has determined under section 32-7 a maximum proportion of the total number of *places allocated in the State, Territory or region that may be extra service places—the maximum proportion.

(3) The invitation must be:
(a) published in such newspapers; or
(b) published or notified by such other means;
as the Secretary thinks appropriate.

(4) In this section:

region means a region determined by the Secretary under subsection 12-6(1) for a State or Territory in respect of residential care subsidy.

32-3 Applications for extra service status

(1) A person may make an application for *extra service status in respect of a residential care service, or a *distinct part of a residential care service, if the person:
(a) has the allocation under Part 2.2 for the *places included in the residential care service; or
(b) has applied under Part 2.2 for such an allocation.

(2) The application must:
(a) be in response to an invitation to apply for *extra service status published by the Secretary under section 32-2; and
(b) be made on or before the closing date specified in the invitation; and
(c) be in a form approved by the Secretary; and
(d) state the number of *places to be included in the residential care service, or the *distinct part, for which extra service status is sought; and
(e) specify the standard of accommodation, services and food in relation to each such place; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(f) include an application (an ***extra service fees application***) for approval under Division 35 of the extra service fee in respect of each place; and

(g) meet any requirements specified in the Extra Service Principles.

(2A) If the application includes an extra service fees application as mentioned in paragraph (2)(f), the Secretary must give the extra service fees application to the *Pricing Authority.

(3) If the Secretary needs further information to determine the application, the Secretary may give to the applicant a notice requesting the applicant to give the further information within 28 days after receiving the notice.

(4) The application is taken to be withdrawn if the applicant does not give the further information within 28 days.

Note: The period for giving the further information can be extended—see section 96-7.

(5) The Secretary may, for a purpose connected with considering an application under this section, request the applicant to agree to an assessment of the residential care service concerned, conducted by a person authorised by the Secretary to conduct the assessment.

(6) If the applicant does not agree to the assessment within 28 days of the request, the application is taken to be withdrawn.

(7) A request under subsection (3) or (5) must contain a statement setting out the effect of subsection (4) or (6), as the case requires.

32-4 Criteria to be considered by Secretary

(1) The Secretary must not grant an application unless the following criteria are satisfied:

(a) granting the *extra service status sought would not unreasonably reduce access to residential care by people living in the State, Territory or region concerned who are

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

included in a class of people specified in the Extra Service Principles;

(b) the proposed standard of accommodation, services and food in respect of each *place that would be covered by the extra service status is, in the Secretary's opinion, at the time of the application, significantly higher than the average standard in residential care services that do not have extra service status;

(c) if the applicant has been a provider of aged care—the applicant has a very good record of:

(i) conduct as such a provider; and

(ii) compliance with its responsibilities as such a provider, and meeting its obligations arising from the receipt of any payments from the Commonwealth for providing aged care;

(ca) if the applicant has relevant *key personnel in common with a person who is or has been an approved provider—the person has a very good record of:

(i) conduct as a provider of *aged care; and

(ii) compliance with its responsibilities as such a provider, and meeting its obligations arising from the receipt of any payments from the Commonwealth for providing aged care;

(d) if, at the time of the application, residential care is being provided through the residential care service—the service meets its *accreditation requirement (see section 42-4); and

(e) any other matters specified in the Extra Service Principles.

(2) The Extra Service Principles may specify the matters to which the Secretary must have regard in considering, or how the Secretary is to determine:

(a) whether granting *extra service status would unreasonably reduce access as mentioned in paragraph (1)(a); and

(b) whether the proposed standard referred to in paragraph (1)(b) is significantly higher than the average standard referred to in that paragraph; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(c) whether an applicant has a very good record of conduct, compliance or meeting its obligations, for the purposes of paragraph (1)(c); and

(d) whether a person with whom the applicant has relevant *key personnel in common and who is or has been an approved provider has a very good record of conduct, compliance or meeting its obligations, for the purposes of paragraph (1)(ca).

(3) The reference in paragraphs (1)(c) and (ca) to aged care includes a reference to any care for the aged, whether provided before or after the commencement of this section, in respect of which any payment was or is payable under a law of the Commonwealth.

(4) For the purposes of paragraphs (1)(ca) and (2)(d), the applicant has ***relevant key personnel in common*** with a person who is or has been an approved provider if:

(a) at the time the person provided *aged care, another person was one of its *key personnel; and

(b) that other person is one of the key personnel of the applicant.

32-5 Competitive assessment of applications

(1) The Secretary must consider an application in accordance with this section if:

(a) more than one application in respect of a State or Territory, or a particular region within a State or Territory, is made in response to an invitation under section 32-2; and

(b) the Secretary is satisfied that to grant the *extra service status sought in each application that would (apart from this section) succeed would:

(i) unreasonably reduce access as mentioned in paragraph 32-4(1)(a); or

(ii) result in the number of extra service places exceeding the maximum proportion (if any) set by the Minister under section 32-7.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(2) The Secretary must grant *extra service status in respect of the applications in a way that ensures that the extra service status granted will not:
  (a) unreasonably reduce access as mentioned in paragraph 32-4(1)(a); or
  (b) result in the number of extra service places exceeding the maximum proportion (if any) set by the Minister under section 32-7.

(3) The Secretary must, in deciding which applications will succeed:
  (a) give preference to those applications that best meet the criteria in section 32-4; and
  (b) have regard to the level of the extra service fees (see Division 35) proposed in each application.

(4) The Extra Service Principles may set out matters to which the Secretary is to have regard in determining which applications best meet the criteria set out in section 32-4.

32-6 Application fee

(1) The Extra Service Principles may specify:
  (a) the application fee; or
  (b) the way the application fee is to be worked out.

(2) The amount of any application fee:
  (a) must be reasonably related to the expenses incurred or to be incurred by the Commonwealth in relation to the application; and
  (b) must not be such as to amount to taxation.

32-7 Maximum proportion of places

(1) The Minister may determine, in respect of any State or Territory, or any region within a State or Territory, the maximum proportion of the total number of *places allocated in the State, Territory or region that may be extra service places.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(2) The determination must be published on the Department's website.

32-8 Conditions of grant of extra service status

(1) *Extra service status is subject to the terms and conditions set out in the notice given to the applicant under subsection 32-9(1).

(2) The conditions are taken to include any conditions set out in this Act and any conditions specified in the Extra Service Principles.

(3) Without limiting the conditions to which a grant of *extra service status in respect of a residential care service, or *distinct part, may be subject, such a grant is subject to the following conditions:

(a) if the Extra Service Principles specify standards that must be met by a residential care service, or a distinct part of a residential care service, that has extra service status—the service, or distinct part, must meet those standards;

(b) residential care may not be provided other than on an extra service basis through the residential care service, or distinct part, except to a care recipient who was being provided with residential care through the service, or distinct part, immediately before extra service status became effective.

Note: Paragraph (b) is to protect residents already in a service when it is granted extra service status. See also paragraph 36-1(1)(b), which provides that an *extra service agreement is necessary in order for residential care to be provided on an extra service basis. A person cannot be forced to enter such an agreement, and section 36-4 contains additional protection for existing residents.

(4) A notice under subsection (1) must:

(a) specify that the *extra service status granted is in respect of a particular location; and

(b) specify that location.

(6) Conditions, other than those under this Act or the Extra Service Principles, may be varied, in accordance with any requirements set out in those Principles, by agreement between the Secretary and the approved provider.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Note: Approved providers have a responsibility under Part 4.3 to comply with the conditions to which a grant of extra service status is subject. Failure to comply with a responsibility can result in a sanction being imposed under Part 7B of the *Quality and Safety Commission Act.

32-9 Notification of extra service status

(1) The Secretary must notify each applicant in writing whether the *extra service status sought in the application has been granted.

(2) If *extra service status has been granted, the notice must specify:
  (a) the conditions to which the grant is subject; and
  (b) when the extra service status will become effective (see subsection (3); and
  (c) when the extra service status ceases to have effect (see Division 33).

(3) The day on which the *extra service status becomes effective must not be before the day on which the notice is given. The day may be specified by reference to conditions that must be satisfied in order for extra service status to become effective.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 33—When does extra service status cease?

33-1 Cessation of extra service status

*Extra service status for a residential care service, or a *distinct part of a residential care service, ceases to have effect at a particular time if any of the following happens:

(b) the extra service status lapses under section 33-3;

(c) the extra service status is revoked or suspended under section 33-4 or by a notice given under section 63N of the *Quality and Safety Commission Act;

(d) the residential care service does not meet its *accreditation requirement (if any) at that time;

(f) if the Extra Service Principles specify that extra service status ceases to have effect on the occurrence of a particular event—that event occurs.

33-3 Lapsing of extra service status

(1) *Extra service status for a residential care service, or a *distinct part of a residential care service, lapses if:

(a) an allocation made under Division 14 in respect of all of the *places included in that service, or distinct part, is *relinquished or revoked; or

(b) the allocation is a *provisional allocation and the provisional allocation does not take effect under section 15-1 before the end of the *provisional allocation period; or

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

(2) The Extra Service Principles may specify other circumstances in which *extra service status for a residential care service, or a *distinct part of a residential care service, lapses.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

33-4 Revocation or suspension of extra service status at approved provider's request

(1) The Secretary must revoke, or suspend for a specified period, the *extra service status of a residential care service, or a *distinct part of a residential care service, if the approved provider concerned requests the Secretary in writing to do so.

Note: *Extra service status can also be revoked or suspended as a sanction under Part 7B of the *Quality and Safety Commission Act.

(2) Subject to subsection (3), a revocation or suspension under this section has effect on the date requested by the approved provider, unless the Secretary specifies otherwise.

(3) However, the date of effect must not be earlier than 60 days after the day on which the request is received by the Secretary.

(4) The Secretary must notify the approved provider, in writing, of the day on which the revocation or suspension will take effect and, in the case of a suspension, the day on which it will cease to have effect.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 35—How are extra service fees approved?

35-1 Approval of extra service fees

(1) A person who:

(a) has applied for *extra service status to be granted in respect of a residential care service, or a *distinct part of a residential care service; or

(b) who has been granted such extra service status;

may apply to the *Pricing Authority, in accordance with section 35-2, for extra service fees to be approved for one or more *places included in that residential care service or distinct part.

(2) The *Pricing Authority must approve the extra service fees proposed in the application if:

(a) the proposed fees meet the requirements of section 35-3; and

(b) the proposed fees meet any requirements (whether as to amount or otherwise) set out in the Extra Service Principles; and

(c) in a case where the application is not included in an application under Division 32—the Pricing Authority is satisfied that any requirements specified in the Extra Service Principles in relation to standards or accreditation have been met; and

(d) fees for those places have not been approved during the 12 months immediately before the date on which the application is given to the Pricing Authority.

Note: Rejections of applications are reviewable under Part 6.1.

35-2 Applications for approval

(1) The application must be in a form approved by the *Pricing Authority, and must satisfy any requirements set out in the Extra Service Principles.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(2) If the applicant has not been granted *extra service status for the residential care service, or the *distinct part of the residential care service, in which the *places concerned are located, the application must be included in an application under Division 32 for such extra service status.

35-3 Rules about amount of extra service fee

(1) The *Pricing Authority must not approve a nil amount as the extra service fee for a *place.

(2) The *Pricing Authority must not approve extra service fees for the *places in that residential care service, or *distinct part, if the average of the extra service fees for all those places, worked out on a daily basis, would be less than:
  (a) $10.00; or
  (b) such other amount as is specified in the Extra Service Principles.

(3) The *Pricing Authority must not approve extra service fees for *places in respect of which residential care is provided if:
  (a) the care is provided through a particular residential care service; and
  (b) extra service fees have previously been approved in respect of places in respect of which residential care is provided through that aged care service; and
  (c) 12 months, or such other period specified in the Extra Service Principles, has not yet elapsed since the date on which the last approval took effect.

(4) The *Pricing Authority must not approve an application for an extra service fee for a *place if:
  (a) an extra service fee for the place (the ***current fee***) is in force at the time the application is made; and
  (b) the application proposes to increase the current fee by an amount that exceeds the maximum amount specified in, or worked out in accordance with, the Extra Service Principles.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

35-4 Notification of decision

The *Pricing Authority must notify each of the following, in writing, of the Pricing Authority's decision on the application:

(a) the applicant;

(b) the Secretary.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 36—When is residential care provided on an extra service basis?

36-1 Provision of residential care on extra service basis

(1) Residential care is provided, in respect of a *place, to a care recipient on an extra service basis on a particular day if:

(a) the care is provided in accordance with the conditions applying to the *extra service status for the residential care service, or the *distinct part of a residential care service, through which the care is provided; and

(b) there is in force on that day an *extra service agreement, between the care recipient and the person providing the service, that was entered into in accordance with section 36-2 and that meets the requirements of section 36-3; and

(c) the care meets any other requirements set out in the Extra Service Principles.

(2) For the purposes of paragraph (1)(b), a care recipient is taken to have entered an *extra service agreement if the care recipient has entered an agreement which contains the provisions specified in section 36-3.

Example: These conditions may be included in a *resident agreement.

36-2 Extra service agreements not to be entered under duress etc.

(1) An *extra service agreement must not be entered into in circumstances under which the care recipient is subject to duress, misrepresentation, or threat of disadvantage or detriment.

(2) An *extra service agreement must not be entered into in a way that contravenes the Extra Service Principles.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(3) Without limiting subsection (1), a threat to cease providing care to a care recipient through a particular residential care service unless the care recipient signs an *extra service agreement is taken to be a threat of disadvantage for the purposes of that subsection.

36-3 Contents of extra service agreements

(1) An *extra service agreement must specify:

(a) the level of the extra service amount (within the meaning of section 58-5) in respect of the *place concerned; and

(b) how the extra service amount may be varied; and

(c) the standard of the accommodation, services and food to be provided to the care recipient.

Note: The notice under subsection 32-9(1) will specify minimum standards, but care recipients and the persons providing care may make agreements to provide more than the minimum.

(2) An *extra service agreement must also:

(a) contain the provisions (if any) set out in the Extra Service Principles; and

(b) deal with the matters (if any) specified in the Extra Service Principles.

36-4 Additional protection for existing residents

An *extra service agreement entered into with a care recipient who was being provided with care in a residential care service, or a *distinct part of a residential care service, immediately before *extra service status became effective under Division 32 must provide that the care recipient may terminate the agreement:

(a) at any time during the 3 months after the date of effect of the agreement; and

(b) without penalty of any kind.

Note: Under paragraph 56-1(g), an approved provider has a responsibility to comply with this Division. A failure to comply may lead to sanctions being imposed under Part 7B of the *Quality and Safety Commission Act.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Chapter 3—Subsidies

Division 40—Introduction

40-1 What this Chapter is about

The Commonwealth pays *subsidies under this Chapter to approved providers for *aged care that has been provided. These subsidies are:

- *residential care subsidy (see Part 3.1);
- *home care subsidy (see Part 3.2);
- *flexible care subsidy (see Part 3.3).

A number of approvals and other decisions may need to have been made under Chapter 2 before a particular kind of payment can be made (see section 5-2). For example, an approved provider can only receive subsidy for providing residential care or flexible care in respect of which a *place has been allocated. Receipt of payments under this Chapter gives rise to certain responsibilities, that are dealt with in Chapter 4.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 3.1—Residential care subsidy

Division 41—Introduction

41-1 What this Part is about

The *residential care subsidy is a payment by the Commonwealth to approved providers for providing residential care to care recipients.

Table of Divisions

41-2 The Subsidy Principles

*Residential care subsidy is also dealt with in the Subsidy Principles. Provisions in this Part indicate when a particular matter is or may be dealt with in these Principles.

Note: The Subsidy Principles are made by the Minister under section 96-1.

41-3 Meaning of *residential care*

(1) ***Residential care*** is personal care or nursing care, or both personal care and nursing care, that:

(a) is provided to a person in a residential facility in which the person is also provided with accommodation that includes:

(i) appropriate staffing to meet the nursing and personal care needs of the person; and

(ii) meals and cleaning services; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(iii) furnishings, furniture and equipment for the provision of that care and accommodation; and

(b) meets any other requirements specified in the Subsidy Principles.

(2) However, residential care does not include any of the following:

(a) care provided to a person in the person's private home;

(b) care provided in a hospital or in a psychiatric facility;

(c) care provided in a facility that primarily provides care to people who are not frail and aged;

(d) care that is specified in the Subsidy Principles not to be residential care.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 42—Who is eligible for residential care subsidy?

42-1 Eligibility for residential care subsidy

(1) An approved provider is eligible for *residential care subsidy in respect of a day if the Secretary is satisfied that, during that day:

(a) the approved provider holds an allocation of *places for residential care subsidy that is in force under Part 2.2 (not being a *provisional allocation); and

(b) the approved provider provides residential care to a care recipient in respect of whom an approval is in force under Part 2.3 as a recipient of residential care; and

(c) the residential care service through which the care is provided meets its *accreditation requirement (if any) applying at that time (see section 42-4).

Note 1: A care recipient can be taken to be provided with residential care while he or she is on *leave from that care (see section 42-2).

Note 2: If the care recipient's approval under Part 2.3 is not in force, subsidy will not be payable. (For example, the approval may have been given only for a limited period.)

(2) However, the approved provider is not eligible in respect of residential care provided to the care recipient during that day if:

(a) it is excluded because the approved provider exceeds the approved provider's allocation of *places for residential care subsidy (see section 42-7); or

(b) the approved provider stopped providing residential care to the person during that day; or

(c) subject to subsection (3), another approved provider would, but for this paragraph, also be eligible for *residential care subsidy in respect of residential care provided to the same care recipient during that day.

(3) Paragraph (2)(c) does not apply if the approved provider started providing residential care to the care recipient before the other approved provider.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Note: Eligibility may also be affected by Division 7 (relating to a person's approval as a provider of aged care services) or Division 20 (relating to a person's approval as a recipient of residential care).

(4) Despite any other provision of this Act, an approved provider operating a residential care service is not eligible for *residential care subsidy for a care recipient in respect of a day if the care recipient is on *pre-entry leave from that service on that day.

42-2 Leave from residential care services

(1) On each day during which a care recipient is on *leave under this section from a residential care service, the care recipient is taken, for the purposes of this Part (other than section 42-3) and for the purposes of section 63Q of the *Quality and Safety Commission Act, to be provided with residential care by the approved provider operating the residential care service.

(2) A care recipient is on *leave under this section from a residential care service on each day of any period during which the care recipient attends a hospital for the purpose of receiving hospital treatment, so long as the day is on or after the day on which the care recipient *enters the residential care service.

Note: Attending a hospital for a period of extended hospital leave may result in the Minister determining a lower basic subsidy amount for the recipient for days occurring during that period, which will affect the amount of subsidy that is payable (see section 44-3).

(3) A care recipient is on *leave under this section from a residential care service on a day if:

(a) during the whole of that day, the care recipient is absent from the residential care service; and

(b) either:

(i) the care recipient does not, during that day, attend a hospital for the purpose of receiving hospital treatment; or

(ii) the care recipient does, during that day, attend a hospital for that purpose and the day is before the day on which

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

the care recipient *enters the residential care service; and

(ba) the care recipient is not on leave under subsection (3B) on that day; and

(c) the number of days on which the care recipient has previously been on leave under this subsection, during the current financial year, is less than 52.

Note: If a care recipient is taken not to have been provided with care because the maximum number of days has been exceeded, subsidy will not be payable in respect of those days. However, the care recipient may agree to pay a fee to the approved provider to reserve the care recipient's *place in the service. The maximum amount in such a case is set by section 52C-5.

(3AA) For the purposes of paragraph (3)(c), disregard days on which the care recipient is on *pre-entry leave from the residential care service.

(3A) A care recipient is on *leave under this section from a residential care service on a day if:

(a) *flexible care subsidy is payable in respect of the care recipient and the day; and

(b) the requirements specified in the Subsidy Principles for the purposes of this paragraph are met.

Note: If a care recipient is on leave for at least 30 days continuously under subsections (2) and (3A), this may result in the Minister determining a lower basic subsidy amount for the recipient for days occurring during that period, which will affect the amount of residential care subsidy that is payable (see section 44-3).

(3B) A care recipient is on *leave under this section from a residential care service (the ***affected service***) on a day if:

(a) during the whole of that day, the care recipient is absent from the affected service; and

(b) either:

(i) the care recipient does not, during that day, attend a hospital for the purpose of receiving hospital treatment; or

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(ii) the care recipient does, during that day, attend a hospital for that purpose and the day is before the day on which the care recipient *enters the affected service; and

(c) the Minister determines under subsection 42-2A(1) that there is a situation of emergency for that day for the affected service or a class of residential care services that includes the affected service.

(4) Despite subsections (2), (3), (3A) and (3B), a care recipient cannot be on *leave under this section from a residential care service during any period during which the residential care in question would have been *respite care.

42-2A Determining situations of emergency to enable additional leave

(1) The Minister may determine in writing that there is a situation of emergency for a specified day for a residential care service, or a class of residential care services, if the Minister is satisfied that an emergency is affecting or has affected:

(a) the service or services for that day; or

(b) the community in which the service or services are located for that day.

Note: An emergency affecting a residential care service or community may include a disaster (whether natural or otherwise), an epidemic or a pandemic.

(2) For the purposes of subsection (1):

(a) a class of residential care services may include all residential care services in Australia; and

(b) a day for which a situation of emergency is determined may be a day that is before, on or after the day the determination is made.

(3) A determination made under subsection (1) for a class of residential care services is a legislative instrument.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(4) A determination made under subsection (1) for a particular residential care service is not a legislative instrument, but must be published on the Department's website.

(5) The Minister may, in writing, delegate to the Secretary the power to make a determination under subsection (1). In exercising the power, the Secretary must comply with any directions of the Minister.

42-3 Working out periods of leave

(1) In working out the days on which a care recipient is on *leave under section 42-2:

(a) include the day on which the period commenced; and

(b) do not include the day on which the approved provider recommenced, or commenced, providing residential care to the care recipient.

Note: Absences that do not include an overnight absence from a residential care service are not counted as *leave because of paragraph (b).

(2) Subject to subsection (3), a care recipient cannot be on *leave under section 42-2 from a residential care service before he or she *enters the service.

(3) A care recipient may be on leave (the ***pre-entry leave***) under section 42-2 on the days during the period starting on the later of:

(a) the day on which he or she was notified that there was a vacancy in the residential care service in question; or

(aa) the day on which he or she accepted a place in the residential care service; or

(b) the day that is 7 days, or such other period as is specified in the Subsidy Principles, before the day on which the person *enters the residential care service;

and ending at the end of the day before the day the person enters the residential care service.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

42-4 Accreditation requirement

A residential care service meets its accreditation requirement at all times during which:

(a) there is in force an accreditation of the service by the *Quality and Safety Commissioner; or

(b) there is in force a determination under section 42-5 that the service is taken, for the purposes of this Division, to meet its accreditation requirement.

42-5 Determinations allowing for exceptional circumstances

(1) The Secretary may determine, in accordance with the Subsidy Principles, that a residential care service is taken, for the purposes of this Division, to meet its *accreditation requirement. However, the Secretary must first be satisfied that exceptional circumstances apply to the service.

Note: Refusals to make determinations are reviewable under Part 6.1.

(3) The Secretary must not make a determination if:

(a) there is an immediate or severe risk to the safety or well-being of care recipients to whom residential care is being provided through the residential care service; or

(b) the approved provider has not applied for accreditation of the service; or

(c) a determination under this section has previously been made in relation to the service and the service has not subsequently met its *accreditation requirement as set out in section 42-4; or

(d) any circumstances specified in the Subsidy Principles for the purposes of this paragraph apply.

(4) A determination ceases to be in force on the earlier of:

(a) the end of 6 months, or such shorter period as is specified in the determination, after the determination is made; or

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(b) the occurrence of a specified event, if the determination so provides.

Note: Determinations specifying periods or events are reviewable under Part 6.1.

(4A) A determination made under subsection (1) is not a legislative instrument.

(5) If the Secretary needs further information to determine the application, the Secretary may give to the applicant a notice requesting the applicant to give the further information within 28 days after receiving the notice.

(6) The application is taken to be withdrawn if the applicant does not give the further information within 28 days.

Note: The period for giving the further information can be extended—see section 96-7.

(7) The notice must contain a statement setting out the effect of subsection (6).

(8) The Secretary must notify the approved provider, in writing, of the Secretary's decision on whether to make the determination. If the Secretary makes the determination, the notice must inform the approved provider of:

(a) the period at the end of which; and

(b) any event on the occurrence of which;

the determination will cease to be in force.

(9) A notice under subsection (8) must be given to the approved provider:

(a) within 28 days after receiving the application; or

(b) if the Secretary has requested further information under subsection (5)—within 28 days after receiving the information.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

42-6 Revocation of determinations

(1) The Secretary must revoke a determination under section 42-5 if satisfied that:

(a) the exceptional circumstances that applied to the residential care service in question at the time the determination was made no longer apply; or

(b) circumstances have changed such that one or more of the circumstances referred to in subsection 42-5(3) now applies.

Note: Revocations of determinations are reviewable under Part 6.1.

(2) The Secretary must, in writing, notify the approved provider conducting the service of the Secretary's decision to revoke the determination. The notice must be given within 7 days after the decision is made.

42-7 Exceeding the number of places for which there is an allocation

(1) For the purposes of a person's eligibility for *residential care subsidy, residential care provided to a particular care recipient on a particular day is excluded if:

(a) the number of care recipients provided with residential care by the approved provider during that day exceeds the number of *places included in the approved provider's allocation of places for residential care subsidy; and

(b) the Secretary decides, in accordance with subsection (2), that the residential care provided to that particular care recipient on that day is to be excluded.

(2) In deciding under paragraph (1)(b) which residential care is to be excluded, the Secretary must:

(a) make the number of exclusions necessary to ensure that the number of *places for which *residential care subsidy will be payable does not exceed the number of places included in the approved provider's allocation of places for residential care subsidy; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(b) exclude the residential care in the reverse order in which the care recipients *entered the residential care service for the provision of residential care.

42-8 Notice of refusal to pay residential care subsidy

(1) If:

(a) an approved provider has claimed *residential care subsidy in respect of a person; and

(b) the approved provider is not eligible for residential care subsidy in respect of that person;

the Secretary must notify the approved provider, in writing, accordingly.

(2) A notice given under subsection (1) is not a legislative instrument.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 43—How is residential care subsidy paid?

43-1 Payment of residential care subsidy

(1) Residential care subsidy is payable by the Commonwealth to an approved provider in respect of each *payment period (see section 43-2) during which the approved provider is eligible under section 42-1. However, it is not payable in respect of any days during that period on which the approved provider is not eligible.

(2) Residential care subsidy is separately payable by the Commonwealth in respect of each residential care service through which the approved provider provides residential care.

(3) The Secretary may, in accordance with the Subsidy Principles, deduct from the amount of residential care subsidy otherwise payable in respect of a *payment period such of the following amounts as apply to the residential care service in question:

(a) deductions for fees (see section 43-5);

(b) *capital repayment deductions (see section 43-6).

43-2 Meaning of *payment period*

A ***payment period*** is:

(a) a calendar month; or

(b) such other period as is set out in the Subsidy Principles.

43-3 Advances

(1) Subject to subsection 43-4(2), *residential care subsidy is payable by the Commonwealth in advance, in respect of a *payment period, at such times as the Secretary thinks fit.

(2) The Secretary must work out the amount of an advance to be paid to an approved provider in respect of the first *payment period or the second payment period for a residential care service by

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

estimating the amount of *residential care subsidy that will be payable for the days in that period.

(3) The Secretary must work out the amount of an advance to be paid to an approved provider in respect of subsequent *payment periods for a residential care service by:

(a) estimating the amount of *residential care subsidy that will be payable (taking into account any deductions under subsection 43-1(3)) for the days in the period; and

(b) increasing or reducing that amount to make any adjustments that the Secretary reasonably believes are necessary to take account of likely underpayments or overpayments in respect of advances previously paid under this section.

(4) The amounts of advances must be worked out in accordance with any requirements set out in the Subsidy Principles.

(5) The Secretary may, in deciding whether to reduce the amount of an advance under paragraph (3)(b), take into account the likelihood of the Commonwealth's right to recover a particular overpayment being waived under section 95-6.

Note: Subsection (5) allows the Secretary to take account of waivers in respect of overpayments caused, for example, by some cases of incorrect determinations of the *ordinary incomes of care recipients.

43-4 Claims for residential care subsidy

(1) For the purpose of obtaining payment of *residential care subsidy in respect of a residential care service through which an approved provider provides residential care, the approved provider must, as soon as practicable after the end of each *payment period, give to the Secretary:

(a) a claim, in the form approved by the Secretary, for residential care subsidy that is payable in respect of the residential care service for that payment period; and

(b) any information relating to the claim that is stated in the form to be required, or that the Secretary requests; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(c) copies of any documents relating to the claim, or to the payment of *residential care subsidy, that are stated in the form to be required, or that the Secretary requests.

(2) An advance of *residential care subsidy is not payable in respect of a *payment period for the residential care service if the approved provider has not given to the Secretary under subsection (1) a claim relating to the second last preceding payment period for the service.

Example: An advance of subsidy is not payable for March if the Secretary has not been given a claim for January of the same year (assuming the *payment periods are all calendar months—see section 43-2).

(3) Subsection (2) does not apply to the first *payment period or the second payment period for a residential care service.

(4) If all the places in a residential care service are transferred from one person to another, subsection (2) does not apply to the first 2 *payment periods for the residential care service that occur after the transfer took effect.

(5) If:

(a) apart from this subsection, the operation of paragraph (1)(c) would result in the acquisition of property from a person otherwise than on just terms; and

(b) the acquisition would be invalid because of paragraph 51(xxxi) of the Constitution;

the Commonwealth is liable to pay compensation of a reasonable amount to the person in respect of the acquisition.

43-4A Variations of claims for residential care subsidy

(1) An approved provider may vary the claim made in respect of a *payment period within:

(a) 2 years after the end of the payment period; or

(b) such longer period as is determined in respect of the claim by the Secretary.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(2) In determining a longer period for the purposes of paragraph (1)(b), the Secretary must be satisfied that a variation is required:

(a) due to an administrative error made by the Commonwealth or an agent of the Commonwealth; or

(b) because the Commonwealth or an agent of the Commonwealth considers that the circumstances of a care recipient are different from those on the basis of which subsidy was claimed.

Note: Determinations of periods under paragraph (1)(b) are reviewable under Part 6.1.

(3) A determination made under paragraph (1)(b) is not a legislative instrument.

43-5 Deductions for fees

The Secretary may, on behalf of the Commonwealth, enter into an agreement with an approved provider, under which:

(a) amounts equal to the fees payable by the approved provider for applications made under this Act are to be deducted from amounts of *residential care subsidy otherwise payable to the approved provider in respect of the residential care service specified in the agreement; and

(b) so far as amounts are so deducted, the approved provider ceases to be liable to the Commonwealth for payment of the fees.

43-6 Capital repayment deductions

(1) Capital repayment deductions apply in respect of a residential care service if:

(a) the approved provider is granted *extra service status under Division 32 in respect of the service, or in respect of a *distinct part of the service; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(b) the Commonwealth has previously made capital payments in respect of the service, whether or not the payments were made to that approved provider; and

(c) the payments have not been repaid to the Commonwealth.

The capital repayment deductions are applied in accordance with an agreement entered into under this section.

(2) The Secretary may, on behalf of the Commonwealth, enter into an agreement with the approved provider, under which:

(a) amounts equal to the capital payments made in respect of the service are to be deducted from amounts of *residential care subsidy otherwise payable to the approved provider in respect of the service; and

(b) so far as amounts are so deducted, the approved provider ceases to be liable to the Commonwealth for repayment in respect of the capital payments.

Note: Entering into such an agreement may be a condition of the granting of *extra service status (see paragraph 32-8(5)(b)).

(3) However, only a proportion of the amounts equal to the capital payments made in respect of the service are to be deducted under the agreement if:

(a) *extra service status is granted only in respect of a *distinct part of the service; or

(b) some or all of the capital payments were made more than 5 years before the first of the deductions is to be made; or

(c) the circumstances (if any) specified in the Subsidy Principles apply.

The proportion is to be worked out in accordance with the Subsidy Principles.

(4) The agreement must provide for the deductions to be completed within 3 years after the making of the first deduction.

(5) In this section:

capital payment means:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(a) a *residential care grant; or
(b) a payment of a kind specified in the Subsidy Principles.

43-9 Recovery of overpayments

This Division does not affect the Commonwealth's right to recover overpayments under Part 6.5.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 44—What is the amount of residential care subsidy?

44-1 What this Division is about

Amounts of *residential care subsidy payable under Division 43 to an approved provider are worked out under this Division in respect of each residential care service. The amount in respect of a residential care service is determined by adding together amounts worked out, using the residential care subsidy calculator in section 44-2, in respect of individual care recipients in the service.

Table of Subdivisions

Subdivision 44-A—Working out the amount of residential care subsidy

44-2 Amount of residential care subsidy

(1) The amount of *residential care subsidy payable to an approved provider for a residential care service in respect of a *payment period is the amount worked out by adding together the amounts of residential care subsidy for each care recipient:

(a) to whom the approved provider provided residential care through the residential care service during the period; and

(b) in respect of whom the approved provider was eligible for residential care subsidy during the period.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(2) This is how to work out the amount of *residential care subsidy for a care recipient in respect of the *payment period.

Residential care subsidy calculator

Step 1. Work out the ***basic subsidy amount*** using Subdivision 44-B.

Step 2. Add to this amount the amounts of any ***primary supplements*** worked out using Subdivision 44-C.

Step 3. Subtract the amounts of any ***reductions in subsidy*** worked out using Subdivision 44-D.

Step 4. Add the amounts of any ***other supplements*** worked out using Subdivision 44-F.

The result is the ***amount of residential care subsidy*** for the care recipient in respect of the payment period.

Subdivision 44-B—The basic subsidy amount

44-3 The basic subsidy amount

(1) The basic subsidy amount for the care recipient in respect of the *payment period is the sum of all the basic subsidy amounts for the days during the period on which the care recipient was provided with residential care through the residential care service in question.

(2) The basic subsidy amount for a care recipient for a day is the amount:
  (a) determined by the Minister by legislative instrument; or
  (b) worked out in accordance with a method determined by the Minister by legislative instrument.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(3) The Minister may determine different amounts (including nil amounts) based on any one or more of the following:
  (aa) the kind of residential care service through which residential care is provided to a care recipient;
  (ab) whether a care recipient provided with residential care has been classified under Part 2.4A;
  (a) the *classification levels for care recipients who have been classified under Part 2.4A;
  (b) whether the residential care being provided is *respite care;
  (ca) whether a care recipient is on *extended hospital leave;
  (e) any other matters specified in the Subsidy Principles;
  (f) any other matters determined by the Minister.

(4) The Minister may make provision for, or in relation to, a matter by conferring a power on the Secretary.

Subdivision 44-C—Primary supplements

44-5 Primary supplements

(1) The primary supplements for the care recipient are such of the following primary supplements as apply to the care recipient in respect of the *payment period:
  (a) the following primary supplements as set out in the Subsidy Principles:
    (i) the respite supplement;
    (ii) the oxygen supplement;
    (iii) the enteral feeding supplement;
  (b) any other primary supplement set out in the Subsidy Principles for the purposes of this paragraph.

(2) The Subsidy Principles may specify, in respect of each primary supplement, the circumstances in which the supplement will apply to a care recipient in respect of a *payment period.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(3) The Minister may determine by legislative instrument, in respect of each such supplement, the amount of the supplement, or the way in which the amount of the supplement is to be worked out.

Subdivision 44-D—Reductions in subsidy

44-17 Reductions in subsidy

The reductions in subsidy for the care recipient under step 3 of the residential care subsidy calculator in section 44-2 are such of the following reductions as apply to the care recipient in respect of the *payment period:

(b) the compensation payment reduction (see sections 44-20 and 44-20A);

(c) the care subsidy reduction (see sections 44-21 and 44-23).

44-20 The compensation payment reduction

(1) The compensation payment reduction for the care recipient in respect of the *payment period is the sum of all compensation payment reductions for days during the period:

(a) on which the care recipient is provided with residential care through the residential care service in question; and

(b) that are covered by a compensation entitlement.

(2) For the purposes of this section, a day is covered by a compensation entitlement if:

(a) the care recipient is entitled to compensation under a judgment, settlement or reimbursement arrangement; and

(b) the compensation takes into account the cost of providing residential care to the care recipient on that day; and

(c) the application of compensation payment reductions to the care recipient for preceding days has not resulted in reductions in subsidy that, in total, exceed or equal the part of the compensation that relates, or is to be treated under subsection (5) or (6) as relating, to future costs of providing residential care.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(3) The compensation payment reduction for a particular day is an amount equal to the amount of *residential care subsidy that would be payable for the care recipient in respect of the *payment period if:

(a) the care recipient was provided with residential care on that day only; and

(b) this section and Subdivision 44-F did not apply.

(4) However, if:

(a) the compensation payment reduction arises from a judgment or settlement that fixes the amount of compensation on the basis that liability should be apportioned between the care recipient and the compensation payer; and

(b) as a result, the amount of compensation is less than it would have been if liability had not been so apportioned; and

(c) the compensation is not paid in a lump sum;

the amount of the compensation payment reduction under subsection (3) is reduced by the proportion corresponding to the proportion of liability that is apportioned to the care recipient by the judgment or settlement.

(5) If a care recipient is entitled to compensation under a judgment or settlement that does not take into account the future costs of providing residential care to the care recipient, the Secretary may, in accordance with the Subsidy Principles, determine:

(a) that, for the purposes of this section, the judgment or settlement is to be treated as having taken into account the cost of providing that residential care; and

(b) the part of the compensation that, for the purposes of this section, is to be treated as relating to the future costs of providing residential care.

Note: Determinations are reviewable under Part 6.1.

(6) If:

(a) a care recipient is entitled to compensation under a settlement; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(b) the settlement takes into account the future costs of providing residential care to the recipient; and

(c) the Secretary is satisfied that the settlement does not adequately take into account the future costs of providing residential care to the care recipient;

the Secretary may, in accordance with the Subsidy Principles, determine the part of the compensation that, for the purposes of this section, is to be treated as relating to the future costs of providing residential care.

Note: Determinations are reviewable under Part 6.1.

(7) A determination under subsection (5) or (6) must be in writing and notice of it must be given to the care recipient.

(7A) A determination under subsection (5) or (6) is not a legislative instrument.

(8) A reference in this section to the costs of providing residential care does not include a reference to an amount that is or may be payable as a *refundable deposit, except to the extent provided in the Subsidy Principles.

(9) In this section, the following terms have the same meanings as in the *Health and Other Services (Compensation) Act 1995*:

compensation
compensation payer
judgment
reimbursement arrangement
settlement.

44-20A Secretary's powers if compensation information is not given

(1) This section applies if:

(a) the Secretary believes on reasonable grounds that a care recipient is entitled to compensation under a judgement, settlement or reimbursement arrangement; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(b) the Secretary does not have sufficient information to apply section 44-20 in relation to the compensation.

(2) The Secretary may, by notice in writing given to a person, require the person to give information or produce a document that is in the person's custody, or under the person's control, if the Secretary believes on reasonable grounds that the information or document may be relevant to the application of section 44-20 in relation to the compensation.

(3) The notice must specify:
(a) how the person is to give the information or produce the document; and
(b) the period within which the person is to give the information or produce the document; and
(c) the effect of subsection (4).

Note: Sections 28A and 29 of the *Acts Interpretation Act 1901* (which deal with service of documents) apply to notice given under this section.

(4) If the information or document is not given or produced within the specified period, the Secretary may determine compensation payment reductions for the care recipient.

Note: Decisions to determine compensation payment reductions under this section are reviewable under Part 6.1.

(5) The compensation payment reductions must be determined in accordance with the Subsidy Principles.

44-21 The care subsidy reduction

(1) The ***care subsidy reduction*** for the care recipient in respect of the *payment period is the sum of all the care subsidy reductions for days during the period on which the care recipient is provided with residential care through the residential care service in question.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(2) Subject to this section and section 44-23, the care subsidy reduction for a particular day is worked out as follows:

Care subsidy reduction calculator

Step 1. Work out the ***means tested amount*** for the care recipient (see section 44-22).

Step 2. Subtract the ***maximum accommodation supplement amount*** for the day (see subsection (6)) from the means tested amount.

Step 3. If the amount worked out under step 2 does not exceed zero, the ***care subsidy reduction*** is zero.

Step 4. If the amount worked out under step 2 exceeds zero but not the sum of the following, the ***care subsidy reduction*** is the amount worked out under step 2:

(a) the ***adjusted basic subsidy amount*** for the care recipient for the day (see subsection (6A));

(b) any primary supplement amounts for the care recipient for the day.

Step 5. If the amount worked out under step 2 exceeds the sum of the following, the ***care subsidy reduction*** is that sum:

(a) the ***adjusted basic subsidy amount*** for the care recipient for the day (see subsection (6A));

(b) any primary supplement amounts for the care recipient for the day.

(3) If the care recipient has not provided sufficient information about the care recipient's income and assets for the care recipient's means tested amount to be determined, the ***care subsidy reduction*** for a day is the sum of the following amounts:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(a) the adjusted basic subsidy amount for the care recipient for the day (see subsection (6A));
(b) any primary supplement amounts for the care recipient for the day.

(4) If, apart from this subsection, the sum of all the *combined care subsidy reductions made for the care recipient during a *start-date year for the care recipient would exceed the annual cap applying at the time for the care recipient, the ***care subsidy reduction*** for the remainder of the start-date year is zero.

(5) If, apart from this subsection, the sum of all the previous *combined care subsidy reductions made for the care recipient would exceed the lifetime cap applying at the time, the ***care subsidy reduction*** for the remainder of the care recipient's life is zero.

(6) The ***maximum accommodation supplement amount*** for a day is the highest of the amounts determined by the Minister by legislative instrument as the amounts of accommodation supplement payable for residential care services for that day.

(6A) The ***adjusted basic subsidy amount*** for a care recipient for a day is an amount:
(a) determined by the Minister by legislative instrument; or
(b) worked out in accordance with a method determined by the Minister by legislative instrument.

(7) The ***annual cap*** is the amount determined by the Minister by legislative instrument.

(8) The ***lifetime cap*** is the amount determined by the Minister by legislative instrument.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

44-22 Working out the means tested amount

(1) The ***means tested amount*** for the care recipient is worked out as follows:

Means tested amount calculator

Work out the ***income tested amount*** using steps 1 to 4:

Step 1. Work out the care recipient's *total assessable income on a yearly basis using section 44-24.

Step 2. Work out the care recipient's *total assessable income free area using section 44-26.

Step 3. If the care recipient's total assessable income does not exceed the care recipient's total assessable income free area, the ***income tested amount*** is zero.

Step 4. If the care recipient's *total assessable income exceeds the care recipient's total assessable income free area, the ***income tested amount*** is 50% of that excess divided by 364.

Work out the ***per day asset tested amount*** using steps 5 to 10:

Step 5. Work out the value of the care recipient's assets using section 44-26A.

Step 6. If the value of the care recipient's assets does not exceed the ***asset free area***, the ***asset tested amount*** is zero.

Step 7. If the value of the care recipient's assets exceeds the ***asset free area*** but not the ***first asset threshold***, the ***asset tested amount*** is 17.5% of the excess.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Step 8. If the value of the care recipient's assets exceeds the first asset threshold but not the ***second asset threshold***, the ***asset tested amount*** is the sum of the following:

(a) 1% of the excess;

(b) 17.5% of the difference between the asset free area and the first asset threshold.

Step 9. If the value of the care recipient's assets exceeds the second asset threshold, the ***asset tested amount*** is the sum of the following:

(a) 2% of the excess;

(b) 1% of the difference between the first asset threshold and the second asset threshold;

(c) 17.5% of the difference between the asset free area and the first asset threshold.

Step 10. The ***per day asset tested amount*** is the asset tested amount divided by 364.

The ***means tested amount*** is the sum of the income tested amount and the per day asset tested amount.

(2) The ***asset free area*** is:

(a) the amount equal to 2.25 times the *basic age pension amount; or

(b) such other amount as is calculated in accordance with the Subsidy Principles.

(3) The ***first asset threshold*** and the ***second asset threshold*** are the amounts determined by the Minister by legislative instrument.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

44-23 Care subsidy reduction taken to be zero in some circumstances

(1) The care subsidy reduction in respect of the care recipient is taken to be zero for each day, during the *payment period, on which one or more of the following applies:

(a) the care recipient was provided with *respite care;

(b) a determination was in force under subsection (2) in relation to the care recipient;

(c) the care recipient was included in a class of people specified in the Subsidy Principles.

(2) The Secretary may, in accordance with the Subsidy Principles, determine that the care subsidy reduction in respect of the care recipient is to be taken to be zero.

Note: Refusals to make determinations are reviewable under Part 6.1.

(3) The determination ceases to be in force at the end of the period (if any) specified in the determination.

Note: Decisions specifying periods are reviewable under Part 6.1.

(4) In deciding whether to make a determination, the Secretary must have regard to the matters specified in the Subsidy Principles.

(5) Application may be made to the Secretary, in the form approved by the Secretary, for a determination under subsection (2) in respect of a care recipient. The application may be made by:

(a) the care recipient; or

(b) an approved provider that is providing, or is to provide, residential care to the care recipient.

(6) The Secretary must notify the care recipient and the approved provider, in writing, of the Secretary's decision on whether to make the determination. The notice must be given:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(a) if an application for a determination was made under subsection (5)—within 28 days after the application was made, or, if the Secretary requested further information in relation to the application, within 28 days after receiving the information; or

(b) if such an application was not made—within 28 days after the decision is made.

(7) A determination under subsection (2) is not a legislative instrument.

44-24 The care recipient's *total assessable income*

(1) If the care recipient is not entitled to an *income support payment, his or her ***total assessable income*** is the amount the Secretary determines to be the amount that would be worked out as the care recipient's ordinary income for the purpose of applying Module E of Pension Rate Calculator A at the end of section 1064 of the *Social Security Act 1991*.

Note: Determinations are reviewable under Part 6.1.

(2) If the care recipient is entitled to a *service pension, his or her ***total assessable income*** is the sum of:

(a) the amount of the care recipient's service pension reduced by the amount worked out under subsection 5GA(3) of the *Veterans' Entitlements Act 1986* to be the care recipient's minimum pension supplement amount; and

(b) the amount the Secretary determines to be the amount that would be worked out as the care recipient's ordinary/adjusted income for the purpose of applying Module E of the Rate Calculator in Schedule 6 to the *Veterans' Entitlements Act 1986*.

Note: Determinations are reviewable under Part 6.1.

(3) If the care recipient is entitled to an *income support supplement, his or her ***total assessable income*** is the sum of:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(a) the amount of the care recipient's income support supplement reduced by the amount worked out under subsection 5GA(3) of the *Veterans' Entitlements Act 1986* to be the care recipient's minimum pension supplement amount; and

(b) the amount the Secretary determines to be the amount that would be worked out as the care recipient's ordinary/adjusted income for the purpose of applying Module E of the Rate Calculator in Schedule 6 to the *Veterans' Entitlements Act 1986*.

Note: Determinations are reviewable under Part 6.1.

(3A) If the care recipient is entitled to a *veteran payment, his or her ***total assessable income*** is the sum of:

(a) the amount of the care recipient's veteran payment reduced by the amount worked out under subsection 5GA(3) of the *Veterans' Entitlements Act 1986* to be the care recipient's minimum pension supplement amount; and

(b) the amount the Secretary determines to be the amount that would be worked out as the care recipient's ordinary/adjusted income for the purpose of applying Module E of the Rate Calculator in Schedule 6 to the *Veterans' Entitlements Act 1986*.

Note: Determinations are reviewable under Part 6.1.

(4) If the care recipient is entitled to an *income support payment (other than a *service pension, an *income support supplement or a *veteran payment), his or her ***total assessable income*** is the sum of:

(a) the amount of the care recipient's income support payment reduced by, if the payment is an income support payment within the meaning of subsection 23(1) of the *Social Security Act 1991*, the amount worked out under subsection 20A(4) of that Act to be the care recipient's minimum pension supplement amount; and

(b) the amount the Secretary determines to be the amount that would be worked out as the care recipient's ordinary income for the purpose of applying Module E of Pension Rate

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Calculator A at the end of section 1064 of the *Social Security Act 1991*.

Note: Determinations are reviewable under Part 6.1.

(4A) However, the reduction referred to in paragraph (4)(a) does not apply if:

(a) the care recipient's income support payment is special benefit or youth allowance under the *Social Security Act 1991*; or

(b) the care recipient has not reached pension age (within the meaning of subsections 23(5A), (5B), (5C) and (5D) of that Act) and the rate of the care recipient's income support payment is worked out in accordance with the Rate Calculator at the end of section 1066A, 1067L, 1068, 1068A or 1068B of that Act.

(5) The Subsidy Principles may specify amounts that are to be taken, in relation to specified kinds of care recipients, to be excluded from determinations under subsection (1) or paragraph (2)(b), (3)(b), (3A)(b) or (4)(b).

(6) For the purpose of making a determination under subsection (1) or paragraph (4)(b) of the amount that would be worked out as the care recipient's ordinary income for the purpose referred to in that subsection or paragraph, the relevant provisions of the *Social Security Act 1991* apply as if:

(a) paragraph 8(8)(zc) of that Act were omitted; and

(b) section 1176 of that Act were omitted; and

(c) any other provision of the social security law (within the meaning of the *Social Security Act 1991*) were omitted:

(i) that has the direct or indirect effect of excluding an amount from a person's ordinary income (within the meaning of that Act); and

(ii) that is specified in the Subsidy Principles.

Note: The effect of this subsection is that certain amounts that would not be included when working out a person's ordinary income under the *Social Security Act 1991* will be included for the purposes of working out a care recipient's total assessable income under this section.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(7) For the purpose of making a determination under paragraph (2)(b), (3)(b) or (3A)(b) of the amount that would be worked out as the care recipient's ordinary/adjusted income for the purpose referred to in the relevant paragraph, the relevant provisions of the *Veterans' Entitlements Act 1986* apply as if:

(a) section 59X of that Act were omitted; and

(b) any other provision of the *Veterans' Entitlements Act 1986* were omitted:

(i) that has the direct or indirect effect of excluding an amount from a person's ordinary/adjusted income (within the meaning of that Act); and

(ii) that is specified in the Subsidy Principles.

Note: The effect of this subsection is that certain amounts that would not be included when working out a person's ordinary/adjusted income under the *Veterans' Entitlements Act 1986* will be included for the purposes of working out a care recipient's total assessable income under this section.

(8) The Secretary may, by notice in writing, request one or more of the following:

(a) the care recipient;

(b) a person acting for or on behalf of the care recipient;

(c) any other person whom the Secretary believes has information that would assist the Secretary in making the determination;

to give, within the period specified in the notice, to the Secretary such information as is specified in the notice for the purposes of making the determination.

Note: A person is not obliged to provide the information.

(9) A determination under subsection (1) or paragraph (2)(b), (3)(b), (3A)(b) or (4)(b) takes effect on the day specified by the Secretary. The day may be earlier than the day on which the determination is made.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(10) The Secretary must notify, in writing, the care recipient of any determination under subsection (1) or paragraph (2)(b), (3)(b), (3A)(b) or (4)(b).

(11) The notice must include such matters as are specified in the Subsidy Principles.

(12) A determination made under subsection (1) or paragraph (2)(b), (3)(b), (3A)(b) or (4)(b) is not a legislative instrument.

44-26 The care recipient's *total assessable income free area*

The ***total assessable income free area*** for a care recipient is the sum of:

(a) the amount worked out by applying point 1064-B1 of Pension Rate Calculator A at the end of section 1064 of the *Social Security Act 1991*; and

(b) the amount worked out under point 1064-BA4 of Pension Rate Calculator A at the end of section 1064 of the *Social Security Act 1991*; and

(c) the amount worked out by applying point 1064-E4 of Pension Rate Calculator A at the end of section 1064 of the *Social Security Act 1991*.

44-26A The value of a person's assets

(1) Subject to this section, the value of a person's assets for the purposes of section 44-22 is to be worked out in accordance with the Subsidy Principles.

(2) If a person who is receiving a *service pension, an *income support supplement or a *veteran payment has an income stream (within the meaning of the *Veterans' Entitlements Act 1986*) that was purchased on or after 20 September 2007, the value of the person's assets:

(a) is taken to include the amount that the Secretary determines to be the value of that income stream that would be included in the value of the person's assets if Subdivision A of

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 11 of Part IIIB of the *Veterans' Entitlements Act 1986* applied for the purposes of this Act; and

(b) is taken to exclude the amount that the Secretary determines to be the value of that income stream that would not be included in the value of the person's assets if Subdivision A of Division 11 of Part IIIB of the *Veterans' Entitlements Act 1986* applied for the purposes of this Act.

(3) If a person who is not receiving a *service pension, an *income support supplement or a *veteran payment has an income stream (within the meaning of the *Social Security Act 1991*) that was purchased on or after 20 September 2007, the value of the person's assets:

(a) is taken to include the amount that the Secretary determines to be the value of that income stream that would be included in the value of the person's assets if Division 1 of Part 3.12 of the *Social Security Act 1991* applied for the purposes of this Act; and

(b) is taken to exclude the amount that the Secretary determines to be the value of that income stream that would not be included in the value of the person's assets if Division 1 of Part 3.12 of the *Social Security Act 1991* applied for the purposes of this Act.

(4) The value of a person's assets is taken to include the amount that the Secretary determines to be the amount:

(a) if the person is receiving a *service pension, an *income support supplement or a *veteran payment—that would be included in the value of the person's assets if Subdivisions B and BB of Division 11 and Subdivision H of Division 11A of Part IIIB of the *Veterans' Entitlements Act 1986* applied for the purposes of this Act; and

(b) otherwise—that would be included in the value of the person's assets if Division 2 of Part 3.12 and Division 8 of Part 3.18 of the *Social Security Act 1991* applied for the purposes of this Act.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Note 1: Subdivisions B and BB of Division 11 of Part IIIB of the *Veterans' Entitlements Act 1986*, and Division 2 of Part 3.12 of the *Social Security Act 1991*, deal with disposal of assets.

Note 2: Subdivision H of Division 11A of Part IIIB of the *Veterans' Entitlements Act 1986*, and Division 8 of Part 3.18 of the *Social Security Act 1991*, deal with the attribution to individuals of assets of private companies and private trusts.

(5) If a person has paid a *refundable deposit, the value of the person's assets is taken to include the amount of the *refundable deposit balance.

(6) In working out the value at a particular time of the assets of a person who is or was a *homeowner, disregard the value of a home that, at the time, was occupied by:

(a) the *partner or a *dependent child of the person; or

(b) a carer of the person who:

(i) had occupied the home for the past 2 years; and

(ii) was eligible to receive an *income support payment at the time; or

(c) a *close relation of the person who:

(i) had occupied the home for the past 5 years; and

(ii) was eligible to receive an *income support payment at the time.

(7) In working out the value at a particular time of the assets of a person who is or was a *homeowner, disregard the value of a home to the extent that it exceeded the *maximum home value in force at that time.

(8) The value of the assets of a person who is a *member of a couple is taken to be 50% of the sum of:

(a) the value of the person's assets; and

(b) the value of the assets of the person's *partner.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(9) A reference to the value of the assets of a person is, in relation to an asset owned by the person jointly or in common with one or more other people, a reference to the value of the person's interest in the asset.

(10) A determination under paragraph (2)(a), (2)(b), (3)(a) or (3)(b) or subsection (4) is not a legislative instrument.

44-26B Definitions relating to the value of a person's assets

(1) In section 44-26A, and in this section:

child: without limiting who is a child of a person for the purposes of this section and section 44-26A, each of the following is the ***child*** of a person:

(a) a stepchild or an adopted child of the person;

(b) someone who would be the stepchild of the person except that the person is not legally married to the person's partner;

(c) someone who is a child of the person within the meaning of the *Family Law Act 1975*;

(d) someone included in a class of persons specified for the purposes of this paragraph in the Subsidy Principles.

close relation, in relation to a person, means:

(a) a parent of the person; or

(b) a sister, brother, child or grandchild of the person; or

(c) a person included in a class of persons specified in the Subsidy Principles.

Note: See also subsection (5).

dependent child has the meaning given by subsection (2).

homeowner has the meaning given by the Subsidy Principles.

maximum home value means the amount determined by the Minister by legislative instrument.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

member of a couple means:

(a) a person who is legally married to another person, and is not living separately and apart from the person on a permanent basis; or

(b) a person whose relationship with another person (whether of the same sex or a different sex) is registered under a law of a State or Territory prescribed for the purposes of section 2E of the *Acts Interpretation Act 1901* as a kind of relationship prescribed for the purposes of that section, and who is not living separately and apart from the other person on a permanent basis; or

(c) a person who lives with another person (whether of the same sex or a different sex) in a de facto relationship, although not legally married to the other person.

parent: without limiting who is a parent of a person for the purposes of this section and section 44-26A, someone is the ***parent*** of a person if the person is his or her child because of the definition of ***child*** in this section.

partner, in relation to a person, means the other *member of a couple of which the person is also a member.

(2) A young person (see subsection (3)) is a ***dependent child*** of a person (the ***adult***) if:

(a) the adult:

(i) is legally responsible (whether alone or jointly with another person) for the day-to-day care, welfare and development of the young person; or

(ii) is under a legal obligation to provide financial support in respect of the young person; and

(b) in a subparagraph (a)(ii) case—the adult is not included in a class of people specified for the purposes of this paragraph in the Subsidy Principles; and

(c) the young person is not:

(i) in full-time employment; or

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(ii) in receipt of a social security pension (within the meaning of the *Social Security Act 1991*) or a social security benefit (within the meaning of that Act); or

(iii) included in a class of people specified in the Subsidy Principles.

(3) A reference in subsection (2) to a ***young person*** is a reference to any of the following:

(a) a person under 16 years of age;

(b) a person who:

(i) has reached 16 years of age, but is under 25 years of age; and

(ii) is receiving full-time education at a school, college or university;

(c) a person included in a class of people specified in the Subsidy Principles.

(4) The reference in paragraph (2)(a) to care does not have the meaning given in the Dictionary in Schedule 1.

(5) For the purposes of paragraph (b) of the definition of ***close relation*** in subsection (1), if one person is the child of another person because of the definition of ***child*** in this section, relationships traced to or through the person are to be determined on the basis that the person is the child of the other person.

44-26C Determination of value of person's assets

Making determinations

(1) The Secretary must determine the value, at the time specified in the determination, of a person's assets in accordance with section 44-26A, if the person:

(a) applies in the approved form for the determination; and

(b) gives the Secretary sufficient information to make the determination.

The time specified must be at or before the determination is made.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Note 1: Determinations are reviewable under Part 6.1.

Note 2: An application can be made under this section for the purposes of section 52J-5: see subsection 52J-5(3).

Giving notice of the determination

(2) Within 14 days after making the determination, the Secretary must give the person a copy of the determination.

When the determination is in force

(3) The determination is in force for the period specified in, or worked out under, the determination.

(4) However, the Secretary may by written instrument revoke the determination if he or she is satisfied that it is incorrect. The determination ceases to be in force on a day specified in the instrument (which may be before the instrument is made).

Note: Revocations of determinations are reviewable under Part 6.1.

(5) Within 14 days after revoking the determination, the Secretary must give written notice of the revocation and the day the determination ceases being in force to:
(a) the person; and
(b) if the Secretary is aware that the person has given an approved provider a copy of the determination—the approved provider.

(6) A determination made under subsection (1) is not a legislative instrument.

Subdivision 44-F—Other supplements

44-27 Other supplements

(1) The other supplements for the care recipient under step 4 of the residential care subsidy calculator in section 44-2 are such of the following supplements as apply to the care recipient in respect of the *payment period:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(a) the accommodation supplement (see section 44-28);
(b) the hardship supplement (see section 44-30);
(c) any other supplement set out in the Subsidy Principles for the purposes of this paragraph.

(2) The Subsidy Principles may specify, in respect of each other supplement set out for the purposes of paragraph (1)(c), the circumstances in which the supplement will apply to a care recipient in respect of a *payment period.

(3) The Minister may determine by legislative instrument, in respect of each such supplement, the amount of the supplement, or the way in which the amount of the supplement is to be worked out.

44-28 The accommodation supplement

(1) The ***accommodation supplement*** for the care recipient in respect of the *payment period is the sum of all the accommodation supplements for the days during the period on which:
(a) the care recipient was provided with residential care (other than *respite care) through the *residential care service in question; and
(b) the care recipient was eligible for accommodation supplement.

(2) The care recipient is eligible for *accommodation supplement on a particular day if:
(a) on that day the residential care provided to the care recipient is not provided on an extra service basis; and
(b) on the day (the ***entry day***) on which the care recipient entered the residential care service, the care recipient's means tested amount was less than the maximum accommodation supplement amount for the entry day.

(3) The care recipient is also eligible for *accommodation supplement on a particular day if, on that day, a *financial hardship determination under section 52K-1 is in force for the person.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(4) The *accommodation supplement for a particular day is the amount:
  (a) determined by the Minister by legislative instrument; or
  (b) worked out in accordance with a method determined by the Minister by legislative instrument.

(5) The Minister may determine different amounts (including nil amounts) or methods based on any one or more of the following:
  (a) the income of a care recipient;
  (b) the value of assets held by a care recipient;
  (c) the status of the building in which the residential care service is provided;
  (d) any other matter specified in the Subsidy Principles.

44-30 The hardship supplement

(1) The hardship supplement for the care recipient in respect of the *payment period is the sum of all the hardship supplements for the days during the period on which:
  (a) the care recipient was provided with residential care through the residential care service in question; and
  (b) the care recipient was eligible for a hardship supplement.

(2) The care recipient is eligible for a hardship supplement on a particular day if:
  (a) the Subsidy Principles specify one or more classes of care recipients to be care recipients for whom paying a daily amount of resident fees of more than the amount specified in the Principles would cause financial hardship; and
  (b) on that day, the care recipient is included in such a class.

The specified amount may be nil.

(3) The care recipient is also eligible for a hardship supplement on a particular day if a determination is in force under section 44-31 in relation to the care recipient.

(5) The hardship supplement for a particular day is the amount:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(a) determined by the Minister by legislative instrument; or
(b) worked out in accordance with a method determined by the Minister by legislative instrument.

(6) The Minister may determine different amounts (including nil amounts) or methods based on any matters determined by the Minister by legislative instrument.

44-31 Determining cases of financial hardship

(1) The Secretary may, in accordance with the Subsidy Principles, determine that the care recipient is eligible for a hardship supplement if the Secretary is satisfied that paying a daily amount of resident fees of more than the amount specified in the determination would cause the care recipient financial hardship.

Note: Refusals to make determinations are reviewable under Part 6.1.

(2) In deciding whether to make a determination under this section, and in determining the specified amount, the Secretary must have regard to the matters (if any) specified in the Subsidy Principles. The specified amount may be nil.

(3) A determination under this section ceases to be in force at the end of a specified period, or on the occurrence of a specified event, if the determination so provides.

Note: Decisions to specify periods or events are reviewable under Part 6.1.

(4) Application may be made to the Secretary, in the form approved by the Secretary, for a determination under this section. The application may be made by:
(a) the care recipient; or
(b) an approved provider who is providing, or is to provide, residential care to the care recipient.

(5) If the Secretary needs further information to determine the application, the Secretary may give to the applicant a notice requesting the applicant to give the further information:
(a) within 28 days after receiving the notice; or

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(b) within such other period as is specified in the notice.

(6) The application is taken to have been withdrawn if the information is not given within whichever of those periods applies. The notice must contain a statement setting out the effect of this subsection.

Note: The period for giving the further information can be extended—see section 96-7.

(7) The Secretary must notify the care recipient and the approved provider, in writing, of the Secretary's decision on whether to make the determination. The notice must be given:

(a) within 28 days after receiving the application; or

(b) if the Secretary has requested further information under subsection (5)—within 28 days after receiving the information.

(8) If the Secretary makes the determination, the notice must set out:

(a) any period at the end of which; or

(b) any event on the occurrence of which;

the determination will cease to be in force.

(9) A determination under subsection (1) is not a legislative instrument.

44-32 Revoking determinations of financial hardship

(1) The Secretary may, in accordance with the Subsidy Principles, revoke a determination under section 44-31.

Note: Revocations of determinations are reviewable under Part 6.1.

(2) Before deciding to revoke the determination, the Secretary must notify the care recipient and the approved provider concerned that revocation is being considered.

(3) The notice must be in writing and must:

(a) invite the care recipient and the approved provider to make submissions, in writing, to the Secretary within 28 days after receiving the notice; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(b) inform them that if no submissions are made within that period, the revocation takes effect on the day after the last day for making submissions.

(4) In making the decision whether to revoke the determination, the Secretary must consider any submissions received within the period for making submissions. The Secretary must make the decision within 28 days after the end of that period.

(5) The Secretary must notify, in writing, the care recipient and the approved provider of the decision.

(6) The notice must be given to the care recipient and the approved provider within 28 days after the end of the period for making submissions.

(7) If the notice is not given within that period, the Secretary is taken to have decided not to revoke the determination.

(8) A revocation has effect:
(a) if the care recipient and the approved provider received notice under subsection (5) on the same day—the day after that day; or
(b) if they received the notice on different days—the day after the later of those days.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 3.2—Home care subsidy

Division 45—Introduction

45-1 What this Part is about

The *home care subsidy is a payment by the Commonwealth to approved providers for providing home care to care recipients. However, any *unspent home care amount (which may include home care subsidy) of a care recipient must be dealt with by an approved provider in accordance with the User Rights Principles.

Table of Divisions

45-2 The Subsidy Principles

*Home care subsidy is also dealt with in the Subsidy Principles. Provisions of this Part indicate when a particular matter is or may be dealt with in these Principles.

Note: The Subsidy Principles are made by the Minister under section 96-1.

45-3 Meaning of *home care*

(1) ***Home care*** is care consisting of a package of personal care services and other personal assistance provided to a person who is not being provided with residential care.

(2) The Subsidy Principles may specify care that:
(a) constitutes home care for the purposes of this Act; or

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(b) does not constitute home care for the purposes of this Act.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 46—Who is eligible for home care subsidy?

46-1 Eligibility for home care subsidy

(1) An approved provider is eligible for *home care subsidy in respect of a day if the Secretary is satisfied that:

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

(b) on that day there is in force a *home care agreement under which a care recipient approved under Part 2.3 in respect of home care is to be provided with home care by the approved provider through a home care service; and

(c) the home care service is a notified home care service; and

(d) the care recipient is a *prioritised home care recipient; and

(e) on that day the approved provider provides the care recipient with such home care (if any) as is required under the home care agreement; and

(f) the approved provider has agreed in the claim relating to the day to deal with the care recipient's *unspent home care amount in accordance with the User Rights Principles.

Note: Eligibility may also be affected by Division 7 (relating to a person's approval as a provider of *aged care services) or Division 20 (relating to a person's approval as a recipient of home care).

(2) For the purposes of paragraph (1)(c), a home care service is a ***notified home care service*** if the approved provider has notified the Secretary of the information required by section 9-1A in relation to the home care service.

46-2 Suspension of home care services

(1) A care recipient who is being provided with home care by an approved provider in accordance with a *home care agreement may request the approved provider to suspend, on a temporary basis, the provision of that home care, commencing on a date specified in the request.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(2) The approved provider must comply with the request.

(3) The Subsidy Principles may specify requirements relating to the suspension, on a temporary basis, of home care.

46-4 Notice of refusal to pay home care subsidy

(1) If:

(a) an approved provider has claimed *home care subsidy in respect of a person; and

(b) the approved provider is not eligible for home care subsidy in respect of that person;

the Secretary must, within 28 days after receiving the claim, notify the approved provider in writing accordingly.

(2) A notice given under subsection (1) is not a legislative instrument.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 47—On what basis is home care subsidy paid?

47-1 Payability of home care subsidy

(1) *Home care subsidy is payable by the Commonwealth to an approved provider in respect of each *payment period (see section 47-2) during which the approved provider is eligible under section 46-1.

(1A) However, *home care subsidy is not payable:

(a) in respect of any days during a *payment period on which the approved provider is not eligible; or

(b) in respect of a payment period if the approved provider has not given to the Secretary under section 47-4:

(i) a claim in respect of the payment period; and

(ii) a claim in respect of each preceding payment period (if any) ending on or after the first day on which the approved provider is eligible under section 46-1.

(2) *Home care subsidy is separately payable by the Commonwealth in respect of each home care service through which an approved provider provides home care.

47-2 Meaning of *payment period*

A ***payment period*** is:

(a) a calendar month; or

(b) such other period as is set out in the Subsidy Principles.

47-4 Claims for home care subsidy

For the purpose of obtaining payment of *home care subsidy in respect of a home care service through which an approved provider provides home care, the approved provider must, as soon as practicable after the end of each *payment period, give to the Secretary:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(a) a claim, in the form approved by the Secretary, for home care subsidy that is, or may become, payable in respect of the service for that payment period; and
(b) any information relating to the claim that is stated in the form to be required, or that the Secretary requests.

47-4A Variations of claims for home care subsidy

(1) An approved provider may vary the claim made in respect of a *payment period within:
(a) either:
(i) the period specified in the Subsidy Principles; or
(ii) if no such period is specified—2 years after the end of that payment period; or
(b) such longer period as is determined in respect of the claim by the Secretary.

(1A) Without limiting subparagraph (1)(a)(i), the Subsidy Principles may specify different periods in respect of different classes of variations.

(2) In determining a longer period for the purposes of paragraph (1)(b), the Secretary must be satisfied that a variation is required:
(a) due to an administrative error made by the Commonwealth or an agent of the Commonwealth; or
(b) because the Commonwealth or an agent of the Commonwealth considers that the circumstances of a care recipient are different from those on the basis of which subsidy was claimed.

Note: Determinations of periods under paragraph (1)(b) are reviewable under Part 6.1.

(3) A determination made under paragraph (1)(b) is not a legislative instrument.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

47-5 Recovery of overpayments

This Division does not affect the Commonwealth's right to recover overpayments under Part 6.5.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 48—What is the amount of home care subsidy?

Subdivision A—Amount of home care subsidy

48-1 Amount of home care subsidy

(1) The amount of *home care subsidy payable to an approved provider for a home care service in respect of a *payment period is the amount worked out by adding together the amounts of home care subsidy for each care recipient:

(a) in respect of whom there is in force a *home care agreement for provision of home care provided through the service during the period; and

(b) in respect of whom the approved provider was eligible for home care subsidy during the period.

(2) The amount of *home care subsidy for a care recipient in respect of the *payment period is worked out as follows:

Home care subsidy calculator

Step 1. Work out the ***Commonwealth contribution amount*** using section 48-1A.

Step 2. Work out the ***shortfall amount*** using section 48-13.

Step 3. If subsection (3) does not apply, work out, using section 48-17, the ***home care account balance*** in the care recipient's *home care account immediately before the approved provider gives to the Secretary, under section 47-4, a claim in respect of the *payment period.

Step 4. Identify:

(a) if subsection (3) applies—the Commonwealth contribution amount; or

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(b) otherwise—the sum of the Commonwealth contribution amount and the home care account balance.

This is the ***maximum contribution amount***.

Step 5. Identify the lesser of the following amounts (or either amount if they are the same):

(a) the shortfall amount;

(b) the maximum contribution amount.

This is the ***amount of home care subsidy*** for the care recipient in respect of the *payment period.

(3) This subsection applies if:

(a) within the period specified in the Subsidy Principles before the day the approved provider gives to the Secretary, under section 47-4, the claim in respect of the *payment period, another approved provider ceases to provide home care to the care recipient; or

(b) any other circumstances specified in the Subsidy Principles apply.

Subdivision B—Commonwealth contribution amount

48-1A Commonwealth contribution amount

The ***Commonwealth contribution amount*** for the care recipient in respect of the *payment period is worked out as follows:

Commonwealth contribution amount calculator

Step 1. Work out the ***basic subsidy amount*** using section 48-2.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Step 2. Add to this amount the amounts of any ***primary supplements*** worked out using section 48-3.

Step 3. Subtract the amounts of any ***reductions in subsidy*** worked out using section 48-4.

Step 4. Add the amounts of any ***other supplements*** worked out using section 48-9.

The result is the ***Commonwealth contribution amount*** for the care recipient in respect of the *payment period.

48-2 The basic subsidy amount

(1) The ***basic subsidy amount*** for the care recipient in respect of the *payment period is the sum of all the basic subsidy amounts for the days during the period on which the care recipient was provided with home care through the home care service in question.

(2) The basic subsidy amount for a day is the amount determined by the Minister by legislative instrument.

(3) The Minister may determine different amounts (including nil amounts) based on any one or more of the following:
  (a) the levels for care recipients being provided with home care;
  (b) any other matters specified in the Subsidy Principles;
  (c) any other matters determined by the Minister.

48-3 Primary supplements

(1) The ***primary supplements*** for the care recipient under step 2 of the Commonwealth contribution amount calculator are such of the following primary supplements as apply to the care recipient in respect of the *payment period:
  (a) the following primary supplements as set out in the Subsidy Principles:
    (i) the oxygen supplement;

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(ii) the enteral feeding supplement;
(iii) the dementia and cognition supplement;
(iv) the veterans' supplement;

(b) any other primary supplement set out in the Subsidy Principles for the purposes of this paragraph.

(2) The Subsidy Principles may specify, in respect of each primary supplement, the circumstances in which the supplement will apply to a care recipient in respect of a *payment period.

(3) The Minister may determine by legislative instrument, in respect of each such supplement, the amount of the supplement, or the way in which the amount of the supplement is to be worked out.

48-4 Reductions in subsidy

The ***reductions in subsidy*** for the care recipient under step 3 of the Commonwealth contribution amount calculator are such of the following reductions as apply to the care recipient in respect of the *payment period:

(a) the compensation payment reduction (see sections 48-5 and 48-6);
(b) the care subsidy reduction (see sections 48-7 and 48-8).

48-5 The compensation payment reduction

(1) The ***compensation payment reduction*** for the care recipient in respect of the *payment period is the sum of all compensation payment reductions for days during the period:

(a) on which the care recipient is provided with home care through the home care service in question; and
(b) that are covered by a compensation entitlement.

(2) For the purposes of this section, a day is covered by a compensation entitlement if:

(a) the care recipient is entitled to compensation under a judgement, settlement or reimbursement arrangement; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(b) the compensation takes into account the cost of providing home care to the care recipient on that day; and

(c) the application of compensation payment reductions to the care recipient for preceding days has not resulted in reductions in subsidy that, in total, exceed or equal the part of the compensation that relates, or is to be treated under subsection (5) or (6) as relating, to future costs of providing home care.

(3) The compensation payment reduction for a particular day is an amount equal to the amount of *home care subsidy that would be payable for the care recipient in respect of the *payment period if:

(a) the care recipient was provided with home care on that day only; and

(b) this section and sections 48-9 and 48-10 did not apply.

(4) However, if:

(a) the compensation payment reduction arises from a judgement or settlement that fixes the amount of compensation on the basis that liability should be apportioned between the care recipient and the compensation payer; and

(b) as a result, the amount of compensation is less than it would have been if liability had not been so apportioned; and

(c) the compensation is not paid in a lump sum;

the amount of the compensation payment reduction under subsection (3) is reduced by the proportion corresponding to the proportion of liability that is apportioned to the care recipient by the judgement or settlement.

(5) If a care recipient is entitled to compensation under a judgement or settlement that does not take into account the future costs of providing home care to the care recipient, the Secretary may, in accordance with the Subsidy Principles, determine:

(a) that, for the purposes of this section, the judgement or settlement is to be treated as having taken into account the cost of providing that home care; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(b) the part of the compensation that, for the purposes of this section, is to be treated as relating to the future costs of providing home care.

Note: Determinations are reviewable under Part 6.1.

(6) If:

(a) a care recipient is entitled to compensation under a settlement; and

(b) the settlement takes into account the future costs of providing home care to the recipient; and

(c) the Secretary is satisfied that the settlement does not adequately take into account the future costs of providing home care to the care recipient;

the Secretary may, in accordance with the Subsidy Principles, determine the part of the compensation that, for the purposes of this section, is to be treated as relating to the future costs of providing home care.

Note: Determinations are reviewable under Part 6.1.

(7) A determination under subsection (5) or (6) must be in writing and notice of it must be given to the care recipient.

(8) A determination under subsection (5) or (6) is not a legislative instrument.

(9) In this section, the following terms have the same meanings as in the *Health and Other Services (Compensation) Act 1995*:

compensation
compensation payer
judgement
reimbursement arrangement
settlement

48-6 Secretary's powers if compensation information is not given

(1) This section applies if:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(a) the Secretary believes on reasonable grounds that a care recipient is entitled to compensation under a judgement, settlement or reimbursement arrangement; and
(b) the Secretary does not have sufficient information to apply section 48-5 in relation to the compensation.

(2) The Secretary may, by notice in writing given to a person, require the person to give information or produce a document that is in the person's custody, or under the person's control, if the Secretary believes on reasonable grounds that the information or document may be relevant to the application of section 48-5 in relation to the compensation.

(3) The notice must specify:
(a) how the person is to give the information or produce the document; and
(b) the period within which the person is to give the information or produce the document.

Note: Sections 28A and 29 of the *Acts Interpretation Act 1901* (which deal with service of documents) apply to notice given under this section.

(4) If the information or document is not given or produced within the specified period, the Secretary may determine compensation payment reductions for the care recipient.

Note: Decisions to determine compensation payment reductions under this section are reviewable under Part 6.1.

(5) The compensation payment reductions must be determined in accordance with the Subsidy Principles.

48-7 The care subsidy reduction

(1) The care subsidy reduction for the care recipient for the *payment period is the sum of all the care subsidy reductions for days during the period on which the care recipient is provided with home care through the home care service in question.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(2) Subject to this section and section 48-8, the care subsidy reduction for a particular day is worked out as follows:

Care subsidy reduction calculator

Step 1. Work out the care recipient's ***total assessable income*** on a yearly basis using section 44-24.

Step 2. Work out the care recipient's ***total assessable income free area*** using section 44-26.

Step 3. If the care recipient's total assessable income does not exceed the care recipient's total assessable income free area, the ***care subsidy reduction*** is zero.

Step 4. If the care recipient's total assessable income exceeds the care recipient's total assessable income free area but not the ***income threshold***, the ***care subsidy reduction*** is equal to the lowest of the following:

(a) the sum of the basic subsidy amount for the care recipient and all primary supplements for the care recipient;

(b) 50% of the amount by which the care recipient's total assessable income exceeds the income free area (worked out on a per day basis);

(c) the amount (the ***first cap***) determined by the Minister by legislative instrument for the purposes of this paragraph.

Step 5. If the care recipient's total assessable income exceeds the ***income threshold***, the ***care subsidy reduction*** is equal to the lowest of the following:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(a) the sum of the basic subsidy amount for the care recipient and all primary supplements for the care recipient;

(b) 50% of the amount by which the care recipient's total assessable income exceeds the income threshold (worked out on a per day basis) plus the amount specified in paragraph (c) of step 4;

(c) the amount (the ***second cap***) determined by the Minister by legislative instrument for the purposes of this paragraph.

(3) If the care recipient has not provided sufficient information about the care recipient's income for the care recipient's care subsidy reduction to be determined, the ***care subsidy reduction*** is equal to the lesser of the following:

(a) the sum of the basic subsidy amount for the care recipient and all primary supplements for the care recipient;

(b) the second cap.

(4) If, apart from this subsection, the sum of all the *combined care subsidy reductions made for the care recipient during a *start-date year for the care recipient would exceed the annual cap applying at the time for the care recipient, the ***care subsidy reduction*** for the remainder of the start-date year is zero.

(5) If, apart from this subsection, the sum of all the previous *combined care subsidy reductions made for the care recipient would exceed the lifetime cap applying at the time, the ***care subsidy reduction*** for the remainder of the care recipient's life is zero.

(6) The ***income threshold*** is the amount determined by the Minister by legislative instrument.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(7) The ***annual cap***, for the care recipient, is the amount determined by the Minister by legislative instrument for the class of care recipients of which the care recipient is a member.

(8) The ***lifetime cap*** is the amount determined by the Minister by legislative instrument.

48-8 Care subsidy reduction taken to be zero in some circumstances

(1) The care subsidy reduction in respect of the care recipient is taken to be zero for each day, during the *payment period, on which one or more of the following applies:

(a) a determination was in force under subsection (2) in relation to the care recipient;

(b) the care recipient was included in a class of people specified in the Subsidy Principles.

(2) The Secretary may, in accordance with the Subsidy Principles, determine that the care subsidy reduction in respect of the care recipient is to be taken to be zero.

Note: Refusals to make determinations are reviewable under Part 6.1.

(3) The determination ceases to be in force at the end of the period (if any) specified in the determination.

Note: Decisions specifying periods are reviewable under Part 6.1.

(4) In deciding whether to make a determination, the Secretary must have regard to the matters specified in the Subsidy Principles.

(5) Application may be made to the Secretary, in the form approved by the Secretary, for a determination under subsection (2) in respect of a care recipient. The application may be made by:

(a) the care recipient; or

(b) an approved provider that is providing, or is to provide, home care to the care recipient.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(6) The Secretary must notify the care recipient and the approved provider, in writing, of the Secretary's decision on whether to make the determination. The notice must be given:
   (a) if an application for a determination was made under subsection (5)—within 28 days after the application was made, or, if the Secretary requested further information in relation to the application, within 28 days after receiving the information; or
   (b) if such an application was not made—within 28 days after the decision is made.

(7) A determination under subsection (2) is not a legislative instrument.

48-9 Other supplements

(1) The ***other supplements*** for the care recipient under step 4 of the Commonwealth contribution amount calculator are such of the following supplements as apply to the care recipient in respect of the *payment period:
   (a) the hardship supplement (see section 48-10);
   (b) any other supplement set out in the Subsidy Principles for the purposes of this paragraph.

(2) The Subsidy Principles may specify, in respect of each other supplement set out for the purposes of paragraph (1)(b), the circumstances in which the supplement will apply to a care recipient in respect of a *payment period.

(3) The Minister may determine by legislative instrument, in respect of each such other supplement, the amount of the supplement, or the way in which the amount of the supplement is to be worked out.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

48-10 The hardship supplement

(1) The hardship supplement for the care recipient in respect of the *payment period is the sum of all the hardship supplements for the days during the period on which:

(a) the care recipient was provided with home care through the home care service in question; and

(b) the care recipient was eligible for a hardship supplement.

(2) The care recipient is eligible for a hardship supplement on a particular day if:

(a) the Subsidy Principles specify one or more classes of care recipients to be care recipients for whom paying a daily amount of home care fees of more than the amount specified in the Principles would cause financial hardship; and

(b) on that day, the care recipient is included in such a class.

The specified amount may be nil.

(3) The care recipient is also eligible for a hardship supplement on a particular day if a determination is in force under section 48-11 in relation to the care recipient.

(4) The hardship supplement for a particular day is the amount:

(a) determined by the Minister by legislative instrument; or

(b) worked out in accordance with a method determined by the Minister by legislative instrument.

(5) The Minister may determine different amounts (including nil amounts) or methods based on any matters determined by the Minister by legislative instrument.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

48-11 Determining cases of financial hardship

(1) The Secretary may, in accordance with the Subsidy Principles, determine that the care recipient is eligible for a hardship supplement if the Secretary is satisfied that paying a daily amount of home care fees of more than the amount specified in the determination would cause the care recipient financial hardship.

Note: Refusals to make determinations are reviewable under Part 6.1.

(2) In deciding whether to make a determination under this section, and in determining the specified amount, the Secretary must have regard to the matters (if any) specified in the Subsidy Principles. The specified amount may be nil.

(3) A determination under this section ceases to be in force at the end of a specified period, or on the occurrence of a specified event, if the determination so provides.

Note: Decisions to specify periods or events are reviewable under Part 6.1.

(4) Application may be made to the Secretary, in the form approved by the Secretary, for a determination under this section. The application may be made by:

(a) the care recipient; or

(b) an approved provider who is providing, or is to provide, home care to the care recipient.

(5) If the Secretary needs further information to determine the application, the Secretary may give to the applicant a notice requesting the applicant to give the further information:

(a) within 28 days after receiving the notice; or

(b) within such other period as is specified in the notice.

(6) The application is taken to have been withdrawn if the information is not given within whichever of those periods applies. The notice must contain a statement setting out the effect of this subsection.

Note: The period for giving the further information can be extended—see section 96-7.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(7) The Secretary must notify the care recipient and the approved provider, in writing, of the Secretary's decision on whether to make the determination. The notice must be given:
  (a) within 28 days after receiving the application; or
  (b) if the Secretary has requested further information under subsection (5)—within 28 days after receiving the information.

(8) If the Secretary makes the determination, the notice must set out:
  (a) any period at the end of which; or
  (b) any event on the occurrence of which;
the determination will cease to be in force.

(9) A determination under subsection (1) is not a legislative instrument.

48-12 Revoking determinations of financial hardship

(1) The Secretary may, in accordance with the Subsidy Principles, revoke a determination under section 48-11.

Note: Revocations of determinations are reviewable under Part 6.1.

(2) Before deciding to revoke the determination, the Secretary must notify the care recipient and the approved provider concerned that revocation is being considered.

(3) The notice must be in writing and must:
  (a) invite the care recipient and the approved provider to make submissions, in writing, to the Secretary within 28 days after receiving the notice; and
  (b) inform them that if no submissions are made within that period, the revocation takes effect on the day after the last day for making submissions.

(4) In making the decision whether to revoke the determination, the Secretary must consider any submissions received within the period for making submissions. The Secretary must make the decision within 28 days after the end of that period.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(5) The Secretary must notify, in writing, the care recipient and the approved provider of the decision.

(6) The notice must be given to the care recipient and the approved provider within 28 days after the end of the period for making submissions.

(7) If the notice is not given within that period, the Secretary is taken to have decided not to revoke the determination.

(8) A revocation has effect:
  (a) if the care recipient and the approved provider received notice under subsection (5) on the same day—the day after that day; or
  (b) if they received the notice on different days—the day after the later of those days.

Subdivision C—Shortfall amount

48-13 Shortfall amount

(1) The ***shortfall amount*** for the care recipient in respect of the *payment period is worked out as follows:

Shortfall amount calculator

Step 1. Work out, in accordance with the Subsidy Principles, the ***price*** for the home care provided during the *payment period to the care recipient by the approved provider.

Step 1A. If, in accordance with the User Rights Principles, the approved provider elects to return the *Commonwealth portion of the care recipient's *unspent home care amount to the Commonwealth, reduce the price by the amount of the Commonwealth portion available at the end of the previous *payment period, up to 100% of the price.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Step 2. Subtract the ***care recipient contribution amount*** (if any) specified in, or worked out in accordance with, the Subsidy Principles.

The result is the ***shortfall amount*** for the care recipient in respect of the *payment period. However, if the result does not exceed zero, the ***shortfall amount*** is zero.

(2) The Subsidy Principles must specify the way to work out the price for home care provided during a *payment period to a care recipient by an approved provider for the purposes of step 1 of the shortfall amount calculator.

(3) Without limiting subsection (2), the Subsidy Principles may require the price to include or exclude amounts in relation to particular matters.

(4) The Subsidy Principles may specify the care recipient contribution amount, or the way to work out the care recipient contribution amount, for a care recipient in respect of a *payment period for the purposes of step 2 of the shortfall amount calculator.

Subdivision D—Home care accounts

48-14 Home care account

(1) There is a ***home care account*** for each person who is, at any time on or after the *implementation day, a *prioritised home care recipient.

(2) A person starts to have a *home care account on:

(a) if the person is, on the *implementation day, a *prioritised home care recipient—the implementation day; or

(b) otherwise—the day the Secretary first makes, after the implementation day, a determination under section 23B-1 that the person is a prioritised home care recipient.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

48-15 Home care credits

The following table sets out when a credit arises in a care recipient's *home care account and the amount of the credit. The credit is called a ***home care credit***.

Credits in the home care account

Item	If ...	a credit of ...	arises ...
1	the amount worked out at step 1 (Commonwealth contribution amount) of the home care subsidy calculator in subsection 48-1(2) for the care recipient in respect of a *payment period exceeds the amount worked out at step 2 (shortfall amount) of that calculator for the care recipient in respect of the payment period	the amount of the excess	at the later of: (a) the end of the subsequent payment period; and (b) the time the approved provider gives to the Secretary, under section 47-4, a claim in respect of the payment period
2	the circumstances specified in the Subsidy Principles happen	an amount specified in, or worked out in accordance with, the Subsidy Principles	at the time specified in the Subsidy Principles

48-16 Home care debits

The following table sets out when a debit arises in a care recipient's *home care account and the amount of the debit. The debit is called a ***home care debit***.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Debits in the home care account			
Item	**If ...**	**a debit of ...**	**arises ...**
1	the amount worked out at step 2 (shortfall amount) of the home care subsidy calculator in subsection 48-1(2) for the care recipient in respect of a *payment period exceeds the amount worked out at step 1 (Commonwealth contribution amount) of that calculator for the care recipient in respect of the payment period	the amount (if any) that is the difference between: (a) the amount identified in step 5 of that calculator for the care recipient in respect of the payment period; and (b) the amount worked out at step 1 (Commonwealth contribution amount) of that calculator for the care recipient in respect of the payment period	at the time the approved provider gives to the Secretary, under section 47-4, a claim in respect of the payment period
2	the circumstances specified in the Subsidy Principles happen	an amount specified in, or worked out in accordance with, the Subsidy Principles	at the time specified in the Subsidy Principles

48-17 Home care account balance

The ***home care account balance*** in a care recipient's *home care account at a particular time equals:

(a) the sum of the *home care credits in that account at that time; less

(b) the sum of the *home care debits in that account at that time.

48-18 When home care account ceases

A care recipient's *home care account ceases when the care recipient dies.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 3.3—Flexible care subsidy

Division 49—Introduction

49-1 What this Part is about

The *flexible care subsidy is a payment by the Commonwealth to approved providers for providing flexible care to care recipients.

Table of Divisions

49-2 The Subsidy Principles

*Flexible care subsidy is also dealt with in the Subsidy Principles. Provisions of this Part indicate when a particular matter is or may be dealt with in these Principles.

Note: The Subsidy Principles are made by the Minister under section 96-1.

49-3 Meaning of *flexible care*

Flexible care means care provided in a residential or community setting through an *aged care service that addresses the needs of care recipients in alternative ways to the care provided through residential care services and home care services.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 50—Who is eligible for flexible care subsidy?

50-1 Eligibility for flexible care subsidy

(1) An approved provider is eligible for *flexible care subsidy in respect of a day if the Secretary is satisfied that, during that day:

(a) the approved provider holds an allocation of *places for flexible care subsidy that is in force under Part 2.2 (other than a *provisional allocation); and

(b) the approved provider:

(i) provides flexible care to a care recipient who is approved under Part 2.3 in respect of flexible care; or

(ii) provides flexible care to a care recipient who is included in a class of people who, under the Subsidy Principles, do not need approval under Part 2.3 in respect of flexible care; or

(iii) is taken to provide flexible care in the circumstances set out in the Subsidy Principles; and

(c) the flexible care is of a kind for which flexible care subsidy may be payable (see section 50-2).

(2) However, the approved provider is not eligible in respect of flexible care provided to the care recipient if the care is excluded because the approved provider exceeds the approved provider's allocation of *places for *flexible care subsidy (see section 50-3).

Note: Eligibility may also be affected by Division 7 (relating to a person's approval as a provider of *aged care services) or Division 20 (relating to a person's approval as a recipient of flexible care).

50-2 Kinds of care for which flexible care subsidy may be payable

(1) The Subsidy Principles may specify kinds of care for which *flexible care subsidy may be payable.

(2) Kinds of care may be specified by reference to one or more of the following:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(a) the nature of the care;
(b) the circumstances in which the care is provided;
(c) the nature of the locations in which it is provided;
(d) the groups of people to whom it is provided;
(e) the period during which the care is provided;
(f) any other matter.

Note: Examples of the kinds of care that might be specified are:

(a) care for *people with special needs;

(b) care provided in small, rural or remote communities;

(c) care provided through a pilot program for alternative means of providing care;

(d) care provided as part of co-ordinated service and accommodation arrangements directed at meeting several health and community service needs.

50-3 Exceeding the number of places for which there is an allocation

(1) For the purposes of an approved provider's eligibility for *flexible care subsidy, flexible care provided to a particular care recipient on a particular day is excluded if:
(a) the number of care recipients provided with flexible care by the approved provider during that day exceeds the number of *places included in the approved provider's allocation of places for flexible care subsidy; and
(b) the Secretary decides, in accordance with subsection (2), that the flexible care provided to that particular care recipient on that day is to be excluded.

(2) In deciding under paragraph (1)(b) which flexible care is to be excluded, the Secretary must:
(a) make the number of exclusions necessary to ensure that the number of *places for which *flexible care subsidy will be payable does not exceed the number of places included in the approved provider's allocation of places for flexible care subsidy; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(b) exclude the flexible care in the reverse order in which the care recipients in question *entered the flexible care service for the provision of flexible care.

50-4 Notice of refusal to pay flexible care subsidy

(1) If:

(a) an approved provider has claimed *flexible care subsidy in respect of a person; and

(b) the approved provider is not eligible for flexible care subsidy in respect of that person;

the Secretary must notify the approved provider, in writing, accordingly.

(2) A notice given under subsection (1) is not a legislative instrument.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 51—On what basis is flexible care subsidy paid?

51-1 Payment of flexible care subsidy

(1) *Flexible care subsidy in respect of a particular kind of flexible care is payable in accordance with the Subsidy Principles.

(2) The Subsidy Principles may, in relation to each kind of flexible care, provide for one or more of the following:
  (a) the periods in respect of which *flexible care subsidy is payable;
  (b) the payment of flexible care subsidy in advance;
  (c) the way in which claims for flexible care subsidy are to be made;
  (d) any other matter relating to the payment of flexible care subsidy.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 52—What is the amount of flexible care subsidy?

52-1 Amounts of flexible care subsidy

(1) The amount of *flexible care subsidy that is payable in respect of a day is the amount:

(a) determined by the Minister by legislative instrument; or

(b) worked out in accordance with a method determined by the Minister by legislative instrument.

(2) The Minister may determine rates of or methods for working out *flexible care subsidy based on any matters determined by the Minister by legislative instrument.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Chapter 3A—Fees and payments

Division 52A—Introduction

52A-1 What this Chapter is about

Care recipients contribute to the cost of their care by paying resident fees or home care fees (see Part 3A.1).

Care recipients may pay for, or contribute to the cost of, accommodation provided with residential care or eligible flexible care by paying an *accommodation payment or an *accommodation contribution (see Part 3A.2).

Accommodation payments or accommodation contributions may be paid by:

- *daily payments; or
- *refundable deposit; or
- a combination of refundable deposit and daily payments.

Rules for managing refundable deposits, *accommodation bonds and *entry contributions are set out in Part 3A.3. Accommodation bonds and entry contributions are paid under the *Aged Care (Transitional Provisions) Act 1997*.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 3A.1—Resident and home care fees

Division 52B—Introduction

52B-1 What this Part is about

Care recipients may pay, or contribute to the cost of, residential care and home care by paying resident fees or home care fees.

Table of Divisions

52B-2 The Fees and Payments Principles

Resident fees and home care fees are also dealt with in the Fees and Payments Principles. Provisions in this Part indicate when a particular matter is or may be dealt with in these Principles.

Note: The Fees and Payments Principles are made by the Minister under section 96-1.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 52C—Resident fees

52C-2 Rules relating to resident fees

(1) Fees charged to a care recipient for, or in connection with, residential care provided to the care recipient through a residential care service are ***resident fees***.

(2) The following apply:

(a) subject to section 52C-5, the resident fee in respect of any day must not exceed the sum of:

(i) the maximum daily amount worked out under section 52C-3; and

(ii) such other amounts as are specified in, or worked out in accordance with, the Fees and Payments Principles;

(b) the care recipient must not be required to pay resident fees more than one month in advance;

(c) the care recipient must not be required to pay resident fees for any period prior to *entry to the residential care service, other than for a period in which the care recipient is, because of subsection 42-3(3), taken to be on *leave under section 42-2;

(d) if the care recipient dies or departs from the service—any fees paid in advance in respect of a period occurring after the care recipient dies or leaves must be refunded in accordance with the Fees and Payments Principles.

52C-3 Maximum daily amount of resident fees

(1) The ***maximum daily amount of resident fees*** payable by the care recipient is the amount worked out as follows:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Resident fee calculator

Step 1. Work out the *standard resident contribution for the care recipient using section 52C-4.

Step 2. Add the ***compensation payment fee*** (if any) for the care recipient for the day in question (see subsection (2)).

Step 3. Add the ***means tested care fee*** (if any) for the care recipient for that day (see subsection (3)).

Step 4. Subtract the amount of any hardship supplement applicable to the care recipient for the day in question under section 44-30.

Step 5. Add any other amounts agreed between the care recipient and the approved provider in accordance with the Fees and Payments Principles.

Step 6. If, on the day in question, the *place in respect of which residential care is provided to the care recipient has *extra service status, add the extra service fee in respect of the place.

The result is the ***maximum daily amount of resident fees*** for the care recipient.

(2) The ***compensation payment fee*** for a care recipient for a particular day is the amount equal to the compensation payment reduction applicable to the care recipient on that day (see sections 44-20 and 44-20A).

(3) The ***means tested care fee*** for a care recipient for a particular day is:

(a) the amount equal to the care subsidy reduction applicable to the care recipient on that day (see sections 44-21 and 44-23); or

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(b) if the care recipient is receiving respite care—zero.

(4) Steps 2 to 6 of the resident fee calculator in subsection (1) do not apply in relation to a day on which the care recipient is, because of subsection 42-3(3), taken to be on *leave under section 42-2.

52C-4 The standard resident contribution

The ***standard resident contribution*** for a care recipient is:

(a) the amount determined by the Minister by legislative instrument; or

(b) if no amount is determined under paragraph (a) for the care recipient—the amount obtained by rounding down to the nearest cent the amount equal to 85% of the *basic age pension amount (worked out on a per day basis).

52C-5 Maximum daily amount of resident fees for reserving a place

If:

(a) a care recipient is absent from a residential care service on a particular day; and

(b) the care recipient is not on *leave from the residential care service on that day; and

(ba) the care recipient would have been on leave from the residential care service on that day under subsection 42-2(3) except that the care recipient had previously been on leave under that subsection, during the current financial year, for 52 days;

the maximum fee in respect of a day that can be charged for reserving a place in the residential care service for that day is the amount:

(c) determined by the Minister by legislative instrument; or

(d) worked out in accordance with a method determined by the Minister by legislative instrument.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 52D—Home care fees

52D-1 Rules relating to home care fees

(1) Fees charged to a care recipient for, or in connection with, home care provided to the care recipient through a home care service are ***home care fees***.

(2) The following apply:

(a) the home care fee in respect of any day must not exceed the sum of:

(i) the maximum daily amount worked out under section 52D-2; and

(ii) such other amounts as are specified in, or worked out in accordance with, the Fees and Payments Principles;

(b) the care recipient must not be required to pay home care fees more than one month in advance;

(c) the care recipient must not be required to pay home care fees for any period prior to being provided with the home care;

(d) if the care recipient dies or provision of home care ceases—any fees paid in advance in respect of a period occurring after the care recipient's death, or the cessation of home care, must be refunded in accordance with the Fees and Payments Principles.

52D-2 Maximum daily amount of home care fees

(1) The ***maximum daily amount of home care fees*** payable by the care recipient is the amount worked out as follows:

Home care fee calculator

Step 1. Work out the ***basic daily care fee*** using section 52D-3.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Step 2. Add the ***compensation payment fee*** (if any) for the care recipient for the day in question (see subsection (2)).

Step 3. Add the ***income tested care fee*** (if any) for the care recipient for the day in question (see subsection (3)).

Step 4. Subtract the amount of any hardship supplement applicable to the care recipient for the day in question under section 48-10.

Step 5. Add any other amounts agreed between the care recipient and the approved provider in accordance with the Fees and Payments Principles.

The result is the ***maximum daily amount of home care fees*** for the care recipient.

(2) The ***compensation payment fee*** for a care recipient for a particular day is the amount equal to the compensation payment reduction applicable to the care recipient on that day (see sections 48-5 and 48-6).

(3) The ***income tested care fee*** for a care recipient for a particular day is the amount equal to the care subsidy reduction applicable to the care recipient on that day (see sections 48-7 and 48-8).

52D-3 The basic daily care fee

The ***basic daily care fee*** for a care recipient is:

(a) the amount determined by the Minister by legislative instrument; or

(b) if no amount is determined under paragraph (a) for the care recipient—the amount obtained by rounding down to the nearest cent the amount equal to 17.5% of the *basic age pension amount (worked out on a per day basis).

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 3A.2—Accommodation payments and accommodation contributions

Division 52E—Introduction

52E-1 What this Part is about

Care recipients may pay for, or contribute to the cost of, accommodation provided with residential care or eligible flexible care by paying an *accommodation payment or an *accommodation contribution.

Accommodation payments or accommodation contributions may be paid by:

- *daily payments; or
- *refundable deposit; or
- a combination of refundable deposit and daily payments.

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*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

52E-2 The Fees and Payments Principles

*Accommodation payments and *accommodation contributions are also dealt with in the Fees and Payments Principles. Provisions in this Part indicate when a particular matter is or may be dealt with in these Principles.

Note: The Fees and Payments Principles are made by the Minister under section 96-1.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 52F—Accommodation agreements

52F-1 Information to be given before person enters residential or eligible flexible care

(1) Before a person enters a residential care service or an *eligible flexible care service, the provider of the service must:

(a) give the person:

(i) an *accommodation agreement; and

(ii) such other information as is specified in the Fees and Payments Principles; and

(b) agree with the person, in writing, about the maximum amount that would be payable if the person paid an *accommodation payment for the service.

Note: Whether or not a person pays an accommodation payment depends on their means tested amount, which may not be worked out before they enter the service.

(2) A flexible care service is an ***eligible flexible care service*** if the service is permitted, under the Fees and Payments Principles, to charge *accommodation payments.

52F-2 Approved provider must enter accommodation agreement

(1) An approved provider must enter into an *accommodation agreement with a person:

(a) before, or within 28 days after, the person enters the provider's service; or

(b) within that period as extended under subsection (2).

(2) If, within 28 days after the person (the ***care recipient***) enters the service:

(a) the approved provider and the care recipient have not entered into an *accommodation agreement; and

(b) a process under a law of the Commonwealth, a State or a Territory has begun for a person (other than an approved

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

provider) to be appointed, by reason that the care recipient has a mental impairment, as the care recipient's legal representative;

the time limit for entering into the agreement is extended until the end of 7 days after:

(c) the appointment is made; or

(d) a decision is made not to make the appointment; or

(e) the process ends for some other reason;

or for such further period as the Secretary allows, having regard to any matters specified in the Fees and Payments Principles.

52F-3 Accommodation agreements

(1) The *accommodation agreement must set out the following:

(a) the person's date (or proposed date) of *entry to the service;

(b) that the person will pay an *accommodation payment if:

(i) the person's *means tested amount at the date of entry is equal to, or greater than, the *maximum accommodation supplement amount for that day; or

(ii) the person does not provide sufficient information to allow the person's means tested amount to be worked out;

(c) that, if the person's means tested amount at the date of entry is less than the maximum accommodation supplement amount for that day, the person may pay an *accommodation contribution, depending on the person's means tested amount;

(d) that a determination under section 52K-1 (financial hardship) may reduce the accommodation payment or accommodation contribution, including to nil;

(e) that, within 28 days after the date of entry, the person must choose to pay the accommodation payment or accommodation contribution (if payable) by:

(i) *daily payments; or

(ii) *refundable deposit; or

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(iii) a combination of refundable deposit and daily payments;

(f) that, if the person does not choose how to pay within those 28 days, the person must pay by daily payments;

(g) that, if the person chooses to pay a refundable deposit within those 28 days:

(i) the person will not be required to pay the refundable deposit until 6 months after the date of entry; and

(ii) daily payments must be paid until the refundable deposit is paid;

(h) the amounts that are permitted to be deducted from a refundable deposit;

(i) the circumstances in which a refundable deposit balance must be refunded;

(j) any other conditions relating to the payment of a refundable deposit;

(k) such other matters as are specified in the Fees and Payments Principles.

(2) In relation to an *accommodation payment, the agreement must set out the following:

(a) the amount of *daily accommodation payment that would be payable, as agreed under paragraph 52F-1(1)(b);

(b) the amount of *refundable accommodation deposit that would be payable if no daily accommodation payments were paid;

(c) the method for working out amounts that would be payable as a combination of refundable accommodation deposit and daily accommodation payments;

(d) that, if the person pays a refundable accommodation deposit, the approved provider:

(i) must, at the person's request, deduct daily accommodation payments for the person from the refundable accommodation deposit; and

(ii) may require the person to maintain the agreed accommodation payment if the refundable accommodation deposit is reduced;

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(e) that, if the person is required to maintain the agreed accommodation payment because the refundable accommodation deposit has been reduced, the person may do so by:
  (i) paying daily accommodation payments or increased daily accommodation payments; or
  (ii) topping up the refundable accommodation deposit; or
  (iii) a combination of both.

(3) In relation to an *accommodation contribution, the agreement must set out the following:
  (a) that the amount of accommodation contribution for a day will not exceed the amount assessed for the person based on the person's *means tested amount;
  (b) that the amount of accommodation contribution payable will vary from time to time depending on:
    (i) the *accommodation supplement applicable to the service; and
    (ii) the person's means tested amount;
  (c) the method for working out amounts that would be payable by:
    (i) *refundable accommodation contribution; or
    (ii) a combination of *refundable accommodation contribution and *daily accommodation contributions;
  (d) that, if the person pays a refundable accommodation contribution, the approved provider:
    (i) must, at the person's request, deduct daily accommodation contributions for the person from the refundable accommodation contribution; and
    (ii) may require the person to maintain the accommodation contribution that is payable if the refundable accommodation contribution is reduced;
  (e) that, if the person is required to maintain the accommodation contribution because the refundable accommodation contribution has been reduced, the person may do so by:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(i) paying *daily accommodation contributions or increased daily accommodation contributions; or

(ii) paying or topping up a *refundable accommodation contribution; or

(ii) a combination of both;

(f) that, if the amount of accommodation contribution that is payable increases, the approved provider may require the person to pay the increase;

(g) that, if the person is required to pay the increase, the person may do so by:

(i) paying daily accommodation contributions or increased daily accommodation contributions; or

(ii) paying or topping up a refundable accommodation contribution; or

(ii) a combination of both.

52F-4 Refundable deposit not to be required for entry

The approved provider must not require the person to choose how to pay an *accommodation payment or *accommodation contribution before the person *enters the service.

52F-5 Accommodation agreements for flexible care

If the *accommodation agreement is for a flexible care service, the accommodation agreement is not required to deal with the matters in section 52F-3 to the extent that they relate to *accommodation contributions.

52F-6 Accommodation agreements may be included in another agreement

The *accommodation agreement may be included in another agreement.

Note: For example, an accommodation agreement could be part of a resident agreement.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

52F-7 Effect of accommodation agreements

The *accommodation agreement has effect subject to this Act, and any other law of the Commonwealth.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 52G—Rules about accommodation payments and accommodation contributions

52G-1 What this Division is about

*Accommodation payments and *accommodation contributions may be charged only in accordance with this Division.

Rules about *daily payments and *refundable deposits are set out in Divisions 52H and 52J.

Table of Subdivisions

Subdivision 52G-A—Rules about accommodation payments

52G-2 Rules about charging accommodation payments

The rules for charging *accommodation payment for a residential care service or *eligible flexible care service are as follows:

(a) a person must not be charged an accommodation payment unless:
  (i) the person's *means tested amount, at the date the person *enters the service, is equal to or greater than the *maximum accommodation supplement amount for that day; or
  (ii) the person has not provided sufficient information to allow the person's means tested amount to be worked out;

(b) an accommodation payment must not be charged for *respite care;

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(c) an accommodation payment must not exceed the maximum amount determined by the Minister under section 52G-3, or such higher amount as approved by the *Pricing Authority under section 52G-4;

(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

(ii) the sanction prohibits the charging of an accommodation payment for the service;

(e) an approved provider must comply with:

(i) the rules set out in this Division; and

(ii) any rules about charging accommodation payments specified in the Fees and Payments Principles.

52G-3 Minister may determine maximum amount of accommodation payment

(1) The Minister may, by legislative instrument, determine the maximum amount of *accommodation payment that an approved provider may charge a person.

(2) The determination may set out:

(a) the maximum *daily accommodation payment amount and a method for working out *refundable accommodation deposit amounts; or

(b) methods for working out both:

(i) the maximum daily accommodation payment amount; and

(ii) refundable accommodation deposit amounts.

(3) The approved provider may charge less than the maximum amount.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

52G-4 Pricing Authority may approve higher maximum amount of accommodation payment

(1) An *approved provider may apply to the *Pricing Authority for approval to charge an *accommodation payment that is higher than the maximum amount of accommodation payment determined by the Minister under section 52G-3 for:

(a) a residential care service or flexible care service; or

(b) a *distinct part of such a service.

(2) The application:

(a) must comply with the requirements set out in the Fees and Payments Principles; and

(b) must not be made:

(i) within the period specified in Fees and Payments Principles after the *Pricing Authority last made a decision under this section in relation to the service, or the part of the service; or

(ii) if no period is specified—within 12 months after that last decision.

(3) If the *Pricing Authority needs further information to determine the application, the Pricing Authority may give to the applicant a notice requiring the applicant to give the further information:

(a) within 28 days after the notice is given; or

(b) within such other period as is specified in the notice.

(4) The application is taken to have been withdrawn if the information is not given within whichever of those periods applies. The notice under subsection (3) must contain a statement setting out the effect of this subsection.

(5) The *Pricing Authority may, in writing and in accordance with the Fees and Payments Principles, approve the higher maximum amount of *accommodation payment specified in the application.

Note: A decision not to approve a higher maximum amount of accommodation payment is reviewable under Part 6.1.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(6) If the *Pricing Authority approves the higher maximum amount of *accommodation payment, the amount applies only in relation to a person:

(a) who at the date of approval has not entered into an *accommodation agreement with the approved provider; and

(b) whose *entry to the service occurs on or after the date of the approval.

(7) An approval under subsection (5) is not a legislative instrument.

52G-5 Accommodation payments must not be greater than amounts set out in accommodation agreements

An approved provider must not accept a payment that would result in a person paying an amount of *accommodation payment that is greater than the amount set out in the person's *accommodation agreement.

Subdivision 52G-B—Rules about accommodation contributions

52G-6 Rules about charging accommodation contribution

The rules for charging *accommodation contribution for a residential care service are as follows:

(a) a person must not be charged an accommodation contribution unless the person's *means tested amount, at the date the person *enters the service, is less than the *maximum accommodation supplement amount for that day;

(b) an accommodation contribution must not be charged for *respite care;

(c) the amount of accommodation contribution for a day must not exceed:

(i) the accommodation supplement applicable to the service for the day; or

(ii) the amount assessed for the person based on the person's means tested amount;

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(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;

(e) an approved provider must comply with:

(i) the rules set out in this Division; and

(ii) any rules about charging accommodation contributions specified in the Fees and Payments Principles.

Note: A person who does not provide sufficient information to allow the person's means tested amount to be worked out will be charged an accommodation payment: see paragraph 52G-2(a).

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 52H—Rules about daily payments

52H-1 Payment in advance

A person must not be required to pay a *daily payment more than 1 month in advance.

52H-2 When daily payments accrue

A *daily payment does not accrue for any day after the provision of care to the person ceases.

52H-3 Charging interest

(1) A person may be charged interest on the balance of any amount of *daily payment that:
  (a) is payable by the person; and
  (b) has been outstanding for more than 1 month.

(2) Subsection (1) does not apply unless the person's *accommodation agreement provides for the charging of such interest at a specified rate.

(3) However, the rate charged must not exceed the maximum rate determined by the Minister under subsection (4).

(4) The Minister may, by legislative instrument, determine the maximum rate of interest that may be charged on an outstanding amount of *daily payment.

52H-4 The Fees and Payments Principles

The Fees and Payments Principles may specify:
  (a) when *daily payments are to be made; and
  (b) any other matter relating to the payment of daily payments.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 52J—Rules about refundable deposits

52J-2 When refundable deposits can be paid

(1) A person may choose to pay a *refundable deposit at any time after the person has entered into an *accommodation agreement.

(2) A person may increase the amount of a *refundable deposit at any time after the person has paid the refundable deposit.

Note: A person cannot overpay a refundable deposit: see section 52G-5 and paragraph 52G-6(c).

(3) This section has effect despite paragraphs 52F-3(1)(e) and (f).

Note: For rules relating to the management of refundable deposits, see Part 3A.3.

52J-3 The Fees and Payments Principles

The Fees and Payments Principles may specify:

(a) how a choice to pay a *refundable deposit is to be made; and

(b) any other matter relating to the payment of refundable deposits.

52J-5 Person must be left with minimum assets

(1) An approved provider must not accept payment of an amount of *refundable deposit from a person if:

(a) the person provides sufficient information to allow the person's *means tested amount to be worked out; and

(b) the person pays, or commits to paying, the amount within 28 days after entering the service; and

(c) payment of the amount would leave the value of the person's remaining assets at less than the *minimum permissible asset value.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(2) The ***minimum permissible asset value*** is:

(a) the amount obtained by rounding to the nearest $500.00 (rounding $250.00 upwards) the amount equal to 2.25 times the *basic age pension amount at the time the person *enters the residential care service or flexible care service; or

(b) such higher amount as is specified in, or worked out in accordance with, the Fees and Payments Principles.

(3) The value of a person's assets is to be worked out:

(a) in the same way as it would be worked out under section 44-26A for the purposes of section 44-22; but

(b) disregarding subsection 44-26A(7).

52J-6 Approved provider may retain income derived

An approved provider may retain income derived from a *refundable deposit.

52J-7 Amounts to be deducted from refundable deposits

(1) An approved provider must deduct a *daily payment from a *refundable deposit paid by a person if:

(a) the person has requested the deduction in writing; and

(b) the daily payment is payable by the person.

(2) An approved provider may deduct the following from a *refundable deposit paid by a person:

(a) the amounts specified in the Fees and Payments Principles that may be deducted when the person leaves the service;

(b) any amounts that the person has agreed in writing may be deducted;

(c) such other amounts (if any) as are specified in the Fees and Payments Principles.

(3) The approved provider must not deduct any other amount from a *refundable deposit.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 52K—Financial hardship

52K-1 Determining cases of financial hardship

(1) The Secretary may, in accordance with the Fees and Payments Principles, determine that a person must not be charged an *accommodation payment or *accommodation contribution more than the amount specified in the determination because payment of more than that amount would cause the person financial hardship.

Note: Refusals to make determinations are reviewable under Part 6.1.

(2) In deciding whether to make a determination under this section, and in determining the specified amount, the Secretary must have regard to the matters (if any) specified in the Fees and Payments Principles. The specified amount may be nil.

(3) The determination ceases to be in force at the end of a specified period or on the occurrence of a specified event, if the determination so provides.

Note: Decisions to specify periods or events are reviewable under Part 6.1.

(4) Application may be made to the Secretary, in the form approved by the Secretary, for a determination under this section. The application may be made by:

(a) a person who is liable to pay an *accommodation payment or *accommodation contribution; or

(b) the approved provider to whom an accommodation payment or accommodation contribution is payable.

(5) If the Secretary needs further information to determine the application, the Secretary may give to the applicant a notice requesting the applicant to give the further information:

(a) within 28 days after receiving the notice; or

(b) within such other period as is specified in the notice.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(6) The application is taken to have been withdrawn if the information is not given within whichever of those periods applies. The notice must contain a statement setting out the effect of this subsection.

Note: The period for giving the further information can be extended—see section 96-7.

(7) The Secretary must notify the person and the approved provider, in writing, of the Secretary's decision on whether to make the determination. The notice must be given:

(a) within 28 days after receiving the application; or

(b) if the Secretary has requested further information under subsection (5)—within 28 days after receiving the information.

(8) If the Secretary makes the determination, the notice must set out:

(a) any period at the end of which; or

(b) any event on the occurrence of which;

the determination will cease to be in force.

(9) A determination under subsection (1) is not a legislative instrument.

52K-2 Revoking determinations of financial hardship

(1) The Secretary may, in accordance with the Fees and Payments Principles, revoke a determination under section 52K-1.

Note: Revocations of determinations are reviewable under Part 6.1.

(2) Before deciding to revoke the determination, the Secretary must notify the person and the approved provider concerned that revocation is being considered.

(3) The notice must be in writing and must:

(a) invite the person and the approved provider to make submissions, in writing, to the Secretary within 28 days after receiving the notice; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(b) inform them that if no submissions are made within that period, the revocation takes effect on the day after the last day for making submissions.

(4) In making the decision whether to revoke the determination, the Secretary must consider any submissions received within the period for making submissions. The Secretary must make the decision within 28 days after the end of that period.

(5) The Secretary must notify, in writing, the person and the approved provider of the decision.

(6) The notice must be given to the person and the approved provider within 28 days after the end of the period for making submissions.

(7) If the notice is not given within that period, the Secretary is taken to have decided not to revoke the determination.

(8) A revocation has effect:
(a) if the person and the approved provider received notice under subsection (5) on the same day—the day after that day; or
(b) if they received the notice on different days—the day after the later of those days.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 3A.3—Managing refundable deposits, accommodation bonds and entry contributions

Division 52L—Introduction

52L-1 What this Part is about

*Refundable deposits, *accommodation bonds and *entry contributions must be managed in accordance with the prudential requirements made under Division 52M and the rules set out in Division 52N (permitted uses) and Division 52P (refunds).

Table of Divisions

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 52M—Prudential requirements

52M-1 Compliance with prudential requirements

(1) An *approved provider must comply with the Prudential Standards.

(2) The Fees and Payments Principles may set out Prudential Standards providing for:

(a) protection of *refundable deposit balances, *accommodation bond balances and *entry contribution balances of care recipients; and

(b) sound financial management of approved providers; and

(c) provision of information about the financial management of approved providers.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 52N—Permitted uses

52N-1 Refundable deposits and accommodation bonds to be used only for permitted purposes

(1) An approved provider must not use a *refundable deposit or *accommodation bond unless the use is permitted.

Permitted use—general

(2) An approved provider is ***permitted*** to use a *refundable deposit or *accommodation bond for the following:

(a) for capital expenditure of a kind specified in the Fees and Payments Principles and in accordance with any requirements specified in those Principles;

(b) to invest in a financial product covered by subsection (3);

(c) to make a loan in relation to which the following conditions are satisfied:

(i) the loan is not made to an individual;

(ii) the loan is made on a commercial basis;

(iii) there is a written agreement in relation to the loan;

(iv) it is a condition of the agreement that the money loaned will only be used as mentioned in paragraph (a), (b), (d) or (e);

(v) the agreement includes any other conditions specified in the Fees and Payments Principles;

(d) to refund, or to repay debt accrued for the purposes of refunding, *refundable deposit balances, *accommodation bond balances or *entry contribution balances;

(e) to repay debt accrued for the purposes of capital expenditure of a kind specified in the Fees and Payments Principles;

(f) to repay debt that is accrued before 1 October 2011, if the debt is accrued for the purposes of providing *aged care to care recipients;

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(g) for a use permitted by the Fees and Payments Principles.

Note: An approved provider, and the approved provider's key personnel, may commit an offence if the approved provider uses a refundable deposit or accommodation bond otherwise than for a permitted use (see section 52N-2).

Permitted use—financial products

(3) For the purposes of paragraph (2)(b), the following are financial products (within the meaning of Division 3 of Part 7.1 of the *Corporations Act 2001*) covered by this subsection:

(a) any deposit-taking facility made available by an ADI in the course of its banking business (within the meaning of the *Banking Act 1959*), other than an RSA within the meaning of the *Retirement Savings Accounts Act 1997*;

Note 1: ADI is short for authorised deposit-taking institution.

Note 2: RSA is short for retirement savings account.

(b) a debenture, stock or bond issued or proposed to be issued by the Commonwealth, a State or a Territory;

(c) a security, other than a security of a kind specified in the Fees and Payments Principles;

(d) any of the following in relation to a registered scheme:

(i) an interest in the scheme;

(ii) a legal or equitable right or interest in an interest covered by subparagraph (i);

(iii) an option to acquire, by way of issue, an interest or right covered by subparagraph (i) or (ii);

(e) a financial product specified in the Fees and Payments Principles.

Permitted uses specified in Fees and Payments Principles

(4) Without limiting paragraph (2)(g), the Fees and Payments Principles may specify that a use of a *refundable deposit or *accommodation bond is only ***permitted*** for the purposes of that paragraph if:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(a) specified circumstances apply; or
(b) the approved provider complies with conditions specified in, or imposed in accordance with, the Fees and Payments Principles.

Note: For paragraph (4)(a), the Fees and Payments Principles might, for example, specify that the use of a *refundable deposit is only permitted if the approved provider obtains the prior consent of the Secretary to the use of the deposit.

52N-2 Offences relating to non-permitted use of refundable deposits and accommodation bonds

Offence for approved provider

(1) A *corporation commits an offence if:
(a) the corporation is or has been an approved provider; and
(b) the corporation uses a *refundable deposit or *accommodation bond; and
(c) the use of the deposit or bond is not *permitted; and
(d) both of the following apply at a particular time during the period of 5 years after the use of the deposit or bond:
(i) an insolvency event (within the meaning of the *Aged Care (Accommodation Payment Security) Act 2006*) has occurred in relation to the corporation;
(ii) there has been at least one outstanding accommodation payment balance (within the meaning of that Act) for the corporation.

Penalty: 300 penalty units.

Note: The Secretary must make a default event declaration under the *Aged Care (Accommodation Payment Security) Act 2006* in relation to the corporation if paragraph (d) of this subsection applies (see section 10 of that Act).

Offence for key personnel

(2) An individual commits an offence if:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(a) the individual is one of the *key personnel of an entity that is or has been an approved provider; and
(b) the entity uses a *refundable deposit or *accommodation bond; and
(c) the use of the deposit or bond is not *permitted; and
(d) the individual knew that, or was reckless or negligent as to whether:
(i) the deposit or bond would be used; and
(ii) the use of the deposit or bond was not permitted; and
(e) the individual was in a position to influence the conduct of the entity in relation to the use of the deposit or bond; and
(f) the individual failed to take all reasonable steps to prevent the use of the deposit or bond; and
(g) both of the following apply at a particular time during the period of 5 years after the use of the deposit or bond:
(i) an insolvency event (within the meaning of the *Aged Care (Accommodation Payment Security) Act 2006* has occurred in relation to the entity;
(ii) there has been at least one outstanding accommodation payment balance (within the meaning of that Act) for the entity; and
(h) at the time the deposit or bond was used, the entity was a *corporation.

Penalty: Imprisonment for 2 years.

Strict liability

(3) Strict liability applies to paragraphs (1)(d) and (2)(g) and (h).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

52N-3 Request to give information or documents relating to the use of a refundable deposit or accommodation bond to make a loan

(1) If:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(a) an approved provider has used a *refundable deposit or *accommodation bond to make a loan to a person (the ***borrower***); and

(b) the Secretary or *Quality and Safety Commissioner believes on reasonable grounds that the borrower has information or documents relating to that use;

the Secretary or Commissioner may request the borrower to give the Secretary or Commissioner such information or documents as are specified in the request that are in the possession, custody or control of the borrower.

(2) Without limiting subsection (1), the following kinds of information or documents may be specified in the request:

(a) a copy of the agreement relating to the loan that has been executed, or entered into, by the parties to the agreement;

(b) the amount of the loan;

(c) details of any security in respect of the loan;

(d) details of the term or life of the loan;

(e) details of the rate of interest payable on the loan;

(f) evidence that the rate of interest payable on the loan has been set on a commercial basis;

(g) details of the loan repayments (including the amounts and frequency of those repayments);

(h) details of any review of the loan that must or may be conducted;

(i) details of any other conditions or terms of the loan;

(j) details of the commercial basis of the loan;

(k) evidence of the use of the money loaned;

(l) a copy of the financial statements (however described) of the borrower (including such statements that have been audited);

(m) any other information or documents relating to the loan.

(3) The Secretary or *Quality and Safety Commissioner may request the borrower to give the specified information or documents on a periodic basis.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Request to be made in writing etc.

(4) The request must:
  (a) be made in writing; and
  (b) set out the effect of subsections (5) and (6).

Period etc. for complying with request

(5) The borrower must comply with the request:
  (a) within 28 days after the request is made or within such shorter period as is specified in the request; or
  (b) if the information or documents are to be given on a periodic basis—before the time or times worked out in accordance with the request.

Offence

(6) A person commits an offence of strict liability if:
  (a) an approved provider that is a *corporation has used a *refundable deposit or *accommodation bond to make a loan to the person; and
  (b) the Secretary or *Quality and Safety Commissioner requests the person to give information or documents under subsection (1) relating to that use; and
  (c) the person fails to comply with the request within the period, or before the time, required under subsection (5).

Penalty: 30 penalty units.

Compensation

(7) If the operation of this section would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.

(8) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Federal Court of Australia, or the Supreme Court of a State or Territory, for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 52P—Refunds

52P-1 Refunding refundable deposit balances

(1) In this section:

refundable deposit includes an *accommodation bond.

refundable deposit balance includes an *accommodation bond balance.

(2) If a *refundable deposit is paid for care provided by, or for *entry to, a residential care service or flexible care service, the *refundable deposit balance must be refunded if:

(a) the person who paid the deposit (the ***care recipient***) dies; or

(b) the care recipient ceases to be provided with:

(i) residential care by the residential care service (other than because the care recipient is on *leave); or

(ii) flexible care provided in a residential setting by the flexible care service.

(3) The *refundable deposit balance must be refunded in the way specified in the Fees and Payments Principles.

(4) The *refundable deposit balance must be refunded:

(a) if the care recipient dies—within 14 days after the day on which the provider is shown the probate of the will of the care recipient or letters of administration of the estate of the care recipient; or

(b) if the care recipient is to *enter another service to receive residential care:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(i) if the care recipient has notified the provider of the move more than 14 days before the day on which the provider ceased providing care to the care recipient—on the day on which the provider ceased providing that care; or

(ii) if the care recipient so notified the provider within 14 days before the day on which the provider ceased providing that care—within 14 days after the day on which the notice was given; or

(iii) if the care recipient did not notify the provider before the day on which the provider ceased providing that care—within 14 days after the day on which the provider ceased providing that care; or

(c) in any other case—within 14 days after the day on which the event referred to in paragraph (2)(b) happened.

52P-2 Refunding refundable deposit balances—former approved providers

(1) In this section:

refundable deposit includes an *accommodation bond.

refundable deposit balance includes an *accommodation bond balance.

(2) If:

(a) a *refundable deposit is paid to a person for care provided by, or *entry to, a residential care service or flexible care service; and

(b) the person ceases to be an approved provider in respect of the residential care service or flexible care service;

the person (the ***former approved provider***) must refund the *refundable deposit balance to the person who paid the deposit (the ***care recipient***).

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 52P-2

(3) The *refundable deposit balance must be refunded under subsection (2):

(a) if the care recipient dies within 90 days after the day on which the former approved provider ceased to be an approved provider in respect of the residential care service or flexible care service (the ***90 day period***)—within 14 days after the day on which the former approved provider is shown the probate of the will of the care recipient or letters of administration of the estate of the care recipient; or

(b) if the care recipient is to *enter another service to receive residential care within the 90 day period:

(i) if the care recipient has notified the former approved provider of the move more than 14 days before the day on which the former approved provider ceased providing care to the care recipient—on the day on which the former approved provider ceased providing that care; or

(ii) if the care recipient so notified the former approved provider within 14 days before the day on which the former approved provider ceased providing that care—within 14 days after the day on which the notice was given; or

(iii) if the care recipient did not notify the former approved provider before the day on which the former approved provider ceased providing that care—within 14 days after the day on which the former approved provider ceased providing that care; or

(c) in any other case—within the 90 day period.

(4) A person commits an offence if:

(a) the person is required under this section to refund an amount on a particular day or within a particular period; and

(b) the person does not refund the amount before that day or within that period; and

(c) the person is a *corporation.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Penalty for a contravention of this subsection: 30 penalty units.

52P-3 Payment of interest

(1) The Fees and Payments Principles may specify circumstances in which interest is to be paid in relation to the refund of:
  (a) a *refundable deposit balance; or
  (b) an *accommodation bond balance; or
  (c) an *entry contribution balance.

(2) The amount of interest is to be worked out in accordance with the Fees and Payments Principles.

52P-4 Delaying refunds to secure re-entry

(1) This section applies if a person who has paid a *refundable deposit or *accommodation bond for care provided by, or *entry to, a residential care service or flexible care service:
  (a) ceases to be provided with residential care by the residential care service (other than because the person is on *leave); or
  (b) ceases to be provided with flexible care by the flexible care service.

(2) The person may agree with the approved provider concerned to delay refunding the *refundable deposit balance or *accommodation bond balance on condition that, if the person requests re-entry to the service, the approved provider must:
  (a) allow *entry to the person, if:
    (i) there are any *places vacant in the service; and
    (ii) in a case where the service is a residential care service—the person has been approved under Part 2.3 as a recipient of residential care; and
  (b) if the person is allowed entry—apply the *refundable deposit balance or *accommodation bond in payment for the service.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Chapter 4—Responsibilities of approved providers

Division 53—Introduction

53-1 What this Chapter is about

Approved providers have responsibilities in relation to *aged care they provide through their *aged care services. These responsibilities relate to:

- the quality of care they provide (see Part 4.1);
- user rights for the people to whom the care is provided (see Part 4.2);
- accountability for the care that is provided, and the suitability of their *key personnel (see Part 4.3).

Sanctions may be imposed under Part 7B of the *Quality and Safety Commission Act on approved providers who do not meet their responsibilities.

Note: The responsibilities of an approved provider in respect of an *aged care service cover all the care recipients in the service who are approved under Part 2.3 as recipients of the type of *aged care provided through the service, as well as those in respect of whom a subsidy is payable.

53-2 Failure to meet responsibilities does not have consequences apart from under this Act

(1) If:

(a) an approved provider fails to meet a responsibility under this Chapter; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(b) the failure does not give rise to an offence;

the failure has no consequences under any law other than this Act and the *Quality and Safety Commission Act.

(2) However, if the act or omission that constitutes that failure also constitutes a breach of an obligation under another law, this section does not affect the operation of any law in relation to that breach of obligation.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 4.1—Quality of care

Division 54—Quality of care

54-1 Responsibilities of approved providers

(1) The responsibilities of an approved provider in relation to the quality of the *aged care that the approved provider provides are as follows:

(a) to provide such care and services as are specified in the Quality of Care Principles in respect of aged care of the type in question;

(b) to maintain an adequate number of appropriately skilled staff to ensure that the care needs of care recipients are met;

(ba) if section 54-1A applies to the provider—to comply with subsection 54-1A(2);

(c) to provide care and services of a quality that is consistent with any rights and responsibilities of care recipients that are specified in the User Rights Principles for the purposes of paragraph 56-1(m), 56-2(k) or 56-3(l);

(d) to comply with the Aged Care Quality Standards made under section 54-2;

(e) to manage incidents and take reasonable steps to prevent incidents, including through:

(i) implementing and maintaining an incident management system that complies with the Quality of Care Principles; and

(ii) complying with any other requirements for managing or preventing incidents specified in the Quality of Care Principles;

(f) if the provider provides aged care of a kind specified in the Quality of Care Principles to care recipients—to ensure a *restrictive practice in relation to those recipients is only used in the circumstances set out in those Principles;

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(g) to comply with the provisions of the *Code of Conduct that apply to the approved provider;

(ga) to take reasonable steps to ensure that the *aged care workers, and the *governing persons, of the approved provider comply with the provisions of the Code of Conduct that apply to them;

(h) such other responsibilities as are specified in the Quality of Care Principles.

Note: The Quality of Care Principles are made by the Minister under section 96-1.

(2) The responsibilities under subsection (1) apply in relation to matters concerning a person to whom the approved provider provides, or is to provide, care through an *aged care service only if:

(a) *subsidy is payable for the provision of the care to the person; or

(b) both:

(i) the approved provider is approved in respect of the aged care service through which the person is provided, or to be provided, with *aged care and for the type of aged care provided, or to be provided, to the person; and

(ii) the person is approved under Part 2.3 as a recipient of the type of aged care provided, or to be provided, through the service.

54-1A Responsibility relating to registered nurses

(1) This section applies to an approved provider if:

(a) the provider provides:

(i) residential care to care recipients in a residential facility; or

(ii) flexible care of a kind specified in the Quality of Care Principles to care recipients in a residential facility; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(b) an exemption from this section has not been granted, in accordance with the Quality of Care Principles, to the provider in relation to the residential facility.

(2) The provider must, on and after 1 July 2023, ensure at least one registered nurse (within the meaning of the *Health Insurance Act 1973*) is on site, and on duty, at all times at the residential facility.

(3) The Quality of Care Principles may make provision for, or in relation to, the granting of an exemption from this section to an approved provider in relation to a residential facility.

(4) Without limiting subsection (3), the Quality of Care Principles made for the purposes of that subsection must:

(a) provide for the circumstances in which an exemption from this section may be granted (on application or otherwise) to an approved provider in relation to a residential facility, including that:

(i) such an exemption may be granted by the Secretary; and

(ii) before granting such an exemption, the Secretary must be satisfied that the provider has taken reasonable steps to ensure that the clinical care needs of the care recipients in the facility will be met during the period for which the exemption is in force; and

(b) provide that such an exemption that is granted to an approved provider in relation to a residential facility must not be in force for more than 12 months; and

(c) provide that more than one such exemption may be granted to an approved provider in relation to a residential facility; and

(d) provide for the conditions that may apply to such an exemption that is granted to an approved provider in relation to a residential facility.

(5) If an exemption from this section is granted to an approved provider in relation to a residential facility, the Secretary must make publicly available information about the exemption, including:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(a) the name of the provider and the facility; and
(b) the period for which the exemption is in force; and
(c) any conditions that apply to the exemption; and
(d) any other information of a kind specified in the Quality of Care Principles.

54-2 Aged Care Quality Standards

(1) The Quality of Care Principles may set out Aged Care Quality Standards. Aged Care Quality Standards are standards for quality of care and quality of life for the provision of *aged care.

(2) The Aged Care Quality Standards may set out different standards for different kinds of *aged care.

54-3 Reportable incidents

(1) When making provision in relation to an incident management system for the purposes of subparagraph 54-1(1)(e)(i), the Quality of Care Principles must make provision for dealing with *reportable incidents.

(2) A ***reportable incident*** is any of the following incidents that have occurred, are alleged to have occurred, or are suspected of having occurred, in connection with the provision of *aged care to a care recipient of an approved provider:
(a) unreasonable use of force against the care recipient;
(b) unlawful sexual contact, or inappropriate sexual conduct, inflicted on the care recipient;
(c) psychological or emotional abuse of the care recipient;
(d) unexpected death of the care recipient;
(e) stealing from, or financial coercion of, the care recipient by a *staff member of the provider;
(f) neglect of the care recipient;
(g) use of a *restrictive practice in relation to the care recipient (other than in circumstances set out in the Quality of Care Principles);

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(h) unexplained absence of the care recipient from the residential care services of the provider.

(4) The Quality of Care Principles may define or clarify an expression used in paragraph (2)(a), (b), (c), (d), (e), (f) or (h).

(5) Despite subsection (2), the Quality of Care Principles may provide as follows:

(a) that a specified act, omission or event involving a care recipient is a ***reportable incident***;

(b) that a specified act, omission or event involving a care recipient is not a ***reportable incident***.

(6) Without limiting subsection (1), the Quality of Care Principles may deal with the following matters:

(a) the manner and period within which *reportable incidents must be reported to the *Quality and Safety Commissioner;

(b) action that must be taken in relation to reportable incidents;

(c) authorising the provision of information relating to reportable incidents to the Minister, the Quality and Safety Commissioner or other specified bodies.

Note: Rules under section 21 of the Quality and Safety Commission Act may make provision for, or in relation to, the Quality and Safety Commissioner's functions and powers in dealing with reportable incidents.

(7) Without limiting paragraph (6)(b), action may include:

(a) requiring an approved provider to provide a care recipient of the provider with information regarding the use of an advocate (including an independent advocate) in relation to an investigation into the *reportable incident; and

(b) requiring an approved provider to arrange for, and cover the cost of, an independent investigation into the reportable incident within a specified period; and

(c) providing a copy of any report of the independent investigation to the *Quality and Safety Commissioner.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

54-4 Disclosures qualifying for protection

(1) This section applies to a disclosure of information by a person or body (the ***discloser***) who is, or was, any of the following:

(a) an approved provider;

(b) one of an approved provider's *key personnel;

(c) a *staff member of an approved provider;

(d) a care recipient of an approved provider, or a family member, carer, representative, advocate (including an independent advocate) of the recipient, or another person who is significant to the recipient;

(e) a volunteer who provides care or services for an approved provider.

(2) The disclosure of the information by the discloser qualifies for protection under this section if:

(a) the disclosure is made to one of the following:

(i) the *Quality and Safety Commissioner;

(ii) the approved provider;

(iii) one of the approved provider's *key personnel;

(iv) a *staff member of an approved provider;

(v) another person authorised by the approved provider to receive reports of *reportable incidents;

(vi) if the disclosure is reported to another person in accordance with the Quality of Care Principles—that person;

(vii) a police officer; and

(b) the discloser informs the person to whom the disclosure is made of the discloser's name before making the disclosure; and

(c) the discloser has reasonable grounds to suspect that the information indicates that a reportable incident has occurred; and

(d) the discloser makes the disclosure in good faith.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

54-5 Disclosure that qualifies for protection not actionable etc.

(1) If a person makes a disclosure that qualifies for protection under section 54-4:

(a) the person is not subject to any civil or criminal liability for making the disclosure; and

(b) no contractual or other remedy may be enforced, and no contractual or other right may be exercised, against the person on the basis of the disclosure.

Note: The person is still subject to any civil or criminal liability for conduct of the person that may be revealed by the disclosure.

(2) Without limiting subsection (1):

(a) the person has qualified privilege (see subsection (3)) in respect of the disclosure; and

(b) a contract to which the person is a party may not be terminated on the basis that the disclosure constitutes a breach of the contract.

(3) For the purpose of paragraph (2)(a), ***qualified privilege***, in respect of the disclosure, means that the person:

(a) has qualified privilege in proceedings for defamation; and

(b) is not, in the absence of malice on the person's part, liable to an action for defamation at the suit of a person;

in respect of the disclosure.

(4) For the purpose of paragraph (3)(b), ***malice*** includes ill will to the person concerned or any other improper motive.

(5) This section does not limit or affect any right, privilege or immunity that a person has, apart from this section, as a defendant in proceedings, or an action, for defamation.

(6) Without limiting paragraphs (1)(b) and (2)(b), if a court is satisfied that:

(a) a person (the ***employee***) is employed in a particular position under a contract of employment with another person (the ***employer***); and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(b) the employee makes a disclosure that qualifies for protection under section 54-4; and

(c) the employer purports to terminate the contract of employment on the basis of the disclosure;

the court may:

(d) order that the employee be reinstated in that position or a position at a comparable level; or

(e) order the employer to pay the employee an amount instead of reinstating the employee, if the court considers it appropriate to make the order.

54-6 Victimisation prohibited

Actually causing detriment to another person

(1) A person (the ***first person***) contravenes this subsection if:

(a) the first person engages in conduct; and

(b) the first person's conduct causes any detriment to another person (the ***second person***); and

(c) the first person intends that the conduct cause detriment to the second person; and

(d) the first person engages in the conduct because the second person or a third person made a disclosure that qualifies for protection under section 54-4.

Civil penalty: 500 penalty units.

Threatening to cause detriment to another person

(2) A person (the ***first person***) contravenes this subsection if:

(a) the first person makes to another person (the ***second person***) a threat to cause any detriment to the second person or to a third person; and

(b) the first person:

(i) intends the second person to fear that the threat will be carried out; or

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(ii) is reckless as to causing the second person to fear that the threat will be carried out; and

(c) the first person makes the threat because a person:

(i) makes a disclosure that qualifies for protection under section 54-4; or

(ii) may make a disclosure that would qualify for protection under section 54-4.

Civil penalty: 500 penalty units.

Threats

(3) For the purpose of subsection (2), a threat may be:

(a) express or implied; or

(b) conditional or unconditional.

(4) In proceedings for a civil penalty order against a person for a contravention of subsection (2), it is not necessary to prove that the person threatened actually feared that the threat would be carried out.

Note: For enforcement of the civil penalty provisions in this section, see Part 8A of the Quality and Safety Commission Act.

54-7 Right to compensation

If:

(a) a person contravenes subsection 54-6(1) or (2); and

(b) another person suffers damage because of the contravention;

the person in contravention is liable to compensate the other person for the damage.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

54-8 Approved providers' responsibilities in relation to informants

Ensuring staff member informants are not victimised

(1) An approved provider is responsible for ensuring, as far as reasonably practicable, compliance with paragraphs 54-5(1)(b) and (2)(b) and subsections 54-6(1) and (2) in relation to a person who:
  (a) is a *staff member of the approved provider; and
  (b) makes a disclosure that qualifies for protection under section 54-4.

Note: The responsibility under subsection (1) covers not only compliance by the approved provider itself with the relevant provisions of sections 54-5 and 54-6 but extends to the approved provider ensuring as far as reasonably practicable that there is also compliance by others, such as:
  (a) other staff members of the approved provider; and
  (b) other parties with whom the approved provider contracts (for example, an employment agency).

Protecting informants' identities

(2) If a person reports a *reportable incident to an approved provider, the provider is responsible for taking reasonable measures to ensure that the fact that the person was the maker of the report is not disclosed, except to one or more of the following:
  (a) the *Quality and Safety Commissioner;
  (b) a person, authority or court to which the approved provider is required by a law of the Commonwealth or a State or Territory to disclose the fact;
  (c) one of the approved provider's *key personnel;
  (d) a police officer.

(3) If a person reports a *reportable incident to someone (the ***report recipient***) who is:
  (a) one of an approved provider's *key personnel; or
  (b) a person authorised by an approved provider to receive reports of reportable incidents;

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

the provider is responsible for taking reasonable measures to ensure that the report recipient does not disclose the fact that the person was the maker of the report, except to the provider or a person described in paragraph (2)(a), (b), (c) or (d).

54-9 Restrictive practice in relation to a care recipient

(1) A ***restrictive practice*** in relation to a care recipient is any practice or intervention that has the effect of restricting the rights or freedom of movement of the care recipient.

(2) Without limiting subsection (1), the Quality of Care Principles may provide that a practice or intervention is a ***restrictive practice*** in relation to a care recipient.

54-10 Matters that Quality of Care Principles must require etc.

(1) The Quality of Care Principles made for the purposes of paragraph 54-1(1)(f) must:

(a) require that a *restrictive practice in relation to a care recipient is used only:

(i) as a last resort to prevent harm to the care recipient or other persons; and

(ii) after consideration of the likely impact of the use of the practice on the care recipient; and

(b) require that, to the extent possible, alternative strategies are used before a restrictive practice in relation to a care recipient is used; and

(c) require that alternative strategies that have been considered or used in relation to a care recipient are documented; and

(d) require that a restrictive practice in relation to a care recipient is used only to the extent that it is necessary and in proportion to the risk of harm to the care recipient or other persons; and

(e) require that, if a restrictive practice in relation to a care recipient is used, it is used in the least restrictive form, and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

for the shortest time, necessary to prevent harm to the care recipient or other persons; and

(f) require that informed consent is given to the use of a restrictive practice in relation to a care recipient; and

(g) require that the use of a restrictive practice in relation to a care recipient is not inconsistent with any rights and responsibilities of care recipients that are specified in the User Rights Principles made for the purposes of paragraph 56-1(m); and

(h) make provision for, or in relation to, the monitoring and review of the use of a restrictive practice in relation to a care recipient.

(1A) The Quality of Care Principles made for the purposes of paragraph 54-1(1)(f) may make provision for, or in relation to, the persons or bodies who may give informed consent to the use of a *restrictive practice in relation to a care recipient if the care recipient lacks capacity to give that consent.

(2) The Quality of Care Principles made for the purposes of paragraph 54-1(1)(f) may provide that a requirement specified in those Principles does not apply if the use of a *restrictive practice in relation to a care recipient is necessary in an emergency.

(3) Subsections (1), (1A) and (2) do not limit the matters that may be specified in the Quality of Care Principles made for the purposes of paragraph 54-1(1)(f).

54-11 Immunity from civil or criminal liability in relation to the use of a restrictive practice in certain circumstances

(1) This section applies if:

(a) an approved provider provides aged care of a kind specified in the Quality of Care Principles made for the purposes of paragraph 54-1(1)(f) to a care recipient; and

(b) a *restrictive practice is used in relation to the care recipient; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(c) the care recipient lacked capacity to give informed consent to the use of the restrictive practice.

(2) A *protected entity is not subject to any civil or criminal liability for, or in relation to, the use of the *restrictive practice in relation to the care recipient if:

(a) informed consent to the use of the restrictive practice was given by a person or body specified in the Quality of Care Principles made for the purposes of this paragraph; and

(b) the restrictive practice was used in the circumstances set out in the Quality of Care Principles made for the purposes of paragraph 54-1(1)(f).

(3) Each of the following is a ***protected entity***:

(a) the approved provider referred to in paragraph (1)(a);

(b) an individual who used, or assisted in the use of, the *restrictive practice in relation to the care recipient referred to in that paragraph.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 4.2—User rights

Division 55—Introduction

55-1 What this Part is about

A person who is an approved provider in respect of an *aged care service has general responsibilities to users, and proposed users, of the service who are approved as care recipients of the type of *aged care in question. Failure to meet those responsibilities may lead to sanctions being imposed under Part 7B of the *Quality and Safety Commission Act.

Table of Divisions

55-2 The User Rights Principles

User rights are also dealt with in the User Rights Principles. The provisions of this Part indicate where a particular matter is or may be dealt with in these Principles.

Note: The User Rights Principles are made by the Minister under section 96-1.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 56—What are the general responsibilities relating to user rights?

56-1 Responsibilities of approved providers—residential care

The responsibilities of an approved provider in relation to a care recipient to whom the approved provider provides, or is to provide, residential care are as follows:

(a) if the care recipient is not a *continuing care recipient:

(i) to charge no more for provision of the care and services that it is the approved provider's responsibility to provide under paragraph 54-1(1)(a) than the amount permitted under Division 52C; and

(ii) to comply with the other rules relating to resident fees set out in section 52C-2; and

(iii) to comply with the requirements of Part 3A.2 in relation to any *accommodation payment or *accommodation contribution charged to the care recipient;

(b) if the care recipient is a continuing care recipient:

(i) to charge no more for provision of the care and services that it is the approved provider's responsibility to provide under paragraph 54-1(1)(a) than the amount permitted under Division 58 of the *Aged Care (Transitional Provisions) Act 1997*; and

(ii) to comply with the other rules relating to resident fees set out in section 58-1 of the *Aged Care (Transitional Provisions) Act 1997*; and

(iii) to comply with Division 57 of the *Aged Care (Transitional Provisions) Act 1997* in relation to any *accommodation bond, and Division 57A of that Act in relation to any *accommodation charge, charged to the care recipient;

(c) in relation to an *entry contribution given or loaned under a *formal agreement binding the approved provider and the care recipient—to comply with the requirements of:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(i) the Prudential Standards made under section 52M-1; and

(ii) the Aged Care (Transitional Provisions) Principles made under the *Aged Care (Transitional Provisions) Act 1997*;

(d) to charge no more than the amount permitted under the Fees and Payments Principles by way of a booking fee for *respite care;

(e) to charge no more for any other care or services than an amount agreed beforehand with the care recipient, and to give the care recipient an itemised account of the other care or services;

(f) to provide such security of tenure for the care recipient's *place in the service as is specified in the User Rights Principles;

(g) to comply with the requirements of Division 36 in relation to *extra service agreements;

(ga) to comply with the requirements of Part 3A.3 in relation to managing *refundable deposits, accommodation bonds and entry contributions;

(h) to offer to enter into a *resident agreement with the care recipient, and, if the care recipient wishes, to enter into such an agreement;

(i) to comply with the requirements of Division 62 in relation to *personal information relating to the care recipient;

(j) to comply with the requirements of section 56-4 in relation to resolution of complaints;

(k) to allow people acting for care recipients to have such access to the service as is specified in the User Rights Principles;

(l) to allow people acting for bodies that have been paid *advocacy grants under Part 5.5, or *community visitors grants under Part 5.6, to have such access to the service as is specified in the User Rights Principles;

(m) not to act in a way which is inconsistent with any rights and responsibilities of care recipients that are specified in the User Rights Principles;

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(n) such other responsibilities as are specified in the Fees and Payments Principles and the User Rights Principles.

56-2 Responsibilities of approved providers—home care

The responsibilities of an approved provider in relation to a care recipient to whom the approved provider provides, or is to provide, home care are as follows:

(a) not to charge for the care recipient's *entry to the service through which the care is, or is to be, provided;

(aa) not to charge for ceasing to provide the care to the care recipient;

(ab) to comply with such requirements as are specified in the User Rights Principles in relation to the prices charged by the approved provider for, or in connection with, the provision of care or services to the care recipient;

(b) if the care recipient is not a *continuing care recipient:

(i) to charge the care recipient no more for provision of the care and services that it is the approved provider's responsibility to provide under paragraph 54-1(1)(a) than the amount permitted under Division 52D; and

(ii) to comply with the other rules relating to home care fees set out in section 52D-1;

(c) if the care recipient is a continuing care recipient:

(i) to charge the care recipient no more for provision of the care and services that it is the approved provider's responsibility to provide under paragraph 54-1(1)(a) than the amount permitted under Division 60 of the *Aged Care (Transitional Provisions) Act 1997*; and

(ii) to comply with the other rules relating to home care fees set out in section 60-1 of the *Aged Care (Transitional Provisions) Act 1997*;

(d) to charge no more for any other care or services than an amount agreed beforehand with the care recipient, and to give the care recipient an itemised account of the other care or services;

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(e) to provide such other care and services in accordance with the agreement between the approved provider and the care recipient;

(f) to provide such security of tenure for the care recipient to receive home care through the service as is specified in the User Rights Principles;

(g) to offer to enter into a *home care agreement with the care recipient, and, if the care recipient wishes, to enter into such an agreement;

(h) to comply with the requirements of Division 62 in relation to *personal information relating to the care recipient;

(i) to comply with the requirements of section 56-4 in relation to resolution of complaints;

(j) to allow people acting for bodies that have been paid *advocacy grants under Part 5.5 to have such access to the service as is specified in the User Rights Principles;

(k) not to act in a way which is inconsistent with any rights and responsibilities of care recipients that are specified in the User Rights Principles;

(l) such other responsibilities as are specified in the Fees and Payments Principles and the User Rights Principles.

56-3 Responsibilities of approved providers—flexible care

The responsibilities of an approved provider in relation to a care recipient to whom the approved provider provides, or is to provide, flexible care are as follows:

(a) to charge no more than the amount specified in, or worked out in accordance with, the User Rights Principles, for provision of the care and services that it is the approved provider's responsibility under paragraph 54-1(1)(a) to provide;

(b) if the care recipient is not a *continuing care recipient—to comply with the requirements of Part 3A.2 in relation to any *accommodation payment charged to the care recipient;

(c) if the care recipient is a continuing care recipient:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(i) to comply with the requirements of Division 57 of the *Aged Care (Transitional Provisions) Act 1997*, and the Aged Care (Transitional Provisions) Principles made under that Act, in relation to any *accommodation bond charged to the care recipient; and

(ii) to comply with the requirements of those Principles in relation to any *accommodation charge charged to the care recipient;

(d) in relation to an *entry contribution given or loaned under a *formal agreement binding the approved provider and the care recipient—to comply with the requirements of:

(i) the Prudential Standards made under section 52M-1; and

(ii) the Aged Care (Transitional Provisions) Principles made under the *Aged Care (Transitional Provisions) Act 1997*;

(e) to charge no more for any other care or services than an amount agreed beforehand with the care recipient, and to give the care recipient an itemised account of the other care or services;

(f) to provide such security of tenure for the care recipient's *place in the service as is specified in the User Rights Principles;

(g) to comply with any requirements of the Fees and Payments Principles relating to:

(i) offering to enter into an agreement with the care recipient relating to the provision of care to the care recipient; or

(ii) entering into such an agreement if the care recipient wishes;

(ga) to comply with the requirements of Part 3A.3 in relation to managing *refundable deposits, accommodation bonds and entry contributions;

(h) to comply with the requirements of Division 62 in relation to *personal information relating to the care recipient;

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(i) to comply with the requirements of section 56-4 in relation to resolution of complaints;

(j) to allow people acting for care recipients to have such access to the service as is specified in the User Rights Principles;

(k) to allow people acting for bodies that have been paid *advocacy grants under Part 5.5 to have such access to the service as is specified in the User Rights Principles;

(l) not to act in a way which is inconsistent with any rights and responsibilities of care recipients that are specified in the User Rights Principles;

(m) such other responsibilities as are specified in the Fees and Payments Principles and the User Rights Principles.

56-4 Complaints resolution mechanisms

(1) The approved provider must:

(a) establish a complaints resolution mechanism for the *aged care service; and

(b) use the complaints resolution mechanism to address any complaints made by or on behalf of a person to whom care is provided through the service; and

(c) advise the person of any other mechanisms that are available to address complaints, and provide such assistance as the person requires to use those mechanisms; and

(e) comply with any requirement made of the approved provider under rules made for the purposes of subsection 21(2) of the *Quality and Safety Commission Act.

(2) If the *aged care service is a residential care service, the complaints resolution mechanism must be the complaints resolution mechanism provided for in the *resident agreements entered into between the care recipients provided with care through the service and the approved provider (see paragraph 59-1(1)(g)).

(3) If the *aged care service is a home care service, the complaints resolution mechanism must be the complaints resolution mechanism provided for in the *home care agreements entered into

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

between the care recipients provided with care through the service and the approved provider (see paragraph 61-1(1)(f)).

56-5 Extent to which responsibilities apply

The responsibilities under this Division apply in relation to matters concerning any person to whom the approved provider provides, or is to provide, care through an *aged care service only if:

(a) *subsidy is payable for the provision of care to that person; or

(b) both:

(i) the approved provider is approved in respect of the aged care service through which the person is provided, or to be provided, with *aged care and for the type of aged care provided, or to be provided, to the person; and

(ii) the person is approved under Part 2.3 as a recipient of the type of aged care provided, or to be provided, through the service.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 59—What are the requirements for resident agreements?

59-1 Requirements for resident agreements

(1) A *resident agreement entered into between a care recipient and an approved provider must specify:

(a) the residential care service in which the approved provider will provide care to the care recipient; and

(b) the care and services that the approved provider has the capacity to provide to the care recipient while the care recipient is being provided with care through the residential care service; and

(c) the policies and practices that the approved provider will follow in setting the fees that the care recipient will be liable to pay to the approved provider for the provision of the care and services; and

(d) if the care recipient is not to *enter the residential care service on a permanent basis—the period for which the care and services will be provided, and (if applicable) any *respite care booking fee; and

(e) the circumstances in which the care recipient may be asked to depart from the residential care service; and

(f) the assistance that the approved provider will provide to the care recipient to obtain alternative accommodation if the care recipient is asked to depart from the residential care service; and

(g) the complaints resolution mechanism that the approved provider will use to address complaints made by or on behalf of the care recipient; and

(h) the care recipient's responsibilities as a resident in the residential care service.

(2) In addition, a *resident agreement must comply with any requirements specified in the User Rights Principles relating to:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(a) the way in which, and the process by which, the agreement is to be entered into; or
(b) the period within which the agreement is to be entered into; or
(c) any provisions that the agreement must contain; or
(d) any other matters with which the agreement must deal.

(3) A *resident agreement must not contain any provision that would have the effect of the care recipient being treated less favourably in relation to any matter than the care recipient would otherwise be treated, under any law of the Commonwealth, in relation to that matter.

Note: A *resident agreement can incorporate the terms of an *extra service agreement (see paragraph 36-1(1)(b), and an accommodation agreement (see section 52F-6).

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 61—What are the requirements for home care agreements?

61-1 Requirements for home care agreements

(1) A home care agreement entered into between a care recipient and an approved provider must specify:

(a) the home care service through which the approved provider will provide care to the care recipient; and

(b) the levels of care and services that the approved provider has the capacity to provide to the care recipient while the care recipient is being provided with care through the home care service; and

(c) the policies and practices that the approved provider will follow in setting the fees that the care recipient will be liable to pay to the approved provider for the provision of the care and services; and

(d) if the care recipient is not to be provided with the home care service on a permanent basis—the period for which the care and services will be provided; and

(e) the circumstances in which provision of the home care may be suspended or terminated by either party, and the amounts that the care recipient will be liable to pay to the approved provider for any period of suspension; and

(f) the complaints resolution mechanism that the approved provider will use to address complaints made by or on behalf of the person; and

(g) the care recipient's responsibilities as a recipient of the home care.

(2) In addition, a *home care agreement must comply with any requirements specified in the User Rights Principles relating to:

(a) the way in which, and the process by which, the agreement is to be entered into; or

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(b) the period within which the agreement is to be entered into; or
(c) any provisions that the agreement must contain; or
(d) any other matters with which the agreement must deal.

(3) A *home care agreement must not contain any provision that would have the effect of the care recipient being treated less favourably in relation to any matter than the care recipient would otherwise be treated, under any law of the Commonwealth, in relation to that matter.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 62—What are the responsibilities relating to protection of personal information?

62-1 Responsibilities relating to protection of personal information

The responsibilities relating to protection of *personal information, relating to a person to whom the approved provider provides *aged care, are as follows:

(a) the personal information must not be used other than:
  (i) for a purpose connected with the provision of aged care to the person by the approved provider; or
  (ii) for a purpose for which the personal information was given by or on behalf of the person to the approved provider;

(b) except with the written consent of the person, the personal information must not be disclosed to any other person other than:
  (i) for a purpose connected with the provision of aged care to the person by the approved provider; or
  (ii) for a purpose connected with the provision of aged care to the person by another approved provider, so far as the disclosure relates to the person's *refundable deposit balance or *accommodation bond balance or the period for which retention amounts may be deducted under section 57-20 of the *Aged Care (Transitional Provisions) Act 1997* or to the person's remaining liability (if any) to pay an *accommodation payment, *accommodation contribution or *accommodation charge; or
  (iia) for a purpose connected with the provision of aged care to the person by another approved provider, so far as the disclosure relates to an appraisal or reappraisal connected with a classification that is in force for a care recipient to whom subsection 27-4(5) applies (*entry into another aged care service within 28 days); or

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(iii) for a purpose for which the personal information was given by or on behalf of the person; or

(iv) for the purpose of complying with an obligation under this Act or the *Aged Care (Transitional Provisions) Act 1997* or any of the Principles made under section 96-1 of this Act or the *Aged Care (Transitional Provisions) Act 1997*;

(c) the personal information must be protected by security safeguards that it is reasonable in the circumstances to take against the loss or misuse of the information.

62-2 Giving personal information to courts etc.

This Division does not prevent *personal information being given to a court, or to a tribunal, authority or person having the power to require the production of documents or the answering of questions, in accordance with a requirement of that court, tribunal, authority or person.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 4.3—Accountability etc.

Division 63—Accountability etc.

63-1 Responsibilities of approved providers

(1) The responsibilities of an approved provider in relation to accountability for the *aged care provided by the approved provider through an *aged care service are as follows:

(a) to comply with Part 6.3 in relation to keeping and retaining records relating to the service;

(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;

(c) to comply with Division 9 in relation to notifying and providing information;

(d) to comply with any conditions to which the allocation of any of the *places included in the service is subject under section 14-5 or 14-6;

(e) if the approved provider has transferred places to another person—to provide records, or copies of records, to that person in accordance with section 16-11;

(f) if the approved provider has *relinquished places—to comply with the obligations under subsections 18-2(4) and 18-4(1);

(g) to allow people authorised by the Secretary access to the service, as required under the Accountability Principles, in order to assess, for the purposes of section 22-4, the care needs of any person provided with care through the service;

(h) to conduct in a proper manner any appraisals under section 25-3, or reappraisals under section 27-5, of the care

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

needs of care recipients provided with care through the service;

(ha) to allow delegates of the Secretary under subsection 96-2(15) access to the service, as required under the Accountability Principles, in order to assess, under section 29C-3, the care needs of care recipients provided with care through the service;

(hb) to allow persons performing an activity mentioned in paragraph 131A(1)(c) of the *National Health Reform Act 2011* access to the service, as required under the Accountability Principles, for the purposes of the *Pricing Authority performing the function mentioned in paragraph 131A(1)(a) of that Act;

(hc) to provide persons performing an activity mentioned in paragraph 131A(1)(c) of the *National Health Reform Act 2011* with all reasonable facilities and assistance necessary, as required under the Accountability Principles, for the purposes of the Pricing Authority performing the function mentioned in paragraph 131A(1)(a) of that Act;

(i) if the service, or a *distinct part of the service, has *extra service status—to comply with any conditions to which the grant of extra service status is subject under section 32-8;

(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;

(m) such other responsibilities as are specified in the Accountability Principles.

Note: The Accountability Principles are made by the Minister under section 96-1.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(2) The responsibilities under this section apply in relation to matters concerning a person to whom the approved provider provides, or is to provide, care through an *aged care service only if:

(a) *subsidy is payable for provision of the care to that person; or

(b) both:

(i) the approved provider is approved in respect of the aged care service through which the person is provided, or to be provided, with *aged care and for the type of aged care provided, or to be provided, to the person; and

(ii) the person is approved under Part 2.3 as a recipient of the type of aged care provided, or to be provided, through the service.

63-1A Responsibilities relating to the suitability of key personnel of an approved provider

The responsibilities of an approved provider in relation to an individual who is one of the *key personnel of the provider are as follows:

(a) at least once every 12 months, the provider must:

(i) consider the *suitability matters in relation to the individual in accordance with any requirements specified in the Accountability Principles; and

(ii) be reasonably satisfied that the individual is suitable to be involved in the provision of *aged care;

(b) the provider must keep a record of those matters that complies with any requirements specified in the Accountability Principles;

(c) such other responsibilities as are specified in the Accountability Principles.

Note: If an approved provider fails to comply with the responsibility in subparagraph (a)(i), the provider may commit an offence (see section 10A-2B).

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

63-1BA Responsibility relating to the cessation of the provision of certain residential care

If an approved provider ceases, on or after the *transition day, to provide residential care (other than *respite care) to a care recipient through a residential care service, it is a responsibility of the provider to notify the Secretary of the cessation:

(a) in the form approved by the Secretary; and

(b) within the period specified in the Accountability Principles.

63-1B Responsibility relating to recording entry of new residents

(1) The responsibility of an approved provider in relation to the recording of the *entry of a care recipient into a residential care service (other than as a recipient of *respite care) is to comply with subsection (2).

(2) An approved provider must, in the form approved by the Secretary and within the period specified in the Accountability Principles, notify the Secretary of each care recipient who *enters a residential care service (other than as a recipient of *respite care) operated by the approved provider on or after 20 March 2008.

63-1C Responsibility relating to circumstances materially affecting an approved provider's suitability to provide aged care

(1) The responsibility of an approved provider in relation to a circumstance specified 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.

(2) The approved provider must do all things reasonably practicable to ensure that there is no change to the circumstance without complying with the steps specified in the notice.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

63-1D Responsibilities of certain approved providers relating to their governing bodies etc.

(1) This section sets out certain responsibilities of an approved provider that is a person or body other than:
  (a) a State or Territory; and
  (b) a *State or Territory authority; and
  (c) a *local government authority.

Membership of governing body

(2) Subject to subsections (3), (4) and (5), the approved provider must ensure that:
  (a) a majority of the members of the *governing body of the provider are independent non-executive members; and
  (b) at least one member of the governing body of the provider has experience in the provision of clinical care.

(3) Subsection (2) does not apply in relation to an approved provider at a particular time if both of the following apply at that time:
  (a) the *governing body of the provider has fewer than 5 members;
  (b) the provider provides *aged care through one or more *aged care services to fewer than 40 care recipients.

(4) Subsection (2) does not apply in relation to an approved provider at a particular time if, at that time, the provider is a kind of body that is known as an Aboriginal Community Controlled Organisation.

(5) Paragraph (2)(a) or (b) does not apply in relation to an approved provider at a particular time if a determination under section 63-1E that the responsibility set out in that paragraph does not apply in relation to the provider is in force at that time.

Advisory bodies

(6) The approved provider must:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(a) establish, and continue in existence, a body (the ***quality care advisory body***) that:

(i) complies with the requirements about membership specified in the Accountability Principles; and

(ii) is required, at least once every 6 months, to give the *governing body of the provider a written report about the quality of the *aged care that the provider provides through an *aged care service; and

(iii) is able, at any time, to give feedback to the governing body of the provider about the quality of the aged care that the provider provides through an aged care service; and

(b) require the governing body of the provider:

(i) to consider such a report, or any such feedback, when making decisions in relation to the quality of the aged care provided through the aged care service; and

(ii) to advise, in writing, the quality care advisory body how the governing body considered such a report or any such feedback.

(7) A report given under subparagraph (6)(a)(ii) must comply with any requirements specified in the Accountability Principles.

(8) The approved provider must, if requested to do so by the quality care advisory body, give the body information about the quality of the *aged care that the provider provides through an *aged care service.

(9) The approved provider must:

(a) offer, at least once every 12 months, care recipients and their representatives the opportunity to establish one or more bodies (the ***consumer advisory bodies***) to give the *governing body of the provider feedback about the quality of the *aged care that the provider provides to the care recipients through an *aged care service; and

(b) if one or more consumer advisory bodies are established—require the governing body of the provider:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(i) to consider any such feedback given by the body or bodies when making decisions in relation to the quality of the aged care provided through the aged care service; and

(ii) to advise, in writing, the body or bodies how the governing body considered any such feedback.

(10) The offer under paragraph (9)(a) must be made in writing.

Staff members

(11) The approved provider must require the *governing body of the provider to ensure that the *staff members of the provider:

(a) have appropriate qualifications, skills or experience to provide the care or other services that the provider provides to care recipients through an *aged care service; and

(b) are given opportunities to develop their capability to provide that care or those other services.

63-1E Determination that certain responsibilities relating to the governing body of an approved provider do not apply

Application for determination

(1) An approved provider may apply to the *Quality and Safety Commissioner for a determination that either or both of the following responsibilities (the ***governance responsibilities***) do not apply in relation to the provider:

(a) the responsibility set out in paragraph 63-1D(2)(a);

(b) the responsibility set out in paragraph 63-1D(2)(b).

(2) The application must:

(a) be made in writing; and

(b) be in a form approved by the *Quality and Safety Commissioner; and

(c) be accompanied by any document or information specified by the Commissioner; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(d) be accompanied by any fee specified by the Commissioner.

Making of determination

(3) If an approved provider makes an application under subsection (1), the *Quality and Safety Commissioner may determine that either or both of the governance responsibilities do not apply in relation to the provider if the Commissioner is satisfied that it is reasonable to do so.

(4) In deciding whether to make the determination in relation to the approved provider, the *Quality and Safety Commissioner may take into account the following matters:

(a) the number of *aged care services through which the provider provides *aged care;

(b) the number of care recipients who are provided with aged care through those services;

(c) the location of those services;

(d) the annual turnover in the provider's *key personnel;

(e) the membership of the *governing body of the provider;

(f) any arrangements that the provider has made, or proposes to make, to assist:

(i) the members of the governing body of the provider to act objectively and independently in the best interests of the provider; or

(ii) the governing body of the provider to seek, when it considers it necessary to do so, advice from a person with experience in the provision of clinical care;

(g) any other matter specified in the Accountability Principles.

Notice of determination etc.

(5) If the *Quality and Safety Commissioner decides to make the determination in relation to the approved provider, the Commissioner must give the provider written notice of the following:

(a) the making of the determination;

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(b) the governance responsibility to which the determination relates;

(c) the period for which the determination is in force.

Note: The determination may remain in force for a period specified by the *Quality and Safety Commissioner or until it is revoked under section 63-1F.

(6) If the *Quality and Safety Commissioner decides not to make the determination in relation to the approved provider, the Commissioner must give the provider written notice of the following:

(a) the decision;

(b) the reasons for the decision;

(c) how the provider may apply for reconsideration of the decision.

Note: See Part 8B of the *Quality and Safety Commission Act for the reconsideration of a decision not to make the determination.

63-1F Variation or revocation of determination on the Quality and Safety Commissioner's own initiative

(1) The *Quality and Safety Commissioner may, on the Commissioner's own initiative, vary or revoke a determination made under subsection 63-1E(3) in relation to an approved provider if the Commissioner is satisfied it is appropriate to do so.

(2) If the *Quality and Safety Commissioner decides to vary or revoke the determination in relation to the approved provider, the Commissioner must, as soon as is practicable, give the provider a written notice that:

(a) sets out the decision; and

(b) sets out the reasons for the decision; and

(c) specifies the day on which the variation or revocation takes effect; and

(d) states how the person may apply for reconsideration of the decision.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Note: See Part 8B of the *Quality and Safety Commission Act for the reconsideration of a decision to vary or revoke the determination.

63-1G Responsibility relating to the giving of information relating to reporting periods

(1) It is a responsibility of an approved provider to give the Secretary information relating to a *reporting period for the provider that is information of a kind specified in the Accountability Principles.

(2) The information must be given within 4 months after the end of the *reporting period for the approved provider.

(3) The ***reporting period*** for an approved provider is

(a) the period of 12 months starting on 1 July of a year; or

(b) another 12 month period that starts on the first day of a month of a year that is determined for the provider by the Secretary in accordance with the Accountability Principles.

(4) Without limiting paragraph (3)(b), the day determined for the provider by the Secretary under that paragraph may be a day before the commencement of this section.

63-1H Responsibility relating to constitution of approved providers that are wholly-owned subsidiary corporations

Corporations under the Corporations Act 2001

(1) If:

(a) an approved provider is a body corporate incorporated, or taken to be incorporated, under the *Corporations Act 2001*; and

(b) the provider has a constitution (within the meaning of that Act); and

(c) the provider is a wholly-owned subsidiary (within the meaning of that Act) of another body corporate (the ***holding company***); and

(d) the holding company is not an approved provider;

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

it is a responsibility of the approved provider to ensure that the constitution of the provider does not authorise a director of the provider to act in good faith in the best interests of the holding company.

Aboriginal and Torres Strait Islander corporations

(2) If:

(a) an approved provider is an Aboriginal and Torres Strait Islander corporation (within the meaning of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*); and

(b) the provider is a wholly-owned subsidiary (within the meaning of that Act) of another body corporate (the ***holding company***); and

(c) the holding company is not an approved provider;

it is a responsibility of the approved provider to ensure that the constitution of the provider does not authorise a director of the provider to act in good faith in the best interests of the holding company.

63-2 Annual report on the operation of the Act

(1) The Minister must, as soon as practicable after 30 June but before 30 November in each year, cause to be laid before each House of the Parliament a report on the operation of this Act during the year ending on 30 June of that year.

(2) A report under subsection (1) must include information about the following matters:

(a) the extent of unmet demand for places; and

(b) the adequacy of the Commonwealth subsidies provided to meet the care needs of residents; and

(c) the extent to which providers are complying with their responsibilities under this Act and the *Aged Care (Transitional Provisions) Act 1997*; and

(ca) the amounts of *accommodation payments and *accommodation contributions paid; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(cb) the amounts of those accommodation payments and accommodation contributions paid as *refundable deposits and *daily payments; and

(d) the amounts of *accommodation bonds and *accommodation charges charged; and

(e) the duration of waiting periods for entry to residential care; and

(f) the extent of building, upgrading and refurbishment of aged care facilities;

but is not limited to information about those matters.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Chapter 5—Grants

Division 69—Introduction

69-1 What this Chapter is about

The Commonwealth makes grants to contribute to costs associated with the establishment or enhancement of *aged care services and with support services related to the provision of aged care. These grants are:

- *residential care grants (see Part 5.1);
- *advocacy grants (see Part 5.5);
- *community visitors grants (see Part 5.6);
- other grants (see Part 5.7).

Grants are (in most cases) payable under agreements with the recipients of the grants, and may be subject to conditions.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 5.1—Residential care grants

Division 70—Introduction

70-1 What this Part is about

The Commonwealth makes *residential care grants to contribute towards the *capital works costs associated with some projects undertaken by approved providers to establish residential care services or to enhance their capacity to provide residential care.

Table of Divisions

70-2 The Grant Principles

*Residential care grants are also dealt with in the Grant Principles. Provisions in this Part indicate when a particular matter is or may be dealt with in these Principles.

Note: The Grant Principles are made by the Minister under section 96-1.

70-3 Meaning of *capital works costs*

(1) The ***capital works costs*** relating to residential care include, but are not limited to, the following:

(a) the cost of acquiring land on which are, or are to be built, the premises needed for providing that care;

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(b) the cost of acquiring, erecting, altering or extending those premises;
(c) the cost of acquiring furniture, fittings or equipment for those premises;
(d) the cost of altering or installing furniture, fittings or equipment on those premises.

(2) However, if:
(a) those premises are, or will be, part of larger premises; and
(b) another part of the larger premises is not, or will not be, connected with the provision of residential care;

any costs that the Secretary is satisfied are attributable to the other part of the larger premises are taken not to be capital works costs relating to the residential care in question.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 71—How do people apply for allocations of residential care grants?

71-1 Applications for residential care grants

A person may apply in writing for the allocation of a *residential care grant. However, the application is valid only if:

(a) it is in response to an invitation to apply for the allocation of residential care grants published by the Secretary under section 71-2; and

(b) it is made on or before the closing date specified in the invitation; and

(c) it is in a form approved by the Secretary.

Note: An applicant who is not an approved provider must become an approved provider for a residential care grant to be allocated (see subsection 72-1(1)).

71-2 Invitation to apply

(1) The Secretary may invite applications for the allocation of *residential care grants.

(2) The invitation must:

(a) specify the amount of money that is available for allocation as *residential care grants; and

(b) specify the criteria for allocations of residential care grants (see subsection 72-1(2)); and

(c) specify the closing date after which applications will not be accepted; and

(e) state that there may be conditions that approved providers must meet before payments of residential care grants are made.

(3) The invitation must be published or notified by such means as the Secretary thinks appropriate.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

71-3 Requests for further information

(1) If the Secretary needs further information to determine the application, the Secretary may give to the applicant a notice requesting the applicant to give the further information within 28 days after receiving the notice, or within such shorter period as is specified in the notice.

(2) The application is taken to be withdrawn if the applicant does not give the further information within 28 days, or within the shorter period, as the case requires.

Note: The period for giving the further information can be extended—see section 96-7.

(3) The notice must contain a statement setting out the effect of subsection (2).

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 72—How are residential care grants allocated?

72-1 Allocation of residential care grants

(1) The Secretary may allocate *residential care grants to approved providers in respect of the *capital works costs of projects for the provision of residential care.

(2) The allocation must meet the criteria for allocations specified in the Grant Principles.

(3) However:

(a) each of the approved providers must have made a valid application in respect of the allocation (see Division 71); and

(b) the allocation must comply with the terms of an invitation published under that Division (see section 72-4);

except so far as the Secretary waives these requirements under section 72-5.

(4) A *residential care grant can only be allocated to an approved provider:

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

(b) who holds an allocation of *places for *residential care subsidy under Part 2.2 (whether or not it is a *provisional allocation), being places that are, or are to be, included in the residential care service in respect of which the grant is payable; and

(c) in relation to a residential care service that does not have, and no *distinct part of which has, *extra service status.

72-4 Compliance with the invitation

The allocation complies with the terms of the invitation if:

(a) the sum of the amounts allocated as *residential care grants does not exceed the amount specified in the invitation as being available for allocation as residential care grants; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(b) the Secretary has considered all valid applications made in respect of the allocation, together with any further information given under section 71-3 in relation to those applications; and

(c) the allocation was made after the closing date specified in the invitation.

72-5 Waiver of requirements

The Secretary may waive:

(a) the requirement under paragraph 72-1(3)(a) that each approved provider who is allocated a *residential care grant must have made a valid application in respect of the allocation; or

(b) that requirement and the requirement under paragraph 72-1(3)(b) that the allocation must comply with the terms of an invitation published under Division 71;

if the Secretary is satisfied that:

(c) the provision of residential care to care recipients is being seriously affected by the condition of the premises used for providing the care, being premises to which the residential care grant would relate; or

(d) the premises used for providing care, being premises to which the residential care grant would relate, have been so damaged by a disaster that they are unsuitable for the provision of residential care; or

(e) there is a high need for the provision of residential care that would not be met unless the residential care grant is allocated, and it would not be practicable to allocate the grant without the waiver; or

(f) there are other exceptional circumstances for justifying the waiver.

72-6 Notification of allocation

(1) The Secretary must notify, in writing, each applicant to whom a *residential care grant has been allocated. The notice must be given

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

within 14 days after the Secretary's decision under section 72-1 is made.

(2) The notice must specify:

(a) the amount of the grant (see Division 74); and

(b) the project to which the grant relates; and

(c) when the grant, or the instalments of the grant, will be paid (see Division 73); and

(d) if the grant is to be paid in more than one instalment—the amounts of the instalments or how they will be worked out (see Division 73); and

(e) the conditions on which the grant is payable (see Division 73).

72-7 Notice to unsuccessful applicants

(1) The Secretary must notify, in writing, each applicant to whom a *residential care grant has not been allocated. The notice must be given within 14 days after the Secretary's decision under section 72-1 is made.

(2) The notice must set out the reasons for the applicant not being allocated a grant.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 73—On what basis are residential care grants paid?

73-1 Basis on which residential care grants are paid

(1) A *residential care grant is payable to an approved provider:
  (a) at such time as the Secretary determines in writing; and
  (b) in full or in such instalments as the Secretary determines in writing.

(2) The grant is subject to:
  (a) such conditions (if any) as the Secretary determines in writing; and
  (b) such other conditions (if any) as are set out in the Grant Principles.

(3) The grant is not payable unless the approved provider enters into an agreement with the Commonwealth under which the approved provider agrees to comply with the conditions to which the grant is subject.

73-3 Grants payable only if certain conditions met

(1) The Secretary may specify which of the conditions of a *residential care grant must be met before the grant is payable.

(2) The grant is not payable unless the approved provider complies with those conditions.

(3) However, payment of the grant to the approved provider does not affect the approved provider's obligation to comply with any other conditions to which the grant is subject.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

73-4 Variation or revocation of allocations

(1) The Secretary may vary or revoke an allocation of a *residential care grant if the Secretary is satisfied that a condition to which the allocation is subject has not been met.

Note: Variations or revocations of allocations are reviewable under Part 6.1.

(2) A variation of the allocation may be either or both of the following:
(a) a reduction of the amount of the grant;
(b) a variation of any of the conditions to which the allocation is subject.

(3) Before deciding to vary or revoke the allocation, the Secretary must notify the approved provider that it is being considered. The notice:
(a) must be in writing; and
(b) must invite the approved provider to make submissions, in writing, to the Secretary within 28 days after receiving the notice; and
(c) must inform the approved provider that, if no submissions are made within that period, the variation or revocation takes effect on the day after the last day for making submissions.

(4) In making the decision whether to vary or revoke the allocation, the Secretary must consider any submissions made within that period.

(5) The Secretary must notify, in writing, the approved provider of the decision.

(6) The notice must be given to the approved provider within 28 days after the end of the period for making submissions. If the notice is not given within that period, the Secretary is taken to have decided not to vary or revoke the allocation, as the case requires.

(7) A variation or revocation has effect:
(a) if no submissions were made within the 28 day period—on the day after the last day for making submissions; or

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(b) if submissions were made within that period—on the day after the approved provider receives a notice under subsection (5).

73-5 Variation of allocations on application of approved provider

(1) An approved provider may at any time apply to the Secretary for a variation of an allocation of a *residential care grant to the approved provider.

(2) A variation of the allocation may be either or both of the following:
(a) a reduction of the amount of the grant;
(b) a variation of any of the conditions to which the allocation is subject.

(3) The application must be in the form approved by the Secretary.

(4) If the Secretary needs further information to determine the application, the Secretary may give to the approved provider a notice requesting the approved provider to give the further information within 28 days after receiving the notice, or within such shorter period as is specified in the notice.

(5) The Secretary must make a variation or reject the application:
(a) within 28 days after receiving the application; or
(b) if the Secretary has requested further information under subsection (4)—within 28 days after receiving the information.

Note: Variations of allocations and rejections of applications are reviewable under Part 6.1.

(6) The Secretary must notify the approved provider in writing of the Secretary's decision.

73-6 Agreement taken to be varied

If the Secretary varies, under section 73-4 or 73-5, one or more of the conditions of an allocation, the agreement entered into under subsection 73-1(3) is taken to be varied accordingly.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

73-7 Appropriation

Payments by the Commonwealth under this Part are to be made out of money appropriated by the Parliament for the purpose.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 74—How much is a residential care grant?

74-1 The amount of a residential care grant

(1) The amount of a *residential care grant is the amount specified in, or worked out in accordance with, the Grant Principles.

(2) However, the amount of a grant to an approved provider must not exceed the difference between:

(a) the *capital works costs of the project in respect of which the grant is payable; and

(b) the sum of the money (if any) spent, and the money presently available for expenditure, by the approved provider towards the capital works costs of the project.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 5.5—Advocacy grants

Division 81—Advocacy grants

81-1 Advocacy grants

(1) The Secretary may, on behalf of the Commonwealth, enter into a written agreement with a body corporate under which the Commonwealth makes one or more grants of money to the body for the following purposes:

(a) encouraging understanding of, and knowledge about, the rights of recipients and potential recipients of *aged care services on the part of people who are, or may become:

(i) care recipients; or

(ii) people caring for care recipients; or

(iii) people who provide aged care services;

or on the part of the general community;

(b) enabling care recipients to exercise those rights;

(c) providing free, independent and confidential advocacy services in relation to those rights to people:

(i) who are, or may become, care recipients; or

(ii) who are representatives of care recipients.

A grant of money under this subsection is an ***advocacy grant***.

(2) An *advocacy grant is payable to a body:

(a) at such time as is specified in the agreement; and

(b) in full or in such instalments as are specified in the agreement.

81-2 Applications for advocacy grants

(1) A body corporate, other than a body mentioned in subsection (3), may apply to the Secretary for an *advocacy grant.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(2) The application must be:
  (a) in writing; and
  (b) in a form approved by the Secretary.

(3) A body may not make an application under subsection (1) if it is:
  (a) an approved provider; or
  (b) a body that is directly associated with an approved provider.

81-3 Deciding whether to make advocacy grants

In deciding whether to make a grant under subsection 81-1(1), the Secretary must take into account the criteria (if any) set out in the Grant Principles.

Note: The Grant Principles are made by the Minister under section 96-1.

81-4 Conditions of advocacy grants

An *advocacy grant is subject to:
  (a) such conditions (if any) as are set out in the Grant Principles; and
  (b) conditions, set out in the agreement under which the grant is payable, that relate to matters specified in the Grant Principles as matters to which conditions of an advocacy grant must relate; and
  (c) such other conditions as are set out in the agreement.

81-5 Appropriation

Payments by the Commonwealth under this Part are to be made out of money appropriated by the Parliament for the purpose.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 5.6—Community visitors grants

Division 82—Community visitors grants

82-1 Community visitors grants

(1) The Secretary may, on behalf of the Commonwealth, enter into a written agreement with a body corporate under which the Commonwealth makes one or more grants of money to the body for the following purposes:

(a) facilitating frequent and regular contact with the community by care recipients to whom residential care or home care is provided;

(b) helping such care recipients to maintain independence through contact with people in the community;

(c) assisting such care recipients from particular linguistic or cultural backgrounds to maintain contact with people from similar backgrounds.

A grant of money under this subsection is a ***community visitors grant***.

(2) A *community visitors grant is payable to a body:

(a) at such time as is specified in the agreement; and

(b) in full or in such instalments as are specified in the agreement.

82-2 Applications for community visitors grants

(1) A body corporate, other than a body mentioned in subsection (3), may apply to the Secretary for a *community visitors grant.

(2) The application must be:

(a) in writing; and

(b) in a form approved by the Secretary.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(3) A body is not eligible to make an application under subsection (1) if it is:

(a) an approved provider; or

(b) a body that is directly associated with an approved provider;

except in the circumstances specified in the Grant Principles.

Note: The Grant Principles are made by the Minister under section 96-1.

82-3 Deciding whether to make community visitors grants

In deciding whether to make a grant under subsection 82-1(1), the Secretary must take into account the criteria (if any) set out in the Grant Principles.

82-4 Conditions of community visitors grants

A *community visitors grant is subject to:

(a) such conditions (if any) as are set out in the Grant Principles; and

(b) conditions, set out in the agreement under which the grant is payable, that relate to the matters (if any) specified in the Grant Principles as matters to which conditions of a community visitors grant must relate; and

(c) such other conditions as are set out in the agreement.

82-5 Appropriation

Payments by the Commonwealth under this Part are to be made out of money appropriated by the Parliament for the purpose.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 5.7—Other grants

Division 83—Other grants

83-1 Other grants

(1) The Secretary may, on behalf of the Commonwealth, enter into a written agreement with a body corporate under which the Commonwealth makes one or more grants of money to the body for the purposes specified in the agreement. The purposes must, in the Secretary's opinion, further the objects of this Act.

(2) A grant under this Part is payable to a body:
  (a) at such time as is specified in the agreement; and
  (b) in full or in such instalments as are specified in the agreement.

(3) The Grant Principles may specify requirements with which the Secretary must comply in exercising powers under this Part.

Note: The Grant Principles are made by the Minister under section 96-1.

83-2 Conditions of other grants

A grant under this Part is subject to:
  (a) such conditions (if any) as are set out in the Grant Principles; and
  (b) conditions, set out in the agreement under which the grant is payable, that relate to the matters (if any) specified in the Grant Principles as matters to which conditions of a grant under this Part must relate; and
  (c) such other conditions as are set out in the agreement.

83-3 Appropriation

Payments by the Commonwealth under this Part are to be paid out of money appropriated by the Parliament for the purpose.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Chapter 6—Administration

Division 84—Introduction

84-1 What this Chapter is about

This Chapter deals with the following matters relating to the administration of this Act:

(a) reconsideration and administrative review of decisions (see Part 6.1);

(b) protection of information (see Part 6.2);

(c) record-keeping obligations of approved providers (see Part 6.3);

(d) the compliance and enforcement powers (see Part 6.4);

(e) recovery of overpayments by the Commonwealth (see Part 6.5);

(i) home care assurance reviews (see Part 6.8).

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 6.1—Reconsideration and review of decisions

Division 85—Reconsideration and review of decisions

85-1 Reviewable decisions

Each of the following decisions is a **reviewable decision*:

Reviewable decisions

Item	Decision	Provision under which decision is made
5	To reject an application for a determination under section 15-1 (when allocations take effect)	subsection 15-3(3)
6	To vary or revoke a provisional allocation of places to a person if a condition has not been met	subsection 15-4(1)
7	To reject an application for a variation of a provisional allocation of places	subsection 15-5(4)
8	To extend a provisional allocation period	subsection 15-7(5)
9	To reject an application for extension of a provisional allocation period	subsection 15-7(5)
10	To give a veto notice rejecting the transfer of an allocated place, other than a provisionally allocated place	subsection 16-6(1)
11	To give a veto notice rejecting the transfer of a provisionally allocated place	subsection 16-17(1)
13	To determine a period for making an application to vary the conditions to which an allocation is subject	subsection 17-2(5)
14	To refuse to determine a period for making an application to vary the conditions to which an allocation is subject	subsection 17-2(5)
15	To reject an application for variation of conditions to which an allocation of places is	section 17-5

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Reviewable decisions		
Item	**Decision**	**Provision under which decision is made**
	subject	
16	To approve a day as a variation day for conditions to which an allocation of places is subject	subsection 17-7(3)
17	To reject an application to approve a day as a variation day	subsection 17-7(3)
18	To revoke an unused allocation of a place	subsection 18-5(1)
19	To reject an application to approve a person as a care recipient	subsection 22-1(2)
20	To limit a person's approval as a care recipient	subsection 22-2(1)
21	To limit a person's approval as a care recipient to one or more levels of care	subsection 22-2(3)
22	To vary a limitation on a person's approval as a care recipient	subsection 22-2(4)
23	As to when a person urgently needed care and when it was practicable to apply for approval	paragraph 22-5(2)(b)
24	To extend the period during which an application for approval as a care recipient can be made	subsection 22-5(3)
25	To reject an application to extend the period during which an application for approval as a care recipient can be made	subsection 22-5(3)
25A	To determine a person's priority for home care services	subsection 22-2A(1)
25B	To vary a person's priority for home care services	subsection 22-2A(2)
26	To revoke an approval of a person as a care recipient	subsection 23-4(1)
27	To suspend an approved provider from making appraisals under section 25-3 and reappraisals under section 27-5	subsection 25-4(1)
27A	To refuse to lift a suspension of an approved	subsection 25-4C(1)

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Reviewable decisions		
Item	**Decision**	**Provision under which decision is made**
	provider from making appraisals and reappraisals	
28	That the Secretary is not satisfied an appraisal under section 25-3 (appraisals of the level of care needed) was sent in sufficient time	subsection 26-2(2)
29	To refuse to renew the classification of a care recipient	subsection 27-6(1)
30	That the Secretary is not satisfied that a reappraisal under section 27-5 (reappraisal of the level of care needed) was sent in sufficient time	subsection 27-8(2)
31	To change the classification of a care recipient	subsection 29-1(1)
32	To classify a care recipient	subsection 29C-2(1)
32A	To not reclassify a care recipient	subsection 29D-1(1)
32B	To change the classification of a care recipient	subsection 29E-1(1)
33	To reject an application for approval of extra service fees	subsection 35-1(2)
37	To refuse to make a determination that a residential care service is taken to meet its accreditation requirement	subsection 42-5(1)
38	To specify a period or event at the end of which, or on the occurrence of which, a determination under subsection 42-5(1) ceases to be in force.	subsection 42-5(4)
39	To revoke a determination that exceptional circumstances apply	subsection 42-6(1)
39AA	To extend the period within which a variation of a claim for residential care subsidy can be made	section 43-4A
39AB	To refuse to extend the period within which a variation of a claim for residential care subsidy can be made	section 43-4A
42	To determine that a judgment or settlement is to be treated as having taken into account the cost of providing residential care	subsection 44-20(5)

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Reviewable decisions		
Item	**Decision**	**Provision under which decision is made**
43	To determine that a part of the compensation under a settlement is to be treated as relating to the future costs of providing residential care	subsection 44-20(6)
44	To determine compensation payment reductions in respect of residential care subsidy	subsection 44-20A(4)
45	To refuse to make a determination that the care subsidy reduction is zero	subsection 44-23(2)
45A	To specify a period at the end of which a determination that the care subsidy reduction is zero ceases to be in force	subsection 44-23(3)
46	To make a determination for the purposes of working out a care recipient's total assessable income	subsection 44-24 (1) or paragraph 44-24(2)(b), (3)(b), (3A)(b) or (4)(b)
47	To determine the value of a person's assets	subsection 44-26C(1)
47A	To revoke a determination of the value of a person's assets	subsection 44-26C(4)
48	To refuse to make a determination that a care recipient is eligible for a hardship supplement of a particular amount in respect of residential care	subsection 44-31(1)
49	To specify a period or event at the end of which, or on the occurrence of which, a determination under section 44-31 will cease to be in force	subsection 44-31(3)
49AA	To revoke a determination that a care recipient is eligible for a hardship supplement in respect of residential care	subsection 44-32(1)
49A	To extend the period within which a variation of a claim for home care subsidy can be made	section 47-4A
49B	To refuse to extend the period within which a variation of a claim for home care subsidy can be made	section 47-4A
50	To determine that a judgement or settlement is to be treated as having taken into account the	subsection 48-5(5)

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Reviewable decisions		
Item	**Decision**	**Provision under which decision is made**
	cost of providing home care	
51	To determine that a part of the compensation under a settlement is to be treated as relating to the future costs of providing home care	subsection 48-5(6)
52	To determine compensation payment reductions in respect of home care subsidy	subsection 48-6(4)
53	To refuse to make a determination that the care subsidy reduction is zero	subsection 48-8(2)
53A	To specify a period at the end of which a determination that the care subsidy reduction is zero ceases to be in force	subsection 48-8(3)
53B	To refuse to make a determination that a care recipient is eligible for a hardship supplement of a particular amount in respect of home care	subsection 48-11(1)
53C	To specify a period or event at the end of which, or on the occurrence of which, a determination under section 48-11 will cease to be in force	subsection 48-11(3)
53D	To revoke a determination that a care recipient is eligible for a hardship supplement in respect of home care	subsection 48-12(1)
53E	To refuse to approve a higher maximum amount of *accommodation payment than the maximum amount of accommodation payment determined by the Minister under section 52G-3	subsection 52G-4(5)
53F	To refuse to make a determination that paying an accommodation payment or accommodation contribution of more than a particular amount would cause financial hardship	subsection 52K-1(1)
53G	To specify a period or event at the end of which, or on the occurrence of which, a determination under subsection 52K-1(1) ceases to be in force	subsection 52K-1(3)
53H	To revoke a determination that paying an accommodation payment or accommodation	subsection 52K-2(1)

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Reviewable decisions		
Item	**Decision**	**Provision under which decision is made**
	contribution would cause financial hardship	
56	To vary or revoke an allocation of a residential care grant	subsection 73-4(1)
57	To vary an allocation of a residential care grant	subsection 73-5(5)
58	To reject an application to vary an allocation of a residential care grant	subsection 73-5(5)
59	A decision under Principles made under section 96-1 that is specified in the Principles concerned to be a decision reviewable under this section	the provision specified in the Principles as the provision under which the decision is made

85-2 Deadlines for making reviewable decisions

(1) If:

(a) this Act provides for a person to apply to the Secretary to make a *reviewable decision; and

(b) a period is specified under this Act for giving notice of the decision to the applicant; and

(c) the Secretary has not notified the applicant of the Secretary's decision within that period;

the Secretary is taken, for the purposes of this Act, to have made a decision to reject the application.

Note: This subsection cannot apply to decisions under Division 16 (How are allocated places transferred from one person to another?).

(2) If:

(a) this Act provides for a person to apply to the *Pricing Authority to make a *reviewable decision; and

(b) a period is specified under this Act for giving notice of the decision to the applicant; and

(c) the Pricing Authority has not notified the applicant of the Pricing Authority's decision within that period;

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

the Pricing Authority is taken, for the purposes of this Act, to have made a decision to reject the application.

85-3 Reasons for reviewable decisions

(1) If this Act requires the Secretary or the *Pricing Authority to notify a person of the making of a *reviewable decision, the notice must include reasons for the decision.

(2) Subsection (1) does not affect an obligation, imposed upon the Secretary or the *Pricing Authority by any other law, to give reasons for a decision.

85-4 Reconsidering reviewable decisions

(1) The Secretary may reconsider a *reviewable decision (other than a reviewable decision under Division 35 or section 52G-4) if the Secretary is satisfied that there is sufficient reason to reconsider the decision.

(1A) The *Pricing Authority may reconsider a *reviewable decision under Division 35 or section 52G-4 if the Pricing Authority is satisfied that there is sufficient reason to reconsider the decision.

(3) The Secretary or the *Pricing Authority may reconsider a decision even if:

(a) an application for reconsideration of the decision has been made under section 85-5; or

(b) if the decision has been confirmed, varied or set aside under section 85-5—an application has been made under section 85-8 for review of the decision.

(3AA) However, if an application has been made under section 85-8 for review of the decision, section 31 (decision cannot be altered outside Tribunal process) of the *Administrative Review Tribunal Act 2024* applies to the decision if:

(a) the application is referred to the *guidance and appeals panel under section 122 of that Act; or

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(b) a *guidance and appeals panel application is taken to be made because the Administrative Review Tribunal's decision on the review is referred to the guidance and appeals panel under section 128 of that Act.

(3A) In reconsidering a decision made under subsection 29C-2(1), 29D-1(1) or 29E-1(1):

(a) the level of care needed by the relevant care recipient, relative to the needs of other care recipients, must be assessed under section 29C-3; and

(b) the Secretary must take that assessment into account before making a decision under subsection (4) of this section.

(3B) If the relevant care recipient cannot be assessed for the purposes of the reconsideration, the Secretary must not make a decision under subsection (4).

(4) After reconsidering the decision, the Secretary or the *Pricing Authority must, subject to subsections (3AA) and (3B):

(a) confirm the decision; or

(b) vary the decision; or

(c) set the decision aside and substitute a new decision.

(5) The decision of the Secretary or the *Pricing Authority (the ***decision on review***) to confirm, vary or set aside the decision takes effect:

(a) on the day specified in the decision on review; or

(b) if a day is not specified—on the day on which the decision on review was made.

(6) The Secretary or the *Pricing Authority must give written notice of the decision on review to the person to whom that decision relates.

Note: Section 266 of the *Administrative Review Tribunal Act 2024* requires the person to be notified of the person's review rights.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

85-5 Reconsideration of reviewable decisions

Request for reconsideration of reviewable decision

(1) A person whose interests are affected by a *reviewable decision (other than a reviewable decision under Division 35 or section 52G-4) may request the Secretary to reconsider the decision.

(1A) A person whose interests are affected by a *reviewable decision under Division 35 or section 52G-4 may request the *Pricing Authority to reconsider the decision.

(3) The person's request must be made by written notice:

(a) for a request that relates to a reviewable decision other than a reviewable decision under Division 35 or section 52G-4—given to the Secretary:

(i) within 28 days, or such longer period as the Secretary allows, after the day on which the person first received notice of the decision; or

(ii) if the decision is a decision under section 44-24 to make a determination under subsection 44-24(1) or paragraph 44-24(2)(b), (3)(b), (3A)(b) or (4)(b)—within 90 days, or such longer period as the Secretary allows, after the day on which the person first received notice of the decision; or

(b) for a request that relates to a reviewable decision under Division 35 or section 52G-4—given to the *Pricing Authority within 28 days, or such longer period as the Pricing Authority allows, after the day on which the person first received notice of the decision.

(4) The notice must set out the reasons for making the request.

(4A) The person's request must comply with section 85-6 (application fee) if the *reviewable decision was made under subsection 29-1(1), 29C-2(1), 29D-1(1) or 29E-1(1) (which deal with decisions relating to the classification of a care recipient).

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Reconsideration of reviewable decision

(5) After receiving the request, the Secretary or the *Pricing Authority must reconsider the decision and must, subject to paragraph (5B)(b):

(a) confirm the decision; or

(b) vary the decision; or

(c) set the decision aside and substitute a new decision.

(5A) In reconsidering a decision made under subsection 29C-2(1), 29D-1(1) or 29E-1(1):

(a) the level of care needed by the relevant care recipient, relative to the needs of other care recipients, must be assessed under section 29C-3; and

(b) the Secretary must take that assessment into account before making a decision under subsection (5) of this section.

(5B) If the relevant care recipient cannot be assessed for the purposes of the reconsideration:

(a) the request is taken to be withdrawn; and

(b) the Secretary must not make a decision under subsection (5).

(6) The decision of the Secretary or the *Pricing Authority (the ***decision on review***) to confirm, vary or set aside the decision takes effect:

(a) on the day specified in the decision on review; or

(b) if a day is not specified—on the day on which the decision on review was made.

(7) The Secretary or the *Pricing Authority is taken, for the purposes of this Part, to have confirmed the decision if the Secretary or the Pricing Authority does not give notice of a decision to the person within 90 days after receiving the person's request.

Note: Section 266 of the *Administrative Review Tribunal Act 2024* requires the person to be notified of the person's review rights.

(8) If a committee has been established under section 96-3 and a function of the committee is to provide advice to the Secretary or

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

the *Pricing Authority in relation to the reconsideration of a particular kind of *reviewable decision, the Secretary or the Pricing Authority:

(a) may refer a reviewable decision of that kind to the committee for advice; and

(b) must, in reconsidering the decision, take account of any advice of the committee in relation to the decision.

85-6 Application fee for reconsideration of decision to change classification of care recipient

(1) A request made under subsection 85-5(1) for reconsideration of a *reviewable decision made under subsection 29-1(1), 29C-2(1), 29D-1(1) or 29E-1(1) (which deal with decisions relating to the classification of a care recipient) must be accompanied by the application fee (if any) specified in, or worked out in accordance with, the Classification Principles.

(2) The amount of the fee must not be such as to amount to taxation.

(3) The Classification Principles may deal with other matters in relation to the fee, including the following:

(a) the circumstances in which the Secretary may waive the fee;

(b) the circumstances in which a person is exempt from paying the fee;

(c) the circumstances in which the fee may be refunded, in whole or in part.

85-8 ART review of reviewable decisions

An application may be made to the Administrative Review Tribunal for the review of a *reviewable decision that has been confirmed, varied or set aside under section 85-4 or 85-5.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 6.2—Protection of information

Division 86—Protection of information

86-1 Meaning of *protected information*

In this Part, ***protected information*** is information that:

(a) was acquired under or for the purposes of this Act or the *Aged Care (Transitional Provisions) Act 1997*; and

(b) either:

(i) is *personal information; or

(ii) relates to the affairs of an approved provider; or

(iv) relates to the affairs of an applicant for a grant under Chapter 5.

86-2 Use of protected information

(1) A person commits an offence if:

(a) the person makes a record of, discloses or otherwise uses information; and

(b) the information is *protected information; and

(c) the information was acquired by the person in the course of performing duties or exercising powers or functions under this Act or the *Aged Care (Transitional Provisions) Act 1997*.

Penalty: Imprisonment for 2 years.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(2) This section does not apply to:

(a) conduct that is carried out in the performance of a function or duty under this Act or the *Aged Care (Transitional Provisions) Act 1997* or the exercise of a power under, or in relation to, this Act or the *Aged Care (Transitional Provisions) Act 1997*; or

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(b) the disclosure of information only to the person to whom it relates; or

(c) conduct carried out by an approved provider; or

(d) conduct that is authorised by the person to whom the information relates; or

(e) conduct that is otherwise authorised under this or any other Act.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

86-3 Disclosure of protected information for other purposes

(1) The Secretary may disclose *protected information:

(a) if the Secretary certifies, in writing, that it is necessary in the public interest to do so in a particular case—to such people and for such purposes as the Secretary determines; and

(b) to a person who is, in the opinion of the Secretary, expressly or impliedly authorised by the person to whom the information relates to obtain it; and

(baa) to the *Inspector-General of Aged Care to assist in the performance of the functions, or the exercise of the powers, of the Inspector-General of Aged Care under the *Inspector-General of Aged Care Act 2023* or instruments made under that Act; and

(ba) to the *Quality and Safety Commissioner to assist in the performance of the functions, or the exercise of the powers, of the Commissioner under the *Quality and Safety Commission Act or rules made under that Act; and

(c) to the *Chief Executive Medicare for the purposes of the *Health and Other Services (Compensation) Act 1995* or the *Health and Other Services (Compensation) Care Charges Act 1995*; and

(ca) to the *Chief Executive Centrelink for the purpose of administering the social security law (within the meaning of the *Social Security Act 1991*); and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(cb) to the Secretary of the Department administered by the Minister who administers the *Social Security Act 1991*; and

(cc) to the *Pricing Authority to assist in the performance of the functions mentioned in subsection 131A(1) of the *National Health Reform Act 2011* or the exercise of powers for or in connection with the performance of those functions; and

(cd) if the Secretary believes, on reasonable grounds, that the information will assist in the performance of the functions, or the exercise of the powers, of a receiving Commonwealth body—to that body for the purposes of performing those functions or exercising those powers; and

(d) to a State or Territory for the purposes of facilitating the transition from the application of this Act in respect of *aged care services in the State or Territory to regulation by the State or Territory in respect of those aged care services; and

(e) if the Secretary believes, on reasonable grounds, that disclosure is necessary to prevent or lessen a serious risk to the safety, health or well-being of a care recipient—to such people as the Secretary determines, for the purpose of preventing or lessening the risk; and

(f) if the Secretary believes, on reasonable grounds, that:

(i) a person's conduct breaches, or may breach, the standards of professional conduct of a profession of which the person is a member; and

(ii) the person should be reported to a body responsible for standards of conduct in the profession;

to that body, for the purposes of maintaining standards of professional conduct in the profession; and

(g) if a person has temporarily taken over the provision of care through a particular service to care recipients—to the person for the purposes of enabling the person properly to provide that care; and

(h) if the Secretary believes, on reasonable grounds, that disclosure of the information is reasonably necessary for:

(i) enforcement of the criminal law; or

(ii) enforcement of a law imposing a pecuniary penalty; or

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(iii) protection of the public revenue;

to an agency whose functions include that enforcement or protection, for the purposes of that enforcement or protection; and

(i) to the Secretary of the Department administered by the Minister who administers the *Veterans' Entitlements Act 1986*, for purposes connected with the provision of treatment under:

(i) Part V of the *Veterans' Entitlements Act 1986*; or

(ii) Chapter 6 of the *Military Rehabilitation and Compensation Act 2004*; or

(iii) the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006*; or

(iv) the *Treatment Benefits (Special Access) Act 2019*; and

(j) to a person of a kind specified in the Information Principles, for the purposes specified in the Information Principles in relation to people of that kind.

(3) The following are not legislative instruments:

(a) a certification under paragraph (1)(a);

(b) a determination under paragraph (1)(a) or (e) (if the determination is in writing).

(4) In this section:

receiving Commonwealth body means any of the following:

(a) the Aged Care Quality and Safety Commission;

(b) the Military Rehabilitation and Compensation Commission;

(c) the National Disability Insurance Scheme Launch Transition Agency;

(d) the NDIS Quality and Safeguards Commission;

(e) the Repatriation Commission;

(f) the Department administered by the Minister administering the *Disability Services and Inclusion Act 2023*;

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(g) the Department administered by the Minister administering the *Veterans' Entitlements Act 1986*;

(h) if:

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

(ii) the Department or authority is specified in the Information Principles;

that Department or authority.

86-4 Disclosure of protected information by people conducting assessments

(1) A person to whom powers or functions under Part 2.3 have been delegated under subsection 96-2(14), or a person making assessments under section 22-4 or 29C-3, may make a record of, disclose or otherwise use *protected information, relating to a person and acquired in the course of exercising those powers or performing those functions, or making those assessments, for any one or more of the following purposes:

(a) provision of *aged care, or other community, health or social services, to the person;

(b) assessing the needs of the person for aged care, or other community, health or social services;

(ba) if the person is a care recipient—assessing the level of care the person needs, relative to the needs of other care recipients;

(c) reporting on, and conducting research into, the level of need for, and access to, aged care, or other community, health or social services;

(d) monitoring, reporting on, and conducting research into, the quality or safety of aged care.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(2) However, the purposes mentioned in paragraphs (1)(c) and (d) do not include publication (whether in writing or otherwise) of *personal information.

86-4A Disclosure of certain protected information by officials of the Pricing Authority

An official of the Pricing Authority (within the meaning of the *National Health Reform Act 2011*) may disclose *protected information to either of the following if the information was obtained in the course of the performance of an Aged Care Act function (within the meaning of the *National Health Reform Act 2011*):

(a) the Secretary;

(b) the *Quality and Safety Commissioner.

86-5 Limits on use of information disclosed under section 86-3, 86-4 or 86-4A

A person commits an offence if:

(a) the person makes a record of, discloses or otherwise uses information; and

(b) the information is information disclosed to the person under section 86-3, 86-4 or 86-4A; and

(c) the purpose for which the person makes a record of, discloses or otherwise uses the information is not the purpose for which the information was disclosed.

Penalty: Imprisonment for 2 years.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

86-6 Limits on use of protected information disclosed under certain legislation

A person commits an offence if:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(a) *protected information has been disclosed under section 1314 of the *Social Security Act 1991*, section 130 of the *Veterans' Entitlements Act 1986*, section 409 of the *Military Rehabilitation and Compensation Act 2004*, section 36 of the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006* or section 46 of the *Treatment Benefits (Special Access) Act 2019*, to the person or another person, for any of the following purposes:

(i) determining whether *residential care subsidy is payable to an approved provider in respect of a care recipient;

(ii) determining the amount of residential care subsidy that is payable to an approved provider in respect of a care recipient;

(iii) determining whether an approved provider has complied, or is complying, with its responsibilities under Chapter 4 of this Act; and

(b) the person makes a record of, discloses or otherwise uses the information for a purpose not referred to in subparagraph (a)(i), (ii) or (iii).

Penalty: Imprisonment for 2 years.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

86-7 Limits on use of protected information by certain Departments

An officer of the Department administered by the Minister who administers the *Social Security Act 1991* or the Department administered by the Minister who administers the *Veterans' Entitlements Act 1986*, the *Chief Executive Centrelink, a Departmental employee (within the meaning of the *Human Services (Centrelink) Act 1997*), the *Chief Executive Medicare or a Departmental employee (within the meaning of the *Human Services (Medicare) Act 1973*) commits an offence if he or she:

(a) acquires *protected information for the purposes of this Act; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(b) makes a record of, discloses or otherwise uses the information for a purpose that is neither a purpose for which it was acquired nor a purpose in respect of which the person to whom the information relates has given written consent.

Penalty: Imprisonment for 2 years.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

86-8 Disclosure to court

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

(a) the disclosure is required for the purposes of this Act;

(b) the information was originally disclosed to the person under section 86-3 and the disclosure is required for the purpose for which it was disclosed under that section;

(c) the person to whom the information relates has consented, in writing, to the disclosure.

86-9 Information about an aged care service

(1) The Secretary may make publicly available the following information about an *aged care service:

(a) the name, address and telephone number of the service;

(b) the number of *places (if any) included in the service;

(ba) if the service is a home care service—the number of care recipients provided with care through the service;

(c) the location of the service and its proximity to community facilities, for example, public transport, shops, libraries and community centres;

(d) the services provided by the service;

(e) the fees and charges connected with the service, including *accommodation payments, *accommodation contributions, *accommodation bonds and *accommodation charges;

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(f) the facilities and activities available to care recipients receiving care through the service;

(g) the name of the approved provider of the service and the names of directors, or members of the committee of management, of the approved provider;

(h) the amounts of funding received by the service under this Act or the *Aged Care (Transitional Provisions) Act 1997*;

(i) information about the variety and type of service provided by approved providers;

(j) any action taken, or intended to be taken, under this Act to protect the welfare of care recipients at a particular service, and the reasons for that action;

(k) information about the service's status under this Act or the *Quality and Safety Commission Act (for example, the service's accreditation record);

(l) information about the approved provider's performance in relation to responsibilities and standards under this Act;

(la) information about any non-compliance with notices given to the approved provider under section 95BA-5 or 95BA-6;

(lb) information about any failure of the approved provider to comply with section 95BA-7;

(m) any other information of a kind specified in the Information Principles for the purposes of this section.

Note: The Information Principles are made by the Minister under section 96-1.

(2) Information disclosed under subsection (1) must not include *personal information about a person (other than the information referred to in paragraph (1)(g)).

86-10 Information about aged care services that must be made publicly available

(1) The Secretary must, in accordance with the Information Principles, make publicly available information in relation to *aged care services.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(2) Without limiting subsection (1), the Information Principles may provide for any or all of the following:
   (a) information about the *aged care provided through an *aged care service, or a specified class of aged care services, that must be made publicly available;
   (b) information about the approved provider of an aged care service, or a specified class of approved providers of aged care services, that must be made publicly available;
   (c) the way in which specified information, or a specified class of information, must be made publicly available;
   (d) the period within which specified information, or a specified class of information, must be made publicly available.

(3) Information made publicly available under subsection (1) must not include *personal information about an individual (other than an individual who is one of the *key personnel of an approved provider).

86-11 Publishing star ratings for residential care services

(1) The Secretary must publish information about:
   (a) the quality of residential care provided through residential care services; and
   (b) the performance of approved providers of such services in relation to responsibilities and standards under this Act.

(2) The Secretary may publish information under subsection (1) in the form of one or more star ratings for a residential care service.

(3) The Secretary may use *protected information for the purposes of:
   (a) creating information for publication under subsection (1); or
   (b) calculating a star rating for a residential care service.

(4) Information published under subsection (1) must not include *personal information about an individual.

(5) The Secretary is not liable to civil proceedings for loss, damage or injury of any kind suffered by the approved provider of a

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

residential care service, or another person, as a result of the publication of information under subsection (1).

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 6.3—Record keeping

Division 87—Introduction

87-1 What this Part is about

This Part sets out the obligations of approved providers and former approved providers to maintain and retain certain records. A person who does not comply with these obligations may commit an offence and, in the case of an approved provider, may be taken to be not complying with its responsibilities under Part 4.3.

Table of Divisions

87-2 Records Principles

Obligations of approved providers in relation to record keeping is also dealt with in the Records Principles. The provisions of this Part indicate when a particular matter is or may be dealt with in these Principles.

Note: The Records Principles are made by the Minister under section 96-1.

87-3 Failure to meet obligations does not have consequences apart from under this Act

(1) If:

(a) a person fails to meet an obligation imposed under this Part; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(b) the failure does not give rise to an offence;

the failure has no consequences under any law other than this Act.

(2) However, if the act or omission that constitutes the failure also constitutes a breach of an obligation under another law, this section does not affect the operation of any law in relation to that breach of obligation.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 88—What records must an approved provider keep?

88-1 Approved provider to keep and retain certain records

(1) An approved provider must:

(a) keep records that enable:

(i) claims for payments of *subsidy to be properly verified; and

(ii) proper assessments to be made of whether the approved provider has complied, or is complying, with its responsibilities under Chapter 4; and

(b) in relation to each of those records, retain the record for the period ending 3 years after the 30 June of the year in which the record was made.

Note: Approved providers have a responsibility under Part 4.3 to comply with this subsection. Failure to comply with a responsibility can result in a sanction being imposed under Part 7B of the *Quality and Safety Commission Act.

(2) An approved provider who ceases permanently to provide care to a care recipient must retain, for the period ending 3 years after the 30 June of the year in which provision of the care ceased, such records relating to the care recipient as are specified in the Records Principles.

Note: Approved providers have a responsibility under Part 4.3 to comply with this subsection. Failure to comply with a responsibility can result in a sanction being imposed under Part 7B of the *Quality and Safety Commission Act.

(3) A record may be kept and retained in written or electronic form.

(4) An approved provider that:

(a) is a *corporation; and

(b) fails to comply with subsection (1) or (2);

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

commits an offence punishable, on conviction, by a fine not exceeding 30 penalty units.

(5) If:

(a) an approved provider fails to comply with subsection (1) or (2); and

(b) the failure arises in respect of records relating to *subsidy paid to the approved provider;

the approved provider commits an offence punishable, on conviction, by a fine not exceeding 30 penalty units.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

88-2 Approved providers to keep records specified in Records Principles

(1) An approved provider must keep records of the kind and in the form specified in the Records Principles.

Note: Approved providers have a responsibility under Part 4.3 to comply with this subsection. Failure to comply with a responsibility can result in a sanction being imposed under Part 7B of the *Quality and Safety Commission Act.

(3) A record may be kept in written or electronic form.

(4) This section does not affect an approved provider's obligations under section 88-1.

88-3 False or misleading records

(1) An approved provider must not, in purported compliance with subsection 88-1(1), make a record that is false or misleading in a material particular.

Note: Approved providers have a responsibility under Part 4.3 to comply with this subsection. Failure to comply with a responsibility can result in a sanction being imposed under Part 7B of the *Quality and Safety Commission Act.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 88-3

(2) If a person:

(a) in purported compliance with subsection 88-1(1), makes a record of any matter or thing; and

(b) the record is false or misleading in a material particular; and

(c) the record relates to the affairs of an approved provider that is a *corporation, or to the payment of a *subsidy;

the person commits an offence punishable, on conviction, by a fine not exceeding 30 penalty units.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 89—What records must a person who was an approved provider retain?

89-1 Former approved provider to retain records

(1) A person who has ceased to be an approved provider commits an offence if:

(a) the person fails to retain a record referred to in subsection (2) for 3 years commencing on the day that the person ceased to be an approved provider; and

(b) the record relates to care provided by the person; and

(c) either:

(i) the person is a *corporation; or

(ii) the record relates to subsidy under Chapter 3 paid to the person.

Penalty: 30 penalty units.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(2) The records the person is required to retain are the records that the person was required to retain under section 88-1 immediately before the person ceased to be an approved provider. However, they do not include records that the person is required to transfer to another approved provider under section 16-11.

(3) A record may be retained in written or electronic form.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

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.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

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 (other than a civil penalty provision in Division 54).

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 provider information or documents.

Table of Divisions

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

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.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

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;

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(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.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

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).

*To find definitions of asterisked terms, see the Dictionary in Schedule 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).

*To find definitions of asterisked terms, see the Dictionary in Schedule 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 and Family Court of Australia (Division 2);

(iii) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act 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.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

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.

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".

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

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 (other than a civil penalty provision in Division 54).

Note 1: 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.

Note 2: The civil penalty provisions in Division 54 are also subject to investigation under Part 3 of the Regulatory Powers Act: see Part 8A of the Quality and Safety Commission Act.

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

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(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 and Family Court of Australia (Division 2);
(iii) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act 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.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

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.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

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.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(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:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(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.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

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.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 6.5—Recovery of overpayments

Division 95—Recovery of overpayments

95-1 Recoverable amounts

(1) If the Commonwealth pays an amount to a person by way of *subsidy, any part of the amount that is an overpayment is a ***recoverable amount***.

(2) If:

(a) the Commonwealth pays an amount to a person by way of a grant under Chapter 5; and

(b) a condition to which the grant is subject is not met;

the amount of the grant (or so much of the amount as the Secretary determines) is a ***recoverable amount***.

(3) The *Commonwealth portion of a care recipient's *unspent home care amount is a ***recoverable amount*** if:

(a) the unspent home care amount relates to *home care subsidy, or home care fees, paid to an approved provider; and

(b) after this subsection commenced, the approved provider was paid an amount of home care subsidy in respect of the care recipient (whether or not the unspent home care amount relates to that payment of subsidy); and

(c) the Commonwealth portion is not payable under the User Rights Principles to any other approved provider of home care.

95-2 Recoverable amount is a debt

A *recoverable amount is a debt due to the Commonwealth and may be recovered by the Commonwealth in a court of competent jurisdiction.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

95-3 Recovery by deductions from amounts payable to debtor

If an approved provider is liable to pay a *recoverable amount, the amount (or part of it) may be deducted from one or more other amounts payable to the approved provider under this Act or the *Aged Care (Transitional Provisions) Act 1997*.

95-4 Recovery where there is a transfer of places

If:

(a) a person is liable to pay a *recoverable amount because of an overpayment in respect of an *aged care service; and

(b) all allocated *places included in the aged care service have been transferred to another person (the ***transferee***) under Division 16;

the recoverable amount (or part of it) may be deducted from one or more other amounts payable to the transferee under this Act or the *Aged Care (Transitional Provisions) Act 1997*.

95-5 Refund to transferee if Commonwealth makes double recovery

(1) If:

(a) a person (the ***debtor***) is liable to pay a *recoverable amount under this Part; and

(b) the Commonwealth recovers the amount (or part of it) from another person (the ***transferee***) by way of deductions under section 95-4; and

(c) the Commonwealth later recovers the amount (or part of it) from the debtor;

the Commonwealth is liable to make a refund to the transferee.

(2) The refund payable to the transferee is the smaller of the following amounts:

(a) the total amount recovered from the transferee by way of deductions under section 95-4;

(b) the amount recovered from the debtor.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

95-6 Write-off and waiver of debt

The Secretary may, on behalf of the Commonwealth, determine to do any of the following:

(a) write off a debt or class of debts arising under this Act;

(b) waive the right of the Commonwealth to recover a debt or class of debts arising under this Act;

(c) allow an amount of a debt that is payable by a person to the Commonwealth under this Act to be paid in instalments.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 6.8—Home care assurance reviews

Division 95BA—Home care assurance reviews

95BA-1 Home care assurance reviews

The Secretary may from time to time conduct reviews (***assurance reviews***) for the purposes of:

(a) assuring that arrangements for the delivery and administration of home care are effective and efficient; and

(b) informing development of home care policy and education of approved providers in relation to home care and home care services.

95BA-2 Scope of assurance reviews

(1) The Secretary may, in writing, specify terms of reference for an *assurance review, including:

(a) the approved providers, or class or classes of approved providers, to which the review is to relate; and

(b) the subject matter of the review.

(2) The subject matter of the review may be any or all of the following matters, so far as they relate to home care services undertaken by approved providers and the home care provided through those services:

(a) how approved providers are using *home care subsidy and charging for home care, including justifications for amounts charged to care recipients;

(b) how approved providers are structuring their financial accounting for home care services;

(c) the nature and type of home care provided by approved providers;

(d) the nature and type of approved providers' dealings with care recipients to whom home care is provided;

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(e) any other matters the Secretary considers relate to the purposes set out in section 95BA-1;
(f) approved providers' procedures and documentation in relation to matters mentioned in any of the above paragraphs.

95BA-3 Reports on assurance reviews

Reports for publication

(1) The Secretary may prepare and publish reports on *assurance reviews, dealing with any findings, conclusions or recommendations made as a result of the reviews.

(2) A report under subsection (1) must not include *personal information.

Other reports

(3) The Secretary may prepare a report on any particular *assurance review, dealing with any findings, conclusions or recommendations made as a result of the review.

(4) If the Secretary prepares a report under subsection (3), the Secretary may give a copy of the report to any approved provider to which the review relates.

95BA-4 Assistance in conducting and reporting on assurance reviews

(1) The Secretary may be assisted in the conduct of *assurance reviews and the preparation of any reports on the reviews by:
(a) APS employees in the Department; or
(b) persons engaged under contract by the Secretary to assist in the exercise of the power and any of their employees who are providing that assistance.

(2) However, the power to give an approved provider a notice under section 95BA-5 (notice to give information or documents) or

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

95BA-6 (notice to answer questions) may not be exercised by a person assisting the Secretary under subsection (1) of this section unless the power has been delegated to the person under subsection 96-2(1A).

95BA-5 Notice to give information or documents

(1) If the Secretary reasonably believes that an approved provider that is a *corporation has information or documents relevant to the subject matter of an *assurance review, the Secretary may, by written notice given to the provider, require the provider to give the Secretary such information or documents (or copies of documents) as are specified in the notice.

(2) The notice:
  (a) must specify the period within which, and the manner in which, the information or documents (or copies) are to be given; and
  (b) may specify the form in which information is to be given.

(3) The period specified under paragraph (2)(a) must not end earlier than 14 days after the day the notice is given.

(4) The approved provider must comply with the notice.

Civil penalty: 30 penalty units.

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

95BA-6 Notice to answer questions

(1) If the Secretary reasonably believes that an approved provider that is a *corporation has information relevant to the subject matter of an *assurance review, the Secretary may, by written notice given to the provider, require the provider to make available appropriate

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

officers, employees or agents to answer questions relating to the information.

(2) The notice must specify:

(a) the person or persons assisting the Secretary in the conduct of the review (as mentioned in subsection 95BA-4(1)) who will be asking the questions; and

(b) the time or times at which, and the means by which, the questions are to be asked and answered.

(3) The time, or the earliest time, specified under paragraph (2)(b) must be at least 14 days after the notice is given.

(4) The approved provider must comply with the notice.

Civil penalty: 30 penalty units.

95BA-7 Duty to provide all reasonable facilities and assistance

An approved provider that is a *corporation to which an *assurance review relates must provide the person conducting the review, and any individuals assisting that person, with all reasonable facilities and assistance necessary for the effective exercise of the person's duties in relation to the review.

Civil penalty: 30 penalty units.

95BA-8 Request for information or documents

(1) If the Secretary reasonably believes that a person (including an approved provider that is not a *corporation) has information or documents relevant to the subject matter of an *assurance review, the Secretary may request the person to give the Secretary any such information or documents (or copies of any such documents).

(2) The person is not required to comply with the request.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Chapter 7—Miscellaneous

Division 95C—Civil penalties

95C-1 Civil penalty provisions

Enforceable civil penalty provisions

(1) Each *civil penalty provision of this Act is enforceable under Part 4 of the *Regulatory Powers Act.

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

Authorised applicant

(2) For the purposes of Part 4 of the *Regulatory Powers Act, the Secretary is an authorised applicant in relation to the *civil penalty provisions of this Act.

Relevant court

(3) For the purposes of Part 4 of the *Regulatory Powers Act, each of the following courts is a relevant court in relation to the *civil penalty provisions of this Act:

(a) the *Federal Court;

(b) the Federal Circuit and Family Court of Australia (Division 2);

(c) a court of a State or Territory that has jurisdiction in relation to the matter.

This section does not apply to Division 54

(4) This section does not apply to a *civil penalty provision in Division 54.

Note: For enforcement of the civil penalty provisions in Division 54, see Part 8A of the Quality and Safety Commission Act.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 96—Miscellaneous

96-1 Principles

The Minister may, by legislative instrument, make Principles, specified in the second column of the table, providing for matters:

(a) required or permitted by the corresponding Part or section of this Act specified in the third column of the table to be provided; or

(b) necessary or convenient to be provided in order to carry out or give effect to that Part or section.

Principles Minister may make

Item	Principles	Part or provision
1	Accountability Principles	Part 4.3
4	Allocation Principles	Part 2.2
5	Approval of Care Recipients Principles	Part 2.3
6	Approved Provider Principles	Part 2.1
9	Classification Principles	Parts 2.4 and 2.4A, section 85-6 and subsection 96-2(15)
10	Committee Principles	section 96-3
14	Extra Service Principles	Part 2.5
14A	Fees and Payments Principles	Parts 3A.1, 3A.2 and 3A.3
15	Grant Principles	Parts 5.1, 5.5, 5.6 and 5.7
16	Information Principles	Part 6.2
17	Prioritised Home Care Recipients Principles	Part 2.3A
18	Quality of Care Principles	Part 4.1
19	Records Principles	Part 6.3
22A	Subsidy Principles	Parts 3.1, 3.2 and 3.3
23	User Rights Principles	Parts 3.2 and 4.2

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

96-2 Delegation of Secretary's powers and functions

Employees etc. of Agencies and Commonwealth authorities

(1) The Secretary may, in writing, delegate all or any of the powers and functions of the Secretary under this Act, the regulations or any Principles made under section 96-1 to a person engaged (whether as an employee or otherwise) by:

(a) an Agency (within the meaning of the *Public Service Act 1999*); or

(b) an authority of the Commonwealth.

(1A) Subsection (1) does not apply in relation to the Secretary's power to give a notice under section 95BA-5 or 95BA-6. However, the Secretary may, in writing, delegate the Secretary's powers under either or both of those sections to an SES employee, or acting SES employee, in the Department.

Note: The expressions ***SES employee*** and ***acting SES employee*** are defined in section 2B of the *Acts Interpretation Act 1901*.

Quality and Safety Commissioner

(2) The Secretary may, in writing, delegate to the *Quality and Safety Commissioner the powers and functions of the Secretary that the Secretary considers necessary for the Commissioner to perform the Commissioner's functions under the *Quality and Safety Commission Act or rules made under that Act.

(2A) If, under subsection (2), the Secretary delegates a power or function to the *Quality and Safety Commissioner, the Commissioner may, in writing, sub-delegate the power or function to a member of the staff of the *Quality and Safety Commission referred to in section 33 of the *Quality and Safety Commission Act.

Pricing Authority

(3) The Secretary may, in writing, delegate to the *Pricing Authority the powers and functions of the Secretary that the Secretary

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

considers necessary for the Pricing Authority to perform the Pricing Authority's functions under this Act.

(3A) If, under subsection (3), the Secretary delegates a power or function to the *Pricing Authority, the Pricing Authority may, in writing, sub-delegate the power or function to a person covered by subsection 161(1) or (2) of the *National Health Reform Act 2011* (other than a member of the Pricing Authority (within the meaning of that Act)).

Chief Executive Centrelink

(4) The Secretary may, in writing, delegate to the *Chief Executive Centrelink:

(a) the Secretary's powers and functions under section 44-24 relating to making a determination for the purposes of working out a care recipient's *total assessable income; or

(b) the Secretary's powers and functions under section 44-26C; or

(c) the Secretary's powers and functions under section 85-4 or 85-5 relating to reconsidering the following decisions:

(i) a determination under section 44-24 for the purposes of working out a care recipient's total assessable income;

(ii) a decision under section 44-26C.

(5) If, under subsection (4), the Secretary delegates a power or function to the *Chief Executive Centrelink, the Chief Executive Centrelink may, in writing, sub-delegate the power or function to a Departmental employee (within the meaning of the *Human Services (Centrelink) Act 1997*).

Chief Executive Medicare

(6) The Secretary may, in writing, delegate to the *Chief Executive Medicare:

(a) the Secretary's powers and functions under section 44-24 relating to making a determination for the purposes of working out a care recipient's *total assessable income; or

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(b) the Secretary's powers and functions under section 44-26C; or

(c) the Secretary's powers and functions under section 85-4 or 85-5 relating to reconsidering the following decisions:

(i) a determination under section 44-24 for the purposes of working out a care recipient's total assessable income;

(ii) a decision under section 44-26C.

(7) If, under subsection (6), the Secretary delegates a power or function to the *Chief Executive Medicare, the Chief Executive Medicare may, in writing, sub-delegate the power or function to a Departmental employee (within the meaning of the *Human Services (Medicare) Act 1973*).

Veterans' Affairs Secretary

(8) The Secretary may, in writing, delegate to the Secretary of the Department administered by the Minister who administers the *Veterans' Entitlements Act 1986*:

(a) the Secretary's powers and functions under section 44-26C; or

(b) the Secretary's powers and functions under section 85-4 or 85-5 relating to reconsidering a decision under section 44-26C.

(9) If, under subsection (8), the Secretary delegates a power or function to the Secretary of the Department administered by the Minister who administers the *Veterans' Entitlements Act 1986*, the Secretary of that Department may, in writing, sub-delegate the power or function to an APS employee in that Department.

Repatriation Commission

(10) The Secretary may, in writing, delegate to the *Repatriation Commission:

(a) the Secretary's powers and functions under section 44-24 relating to making a determination for the purposes of working out a care recipient's *total assessable income; or

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(b) the Secretary's powers and functions under section 85-4 or 85-5 relating to reconsidering a determination under section 44-24 for the purposes of working out a care recipient's total assessable income.

(11) If, under subsection (10), the Secretary delegates a power or function to the *Repatriation Commission, the Repatriation Commission may, in writing, sub-delegate the power or function to any person to whom it may delegate powers under the *Veterans' Entitlements Act 1986* under section 213 of that Act.

Social Services Secretary

(12) The Secretary may, in writing, delegate to the Secretary of the Department administered by the Minister who administers the *Data-matching Program (Assistance and Tax) Act 1990*:

(a) the Secretary's powers and functions under section 44-24 relating to making a determination for the purposes of working out a care recipient's *total assessable income; or

(b) the Secretary's powers and functions under section 85-4 or 85-5 relating to reconsidering a determination under section 44-24 for the purposes of working out a care recipient's total assessable income.

(13) If, under subsection (12), the Secretary delegates a power or function to the Secretary of the Department administered by the Minister who administers the *Data-matching Program (Assistance and Tax) Act 1990*, the Secretary of that Department may, in writing, sub-delegate the power or function to an APS employee in that Department.

Person making an assessment for the purposes of section 22-4

(14) The Secretary may, in writing, delegate to a person making an assessment for the purposes of section 22-4:

(a) all or any of the Secretary's powers and functions under Part 2.3; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(b) all or any of the Secretary's powers and functions under the Subsidy Principles that relate to respite supplement.

Person to make assessment under section 29C-3

(15) The Secretary may, in writing, delegate the Secretary's powers and functions under section 29C-3 (Secretary may assess care recipients) to a person who satisfies the criteria specified in the Classification Principles for the purposes of this subsection.

SES employee etc. in the Department

(15A) The Secretary may, in writing, delegate the powers conferred on the Secretary under the determination made under subsection 44-3(2) to an SES employee, or an acting SES employee, in the Department.

Note: The expressions ***SES employee*** and ***acting SES employee*** are defined in section 2B of the *Acts Interpretation Act 1901*.

Sub-delegation

(16) Sections 34AA, 34AB and 34A of the *Acts Interpretation Act 1901* apply in relation to a sub-delegation in a corresponding way to the way in which they apply to a delegation.

96-2A Identity cards for certain delegates

(1) The Secretary must cause an identity card to be issued to each person to whom the Secretary's powers and functions under section 29C-3 are delegated under subsection 96-2(15).

Note: Section 29C-3 provides for assessments of the care needs of care recipients for the purposes of making classifications under Part 2.4A.

Form of identity card

(2) The identity card must:

(a) be in the form approved in an instrument under subsection (3); and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(b) include a photograph of the person that is no more than 5 years old.

(3) The Secretary may, by notifiable instrument, approve a form for the purposes of subsection (2).

Offence

(4) A person commits an offence of strict liability if:
(a) the person has been issued with an identity card under this section; and
(b) the person ceases to be a delegate of the Secretary under subsection 96-2(15); and
(c) the person does not return the identity card to the Secretary within 14 days after ceasing to be such a delegate.

Penalty: 1 penalty unit.

(5) Subsection (4) does not apply if the identity card was lost or destroyed.

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

Requirement to carry and show identity card

(6) When a person to whom the Secretary's powers and functions under section 29C-3 are delegated under subsection 96-2(15) is exercising those powers or performing those functions:
(a) the delegate must, at all times, carry the delegate's identity card; and
(b) if a person who apparently represents an approved provider requests the delegate to show the delegate's identity card—the delegate must:
(i) do so when requested; or
(ii) if it is not reasonably practicable to do so when requested—do so as soon as reasonably practicable after that.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

96-3 Committees

(1) For the purposes of this Act and the *Aged Care (Transitional Provisions) Act 1997*, the Minister may establish one or more committees.

(3) The Committee Principles may provide for the following matters in relation to a committee:

(a) its functions;

(b) its constitution;

(c) its composition;

(d) the remuneration (if any) of its members;

(e) the disclosure of members' interests;

(f) its procedures;

(g) the fees (if any) that may be charged, on behalf of the Commonwealth, for services provided by it;

(h) any other matter relating to its operation.

(4) Fees charged for a service provided by a committee must be reasonably related to the cost of providing the service and must not be such as to amount to taxation.

96-4 Care provided on behalf of an approved provider

A reference in this Act to an approved provider providing care includes a reference to the provision of that care by another person, on the approved provider's behalf, under a contract or arrangement entered into between the approved provider and the other person.

Note: The approved provider will still be subject to the responsibilities under Chapter 4 in respect of care provided by the other person.

96-5 Care recipients etc. lacking capacity to enter agreements

If:

(a) this Act provides for an approved provider and a care recipient, or a person proposing to enter an *aged care service, to enter into an agreement; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(b) the care recipient or person is, because of any physical incapacity or mental impairment, unable to enter into the agreement;

another person (other than an approved provider) representing the care recipient or person may enter into the agreement on behalf of the care recipient or person.

Note: The agreements provided for in this Act are accommodation agreements, home care agreements, *extra service agreements and *resident agreements.

96-6 Applications etc. on behalf of care recipients

If this Act provides for a care recipient to make an application or give information, the application may be made or the information given by a person authorised to act on the care recipient's behalf.

96-7 Withdrawal of applications

(1) A person who has made an application to the Secretary under this Act may withdraw the application at any time before the Secretary makes a decision relating to the application.

(2) If:

(a) this Act provides that an application under this Act is taken to be withdrawn if the application does not give further information, within a particular period, as requested by the Secretary; and

(b) the Secretary, at the applicant's request, extends the period for giving the further information;

the application is not taken to be withdrawn unless the applicant does not give the further information within the period as extended.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

96-9 Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: The *Criminal Code* creates offences which can apply in relation to the regulation of providers of aged care. For example, under section 137.1 of the Code it would generally be an offence to give false or misleading information to the Secretary in purported compliance with this Act.

96-10 Appropriation

(1) Subject to subsection (2), *subsidies, are payable out of the Consolidated Revenue Fund, which is appropriated accordingly.

(2) This section does not apply to a subsidy to the extent that:

(a) the *Repatriation Commission has accepted financial responsibility for the amount of the subsidy as mentioned in subsection 84(3A) of the *Veterans' Entitlements Act 1986*; or

(b) the *Military Rehabilitation and Compensation Commission has accepted financial responsibility for the amount of the subsidy as mentioned in subsection 287(2A) of the *Military Rehabilitation and Compensation Act 2004*; or

(c) the Repatriation Commission has accepted financial responsibility for the amount of the subsidy as mentioned in section 13A of the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006*; or

(d) the Repatriation Commission has accepted financial responsibility for the amount of the subsidy as mentioned in section 15 of the *Treatment Benefits (Special Access) Act 2019*.

96-13 Regulations

The Governor-General may make regulations prescribing matters:

(a) required or permitted by this Act to be prescribed; or

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Schedule 1—Dictionary

Note: Section 1-3 describes how asterisks are used to identify terms that are defined in this Act.

1 Definitions

In this Act, unless the contrary intention appears:

accommodation agreement means an agreement that meets the requirements set out in section 52F-3.

accommodation bond, in relation to a person, means an amount of money that does not accrue daily and is paid or payable to an approved provider by the person for the person's *entry to a residential care service or flexible care service through which care is, or is to be, provided by the approved provider, and in respect of which the approved provider holds an allocation of *places.

Note: This Act contains rules about accommodation bonds, which are paid under the *Aged Care (Transitional Provisions) Act 1997*.

accommodation bond balance, in relation to an *accommodation bond (other than an accommodation bond that is to be paid by periodic payments), is, at a particular time, an amount equal to the difference between:

(a) the amount of the accommodation bond; and

(b) any amounts that have been, or are permitted to be, deducted under this Act or the *Aged Care (Transitional Provisions) Act 1997* as at that time.

accommodation charge, in relation to a person, means an amount of money that accrues daily and is paid or payable to an approved provider by the person for the person's *entry to a residential care service or flexible care service through which care is, or is to be, provided by the approved provider.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Note: This Act contains rules about accommodation charges, which are paid under the *Aged Care (Transitional Provisions) Act 1997*.

accommodation contribution means a contribution paid for accommodation provided with residential care.

accommodation payment means payment for accommodation provided with residential care or flexible care.

accommodation supplement means the supplement referred to in section 44-28.

accreditation requirement means a requirement set out in section 42-4.

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

advocacy grant means a grant payable under Part 5.5.

aged care means care of one or more of the following types:

(a) residential care;
(b) home care;
(c) flexible care.

aged care service means an undertaking through which *aged care is provided.

aged care worker of an approved provider has the same meaning as in the *Quality and Safety Commission Act.

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

assurance review: see section 95BA-1.

Australia, when used in a geographical sense, includes Norfolk Island, the Territory of Cocos (Keeling) Islands and the Territory of Christmas Island.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

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

available for allocation, in relation to a place, means determined by the Minister under section 12-3 to be available for allocation.

basic age pension amount means the annual maximum basic rate under point 1064-B1 of the *Social Security Act 1991* that applies to a person who is not a member of a couple within the meaning of that section.

capital repayment deduction is an amount deducted, in accordance with section 43-6, from an amount of *residential care subsidy otherwise payable under Division 43.

capital works costs is defined in section 70-3.

care means services, or accommodation and services, provided to a person whose physical, mental or social functioning is affected to such a degree that the person cannot maintain himself or herself independently.

Chief Executive Centrelink has the same meaning as in the *Human Services (Centrelink) Act 1997*.

Chief Executive Medicare has the same meaning as in the *Human Services (Medicare) Act 1973*.

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

classification level, in relation to a person, means the classification level to which the person has been classified under Part 2.4 or Part 2.4A.

close relation has the meaning given in section 44-26B.

Code of Conduct has the same meaning as in the *Quality and Safety Commission Act.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

combined care subsidy reduction means a care subsidy reduction under section 44-21 or 48-7.

Commonwealth portion of a care recipient's *unspent home care amount has the meaning given by the User Rights Principles.

community visitors grant means a grant payable under Part 5.6.

continuing care recipient means:

(a) a *continuing residential care recipient; or

(b) a *continuing home care recipient; or

(c) a *continuing flexible care recipient.

continuing flexible care recipient means a person who:

(a) *entered a flexible care service before 1 July 2014; and

(b) has not:

(i) ceased to be provided with flexible care by a flexible care service for a continuous period of more than 28 days (other than because the person is on *leave); or

(ii) before moving to another flexible care service, made a written choice, in accordance with the Fees and Payments Principles, to be covered by Chapters 3 and 3A of this Act in relation to the other service.

continuing home care recipient means a person who:

(a) *entered a home care service before 1 July 2014; and

(b) has not:

(i) ceased to be provided with home care by a home care service for a continuous period of more than 28 days (other than because the person is on *leave); or

(ii) before moving to another home care service, made a written choice, in accordance with the Fees and Payments Principles, to be covered by Chapters 3 and 3A of this Act in relation to the other service.

continuing residential care recipient means a person who:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(a) *entered a residential care service before 1 July 2014; and

(b) has not:

(i) ceased to be provided with residential care by a residential care service for a continuous period of more than 28 days (other than because the person is on *leave); or

(ii) before moving to another residential care service, made a written choice, in accordance with the Fees and Payments Principles, to be covered by Chapters 3 and 3A of this Act in relation to the other service.

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

daily accommodation contribution means *accommodation contribution that:

(a) accrues daily; and

(b) is paid by periodic payment.

daily accommodation payment means *accommodation payment that:

(a) accrues daily; and

(b) is paid by periodic payment.

daily payment means:

(a) *daily accommodation payment; or

(b) *daily accommodation contribution.

dependent child has the meaning given in section 44-26B.

distinct part, in relation to a residential care service, has the meaning given by section 30-3.

eligible flexible care service has the meaning given by subsection 52F-1(2).

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

entry, in relation to a person and an *aged care service, means the commencement of the provision of care to the person through that aged care service.

entry contribution, relating to a care recipient, means any payment, made before 1 October 1997, of money or other valuable consideration required by an *operator to be given or loaned in return for, or in contemplation of, *entry of the care recipient to a hostel (within the meaning of the *Aged or Disabled Persons Care Act 1954*).

entry contribution balance, in relation to an *entry contribution, is, at a particular time, an amount equal to the difference between the amount of the entry contribution and any amounts that have been, or are permitted to be, deducted under a *formal agreement as at that time.

expiry date, for a classification under Part 2.4, means the expiry date determined under section 27-2.

extended hospital leave, in relation to a care recipient provided with residential care, means:

(a) leave taken by the care recipient under subsection 42-2(2) for a continuous period of 30 days or more; and

(b) leave taken by the care recipient for a continuous period of 30 days or more, first under subsection 42-2(2) and later under subsection 42-2(3A).

extra service agreement means an agreement referred to in paragraph 36-1(1)(b).

extra service place has the meaning given by section 31-1.

extra service status means the extra service status referred to in paragraph 31-1(a).

Federal Court means the Federal Court of Australia.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

flexible care has the meaning given by section 49-3.

flexible care service means an undertaking through which flexible care is provided.

flexible care subsidy means a subsidy payable under Part 3.3.

formal agreement means a legally binding agreement in writing, entered into before 1 October 1997, between:

(a) a care recipient; and

(b) an *operator.

governing body of an approved provider means:

(a) if the provider is a body corporate incorporated, or taken to be incorporated, under the *Corporations Act 2001*—the board of directors of the provider; or

(b) otherwise—the group of persons responsible for the executive decisions of the provider.

governing person of an approved provider has the same meaning as in the *Quality and Safety Commission Act.

guidance and appeals panel has the same meaning as in the *Administrative Review Tribunal Act 2024*.

guidance and appeals panel application has the same meaning as in the *Administrative Review Tribunal Act 2024*.

home care has the meaning given by section 45-3.

home care account means an account that arises under section 48-14.

home care agreement means an agreement referred to in section 61-1.

home care credit has the meaning given by section 48-15.

home care debit has the meaning given by section 48-16.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

home care service means an undertaking through which home care is provided.

home care subsidy means a subsidy payable under Part 3.2.

homeowner has the meaning given in section 44-26B.

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.

implementation day means the day Part 1 of Schedule 1 to the *Aged Care Legislation Amendment (Improved Home Care Payment Administration No. 2) Act 2021* commences.

income support payment means an income support payment within the meaning of subsection 23(1) of the *Social Security Act 1991*.

income support supplement means an income support supplement under Part IIIA of the *Veterans' Entitlements Act 1986*.

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

just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

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

leave, in relation to a care recipient provided with residential care, has the meaning given by section 42-2.

local government authority has the same meaning as in the *Quality and Safety Commission Act.

lowest applicable classification level means the lowest applicable classification level for the purposes of subsection 25-2(3).

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

maximum accommodation supplement amount has the meaning given by subsection 44-21(6).

maximum home value has the meaning given by section 44-26B.

means tested amount has the meaning given by section 44-22.

member of a couple has the meaning given in section 44-26B.

Military Rehabilitation and Compensation Commission means the Military Rehabilitation and Compensation Commission established under section 361 of the *Military Rehabilitation and Compensation Act 2004*.

non-respite care means residential care, or flexible care of a kind specified in the Classification Principles for the purposes of paragraph 29C-1(b), other than respite care.

operator means an organisation that was approved for the payment of financial assistance by way of recurrent subsidy under section 10B of the *Aged or Disabled Persons Care Act 1954* immediately before the commencement of this Act (other than Division 1).

partner has the meaning given in section 44-26B.

payment period:

(a) in relation to residential care: see section 43-2; and

(b) in relation to home care: see section 47-2.

people with special needs has the meaning given in section 11-3.

permitted: for when the use of a *refundable deposit or an *accommodation bond is ***permitted***, see section 52N-1.

personal information has the same meaning as in the *Privacy Act 1988*.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

place means a capacity within an *aged care service for provision of residential care or flexible care to an individual.

pre-allocation lump sum has the meaning given by subsection 14-5(6).

pre-entry leave has the meaning given in subsection 42-3(3).

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

prioritised home care recipient means a person in relation to whom a determination under section 23B-1 is in effect.

protected entity has the meaning given by subsection 54-11(3).

protected information has the meaning given by section 86-1.

provide, in relation to care, includes the meaning given by section 96-4.

provisional allocation means an allocation of *places under Division 14 that has not taken effect under subsection 15-1(1).

provisional allocation period means the period referred to in section 15-7, at the end of which a *provisional allocation lapses.

provisionally allocated: a *place is ***provisionally allocated*** if it is a place in relation to which a *provisional allocation is in force under Division 15.

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

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

Quality and Safety Commissioner means the Commissioner of the *Quality and Safety Commission.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

recoverable amount has the meaning given in section 95-1.

refundable accommodation contribution means *accommodation contribution that:

(a) does not accrue daily; and

(b) is paid as a lump sum.

refundable accommodation deposit means *accommodation payment that:

(a) does not accrue daily; and

(b) is paid as a lump sum.

refundable deposit means:

(a) a *refundable accommodation deposit; or

(b) a *refundable accommodation contribution.

refundable deposit balance, in relation to a *refundable deposit is, at a particular time, an amount equal to the difference between:

(a) the amount of the refundable deposit; and

(b) any amounts that have been, or are permitted to be, deducted at the time from the refundable deposit under this Act as at that time.

region, in respect of a type of subsidy under Chapter 3, means a region for the purposes of section 12-6.

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

relinquish, in relation to a *place, means:

(a) no longer conduct an *aged care service that includes that place; or

(b) no longer include that place in an aged care service that continues to be conducted;

but does not include a transfer of the place under Division 16.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

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

reportable incident has the meaning given by subsections 54-3(2) and (5).

reporting period for an approved provider has the meaning given by subsection 63-1G(3).

resident agreement means an agreement referred to in section 59-1.

residential care has the meaning given by section 41-3.

residential care grant means a grant payable under Part 5.1.

residential care service means an undertaking through which residential care is provided.

residential care subsidy means a subsidy payable under Part 3.1.

respite care means residential care or flexible care (as the case requires) provided as an alternative care arrangement with the primary purpose of giving a carer or a care recipient a short-term break from their usual care arrangement. However, it does not include residential care provided through a residential care service while the care recipient in question is on *leave under section 42-2 from another residential care service.

restrictive practice, in relation to a care recipient, has the meaning given by section 54-9.

reviewable decision has the meaning given in section 85-1.

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

Secretary means the Secretary of the Department.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

service pension has the same meaning as in subsection 5Q(1) of the *Veterans' Entitlements Act 1986*.

staff member of an approved provider means an individual who is employed, hired, retained or contracted by the approved provider (whether directly or through an employment or recruiting agency) to provide care or other services.

start-date year, for a care recipient, means a year beginning on:

(a) the day on which the care recipient first *entered an aged care service other than as a *continuing care recipient; or

(b) an anniversary of that day.

State or Territory authority has the same meaning as in the *Quality and Safety Commission Act.

subsidy means subsidy paid under Chapter 3 of this Act or under Chapter 3 of the *Aged Care (Transitional Provisions) Act 1997*.

suitability matter in relation to an individual has the same meaning as in the *Quality and Safety Commission Act.

total assessable income has the meaning given in section 44-24.

total assessable income free area has the meaning given in section 44-26.

transition day means the day Schedule 1 to the *Aged Care and Other Legislation Amendment (Royal Commission Response) Act 2022* commences.

unregulated lump sum has the meaning given by the *Aged Care (Accommodation Payment Security) Act 2006*.

unregulated lump sum balance has the meaning given by the *Aged Care (Accommodation Payment Security) Act 2006*.

unspent home care amount of a care recipient has the meaning given by the User Rights Principles.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

veteran payment means a veteran payment made under an instrument made under section 45SB of the *Veterans' Entitlements Act 1986*.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Endnotes

Endnote 1—About the endnotes

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

The following endnotes are included in every compilation:

Endnote 1—About the endnotes
Endnote 2—Abbreviation key
Endnote 3—Legislation history
Endnote 4—Amendment history

Abbreviation key—Endnote 2
The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4
Amending laws are annotated in the legislation history and amendment history.

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

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

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

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

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

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

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

Endnote 2—Abbreviation key

ad = added or inserted

am = amended

amdt = amendment

c = clause(s)

C[x] = Compilation No. x

Ch = Chapter(s)

def = definition(s)

Dict = Dictionary

disallowed = disallowed by Parliament

Div = Division(s)

ed = editorial change

exp = expires/expired or ceases/ceased to have effect

F = Federal Register of Legislation

gaz = gazette

LA = *Legislation Act 2003*

LIA = *Legislative Instruments Act 2003*

(md) = misdescribed amendment can be given effect

(md not incorp) = misdescribed amendment cannot be given effect

mod = modified/modification

No. = Number(s)

o = order(s)

Ord = Ordinance

orig = original

par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)

pres = present

prev = previous

(prev…) = previously

Pt = Part(s)

r = regulation(s)/rule(s)

reloc = relocated

renum = renumbered

rep = repealed

rs = repealed and substituted

s = section(s)/subsection(s)

Sch = Schedule(s)

Sdiv = Subdivision(s)

SLI = Select Legislative Instrument

SR = Statutory Rules

Sub-Ch = Sub-Chapter(s)

SubPt = Subpart(s)

underlining = whole or part not commenced or to be commenced

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Aged Care Act 1997	112, 1997	7 July 1997	s 2-1 to 96-13 and Sch 1: 1 Oct 1997 (s 1-2(2) and gaz 1997, No GN37) Remainder: 7 July 1997 (s 1-2(1))	Act No 114, 1997 (s 6–87)
Veterans' Affairs Legislation Amendment (Budget and Simplification Measures) Act 1997	87, 1997	27 June 1997	Sch 1: 1 Jan 1998 (s 2(2))	—
as amended by				
Aged Care Amendment (Omnibus) Act 1999	132, 1999	13 Oct 1999	Sch 4 (items 1–4): 1 Jan 1998 (s 2(3))	—
Social Security Legislation Amendment (Youth Allowance Consequential and Related Measures) Act 1998	45, 1998	17 June 1998	Sch 13 (items 1–3): 1 July 1998 (s 2(1))	Sch 13 (item 3)
Aged Care Amendment (Accreditation Agency) Act 1998	122, 1998	21 Dec 1998	21 Dec 1998 (s 2)	—
A New Tax System (Aged Care Compensation Measures Legislation Amendment) Act 1999	58, 1999	8 July 1999	Sch 1: 1 July 2000 (s 2(2))	—

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Aged Care Amendment (Omnibus) Act 1999	132, 1999	13 Oct 1999	Sch 1: 21 Oct 1999 (s 2(1) and gaz 1999, No S496)	—
Public Employment (Consequential and Transitional) Amendment Act 1999	146, 1999	11 Nov 1999	Sch 1 (item 56): 5 Dec 1999 (s 2(1), (2))	—
Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000	137, 2000	24 Nov 2000	Sch 2 (items 17, 18, 418, 419): 24 May 2001 (s 2(3))	Sch 2 (items 418, 419)
Aged Care Amendment Act 2000	158, 2000	21 Dec 2000	Sch 1 (items 5A–5C) and Sch 2: 18 Jan 2001 (s 2(2), Sch 1 item 5D) Remainder: 22 Dec 2000 (s 2(1))	Sch 1 (item 10)
Health and Aged Care Legislation Amendment (Application of Criminal Code) Act 2001	111, 2001	17 Sept 2001	s 4 and Sch 1 (item 1): 17 Sept 2001 (s 2)	s 4
Statute Law Revision Act 2002	63, 2002	3 July 2002	Sch 1 (item 2): 18 Jan 2001 (s 2(1) item 3)	—

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Health and Ageing Legislation Amendment Act 2004	50, 2004	21 Apr 2004	Sch 5 (items 1, 18, 19): 21 Apr 2004 (s 2(1) items 5, 22) Sch 5 (items 2–5, 8, 9, 17): 1 Oct 1997 (s 2(1) items 6–9, 12, 13, 21) Sch 5 (items 6, 7, 10–15): 21 Oct 1999 (s 2(1) items 10, 11, 14–19) Sch 5 (item 16): 22 Dec 2000 (s 2(1) item 20) Sch 5 (items 20–22): 5 Dec 1999 (s 2(1) item 23)	—
Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004	52, 2004	27 Apr 2004	Sch 3 (items 1–7): 1 July 2004 (s 2(4))	—
Aged Care Amendment Act 2004	82, 2004	25 June 2004	1 July 2004 (s 2)	Sch 1 (item 4)
Aged Care Amendment (Transition Care and Assets Testing) Act 2005	22, 2005	21 Mar 2005	Sch 2: 1 July 2005 (s 2(1) item 3) Remainder: 21 Mar 2005 (s 2(1) items 1, 2)	Sch 1 (item 4) and Sch 2 (item 27)
Aged Care Amendment (Extra Service) Act 2005	59, 2005	26 June 2005	1 July 2005 (s 2)	Sch 1 (item 11)
Statute Law Revision Act 2005	100, 2005	6 July 2005	Sch 1 (items 2, 3): 1 Oct 1997 (s 2(1) items 3, 4)	—
Human Services Legislation Amendment Act 2005	111, 2005	6 Sept 2005	Sch 2 (item 81): 1 Oct 2005 (s 2(1) item 7)	—

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Statute Law Revision Act 2006	9, 2006	23 Mar 2006	Sch 1 (item 1): 1 Oct 1997 (s 2(1) item 2)	—
Aged Care Amendment (2005 Measures No. 1) Act 2006	28, 2006	6 Apr 2006	Sch 1, Sch 2 (items 1–9) and Sch 3–7: 31 May 2006 (s 2(1) item 2)	Sch 7 (item 1)
Aged Care Amendment (Residential Care) Act 2006	133, 2006	9 Nov 2006	Sch 1: 1 Jan 2007 (s 2(1) item 2) Remainder: 9 Nov 2006 (s 2(1) items 1, 3)	Sch 1 (items 2, 3) and Sch 2 (item 2)
Australian Participants in British Nuclear Tests (Treatment) (Consequential Amendments and Transitional Provisions) Act 2006	136, 2006	30 Nov 2006	Sch 1 (items 1–4) and Sch 2 (items 1, 2): 1 Dec 2006 (s 2(1) item 2)	Sch 2 (items 1, 2)
Families, Community Services and Indigenous Affairs and Veterans' Affairs Legislation Amendment (2006 Budget Measures) Act 2006	156, 2006	8 Dec 2006	Sch 4 (items 1, 2): 8 Dec 2006 (s 2(1) item 4)	—
Aged Care Amendment (Security and Protection) Act 2007	51, 2007	12 Apr 2007	Sch 1: 1 May 2007 (s 2(1) item 2) Sch 2: 1 July 2007 (s 2(1) item 3)	Sch 2 (item 4)
Aged Care Amendment (Residential Care) Act 2007	109, 2007	28 June 2007	Sch 1: 20 Mar 2008 (s 2(1) item 2)	Sch 1 (items 49–56)
Aged Care Amendment (2008 Measures No. 1) Act 2008	1, 2008	18 Feb 2008	Sch 1: 20 Mar 2008 (s 2(1) items 2–4)	Sch 1 (items 171–186)

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Aged Care Amendment (2008 Measures No. 2) Act 2008	140, 2008	9 Dec 2008	Sch 1 (items 1–140, 185–201): 1 Jan 2009 (s 2)	Sch 1 (items 185–201)
Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Act 2008	144, 2008	9 Dec 2008	Sch 9 (items 30–35, 38, 39): 1 July 2009 (s 2(1) item 26)	—
Social Security and Other Legislation Amendment (Pension Reform and Other 2009 Budget Measures) Act 2009	60, 2009	29 June 2009	Sch 17: 20 Sept 2009 (s 2(1) item 20)	Sch 17 (items 23–27)
Veterans' Affairs and Other Legislation Amendment (Pension Reform) Act 2009	81, 2009	10 Sept 2009	Sch 12: 20 Sept 2009 (s 2(1) item 22)	Sch 12 (item 5)
Statute Law Revision Act 2011	5, 2011	22 Mar 2011	Sch 1 (items 3–5): 22 Mar 2011 (s 2(1) item 2)	—
Human Services Legislation Amendment Act 2011	32, 2011	25 May 2011	Sch 4 (items 1–15): 1 July 2011 (s 2(1) item 3)	—
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Sch 2 (items 36–43) and Sch 3 (items 10, 11): 27 Dec 2011 (s 2(1) item 2, 12)	Sch 3 (items 10, 11)

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Aged Care Amendment Act 2011	86, 2011	26 July 2011	Sch 1: 1 Oct 2011 (s 2(1) item 2) Sch 2: 1 Sept 2011 (s 2(1) item 3) Sch 3 (items 1–17): 27 July 2011 (s 2(1) item 4)	Sch 1 (items 10–12) and Sch 2 (items 20, 21)
Clean Energy (Household Assistance Amendments) Act 2011	141, 2011	29 Nov 2011	Sch 9: 1 July 2012 (s 2(1) item 17)	Sch 9 (item 5)
Statute Law Revision Act 2012	136, 2012	22 Sept 2012	Sch 1 (items 1–7): 22 Sept 2012 (s 2(1) item 2)	—
Australian Charities and Not-for-profits Commission (Consequential and Transitional) Act 2012	169, 2012	3 Dec 2012	Sch 2 (item 142): 3 Dec 2012 (s 2(1) item 7)	—
Privacy Amendment (Enhancing Privacy Protection) Act 2012	197, 2012	12 Dec 2012	Sch 5 (items 2–5) and Sch 6 (items 15–19): 12 Mar 2014 (s 2(1) items 3, 19) Sch 6 (item 1): 12 Dec 2012 (s 2(1) item 16)	Sch 6 (items 1, 15–19)

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Aged Care (Living Longer Living Better) Act 2013	76, 2013	28 June 2013	Sch 1 and Sch 2 (items 5, 7–11, 13, 14, 16, 16A, 18, 22, 24–26, 194A–199): 1 Aug 2013 (s 2(1) items 2, 3A, 3C, 3E, 3G, 3J, 3L, 3N) Sch 2 (items 1–4, 6, 12, 15, 17, 19–21, 23, 290–292): 1 Jan 2014 (s 2(1) items 3, 3B, 3D, 3F, 3H, 3K, 3M, 3N) Sch 3: 1 July 2014 (s 2(1) item 4)	Sch 1 (items 194A–199), Sch 2 (items 24–26) and Sch 3 (items 290–292)
Veterans' Affairs Legislation Amendment (Military Compensation Review and Other Measures) Act 2013	99, 2013	28 June 2013	Sch 13 (items 1, 12): 26 July 2013 (s 2(1) item 7)	Sch 13 (item 12)
Farm Household Support (Consequential and Transitional Provisions) Act 2014	13, 2014	28 Mar 2014	Sch 2 (items 1, 2): 1 July 2014 (s 2(1) item 3)	Sch 2 (item 2)
Statute Law Revision Act (No. 1) 2014	31, 2014	27 May 2014	Sch 1 (item 1): 24 June 2014 (s 2(1) item 2)	—
Social Services and Other Legislation Amendment (Seniors Health Card and Other Measures) Act 2014	98, 2014	11 Sept 2014	Sch 4 (items 1–8): 9 Oct 2014 (s 2(1) item 3)	Sch 4 (item 8)
Omnibus Repeal Day (Autumn 2014) Act 2014	109, 2014	16 Oct 2014	Sch 9 (items 14–33): 17 Oct 2014 (s 2(1) item 7)	—

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Aged Care and Other Legislation Amendment Act 2014	126, 2014	4 Dec 2014	Sch 1 (items 1–11): 5 Dec 2014 (s 2(1) item 2)	—
Norfolk Island Legislation Amendment Act 2015	59, 2015	26 May 2015	Sch 2 (items 37–40): 1 July 2016 (s 2(1) item 5) Sch 2 (items 356–396): 18 June 2015 (s 2(1) item 6)	Sch 2 (items 356–396)
as amended by				
Territories Legislation Amendment Act 2016	33, 2016	23 Mar 2016	Sch 2: 24 Mar 2016 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 4): 5 Mar 2016 (s 2(1) item 2)	—
Social Services Legislation Amendment (No. 2) Act 2015	128, 2015	16 Sept 2015	Sch 2 (items 1–5): 17 Sept 2015 (s 2(1) item 5) Sch 3: 16 Sept 2015 (s 2(1) item 6)	Sch 2 (item 5)
Aged Care Amendment (Independent Complaints Arrangements) Act 2015	131, 2015	13 Oct 2015	Sch 1 (items 1–30, 34): 1 Jan 2016 (s 2(1) item 1)	Sch 1 (item 34)
Statute Law Revision Act (No. 2) 2015	145, 2015	12 Nov 2015	Sch 1 (item 1): 10 Dec 2015 (s 2(1) item 2)	—
Aged Care Amendment (Red Tape Reduction in Places Management) Act 2016	1, 2016	10 Feb 2016	11 Feb 2016 (s 2(1) item 1)	Sch 1 (item 7) and Sch 2 (item 10)

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Statute Law Revision Act (No. 1) 2016	4, 2016	11 Feb 2016	Sch 1 (items 1–3) and Sch 4 (items 1, 5–7, 329): 10 Mar 2016 (s 2(1) items 2, 6)	—
Aged Care Legislation Amendment (Increasing Consumer Choice) Act 2016	19, 2016	18 Mar 2016	Sch 1 (items 1–59, 69–83): 27 Feb 2017 (s 2(1) items 2, 4, 5) Sch 1 (item 68): never commenced (s 2(1) item 3)	Sch 1 (items 70–83)
Budget Savings (Omnibus) Act 2016	55, 2016	16 Sept 2016	Sch 8 (items 1–23): 1 Jan 2017 (s 2(1) item 8) Sch 8 (items 24–33): 17 Sept 2016 (s 2(1) item 9) Sch 8 (items 34–38): 14 Oct 2016 (s 2(1) item 10)	Sch 8 (items 2, 9, 16) and Sch 8 (items 33, 38)
Veterans' Affairs Legislation Amendment (Budget Measures) Act 2017	59, 2017	22 June 2017	Sch 1 (items 19–21): 1 July 2017 (s 2(1) item 4)	—
Veterans' Affairs Legislation Amendment (Veteran-centric Reforms No. 1) Act 2018	17, 2018	28 Mar 2018	Sch 2 (items 4–13): 1 May 2018 (s 2(1) item 3)	—
Aged Care (Single Quality Framework) Reform Act 2018	102, 2018	21 Sept 2018	Sch 1 (items 1–3, 10): 1 July 2019 (s 2(1) item 1)	Sch 1 (item 10)

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Aged Care Quality and Safety Commission (Consequential Amendments and Transitional Provisions) Act 2018	150, 2018	10 Dec 2018	Sch 1 (items 3–22) and Sch 2: 1 Jan 2019 (s 2(1) item 2) Sch 1 (item 24): 1 July 2019 (s 2(1) item 3)	Sch 2
Treatment Benefits (Special Access) (Consequential Amendments and Transitional Provisions) Act 2019	42, 2019	5 Apr 2019	Sch 1 (item 1) and Sch 2 (items 1–4): 6 Apr 2019 (s 2(1) item 2)	Sch 1 (item 1)
Aged Care Amendment (Movement of Provisionally Allocated Places) Act 2019	71, 2019	20 Sept 2019	21 Sept 2019 (s 2(1) item 1)	Sch 1 (item 7)
Aged Care Legislation Amendment (New Commissioner Functions) Act 2019	116, 2019	11 Dec 2019	Sch 1 (items 3–54), Sch 2 (items 1–38), Sch 3 (item 1) and Sch 4: 1 Jan 2020 (s 2(1) item 2)	Sch 4
Aged Care Legislation Amendment (Emergency Leave) Act 2020	41, 2020	15 May 2020	Sch 1 (items 1–5, 10): 15 May 2020 (s 2(1) item 1)	Sch 1 (item 10)
Aged Care Legislation Amendment (Improved Home Care Payment Administration No. 1) Act 2020	124, 2020	15 Dec 2020	Sch 1 (items 1–4, 9): 1 Feb 2021 (s 2(1) item 1)	Sch 1 (item 9)
Aged Care Amendment (Aged Care Recipient Classification) Act 2020	147, 2020	17 Dec 2020	1 Mar 2021 (s 2(1) item 1)	—

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Aged Care Legislation Amendment (Improved Home Care Payment Administration No. 2) Act 2021	2, 2021	16 Feb 2021	Sch 1 (items 1–11, 15, 17, 18, 21, 22, 24): 1 Sept 2021 (s 2(1) items 2, 3)	Sch 1 (items 15, 21, 24)
Aged Care Legislation Amendment (Serious Incident Response Scheme and Other Measures) Act 2021	9, 2021	1 Mar 2021	Sch 1 (items 1, 2, 4–12, 14, 15) and Sch 2 (items 4, 5): 1 Apr 2021 (s 2(1) item 2)	Sch 1 (items 14, 15)
Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Act 2021	13, 2021	1 Mar 2021	Sch 2 (item 62) and Sch 4 (item 1): 1 Sept 2021 (s 2(1) items 5, 6)	—
Aged Care and Other Legislation Amendment (Royal Commission Response No. 1) Act 2021	57, 2021	28 June 2021	Sch 1 (items 1–4) and Sch 3: 1 July 2021 (s 2(1) items 2, 4) Sch 2: 29 June 2021 (s 2(1) item 3)	—

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Aged Care and Other Legislation Amendment (Royal Commission Response) Act 2022	34, 2022	5 Aug 2022	Sch 1 (items 1–55, 88–91, 93, 94, 96, 97, 100, 101, 103–105): 1 Oct 2022 (s 2(1) item 2) Sch 2 (items 1, 2), Sch 6 (items 1–3, 19), Sch 7 (items 1–13, 15–18) and Sch 9 (items 1–4): 6 Aug 2022 (s 2(1) items 3, 8, 9, 11) Sch 3 (items 1, 2), Sch 4 (items 1–9) and Sch 5 (items 1–18, 34–38, 41): 1 Dec 2022 (s 2(1) items 4, 5, 7) Sch 8 (items 79–118, 122, 127–132, 134): 12 Aug 2022 (s 2(1) item 10)	Sch 1 (items 88–91, 93, 94, 96, 97, 100, 101, 103–105), Sch 2 (item 2), Sch 4 (item 9), Sch 5 (items 34–38, 41), Sch 6 (item 19), Sch 7 (items 15–18) and Sch 8 (items 122, 127–132, 134)
Aged Care Amendment (Implementing Care Reform) Act 2022	47, 2022	9 Nov 2022	Sch 1: 1 Apr 2023 (s 2(1) item 2) Sch 2: 1 Jan 2023 (s 2(1) item 3) Sch 3: 1 Dec 2022 (s 2(1) item 4)	Sch 2 (item 2) and Sch 3 (item 2)
Inspector-General of Aged Care (Consequential and Transitional Provisions) Act 2023	56, 2023	17 Aug 2023	Sch 1 (items 1, 2): 16 Oct 2023 (s 2(1) item 1)	—

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Treasury Laws Amendment (2023 Law Improvement Package No. 1) Act 2023	76, 2023	20 Sept 2023	Sch 2 (item 619): 20 Oct 2023 (s 2(1) item 2)	—
Disability Services and Inclusion (Consequential Amendments and Transitional Provisions) Act 2023	103, 2023	28 Nov 2023	Sch 2 (item 1): 1 Jan 2024 (s 2(1) item 2)	—
Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Act 2024	38, 2024	31 May 2024	Sch 12 (items 1, 2, 35: 14 Oct 2024 (s 2(1) item 2)	—
Administrative Review Tribunal (Miscellaneous Measures) Act 2025	14, 2025	20 Feb 2025	Sch 2 (items 48–50): 21 Feb 2025 (s 2(1) item 2)	—
Veterans' Entitlements, Treatment and Support (Simplification and Harmonisation) Act 2025	17, 2025	20 Feb 2025	Sch 8 (items 1–8): 1 July 2026 (s 2(1) item 6)	—

Endnote 4—Amendment history

Provision affected	How affected
Chapter 1	
Division 1	
s 1-3	am No 76, 2013
s 1-4	ad No 50, 2004
s 1-5	ad No 76, 2013
Division 3	
s 3-1	am No 76, 2013
s 3-2	am No 76, 2013; No 19, 2016; No 116, 2019
s 3-3	am No 76, 2013
s 3-3A	ad No 76, 2013
s 3-4	am No 158, 2000; No 76, 2013; No 116, 2019
s 3-5	am No 76, 2013
s 3-6	rs No 1, 2008
	rep No 76, 2013
Division 4	
s 4-1	am No 1, 2008; No 59, 2015
Chapter 2	
Division 5	
s 5-1	am No 132, 1999; No 76, 2013; No 109, 2014; No 19, 2016; No 116, 2019; No 147, 2020; No 34, 2022
s 5-2	am No 1, 2008; No 76, 2013; No 109, 2014; No 19, 2016; No 116, 2019
Part 2.1	
Part 2.1 heading	rs No 116, 2019
Division 6	
s 6-1	am No 76, 2013
	rs No 116, 2019
	am No 34, 2022
s 6-2	rep No 116, 2019

Endnote 4—Amendment history

Provision affected	How affected
Division 7	
s 7-1	rs No 140, 2008
	am No 76, 2013; No 116, 2019
s 7-2	am No 76, 2013
	rs No 116, 2019
Division 8	rep No 116, 2019
s 8-1	am No 158, 2000; No 140, 2008; No 19, 2016
	rep No 116, 2019
s 8-2	rep No 116, 2019
s 8-3	am No 158, 2000; No 140, 2008; No 19, 2016
	rep No 116, 2019
s 8-3A	ad No 140, 2008
	rep No 116, 2019
s 8-4	rep No 116, 2019
s 8-5	am No 140, 2008; No 19, 2016
	rep No 116, 2019
s 8-6	am No 140, 2008; No 136, 2012; No 19, 2016
	rep No 116, 2019
Division 9	
s 9-1A	ad No 19, 2016
	am No 116, 2019
s 9-1	am No 158, 2000; No 50, 2004; No 140, 2008; No 169, 2012; No 4, 2016; No 19, 2016; No 55, 2016; No 116, 2019; No 34, 2022
s 9-2A	ad No 34, 2022
s 9-2	am No 140, 2008; No 4, 2016; No 19, 2016; No 116, 2019; No 9, 2021; No 34, 2022
s 9-3	am No 76, 2013; No 116, 2019
s 9-3A	ad No 28, 2006
	am No 140, 2008; No 76, 2013; No 116, 2019; No 9, 2021
s 9-3B	ad No 86, 2011
	am No 76, 2013; No 116, 2019; No 9, 2021; No 34, 2022

Provision affected	How affected
s 9-4	am No 116, 2019
Division 10	rep No 116, 2019
s 10-1	am No 140, 2008; No 19, 2016
	rep No 116, 2019
s 10-2	rs No 140, 2008
	rep No 19, 2016
s 10-3	am No 132, 1999; No 140, 2008
	rep No 116, 2019
s 10-4	rep No 140, 2008
Division 10A	
Division 10A heading	rs No 34, 2022
Division 10A	ad No 158, 2000
s 10A-1	ad No 158, 2000
	rep No 116, 2019
	ad No 34, 2022
s 10A-2	ad No 158, 2000
	am No 4, 2016
	rs No 34, 2022
s 10A-2A	ad No 34, 2022
s 10A-2B	ad No 34, 2022
s 10A-3	ad No 158, 2000
	am No 116, 2019; No 34, 2022
Part 2.2	
Division 11	
s 11-1	am No 76, 2013; No 19, 2016
s 11-3	am No 76, 2013
s 11-4	am No 76, 2013; No 128, 2015; No 19, 2016
Division 12	
s 12-1	am No 76, 2013; No 128, 2015; No 19, 2016
s 12-3	am No 76, 2013; No 19, 2016
s 12-4	am No 76, 2013; No 19, 2016

Endnote 4—Amendment history

Provision affected	How affected
s 12-5	am No 1, 2008; No 76, 2013; No 19, 2016
s 12-6	am No 1, 2008; No 76, 2013; No 59, 2015; No 19, 2016
s 12-7	rep No 128, 2015
Division 13	
s 13-1	am No 140, 2008
s 13-2	am No 1, 2008; No 76, 2013
Division 14	
s 14-1	am No 140, 2008; No 76, 2013; No 19, 2016; No 116, 2019
s 14-2	am No 140, 2008
	rs No 76, 2013
s 14-3	am No 76, 2013
s 14-4	am No 140, 2008; No 116, 2019
s 14-5	am No 1, 2008; No 140, 2008; No 76, 2013; No 116, 2019
s 14-6	am No 140, 2008; No 116, 2019
s 14-8	am No 76, 2013
s 14-9	am No 140, 2008
Division 15	
s 15-1	am No 140, 2008; No 76, 2013
s 15-3	am No 140, 2008
s 15-4	am No 1, 2008; No 140, 2008
s 15-5	am No 1, 2008; No 140, 2008; No 71, 2019
s 15-5A	ad No 71, 2019
s 15-6	am No 140, 2008
s 15-7	am No 140, 2008; No 76, 2013; No 1, 2016
Division 16	
Division 16	rs No 1, 2016
Subdivision 16-A	
Subdivision 16-A heading	ad No 140, 2008
	rs No 1, 2016
s 16-1A	ad No 140, 2008
	rep No 1, 2016

Provision affected	How affected
s 16-1	am No 50, 2004; No 140, 2008
	rs No 1, 2016
s 16-2	am No 140, 2008; No 86, 2011
	rs No 1, 2016
	am No 19, 2016; No 116, 2019
s 16-3	rs No 1, 2016
s 16-4	am No 140, 2008
	rs No 1, 2016
s 16-5	rs No 1, 2016
s 16-6	am No 1, 2008; No 76, 2013
	rs No 1, 2016
s 16-7	rs No 1, 2016
s 16-8	am No 140, 2008
	rs No 1, 2016
s 16-9	am No 86, 2011; No 76, 2013
	rs No 1, 2016
s 16-10	am No 76, 2013
	rs No 1, 2016
s 16-11	am No 76, 2013
	rs No 1, 2016
	am No 116, 2019; No 147, 2020
Subdivision 16-B	
Subdivision 16-B	ad No 140, 2008
	rs No 1, 2016
s 16-12	ad No 140, 2008
	rs No 1, 2016
s 16-13	ad No 140, 2008
	rs No 1, 2016
	am No 19, 2016; No 116, 2019
s 16-14	ad No 140, 2008
	rs No 1, 2016

Endnote 4—Amendment history

Provision affected	How affected
s 16-15	ad No 140, 2008
	rs No 1, 2016
s 16-16	ad No 140, 2008
	rs No 1, 2016
s 16-17	ad No 140, 2008
	rs No 1, 2016
s 16-18	ad No 140, 2008
	am No 76, 2013
	rs No 1, 2016
s 16-19	ad No 140, 2008
	rs No 1, 2016
s 16-20	ad No 140, 2008
	rs No 1, 2016
s 16-21	ad No 140, 2008
	rs No 1, 2016
Division 17	
s 17-2	am No 76, 2013
Division 17A	
Division 17A	ad No 34, 2022
s 17A-1	ad No 34, 2022
Division 18	
s 18-1	am No 140, 2008; No 116, 2019
s 18-2	am No 76, 2013; No 4, 2016; No 116, 2019
s 18-4	am No 4, 2016; No 116, 2019
s 18-5	am No 76, 2013; No 19, 2016
Part 2.3	
Division 19	
s 19-1	am No 76, 2013
Division 20	
s 20-1	am No 76, 2013
s 20-2	am No 76, 2013

Provision affected	How affected
Division 21	
s 21-1	am No 76, 2013; No 19, 2016
s 21-2	am No 31, 2014; No 19, 2016
s 21-3	am No 76, 2013; No 19, 2016
s 21-4	am No 19, 2016
Division 22	
s 22-1	am No 76, 2013
s 22-2	am No 109, 2007; No 76, 2013
s 22-2A	ad No 19, 2016
s 22-4	am No 76, 2013; No 19, 2016
s 22-5	am No 46, 2011
s 22-6	am No 109, 2007; No 76, 2013; No 19, 2016
Division 23	
s 23-1	am No 76, 2013
s 23-3	am No 140, 2008; No 76, 2013
	rs No 76, 2013
Part 2.3A	
Part 2.3A	ad No 19, 2016
Division 23A	
s 23A-1	ad No 19, 2016
Division 23B	
s 23B-1	ad No 19, 2016
s 23B-2	ad No 19, 2016
s 23B-3	ad No 19, 2016
s 23B-4	ad No 19, 2016
Part 2.4	
Part 2.4 heading	rs No 34, 2022
Division 24	
s 24-1	am No 76, 2013; No 34, 2022
Division 25	
s 25-1	am No 109, 2007; No 55, 2016; No 34, 2022

Endnote 4—Amendment history

Provision affected	How affected
s 25-2	am No 76, 2013
s 25-3	am No 109, 2007; No 34, 2022
s 25-4	am No 109, 2007; No 76, 2013; No 55, 2016
	ed C64
	am No 116, 2019
s 25-4A	ad No 109, 2007
	am No 55, 2016
s 25-4B	ad No 109, 2007
	am No 55, 2016
s 25-4C	ad No 109, 2007
s 25-4D	ad No 109, 2007
	am No 1, 2008
s 25-4E	ad No 109, 2007
s 25-5	am No 109, 2007
Division 26	
s 26-1	am No 109, 2007; No 34, 2022
s 26-2	am No 109, 2007; No 34, 2022
s 26-3	am No 34, 2022
Division 27	rs No 109, 2007
s 27-1	rs No 109, 2007
	am No 34, 2022
s 27-2	rs No 109, 2007
s 27-3	rs No 109, 2007
	am No 76, 2013; No 55, 2016
s 27-4	ad No 109, 2007
	am No 34, 2022
s 27-5	ad No 109, 2007
s 27-5A	ad No 34, 2022
s 27-6	ad No 109, 2007
	am No 34, 2022
s 27-7	ad No 109, 2007

Provision affected	How affected
s 27-8	ad No 109, 2007
s 27-9	ad No 109, 2007
Division 28	rep No 109, 2007
s 28-1	am No 82, 2004
	rep No 109, 2007
s 28-2	rep No 109, 2007
s 28-3	rep No 109, 2007
s 28-4	rep No 109, 2007
s 28-5	rep No 109, 2007
Division 29	
s 29-1	am No 109, 2007; No 5, 2011; No 34, 2022
s 29-2	rs No 55, 2016
Division 29A	
Division 29A	ad No 55, 2016
s 29A-1	ad No 55, 2016
s 29A-2	ad No 55, 2016
s 29A-3	ad No 55, 2016
Part 2.4A	
Part 2.4A heading	am No 34, 2022
Part 2.4A	ad No 147, 2020
Division 29B	
s 29B-1	ad No 147, 2020
	am No 34, 2022
s 29B-2	ad No 147, 2020
Division 29C	
s 29C-1	ad No 147, 2020
s 29C-2	ad No 147, 2020
	am No 34, 2022
s 29C-3	ad No 147, 2020
	am No 34, 2022
s 29C-4	ad No 147, 2020

Endnote 4—Amendment history

Provision affected	How affected
s 29C-5	ad No 147, 2020
s 29C-6	ad No 147, 2020
s 29C-7	ad No 147, 2020
s 29C-8	ad No 147, 2020
Division 29D	
s 29D-1	ad No 147, 2020
	am No 34, 2022
Division 29E	
s 29E-1	ad No 147, 2020
Division 29F	rep No 34, 2022
s 29F-1	ad No 147, 2020
	rep No 34, 2022
Part 2.5	
Division 30	
s 30-1	am No 76, 2013
s 30-3	am No 76, 2013
Division 31	
s 31-1	am No 59, 2005
s 31-2	rep No 59, 2005
s 31-3	am No 140, 2008; No 1, 2016; No 71, 2019
Division 32	
s 32-3	am No 1, 2008; No 34, 2022
s 32-4	am No 1, 2008; No 140, 2008; No 86, 2011; No 76, 2013; No 109, 2014
s 32-7	am No 76, 2013
s 32-8	am No 76, 2013; No 116, 2019
s 32-9	am No 76, 2013; No 109, 2014
Division 33	
s 33-1	am No 59, 2005; No 109, 2014; No 116, 2019
s 33-2	rep No 59, 2005
s 33-3	am No 116, 2019

Provision affected	How affected
s 33-4	am No 116, 2019
Division 34	rep No 59, 2005
s 34-1	rep No 59, 2005
s 34-2	rep No 59, 2005
s 34-3	rep No 59, 2005
s 34-4	rep No 59, 2005
s 34-5	rep No 59, 2005
s 34-6	rep No 59, 2005
Division 35	
s 35-1	am No 59, 2005; No 140, 2008; No 76, 2013; No 109, 2014; No 34, 2022
s 35-2	am No 76, 2013; No 34, 2022
s 35-3	am No 76, 2013; No 34, 2022
s 35-4	am No 76, 2013
	rs No 34, 2022
Division 36	
s 36-1	am No 140, 2008
s 36-3	am No 59, 2005; No 140, 2008
s 36-4	am No 76, 2013; No 116, 2019
Part 2.6	rep No 109, 2014
s 37-1	am No 132, 1999; No 1, 2008
	rs No 76, 2013
	rep No 109, 2014
s 37-2	rep No 109, 2014
s 38-1	rep No 109, 2014
s 38-2	rep No 109, 2014
s 38-3	am No 140, 2008; No 136, 2012
	rep No 109, 2014
s 38-4	rep No 109, 2014
s 38-5	am No 1, 2008
	rep No 109, 2014

Endnote 4—Amendment history

Provision affected	How affected
s 38-6	am No 132, 1999; No 76, 2013
	rep No 109, 2014
s 38-7	rep No 109, 2014
s 39-1	am No 136, 2012
	rep No 109, 2014
s 39-2	am No 76, 2013
	rep No 109, 2014
s 39-3	am No 50, 2004; No 76, 2013
	rep No 109, 2014
s 39-3A	ad No 76, 2013
	rep No 109, 2014
s 39-3B	ad No 76, 2013
	rep No 109, 2014
s 39-4	am No 46, 2011
	rep No 109, 2014
s 39-5	rep No 109, 2014
Chapter 3	
Division 40	
s 40-1	am No 76, 2013; No 19, 2016
Part 3.1	
Division 41	
s 41-2	am No 76, 2013
s 41-3	am No 140, 2008; No 76, 2013
Division 42	
s 42-1	am No 109, 2007; No 76, 2013; No 128, 2015
s 42-2	am No 132, 1999; No 158, 2000; No 22, 2005; No 109, 2007; No 76, 2013; No 128, 2015; No 145, 2015; No 116, 2019; No 41, 2020
s 42-2A	ad No 41, 2020
s 42-3	am No 132, 1999; No 76, 2013; No 128, 2015
s 42-4	am No 86, 2011; No 76, 2013; No 150, 2018
s 42-5	am No 1, 2008; No 76, 2013

Provision affected	How affected
s 42-8	am No 1, 2008
Division 43	
s 43-1	am No 86, 2011; No 76, 2013; No 34, 2022
s 43-2	am No 76, 2013
s 43-3	am No 76, 2013
s 43-4	am No 9, 2006
s 43-4A	ad No 1, 2008
s 43-6	am No 86, 2011; No 76, 2013
s 43-7	rep No 86, 2011
s 43-8	am No 1, 2008; No 76, 2013
	rep No 34, 2022
Division 44	
Subdivision 44-A	
s 44-2	am No 76, 2013
Subdivision 44-B	
s 44-3	am No 109, 2007; No 1, 2008; No 76, 2013; No 34, 2022
s 44-4	am No 22, 2005
	rep No 109, 2007
Subdivision 44-C	
s 44-5	am No 132, 1999; No 1, 2008
	rs No 76, 2013
	am No 126, 2014; No 34, 2022
s 44-5A	ad No 1, 2008
	rep No 76, 2013
s 44-5B	ad No 1, 2008
	rep No 76, 2013
s 44-5C	ad No 1, 2008
	rep No 76, 2013
s 44-5D	ad No 1, 2008
	rep No 76, 2013
s 44-5E	ad No 1, 2008

Endnote 4—Amendment history

Provision affected	How affected
	rep No 76, 2013
s 44-6	am No 132, 1999; No 50, 2004; No 22, 2005; No 109, 2007; No 1, 2008
	rep No 76, 2013
s 44-7	am No 132, 1999; No 22, 2005; No 1, 2008; No 140, 2008; No 60, 2009
	rep No 76, 2013
s 44-8	am No 132, 1999; No 22, 2005; No 1, 2008; No 140, 2008; No 60, 2009
	rep No 76, 2013
s 44-8AA	ad No 22, 2005
	am No 1, 2008
	rep No 76, 2013
s 44-8AB	ad No 22, 2005
	am No 1, 2008
	rep No 76, 2013
s 44-8A	ad No 132, 1999
	am No 1, 2008
	rep No 76, 2013
s 44-8B	ad No 132, 1999
	am No 50, 2004
	rep No 76, 2013
s 44-9	am No 22, 2005; No 1, 2008
	rep No 76, 2013
s 44-10	am No 132, 1999; No 22, 2005; No 133, 2006; No 1, 2008; No 140, 2008
	rep No 76, 2013
s 44-11	am No 132, 1999; No 1, 2008; No 144, 2008; No 46, 2011
	rep No 76, 2013
s 44-12	am No 109, 2007; No 1, 2008
	rep No 76, 2013
s 44-13	am No 1, 2008

Provision affected	How affected
	rep No 76, 2013
s 44-14	am No 1, 2008
	rep No 76, 2013
s 44-15	am No 1, 2008
	rep No 76, 2013
s 44-16	am No 1, 2008
	rep No 76, 2013
Subdivision 44-D	
s 44-17	am No 76, 2013; No 34, 2022
s 44-18	rep No 76, 2013
s 44-19	am No 1, 2008
	rep No 34, 2022
s 44-20	am No 1, 2008; No 76, 2013
Subdivision 44-E heading	rep No 76, 2013
s 44-20A	ad No 76, 2013
s 44-21	am No 132, 1999; No 1, 2008; No 60, 2009
	rs No 76, 2013
	am No 34, 2022
s 44-22	am No 1, 2008
	rs No 76, 2013
s 44-23	am No 1, 2008; No 60, 2009
	rs No 76, 2013
s 44-24	am No 87, 1997; No 50, 2004
	rs No 1, 2008
	am No 81, 2009; No 76, 2013; No 98, 2014; No 17, 2018
s 44-25	am No 58, 1999; No 52, 2004
	rep No 1, 2008
s 44-26	am No 87, 1997
	rs No 1, 2008; No 60, 2009
	am No 76, 2013
s 44-26A	ad No 76, 2013

Endnote 4—Amendment history

Provision affected	How affected
	am No 17, 2018
s 44-26B	ad No 76, 2013
s 44-26C	ad No 76, 2013
Subdivision 44-F	
s 44-27	am No 60, 2009; No 76, 2013
s 44-28	am No 1, 2008; No 60, 2009
	rs No 76, 2013
	am No 109, 2014; No 34, 2022
s 44-29	am No 1, 2008
	rep No 76, 2013
s 44-30	am No 1, 2008; No 76, 2013
s 44-31	am No 1, 2008; No 76, 2013
s 44-32	ad No 60, 2009
	rs No 76, 2013
Part 3.2	am No 76, 2013
Division 45	
s 45-1	am No 76, 2013; No 19, 2016
s 45-2	am No 76, 2013
s 45-3	am No 76, 2013
Division 46	am No 76, 2013
s 46-1	am No 76, 2013
	rs No 19, 2016
	am No 116, 2019
s 46-2	am No 76, 2013
s 46-3	am No 76, 2013
	rep No 19, 2016
s 46-4	am No 1, 2008; No 76, 2013
Division 47	
Division 47 heading	am No 76, 2013
s 47-1	am No 76, 2013; No 124, 2020; No 2, 2021
s 47-2	am No 76, 2013

Provision affected	How affected
s 47-3	am No 76, 2013
	rep No 124, 2020
s 47-4	am No 76, 2013; No 124, 2020
s 47-4A	ad No 1, 2008
	am No 76, 2013; No 2, 2021
Division 48	
Division 48 heading	am No 76, 2013
Subdivision A	
Subdivision A heading	ad No 2, 2021
s 48-1	am No 1, 2008; No 76, 2013
	rs No 76, 2013
	am No 2, 2021
Subdivision B	
Subdivision B heading	ad No 2, 2021
s 48-1A	ad No 2, 2021
s 48-2	ad No 76, 2013
s 48-3	ad No 76, 2013
	am No 126, 2014; No 2, 2021
s 48-4	ad No 76, 2013
	am No 2, 2021
s 48-5	ad No 76, 2013
s 48-6	ad No 76, 2013
s 48-7	ad No 76, 2013
s 48-8	ad No 76, 2013
s 48-9	ad No 76, 2013
	am No 2, 2021
s 48-10	ad No 76, 2013
s 48-11	ad No 76, 2013
s 48-12	ad No 76, 2013
Subdivision C	
Subdivision C heading	ad No 2, 2021

Endnote 4—Amendment history

Provision affected	How affected
s 48-13	ad No 2, 2021
Subdivision D	
Subdivision D heading	ad No 2, 2021
s 48-14	ad No 2, 2021
s 48-15	ad No 2, 2021
s 48-16	ad No 2, 2021
s 48-17	ad No 2, 2021
s 48-18	ad No 2, 2021
Part 3.3	
Division 49	
s 49-2	am No 76, 2013
s 49-3	am No 76, 2013
Division 50	
s 50-1	am No 76, 2013
s 50-2	am No 1, 2008; No 76, 2013
s 50-4	am No 1, 2008
Division 51	
s 51-1	am No 76, 2013
Division 52	
s 52-1	am No 1, 2008
Chapter 3A	
Chapter 3A	ad No 76, 2013
Division 52A	
s 52A-1	ad No 76, 2013
Part 3A.1	
Division 52B	
s 52B-1	ad No 76, 2013
s 52B-2	ad No 76, 2013
Division 52C	
s 52C-2	ad No 76, 2013
s 52C-3	ad No 76, 2013

Provision affected	How affected
	am No 128, 2015
s 52C-4	ad No 76, 2013
s 52C-5	ad No 76, 2013
	am No 41, 2020; No 34, 2022
Division 52D	
s 52D-1	ad No 76, 2013
s 52D-2	ad No 76, 2013
s 52D-3	ad No 76, 2013
Part 3A.2	ad No 76, 2013
Division 52E	
s 52E-1	ad No 76, 2013
s 52E-2	ad No 76, 2013
Division 52F	
s 52F-1	ad No 76, 2013
s 52F-2	ad No 76, 2013
s 52F-3	ad No 76, 2013
	am No 4, 2016
s 52F-4	ad No 76, 2013
s 52F-5	ad No 76, 2013
s 52F-6	ad No 76, 2013
s 52F-7	ad No 76, 2013
Division 52G	
s 52G-1	ad No 76, 2013
Subdivision 52G-A	
s 52G-2	ad No 76, 2013
	am No 109, 2014; No 4, 2016; No 116, 2019; No 34, 2022
s 52G-3	ad No 76, 2013
s 52G-4	ad No 76, 2013
	am No 34, 2022
s 52G-5	ad No 76, 2013

Endnote 4—Amendment history

Provision affected	How affected
Subdivision 52G-B	
s 52G-6	ad No 76, 2013
	am No 109, 2014; No 116, 2019
Division 52H	
s 52H-1	ad No 76, 2013
s 52H-2	ad No 76, 2013
	am No 109, 2014
s 52H-3	ad No 76, 2013
s 52H-4	ad No 76, 2013
Division 52J	
s 52J-2	ad No 76, 2013
s 52J-3	ad No 76, 2013
s 52J-4	ad No 76, 2013
	rep No 109, 2014
s 52J-5	ad No 76, 2013
s 52J-6	ad No 76, 2013
s 52J-7	ad No 76, 2013
Division 52K	
s 52K-1	ad No 76, 2013
s 52K-2	ad No 76, 2013
Part 3A.3	
Division 52L	
s 52L-1	ad No 76, 2013
Division 52M	
s 52M-1	ad No 76, 2013
Division 52N	
s 52N-1	ad No 76, 2013
	am No 34, 2022; No 76, 2023
s 52N-2	ad No 76, 2013
	am No 34, 2022
s 52N-3	ad No 34, 2022

Provision affected	How affected
Division 52P	
s 52P-1	ad No 76, 2013
s 52P-2	ad No 76, 2013
s 52P-3	ad No 76, 2013
s 52P-4	ad No 76, 2013
Chapter 4	
Division 53	
s 53-1	am No 158, 2000; No 140, 2008; No 76, 2013; No 116, 2019; No 34, 2022
s 53-2	am No 116, 2019
Part 4.1	
Division 54	
s 54-1	am No 50, 2004; No 140, 2008; No 86, 2011; No 76, 2013; No 102, 2018; No 9, 2021; No 57, 2021; No 34, 2022; No 47, 2022
s 54-1A	ad No 47, 2022
s 54-2	am No 86, 2011; No 76, 2013
	rs No 102, 2018
s 54-3	rep No 86, 2011
	ad No 9, 2021
	am No 57, 2021; No 34, 2022
s 54-4	am No 76, 2013
	rep No 102, 2018
	ad No 9, 2021
	am No 34, 2022
s 54-5	am No 76, 2013
	rep No 102, 2018
	ad No 9, 2021
s 54-6	ad No 9, 2021
s 54-7	ad No 9, 2021
s 54-8	ad No 9, 2021
s 54-9	ad No 57, 2021

Endnote 4—Amendment history

Provision affected	How affected
s 54-10	ad No 57, 2021
	am No 34, 2022
s 54-11	ad No 34, 2022
Part 4.2	
Division 55	
s 55-1	am No 140, 2008; No 116, 2019
Division 56	
s 56-1	am No 132, 1999; No 50, 2004; No 28, 2006; No 76, 2013; No 126, 2014
s 56-2	am No 76, 2013; No 126, 2014; No 19, 2016; No 2, 2021; No 47, 2022
s 56-3	am No 132, 1999; No 50, 2004; No 28, 2006; No 76, 2013; No 126, 2014
s 56-4	am No 51, 2007; No 86, 2011; No 76, 2013; No 131, 2015; No 150, 2018
s 56-5	am No 140, 2008; No 76, 2013
Division 57 heading	rs No 28, 2006
	rep No 76, 2013
s 57-1	am No 28, 2006
	rep No 76, 2013
s 57-2	am No 132, 1999; No 50, 2004; No 22, 2005; No 28, 2006; No 1, 2008; No 140, 2008; No 86, 2011
	rep No 76, 2013
Subdivision 57-B	
Subdivision 57-B heading	rs No 100, 2005
Division 57	rs No 28, 2006
	rep No 76, 2013
s 57-3	rs No 28, 2006
	rep No 76, 2013
s 57-4	rs No 28, 2006
	rep No 76, 2013
s 57-5	rep No 28, 2006

Provision affected	How affected
s 57-6	rep No 28, 2006
s 57-7	rep No 28, 2006
s 57-8	rep No 28, 2006
s 57-9	am No 28, 2006
	rep No 76, 2013
s 57-10	rep No 76, 2013
s 57-11	rep No 76, 2013
s 57-12	am No 22, 2005; No 28, 2006; No 1, 2008; No 140, 2008; No 60, 2009
	rep No 76, 2013
s 57-13	am No 28, 2006
	rep No 76, 2013
s 57-14	am No 140, 2008
	rep No 76, 2013
s 57-15	am No 28, 2006
	rep No 76, 2013
s 57-16	am No 132, 1999; No 22, 2005; No 28, 2006
	rep No 76, 2013
Subdivision 57-EA	ad No 86, 2011
	rep No 76, 2013
s 57-17A	ad No 86, 2011
	rep No 76, 2013
s 57-17B	ad No 86, 2011
	rep No 76, 2013
s 57-18	am No 28, 2006
	rep No 76, 2013
s 57-19	rep No 76, 2013
s 57-20	am No 28, 2006; No 140, 2008
	rep No 76, 2013
s 57-21	am No 28, 2006; No 140, 2008
	rep No 76, 2013

Endnote 4—Amendment history

Provision affected	How affected
s 57-21AA	ad No 140, 2008
	rep No 76, 2013
s 57-21A	ad No 28, 2006
	am No 140, 2008
	rep No 76, 2013
s 57-21B	ad No 28, 2006
	am No 140, 2008
	rep No 76, 2013
s 57-22	am No 28, 2006
	rep No 76, 2013
Subdivision 57-H	ad No 132, 1999
	rep No 76, 2013
s 57-23	ad No 132, 1999
	am No 28, 2006
	rep No 76, 2013
Division 57A	ad No 132, 1999
	rep No 76, 2013
s 57A-1	ad No 132, 1999
	rep No 76, 2013
s 57A-2	ad No 132, 1999
	am No 50, 2004; No 82, 2004; No 22, 2005; No 1, 2008; No 140, 2008; No 86, 2011
	rep No 76, 2013
s 57A-3	ad No 132, 1999
	rep No 76, 2013
s 57A-4	ad No 132, 1999
	rep No 76, 2013
s 57A-5	ad No 132, 1999
	rep No 76, 2013
s 57A-6	ad No 132, 1999
	am No 22, 2005; No 1, 2008; No 140, 2008

Provision affected	How affected
	rep No 76, 2013
s 57A-7	ad No 132, 1999
	am No 82, 2004
	rep No 76, 2013
s 57A-8	ad No 132, 1999
	rep No 76, 2013
s 57A-8A	ad No 1, 2008
	rep No 76, 2013
s 57A-9	ad No 132, 1999
	am No 140, 2008
	rep No 76, 2013
s 57A-10	ad No 132, 1999
	rep No 76, 2013
s 57A-11	ad No 132, 1999
	rep No 76, 2013
s 57A-12	ad No 132, 1999
	rep No 76, 2013
Division 58	rep No 76, 2013
s 58-1	rep No 76, 2013
s 58-2	am No 1, 2008; No 60, 2009
	rep No 76, 2013
s 58-3	am No 1, 2008
	rs No 60, 2009
	am No 141, 2011
	rep No 76, 2013
s 58-3A	ad No 60, 2009
	rep No 76, 2013
s 58-3B	ad No 60, 2009
	am No 141, 2011
	rep No 76, 2013
s 58-3C	ad No 60, 2009

Endnote 4—Amendment history

Provision affected	How affected
	am No 141, 2011
	rep No 76, 2013
s 58-4	am No 1, 2008
	rs No 60, 2009
	am No 141, 2011
	rep No 76, 2013
s 58-4A	ad No 1, 2008
	rep No 60, 2009
s 58-5	rep No 76, 2013
s 58-6	rep No 76, 2013
Division 59	
s 59-1	am No 132, 1999; No 76, 2013; No 126, 2014
Division 60 heading	am No 76, 2013
	rep No 76, 2013
s 60-1	am No 76, 2013
	rep No 76, 2013
s 60-2	am No 76, 2013
	rep No 76, 2013
Division 61	
Division 61 heading	am No 76, 2013
s 61-1	am No 76, 2013
Division 62	
s 62-1	am No 132, 1999; No 28, 2006; No 109, 2007; No 140, 2008; No 76, 2013
Part 4.3	
Part 4.3 heading	rs No 158, 2000
Division 63	
Division 63 heading	rs No 158, 2000
s 63-1	am No 59, 2005; No 28, 2006; No 140, 2008; No 5, 2011; No 86, 2011; No 76, 2013; No 109, 2014; No 126, 2014; No 131, 2015; No 1, 2016; No 19, 2016; No 150, 2018; No 116, 2019; No 147, 2020; No 34, 2022

Provision affected	How affected
s 63-1AA	ad No 51, 2007
	am No 76, 2013; No 126, 2015; No 116, 2019
	rep No 9, 2021
s 63-1A	ad No 158, 2000
	am No 63, 2002; No 116, 2019
	rs No 34, 2022
s 63-1B	ad No 1, 2008
s 63-1BA	ad No 34, 2022
s 63-1C	ad No 140, 2008
	am No 116, 2019
s 63-1D	ad No 34, 2022
s 63-1E	ad No 34, 2022
s 63-1F	ad No 34, 2022
s 63-1G	ad No 34, 2022
s 63-1H	ad No 34, 2022
s 63-2	am No 132, 1999; No 28, 2006; No 76, 2013; No 116, 2019
Part 4.4	rep No 116, 2019
s 64-1	rep No 116, 2019
s 64-2	rep No 116, 2019
s 65-1	rep No 116, 2019
s 65-1A	ad No 76, 2013
	am No 150, 2018
	rep No 116, 2019
s 65-2	am No 140, 2008
	rep No 116, 2019
s 66-1	am No 132, 1999; No 158, 2000; No 50, 2004; No 28, 2006; No 140, 2008; No 76, 2013; No 109, 2014; No 126, 2014
	rep No 116, 2019
s 66-2	am No 158, 2000; No 76, 2013; No 55, 2016
	rep No 116, 2019
Division 66A heading	rs No 55, 2016

Endnote 4—Amendment history

Provision affected	How affected
	rep No 116, 2019
Division 66A	ad No 158, 2000
	rep No 116, 2019
s 66A-1	ad No 158, 2000
	am No 76, 2013
	rep No 55, 2016
s 66A-2	ad No 158, 2000
	am No 76, 2013
	rs No 55, 2016
	rep No 116, 2019
s 66A-3	ad No 158, 2000
	am No 76, 2013
	rs No 55, 2016
	rep No 116, 2019
s 66A-4	ad No 158, 2000
	am No 76, 2013; No 109, 2014
	rep No 116, 2019
s 66A-5	ad No 158, 2000
	rep No 76, 2013
s 67-1	rep No 116, 2019
s 67-2	rep No 116, 2019
s 67-3	rep No 116, 2019
s 67-4	rep No 116, 2019
s 67-5	am No 158, 2000
	rep No 116, 2019
Division 67A	ad No 158, 2000
	rep No 116, 2019
s 67A-1	ad No 158, 2000
	rep No 116, 2019
s 67A-2	ad No 158, 2000
	rep No 116, 2019

Provision affected	How affected
s 67A-3	ad No 158, 2000
	rep No 116, 2019
s 67A-4	ad No 158, 2000
	am No 144, 2008; No 76, 2013
	rep No 116, 2019
s 67A-5	ad No 158, 2000
	rep No 116, 2019
s 67A-6	ad No 158, 2000
	rep No 116, 2019
s 68-1	am No 109, 2014
	rep No 116, 2019
s 68-2	am No 158, 2000
	rep No 116, 2019
s 68-3	rep No 116, 2019
s 68-4	rep No 116, 2019
s 68-5	am No 1, 2008
	rep No 116, 2019
s 68-6	rep No 116, 2019
Chapter 5	
Division 69	
s 69-1	rs No 1, 2008
	am No 76, 2013
Part 5.1	
Division 70	
s 70-2	am No 76, 2013
Division 71	
s 71-2	am No 76, 2013
s 71-3	am No 1, 2008
Division 72	
s 72-1	am No 1, 2008; No 76, 2013; No 116, 2019
s 72-2	rs No 1, 2008

Endnote 4—Amendment history

Provision affected	How affected
	rep No 76, 2013
s 72-3	am No 1, 2008
	rep No 76, 2013
Division 73	
s 73-1	am No 76, 2013
s 73-2	am No 1, 2008
	rep No 76, 2013
s 73-5	am No 76, 2013
Division 74	
s 74-1	am No 76, 2013
Part 5.2	rep No 76, 2013
s 75-1	rep No 76, 2013
s 75-2	rep No 76, 2013
s 76-1	am No 1, 2008
	rep No 76, 2013
s 76-2	rep No 76, 2013
s 76-3	am No 1, 2008
	rep No 76, 2013
s 76-4	rep No 76, 2013
s 76-5	rep No 76, 2013
s 77-1	rep No 76, 2013
s 77-2	rep No 76, 2013
s 77-3	rep No 76, 2013
s 77-4	rep No 76, 2013
s 77-5	rep No 76, 2013
s 77-6	rep No 76, 2013
s 77-7	rep No 76, 2013
s 78-1	rep No 76, 2013
Part 5.2A	ad No 1, 2008
	rep No 76, 2013
s 78A-1	ad No 1, 2008

Provision affected	How affected
	rep No 76, 2013
s 78A-2	ad No 1, 2008
	rep No 76, 2013
s 78B-1	ad No 1, 2008
	rep No 76, 2013
s 78B-2	ad No 1, 2008
	rep No 76, 2013
s 78B-3	ad No 1, 2008
	rep No 76, 2013
s 78B-4	ad No 1, 2008
	rep No 76, 2013
s 78B-5	ad No 1, 2008
	rep No 76, 2013
s 78C-1	ad No 1, 2008
	rep No 76, 2013
s 78C-2	ad No 1, 2008
	rep No 76, 2013
s 78C-3	ad No 1, 2008
	rep No 76, 2013
s 78C-4	ad No 1, 2008
	rep No 76, 2013
s 78C-5	ad No 1, 2008
	rep No 76, 2013
s 78C-6	ad No 1, 2008
	rep No 76, 2013
s 78C-7	ad No 1, 2008
	rep No 76, 2013
s 78D-1	ad No 1, 2008
	rep No 76, 2013
Part 5.3	rep No 76, 2013
s 79-1	rep No 76, 2013

Endnote 4—Amendment history

Provision affected	How affected
s 79-2	rep No 76, 2013
s 79-3	rep No 76, 2013
Part 5.4	rep No 76, 2013
s 80-1	am No 122, 1998; No 76, 2013
	rep No 76, 2013
s 80-2	rep No 76, 2013
s 80-3	rep No 76, 2013
Part 5.5	
Division 81	
s 81-3	am No 76, 2013
s 81-4	am No 76, 2013
Part 5.6	
Division 82	
s 82-1	am No 76, 2013
s 82-2	am No 76, 2013
s 82-3	am No 76, 2013
s 82-4	am No 76, 2013
Part 5.7	
Division 83	
s 83-1	am No 76, 2013
s 83-2	am No 76, 2013
Chapter 6	
Division 84	
s 84-1	rs No 51, 2007
	am No 86, 2011; No 76, 2013; No 131, 2015; No 150, 2018; No 116, 2019; No 57, 2021; No 34, 2022
Part 6.1	
Division 85	
s 85-1	am No 132, 1999; No 50, 2004; No 22, 2005; No 59, 2005; No 28, 2006; No 109, 2007; No 1, 2008; No 140, 2008; No 5, 2011; No 76, 2013; No 109, 2014; No 1, 2016; No 19, 2016; No 17, 2018; No 116, 2019; No 147, 2020

Provision affected	How affected
s 85-2	am No 76, 2013; No 1, 2016; No 34, 2022
s 85-3	am No 76, 2013; No 34, 2022
s 85-4	am No 1, 2008; No 76, 2013; No 98, 2014; No 34, 2022; No 38, 2024; No 14, 2025
s 85-5	am No 1, 2008; No 76, 2013; No 98, 2014; No 55, 2016; No 17, 2018; No 147, 2020; No 34, 2022; No 38, 2024
s 85-6	am No 1, 2008; No 76, 2013
	rep No 98, 2014
	ad No 55, 2016
	am No 147, 2020; No 34, 2022
s 85-7	am No 1, 2008; No 76, 2013
	rep No 98, 2014
s 85-8	am No 38, 2024
Part 6.2	
Division 86	
s 86-1	am No 76, 2013; No 116, 2019
s 86-2	am No 76, 2013; No 4, 2016
s 86-3	am No 52, 2004; No 111, 2005; No 136, 2006; No 156, 2006; No 1, 2008; No 32, 2011; No 131, 2015; No 59, 2017; No 150, 2018; No 42, 2019; No 34, 2022; No 56, 2023; No 103, 2023; No 17, 2025
s 86-4	am No 98, 2014; No 147, 2020
s 86-4A	ad No 34, 2022
s 86-5	am No 131, 2015; No 4, 2016; No 34, 2022
s 86-6	am No 52, 2004; No 136, 2006; No 4, 2016; No 59, 2017; No 42, 2019
s 86-7	am No 50, 2004; No 1, 2008; No 32, 2011; No 98, 2014; No 4, 2016; No 17, 2025
s 86-9	am No 132, 1999; No 51, 2007; No 76, 2013; No 19, 2016; No 102, 2018; No 150, 2018; No 57, 2021
s 86-10	ad No 47, 2022
s 86-11	ad No 34, 2022

Endnote 4—Amendment history

Provision affected	How affected
Part 6.3	
Division 87	
s 87-1	am No 4, 2016
Division 88	
s 88-1	am No 76, 2013; No 4, 2016; No 116, 2019
s 88-2	am No 132, 1999; No 109, 2007; No 76, 2013; No 116, 2019
s 88-3	am No 76, 2013; No 4, 2016; No 116, 2019
Division 89	
s 89-1	am No 1, 2016; No 4, 2016
Part 6.4	
Part 6.4	rs No 116, 2019
Division 90	
s 90-1	am No 4, 2016
	rs No 116, 2019
	am No 9, 2021
s 90-2	rep No 116, 2019
s 90-3	am No 50, 2004
	rep No 116, 2019
s 90-4	am No 76, 2013
	rep No 116, 2019
Division 91	
s 91-1	am No 46, 2011; No 76, 2013
	rs No 116, 2019
s 91-2	am No 197, 2012
	rs No 116, 2019
s 91-3	rs No 116, 2019
s 91-4	ad No 116, 2019
Division 92	
s 92-1	am No 76,2013
	rs No 116, 2019
	am No 13, 2021

Provision affected	How affected
s 92-2	am No 76, 2013
	rs No 116, 2019
s 92-3	rs No 116, 2019
	am No 9, 2021; No 13, 2021
s 92-4	rs No 116, 2019
s 92-5	rep No 116, 2019
s 92-6	rep No 116, 2019
s 92-7	am No 197, 2012; No 4, 2016
	rep No 116, 2019
s 92-8	am No 4, 2016
	rep No 116, 2019
Division 93	
s 93-1	am No 140, 2008; No 197, 2012; No 76, 2013; No 4, 2016
	rs No 116, 2019
s 93-2	rs No 116, 2019
s 93-3	rep No 137, 2000
s 93-4	am No 140, 2008; No 76, 2013; No 4, 2016
	rep No 116, 2019
Division 94	
s 94-1	rs No 116, 2019
s 94-2	rs No 116, 2019
Part 6.4A heading	rs No 86, 2011; No 131, 2015
	rep No 150, 2018
Part 6.4A	ad No 51, 2007
	rep No 150, 2018
Division 94AA	ad No 131, 2015
	rep No 150, 2018
s 94AA-1	ad No 131, 2015
	rep No 150, 2018
Division 94A heading	rs No 86, 2011
	rep No 150, 2018

Endnote 4—Amendment history

Provision affected	How affected
Division 94A	rep No 150, 2018
s 94A-1	ad No 51, 2007
	am No 86, 2011; No 126, 2014; No 131, 2015
	rep No 150, 2018
Division 94B	ad No 131, 2015
	rep No 150, 2018
s 94B-1	ad No 131, 2015
	rep No 150, 2018
s 94B-2	ad No 131, 2015
	rep No 150, 2018
s 94B-3	ad No 131, 2015
	rep No 150, 2018
s 94B-4	ad No 131, 2015
	rep No 150, 2018
s 94B-5	ad No 131, 2015
	rep No 150, 2018
Part 6.5	
Division 95	
s 95-1	am No 76, 2013; No 19, 2016
s 95-3	am No 76, 2013
s 95-4	am No 76, 2013
Part 6.6 heading	rs No 131, 2015
	rep No 150, 2018
Part 6.6	ad No 51, 2007
	rep No 150, 2018
Division 95A heading	rs No 131, 2015
	rep No 150, 2018
Division 95A	rep No 150, 2018
s 95A-1	ad No 51, 2007
	am No 86, 2011; No 136, 2012; No 76, 2013; No 131, 2015
	rep No 150, 2018

Endnote 4—Amendment history

Provision affected	How affected
s 95A-2	ad No 51, 2007
	am No 131, 2015
	rep No 150, 2018
s 95A-3	ad No 51, 2007
	am No 46, 2011; No 131, 2015
	rep No 150, 2018
s 95A-4	ad No 51, 2007
	am No 86, 2011; No 76, 2013; No 131, 2015
	rep No 150, 2018
s 95A-5	ad No 51, 2007
	am No 131, 2015
	rep No 150, 2018
s 95A-6	ad No 51, 2007
	am No 131, 2015
	rep No 150, 2018
s 95A-7	ad No 51, 2007
	am No 131, 2015
	rep No 150, 2018
s 95A-8	ad No 51, 2007
	am No 131, 2015
	rep No 150, 2018
s 95A-9	ad No 51, 2007
	am No 76, 2013; No 131, 2015
	rep No 150, 2018
s 95A-10	ad No 51, 2007
	rs No 76, 2013
	am No 131, 2015
	rep No 150, 2018
s 95A-11	ad No 51, 2007
	am No 76, 2013; No 131, 2015
	rep No 150, 2018

Endnote 4—Amendment history

Provision affected	How affected
s 95A-11A	ad No 76, 2013
	am No 131, 2015
	rep No 150, 2018
s 95A-12	ad No 51, 2007
	am No 86, 2011; No 136, 2012; No 76, 2013; No 131, 2015
	rep No 150, 2018
Part 6.7	ad No 76, 2013
	rep No 34, 2022
s 95B-1	ad No 76, 2013
	rep No 34, 2022
s 95B-2	ad No 76, 2013
	rep No 34, 2022
s 95B-3	ad No 76, 2013
	rep No 34, 2022
s 95B-4	ad No 76, 2013
	rep No 34, 2022
s 95B-5	ad No 76, 2013
	rep No 34, 2022
s 95B-6	ad No 76, 2013
	rep No 34, 2022
s 95B-7	ad No 76, 2013
	rep No 34, 2022
s 95B-8	ad No 76, 2013
	rep No 34, 2022
s 95B-9	ad No 76, 2013
	rep No 34, 2022
s 95B-10	ad No 76, 2013
	rep No 34, 2022
s 95B-11	ad No 76, 2013
	rep No 34, 2022
s 95B-12	ad No 76, 2013

Provision affected	How affected
	rep No 34, 2022
Part 6.8	
Part 6.8	ad No 57, 2021
Division 95BA	
s 95BA-1	ad No 57, 2021
s 95BA-2	ad No 57, 2021
s 95BA-3	ad No 57, 2021
s 95BA-4	ad No 57, 2021
s 95BA-5	ad No 57, 2021
s 95BA-6	ad No 57, 2021
s 95BA-7	ad No 57, 2021
s 95BA-8	ad No 57, 2021
Chapter 7	
Division 95C	
Division 95C	ad No 55, 2016
s 95C-1	ad No 55, 2016
	am No 116, 2019; No 9, 2021; No 13, 2021
Division 96	
s 96-1	am No 51, 2007; No 1, 2008; No 86, 2011; No 76, 2013; No 109, 2014; No 19, 2016; No 55, 2016; No 150, 2018; No 116, 2019; No 147, 2020; No 2, 2021; No 34, 2022
s 96-2	am No 50, 2004; No 22, 2005; No 133, 2006; No 51, 2007; No 1, 2008; No 32, 2011; No 76, 2013
	rs No 98, 2014
	am No 131, 2015; No 19, 2016; No 150, 2018; No 147, 2020; No 57, 2021; No 34, 2022; No 17, 2025
s 96-2A	ad No 147, 2020
s 96-3	am No 51, 2007; No 76, 2013; No 57, 2021
s 96-5	am No 132, 1999; No 76, 2013
s 96-8	rep No 137, 2000
	ad No 51, 2007
	am No 116, 2019

Endnote 4—Amendment history

Provision affected	How affected
	rep No 9, 2021
s 96-9	ad No 111, 2001
s 96-10	am No 132, 1999; No 52, 2004; No 136, 2006; No 76, 2013; No 99, 2013; No 59, 2017; No 42, 2019; No 17, 2025
s 96-11	rep No 136, 2012
s 96-12	rep No 1, 2008
Schedule 1	
Schedule 1	am No 45, 1998; No 132, 1999; No 146, 1999; No 158, 2000; No 52, 2004; No 59, 2005; No 100, 2005; No 28, 2006; No 156, 2006; No 51, 2007; No 109, 2007; No 1, 2008; No 140, 2008; No 60, 2009; No 32, 2011; No 46, 2011; No 86, 2011; No 197, 2012; No 76, 2013; No 13, 2014; No 109, 2014; No 126, 2014; No 59, 2015; No 131, 2015; No 4, 2016; No 19, 2016; No 55, 2016; No 17, 2018; No 150, 2018; No 116, 2019; No 147, 2020; No 2, 2021; No 9, 2021; No 57, 2021; No 34, 2022; No 56, 2023; No 14, 2025; No 17, 2025