



Australian Aged Care Quality Agency (Transitional Provisions) Act 2013

No. 78, 2013

**An Act to deal with transitional matters in
connection with the *Australian Aged Care Quality
Agency Act 2013*, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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**An Act to deal with transitional matters in
connection with the *Australian Aged Care Quality
Agency Act 2013*, and for related purposes**

[Assented to 28 June 2013]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Australian Aged Care Quality Agency
(Transitional Provisions) Act 2013*.

2 Commencement

This Act commences at the same time as the *Australian Aged Care Quality Agency Act 2013* commences.

3 Schedule(s)

Every item in a Schedule to this Act has effect according to its terms.

Schedule 1—Transitional provisions

Part 1—Preliminary

1 Definitions

In this Schedule:

accreditation body has the same meaning as in the old Act.

Accreditation Grant Principles means the Accreditation Grant Principles made under section 96-1 of the old Act.

ACSAA Limited means Aged Care Standards and Accreditation Agency Limited (ACN 079 618 652).

asset means:

- (a) any legal or equitable estate or interest in real or personal property, whether actual, contingent or prospective; and
- (b) any right, power, privilege or immunity, whether actual, contingent or prospective.

assets official, in relation to an asset other than land, means the person or authority who, under a law of the Commonwealth, a State or a Territory, under a trust instrument or otherwise, has responsibility for keeping a register in relation to assets of the kind concerned.

CEO of the Quality Agency means the Chief Executive Officer of the Quality Agency appointed under the Quality Agency Act.

commencement day means the day on which the Quality Agency Act commences.

exempt matter: see item 8.

instrument:

- (a) includes:
 - (i) an agreement or undertaking; and
 - (ii) a notice, authority, order or instruction; and
 - (iii) an instrument made under an Act or regulations; but
- (b) does not include:
 - (i) an Act; or
 - (ii) instruments made under this Act.

land means any legal or equitable estate or interest in real property, whether actual, contingent or prospective.

Schedule 1 Transitional provisions

Part 1 Preliminary

land registration official, in relation to land, means the Registrar of Titles or other proper officer of the State or Territory in which the land is situated.

liability means any liability, duty or obligation, whether actual, contingent or prospective.

old Act means the *Aged Care Act 1997* as in force immediately before the commencement day.

Quality Agency means the Australian Aged Care Quality Agency established by section 7 of the Quality Agency Act.

Quality Agency Act means the *Australian Aged Care Quality Agency Act 2013*.

Quality Agency Principles means the Quality Agency Principles made under section 53 of the Quality Agency Act.

residential care service has the same meaning as in the old Act.

Part 2—Transfer of assets and liabilities

Division 1—Transfer from ACSAA Limited to the Commonwealth

2 ACSAA Limited assets and liabilities

On the commencement day, the assets and liabilities of ACSAA Limited cease to be assets and liabilities of ACSAA Limited and become assets and liabilities of the Commonwealth, without any conveyance, transfer or assignment. The Commonwealth becomes the successor in law in relation to those assets and liabilities.

Division 2—Instruments, legal proceedings and records

3 References in instruments to ACSAA Limited

- (1) This item applies to an instrument that:
 - (a) is in force immediately before the commencement day; and
 - (b) contains a reference to ACSAA Limited.
- (2) If the instrument relates to an asset or liability that, as a result of the operation of item 2, becomes an asset or liability of the Commonwealth, then the reference to ACSAA Limited has effect, at and after the commencement day, as if it were a reference to the Commonwealth.
- (3) This item does not, by implication, prevent the instrument from being varied or terminated after the commencement day.

4 Legal proceedings of ACSAA Limited

- (1) This item applies to any proceedings:
 - (a) that were pending in any court or tribunal immediately before the commencement day; and
 - (b) to which ACSAA Limited was a party.
- (2) On and after the commencement day, the Commonwealth is substituted for ACSAA Limited as a party to the proceedings.

5 Transfer of custody of records or documents of ACSAA Limited

- (1) This item applies to a record or document that, immediately before the commencement day, was in the custody of ACSAA Limited.
- (2) If the record or document relates to an asset or liability that, as a result of the operation of item 2, becomes an asset or liability of the Commonwealth, then, after the commencement day, the record or document is to be transferred into the custody of the Commonwealth.

Division 3—General provisions

6 Certificates relating to vesting of land

- (1) This item applies if:
 - (a) any land vests in the Commonwealth under this Part; and
 - (b) there is lodged with a land registration official a certificate that:
 - (i) is signed by the Minister; and
 - (ii) identifies the land, whether by reference to a map or otherwise; and
 - (iii) states that the land has become vested in the Commonwealth under this Part.
- (2) The land registration official may:
 - (a) register the matter in a way that is the same as, or similar to, the way in which dealings in land of that kind are registered; and
 - (b) deal with, and give effect to, the certificate.
- (3) A certificate made under subitem (1) is not a legislative instrument.

7 Certificates for vesting of assets other than land

- (1) This item applies if:
 - (a) an asset other than land vests in the Commonwealth under this Part; and
 - (b) there is lodged with an assets official a certificate that:
 - (i) is signed by the Minister; and
 - (ii) identifies the asset; and

- (iii) states that the asset has become vested in the Commonwealth under this Part.
- (2) The assets official may:
- (a) deal with, and give effect to, the certificate as if it were a proper and appropriate instrument for transactions in relation to assets of that kind; and
 - (b) make such entries in the register in relation to assets of that kind as are necessary, having regard to the effect of this Part.
- (3) A certificate made under subitem (1) is not a legislative instrument.

8 Exemption from stamp duty and other State or Territory taxes

- (1) No stamp duty or other tax is payable under a law of a State or a Territory in respect of an exempt matter, or anything connected with an exempt matter.
- (2) An *exempt matter* is:
- (a) the vesting of an asset or liability under this Part; or
 - (b) the operation of this Act (including regulations made for the purpose of this Schedule) in any other respect.
- (3) The Minister may certify in writing:
- (a) that a specified matter is an exempt matter; or
 - (b) that a specified thing was connected with a specified exempt matter.
- (4) A certificate made under subitem (3) is not a legislative instrument.

9 Certificates taken to be authentic

A document that appears to be a certificate made or issued under item 6, 7 or 8:

- (a) is taken to be such a certificate; and
 - (b) is taken to have been properly given;
- unless the contrary is established.

Division 4—Applications and requests for reconsideration

10 Dealing with undecided applications and requests for reconsideration

Applications for accreditation and re-accreditation

- (1) If:
- (a) before the commencement day, an approved provider of a residential care service had, in accordance with Part 2 of the Accreditation Grant Principles, applied to the accreditation body for accreditation or re-accreditation of the service; and
 - (b) as at the commencement day, the application had not been decided;

the application is taken, for the purposes of the Quality Agency Act, to be an application made to the Quality Agency by the approved provider, on the commencement day, under the Quality Agency Principles.

Applications to be registered as quality assessor

- (2) If:
- (a) before the commencement day, a person had, in accordance with Part 12 of the Accreditation Grant Principles, applied to be registered as a quality assessor or applied to be registered for a further period; and
 - (b) as at the commencement day, the application had not been decided;

the application is taken, for the purposes of the Quality Agency Act, to be an application made by the person, on the commencement day, under the Quality Agency Principles to be registered as a quality assessor or to be registered for a further period.

Requests for reconsideration of decisions

- (3) If:
- (a) before the commencement day, a person had, in accordance with Part 9 of the Accreditation Grant Principles, requested the accreditation body to reconsider a decision covered by that Part; and

- (b) as at the commencement day, the accreditation body had not reconsidered the decision as requested;

the request is taken, for the purposes of the Quality Agency Act, to be a request made by the person to the Quality Agency for reconsideration of the decision, on the commencement day, under the Quality Agency Principles.

Reconsideration and review where no request made

- (4) If:
- (a) before the commencement day, the accreditation body had made a decision covered by column 2 of the table in section 2.67 of the Accreditation Grant Principles that could have been reconsidered and reviewed under Part 9 of those Principles; and
 - (b) as at the commencement day, a person specified in column 3 of that table in relation to the decision could have properly requested the accreditation body to reconsider the decision but had not done so; and
 - (c) as at the commencement day, the period specified in section 2.68 of those Principles for requesting the reconsideration had not expired;

then on and after the commencement day, the Quality Agency Principles apply to the decision as if it were a decision made by the CEO of the Quality Agency on the commencement day that may be reconsidered and reviewed under those Principles.

Part 3—Books, reports, returns etc.

11 Director's obligations—ACSAA Limited's books

Subsection 601AD(5) of the *Corporations Act 2001* has effect in relation to ACSAA Limited's books (within the meaning of that Act), after the commencement day, as if the reference in that subsection to the directors of the company immediately before deregistration were a reference to the Commonwealth.

12 Reports, returns etc. of ACSAA Limited

- (1) This item applies to a report, return or other document if, at a time (the *relevant time*) that is on, or is after, the commencement day:
 - (a) ACSAA Limited is required, by or under a law of the Commonwealth, to prepare or lodge the report, return or document; or
 - (b) any of the following persons is required, by or under a law of the Commonwealth, to prepare or lodge the report, return or document in relation to ACSAA Limited:
 - (i) a director or former director of ACSAA Limited;
 - (ii) any other officer or member of the staff, or former officer or member of the staff, of ACSAA Limited.
- (2) The CEO of the Quality Agency is instead required, at the relevant time, to prepare or lodge the report, return or document.
- (3) The Secretary must provide reasonable assistance to the CEO of the Quality Agency for the purpose of preparing the report, return or document. This may, for example, include allowing the CEO of the Quality Agency appropriate access to records, documents or information relating to the activities of ACSAA Limited.

Part 4—Office holders and staff

13 Termination of office holders of ACSAA Limited

- (1) Before the commencement day, the Minister may, in writing:
 - (a) terminate the appointment of any director of ACSAA Limited; and
 - (b) terminate any agreement or other instrument relating to that appointment; and
 - (c) make provision in relation to a termination under paragraph (a) or (b).
- (2) An instrument made under subitem (1) has effect accordingly, and takes effect immediately before the commencement day.
- (3) An instrument made under subitem (1) is not a legislative instrument.

14 No transfer of appointment, engagement or employment of ACSAA Limited office holders or staff

- (1) Nothing in this Schedule produces the result that the appointment, engagement or employment of an ACSAA Limited officer has effect as if it were an appointment, engagement or employment of the person in relation to the Commonwealth.

Note: Determinations under section 72 of the *Public Service Act 1999* may provide for employees of ACSAA Limited to become engaged as APS employees in a specified Agency.

- (2) The following are ACSAA Limited *officers*:
 - (a) directors of ACSAA Limited;
 - (b) employees of ACSAA Limited.
- (3) To avoid doubt, if a person ceases to be an employee of ACSAA Limited (and becomes an APS employee) because of a determination under section 72 of the *Public Service Act 1999*, the person is not entitled to receive any payment or other benefit merely because he or she ceased to be an employee of ACSAA Limited.

15 Accrued entitlements etc. of ACSAA Limited employees who become APS employees

Persons to whom this item applies

- (1) This item applies to a person if:
 - (a) immediately before the commencement day, the person was an employee of ACSAA Limited; and
 - (b) because of a determination under section 72 of the *Public Service Act 1999*, the person becomes an APS employee on the commencement day.

Preservation of accrued entitlements

- (2) The person is taken to have accrued an entitlement to benefits, in connection with becoming an APS employee, that is equivalent to the entitlement that the person had as an employee of ACSAA Limited immediately before the commencement day.

Continuity of service

- (3) The service of the person as an APS employee is taken, for all purposes, to be continuous with his or her service as an employee of ACSAA Limited.

Long service leave

- (4) For the purposes of the *Long Service Leave (Commonwealth Employees) Act 1976*, the person's service before the commencement day as an employee of ACSAA Limited is to be treated, at and after that time, as if it had been service by the person as an APS employee.

Maternity leave

- (5) For the purposes of the *Maternity Leave (Commonwealth Employees) Act 1973*, the person's service before the commencement day as an employee of ACSAA Limited is to be treated, at and after that time, as if it had been service by the person as an APS employee.

Part 5—Other transitional matters

16 Compensation for acquisition of property

- (1) If the operation of this Schedule 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.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.
- (3) In this item:
acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.
just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

17 Delegation by Minister

- (1) Subject to subitem (2), the Minister may, in writing, delegate all or any of his or her powers and functions under this Schedule to:
 - (a) the Secretary of the Department; or
 - (b) an SES employee, or acting SES employee, in the Department.
- (2) The Minister cannot delegate his or her powers and functions under subitem 13(1).
- (3) In exercising powers or functions under a delegation, the delegate must comply with any directions of the Minister.

18 Regulations

- (1) The Governor-General may make regulations prescribing matters:
 - (a) required or permitted by this Schedule to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Schedule.

Schedule 1 Transitional provisions

Part 5 Other transitional matters

- (2) The regulations may prescribe matters of a transitional nature (including prescribing any saving or application provisions) relating to the enactment of this Act or the *Australian Aged Care Quality Agency Act 2013*.
 - (3) The regulations may provide that provisions of this Schedule are taken to be modified as set out in the regulations. Those provisions then have effect as if they were so modified.
 - (4) Subitems (2) and (3) do not limit subitem (1).
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*[Minister's second reading speech made in—
House of Representatives on 13 March 2013
Senate on 17 June 2013]*

(39/13)

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