



Aged Care Quality and Safety Commission (Consequential Amendments and Transitional Provisions) Act 2018

No. 150, 2018

**An Act to deal with consequential and transitional
matters arising from the enactment of the *Aged
Care Quality and Safety Commission Act 2018*, and
for related purposes**

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

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**An Act to deal with consequential and transitional
matters arising from the enactment of the *Aged
Care Quality and Safety Commission Act 2018*, and
for related purposes**

[Assented to 10 December 2018]

The Parliament of Australia enacts:

No. 150, 2018

*Aged Care Quality and Safety Commission (Consequential
Amendments and Transitional Provisions) Act 2018*

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1 Short title

This Act is the *Aged Care Quality and Safety Commission (Consequential Amendments and Transitional Provisions) Act 2018*.

2 Commencement

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

| Commencement information | | |
|---|--|---|
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table | The day this Act receives the Royal Assent. | 10 December 2018 |
| 2. Schedule 1, Parts 1 and 2 | The later of: (a) the start of the day after this Act receives the Royal Assent; and (b) immediately after the commencement of the <i>Aged Care Quality and Safety Commission Act 2018</i> . However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur. | 1 January 2019 (paragraph (b) applies) |
| 3. Schedule 1, Part 3 | Immediately after the commencement of the <i>Aged Care (Single Quality Framework) Reform Act 2018</i> . However, the provisions do not commence at all if that Act does not commence. | 1 July 2019 |
| 4. Schedule 2 | The later of: (a) the start of the day after this Act receives the Royal Assent; and (b) immediately after the commencement of | 1 January 2019 (paragraph (b) applies) |

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| Commencement information | | |
|---------------------------------|---|---------------------|
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| | <p>the <i>Aged Care Quality and Safety Commission Act 2018</i>.</p> <p>However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.</p> | |

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

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

3 Schedules

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

Schedule 1—Repeals and amendments

Part 1—Repeals

Australian Aged Care Quality Agency Act 2013

1 The whole of the Act

Repeal the Act.

Australian Aged Care Quality Agency (Transitional Provisions) Act 2013

2 The whole of the Act

Repeal the Act.

Part 2—Consequential amendments

Aged Care Act 1997

3 Paragraph 42-4(a)

Omit “*CEO of the Quality Agency”, substitute “*Quality and Safety Commissioner”.

4 Paragraph 56-4(1)(d)

Repeal the paragraph.

5 Paragraph 56-4(1)(e)

Omit “the Complaints Principles”, substitute “rules made for the purposes of subsection 21(2) of the *Quality and Safety Commission Act”.

6 Paragraph 63-1(1)(ba)

Omit “Division 94B”, substitute “Part 8 of the *Quality and Safety Commission Act”.

7 Paragraph 63-1(1)(l)

Repeal the paragraph.

8 Subsection 65-1A(1)

Omit “(1)”.

9 Paragraph 65-1A(1)(a)

Repeal the paragraph, substitute:

- (a) any information provided by the *Quality and Safety Commissioner in accordance with the *Quality and Safety Commission Act or rules made under that Act; and

10 Subsection 65-1A(2)

Repeal the subsection (including the note).

11 Section 84-1

Omit:

- (e) the management and resolution of complaints and other concerns about the provision of aged care services, and powers of authorised complaints officers (see Part 6.4A);
- (f) recovery of overpayments by the Commonwealth (see Part 6.5);
- (g) the Aged Care Complaints Commissioner, whose functions include those relating to complaints and other concerns conferred on the Commissioner by the Complaints Principles (see Part 6.6);

substitute:

- (e) recovery of overpayments by the Commonwealth (see Part 6.5);

12 After paragraph 86-3(1)(b)

Insert:

- (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

13 Subsection 86-3(2)

Repeal the subsection.

14 Paragraph 86-3(3)(a)

Omit “or (2)(a)”.

15 Paragraph 86-3(3)(b)

Omit “or (2)(a) or (c)”.

16 Parts 6.4A and 6.6

Repeal the Parts.

17 Section 96-1 (table item 9A)

Omit “Divisions 95A and”, substitute “Division”.

18 Section 96-1 (table items 13A and 17A)

Repeal the items.

19 Subsection 96-2(2)

Repeal the subsection, substitute:

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.

20 Subsection 96-2(15)

Repeal the subsection.

21 Clause 1 of Schedule 1

Repeal the following definitions:

- (a) definition of *Aged Care Complaints Commissioner*;
- (b) definition of *authorised complaints officer*;
- (c) definition of *CEO of the Quality Agency*;
- (d) definition of *complaints powers*.

22 Clause 1 of Schedule 1

Insert:

Schedule 1 Repeals and amendments

Part 2 Consequential amendments

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.

Aged Care (Transitional Provisions) Act 1997

23 Clause 1 of Schedule 1 (definition of *CEO of the Quality Agency*)

Repeal the definition.

Part 3—Contingent amendments

Aged Care Act 1997

24 Paragraph 86-9(1)(k)

Omit “*Australian Aged Care Quality Agency Act 2013*”, substitute
“*Quality and Safety Commission Act”.

Freedom of Information Act 1982

25 Schedule 3

Omit:

Australian Aged Care Quality Agency Act 2013, subsection 48(1) and
section 50

substitute:

Aged Care Quality and Safety Commission Act 2018, subsection 60(1)
and section 62

Schedule 2—Application and transitional provisions

1 Definitions

In this Schedule:

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

CEO means the Chief Executive Officer of the Quality Agency appointed under section 16 of the Quality Agency Act.

Complaints Commissioner means the Aged Care Complaints Commissioner appointed under section 95A-2 of the Aged Care Act, as in force immediately before the transition time.

instrument includes:

- (a) a contract, deed, undertaking, arrangement or agreement; and
- (b) a notice, authority, order or instruction; and
- (c) an instrument made under an Act or regulation.

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*, as in force immediately before the transition time.

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 appointed under section 24 of the Quality and Safety Commission Act.

transition time means the commencement of the Quality and Safety Commission Act.

2 Things done by, or in relation to, the CEO or Complaints Commissioner

- (1) If, before the transition time, a thing was done by, or in relation to, the CEO for the purposes of the Quality Agency Act or the Aged Care Act,

then the thing has effect, after that time, as if it had been done by, or in relation to, the Quality and Safety Commissioner for the purposes of the Quality and Safety Commission Act.

- (2) If, before the transition time, a thing was done by, or in relation to, the Complaints Commissioner for the purposes of the Aged Care Act, then the thing has effect, after that time, as if it had been done by, or in relation to, the Quality and Safety Commissioner for the purposes of the Quality and Safety Commission Act.
- (3) The rules may provide that subitem (1) or (2) does not apply in relation to a specified thing done by, or in relation to, the CEO or the Complaints Commissioner.

3 Advisory Council members

- (1) This item applies to a person who, immediately before the transition time, was an Advisory Council member within the meaning of the Quality Agency Act.
- (2) The person is taken, after the transition time, to have been appointed under section 41 of the Quality and Safety Commission Act as an Advisory Council member within the meaning of that Act:
 - (a) for the balance of the person's term of appointment that remained immediately before that time; and
 - (b) on the same terms and conditions as applied to the person immediately before that time.
- (3) This item does not prevent those terms and conditions being varied after the transition time.

4 Consultants

- (1) This item applies to a person if:
 - (a) before the transition time, the person was engaged as a consultant under section 28 of the Quality Agency Act; and
 - (b) the engagement was in effect immediately before that time.
 - (2) The person is taken, after the transition time, to be engaged as a consultant under section 35 of the Quality and Safety Commission Act on the same terms and conditions that applied to the person's engagement immediately before that time.
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- (3) This item does not prevent those terms and conditions being varied after the transition time.

5 Authorised complaints officers

- (1) This item applies to a person who was, immediately before the transition time, appointed under subsection 94B-1(1) of the Aged Care Act as an authorised complaints officer.
- (2) The person is taken, after the transition time, to have been appointed under subsection 73(1) of the Quality and Safety Commission Act as an authorised complaints officer for the purposes referred to in that subsection.
- (3) An identity card issued to the person under subsection 94B-1(2) of the Aged Care Act before the transition time is taken, after that time, to have been issued under subsection 74(1) of the Quality and Safety Commission Act.

6 Transfer of records

- (1) This item applies to any records or documents that were in the possession of the following immediately before the transition time:
- (a) the CEO;
 - (b) the Quality Agency;
 - (c) the Complaints Commissioner;
 - (d) an APS employee of the Department who, before that time, was assisting the Complaints Commissioner in the performance of the Commissioner's functions under the Aged Care Act.
- (2) The records and documents are to be transferred to the Quality and Safety Commissioner after the transition time.

Note: The records and documents are Commonwealth records for the purposes of the *Archives Act 1983*.

7 Protected information

- (1) This item applies to the following information:
- (a) information that, immediately before the transition time, was protected information within the meaning of the Quality Agency Act;
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- (b) information that:
 - (i) immediately before the transition time, was protected information within the meaning of the Aged Care Act; and
 - (ii) related to the functions of the Complaints Commissioner under that Act.
- (2) For the purposes of the Quality and Safety Commission Act, the information is taken, after the transition time, to be protected information within the meaning of that Act.

8 References to the CEO etc. in instruments

- (1) This item applies to an instrument if:
 - (a) the instrument was in force immediately before the transition time; and
 - (b) the instrument contains a reference to:
 - (i) the CEO; or
 - (ii) the Quality Agency; or
 - (iii) the Complaints Commissioner.
- (2) The instrument has effect, after the transition time, as if:
 - (a) a reference in the instrument to the CEO or Complaints Commissioner were a reference to the Quality and Safety Commissioner; and
 - (b) a reference in the instrument to the Quality Agency were a reference to the Quality and Safety Commission.
- (3) The rules may provide that subitem (2) does not apply in relation to a specified instrument.
- (4) This item does not prevent the instrument from being amended or repealed after the transition time.

9 Legal proceedings

- (1) If any proceedings to which the CEO is a party are pending in any court or tribunal immediately before the transition time, the Quality and Safety Commissioner is substituted for the CEO, from that time, as a party to those proceedings.

- (2) If any proceedings to which the Complaints Commissioner is a party are pending in any court or tribunal immediately before the transition time, the Quality and Safety Commissioner is substituted for the Complaints Commissioner, from that time, as a party to those proceedings.

10 Rules

- (1) The Minister may, by legislative instrument, make rules prescribing matters:
- (a) required or permitted by this Act to be prescribed by the rules; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting subitem (1), the rules may prescribe matters of a transitional nature (including prescribing any saving or application provisions) relating to:
- (a) the amendments or repeals made by this Act; or
 - (b) the enactment of this Act or the Quality and Safety Commission Act.
- (3) To avoid doubt, the rules may not do the following:
- (a) create an offence or civil penalty;
 - (b) provide powers of:
 - (i) arrest or detention; or
 - (ii) entry, search or seizure;
 - (c) impose a tax;
 - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act or the Quality and Safety Commission Act;
 - (e) directly amend the text of this Act or the Quality and Safety Commission Act.
- (4) This Schedule (other than subitem (3)) does not limit the rules that may be made for the purposes of subitems (1) and (2).

*[Minister's second reading speech made in—
House of Representatives on 12 September 2018
Senate on 17 October 2018]*

(186/18)

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