



Aged Care Legislation Amendment (Serious Incident Response Scheme and Other Measures) Act 2021

No. 9, 2021

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

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

Contents

1	Short title.....	1
2	Commencement.....	2
3	Schedules.....	3
Schedule 1—Incident management and reporting		4
Part 1—Main amendments		4
<i>Aged Care Act 1997</i>		4
<i>Aged Care Quality and Safety Commission Act 2018</i>		11
Part 2—Consequential amendments		12
<i>Aged Care Act 1997</i>		12
<i>Aged Care Quality and Safety Commission Act 2018</i>		13
Part 3—Transitional provisions		14
Schedule 2—Enforcement		15
Part 1—Main amendments		15
<i>Aged Care Quality and Safety Commission Act 2018</i>		15
Part 2—Other amendments		22
<i>Aged Care Act 1997</i>		22
<i>Aged Care Quality and Safety Commission Act 2018</i>		22
Part 3—Transitional provisions		25
Schedule 3—Amendments contingent on the Federal Circuit and Family Court of Australia Act 2021		26
<i>Aged Care Quality and Safety Commission Act 2018</i>		26



Aged Care Legislation Amendment (Serious Incident Response Scheme and Other Measures) Act 2021

No. 9, 2021

An Act to amend the law relating to aged care, and for related purposes

[Assented to 1 March 2021]

The Parliament of Australia enacts:

1 Short title

*This Act is the **Aged Care Legislation Amendment (Serious Incident Response Scheme and Other Measures) Act 2021**.*

No. 9, 2021 Aged Care Legislation Amendment (Serious Incident Response Scheme and Other Measures) Act 2021 1

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.	1 March 2021
2. Schedules 1 and 2	The later of: (a) 1 April 2021; and (b) the eighth day after the day this Act receives the Royal Assent.	1 April 2021 (paragraph (a) applies)
3. Schedule 3	The later of: (a) immediately after the commencement of the provisions covered by table item 2; and (b) immediately after the commencement of the <i>Federal Circuit and Family Court of Australia Act 2021</i> . However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	1 September 2021 (paragraph (b) applies)

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—Incident management and reporting

Part 1—Main amendments

Aged Care Act 1997

1 After paragraph 54-1(1)(d)

Insert:

- (e) if the type of aged care is residential care or flexible care provided in a residential setting—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;

2 At the end of Division 54

Add:

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 residential care, or flexible care provided in a residential setting, to a *residential care recipient of an approved provider:
 - (a) unreasonable use of force against the residential care recipient;
 - (b) unlawful sexual contact, or inappropriate sexual conduct, inflicted on the residential care recipient;

- (c) psychological or emotional abuse of the residential care recipient;
 - (d) unexpected death of the residential care recipient;
 - (e) stealing from, or financial coercion of, the residential care recipient by a *staff member of the provider;
 - (f) neglect of the residential care recipient;
 - (g) use of physical restraint or chemical restraint in relation to the residential care recipient (other than in circumstances set out in the Quality of Care Principles);
 - (h) unexplained absence of the residential care recipient from the residential care services of the provider.
- (3) A person is a **residential care recipient** of an approved provider if:
- (a) the person is receiving residential care, or flexible care provided in a residential setting, in respect of which the provider is approved; and
 - (b) either:
 - (i) *subsidy is payable for provision of the care to the person; or
 - (ii) the person is approved under Part 2.3 as the recipient of the care.
- (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 *residential care recipient is a **reportable incident**;
 - (b) that a specified act, omission or event involving a residential 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 *residential 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.

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 *residential 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.

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
 - (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 Victimization 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
 - (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.

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;
- 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).

Aged Care Quality and Safety Commission Act 2018

3 At the end of section 21

Add:

Reportable incident functions

- (7) Without limiting subsection (1), the rules may make provision for, or in relation to, how the Commissioner deals with reportable incidents, including in relation to one or more of the following:
- (a) action that may be taken by the Commissioner in dealing with a reportable incident, which may include requiring an approved provider to do something;
 - (b) the circumstances in which the Commissioner may authorise or carry out an inquiry in relation to a reportable incident on the Commissioner's own initiative;
 - (c) how information given to the Commissioner about a reportable incident may be dealt with.

Note: For responsibilities of approved providers in relation to reportable incidents, see Division 54 of the Aged Care Act.

Part 2—Consequential amendments

Aged Care Act 1997

4 Section 63-1AA

Repeal the section.

5 Section 90-1

After “*civil penalty provision in this Act”, insert “(other than a civil penalty provision in Division 54)”.

6 Subsection 92-3(1)

After “*civil penalty provision”, insert “(other than a civil penalty provision in Division 54)”.

7 Subsection 92-3(1) (note)

Omit “Note”, substitute “Note 1”.

8 At the end of subsection 92-3(1)

Add:

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.

9 At the end of section 95C-1

Add:

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.

10 Section 96-8

Repeal the section.

11 Clause 1 of Schedule 1 (definition of *reportable assault*)

Repeal the definition.

12 Clause 1 of Schedule 1

Insert:

reportable incident has the meaning given by subsections 54-3(2) and (5).

residential care recipient has the meaning given by subsection 54-3(3).

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.

Aged Care Quality and Safety Commission Act 2018

13 Section 7

Insert:

reportable incident has the same meaning as in the Aged Care Act.

Part 3—Transitional provisions

14 Application of the incident management provisions

- (1) The amendments made by Part 1 of this Schedule apply in relation to incidents that occur, or are alleged or suspected to occur, on or after the commencement of this Schedule.
- (2) Sections 54-4 to 54-8 of the *Aged Care Act 1997* as inserted by this Schedule also apply in relation to a disclosure of information by a person or body (the *discloser*) made on or after the commencement of this Schedule if the discloser has reasonable grounds to suspect that the information indicates a reportable incident has occurred in the period starting on 1 January 2020 and ending on the day before this Schedule commences.
- (3) For the purposes of subitem (2), *reportable incident* has the meaning it would have under section 54-3 of the *Aged Care Act 1997* if that section and the Quality of Care Principles made for the purposes of that section, as in force at the time the disclosure is made, had been in force at the time the incident is suspected to have occurred.

15 Saving of protection for reporting reportable assaults

Despite the repeal of section 96-8 of the *Aged Care Act 1997* by this Schedule, that section as in force immediately before the commencement of this Schedule continues to apply to disclosures of information made before that commencement.

Schedule 2—Enforcement

Part 1—Main amendments

Aged Care Quality and Safety Commission Act 2018

1 At the end of Division 2 of Part 8A

Add:

74EA Civil penalty provisions

Enforceable civil penalty provisions

- (1) The following civil penalty provisions are enforceable under Part 4 of the Regulatory Powers Act:
 - (a) each civil penalty provision of this Act;
 - (b) each civil penalty provision of Division 54 of the Aged Care 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 Commissioner is an authorised applicant in relation to the provisions mentioned in subsection (1).

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 provisions mentioned in subsection (1):
 - (a) the Federal Court;
 - (b) the Federal Circuit Court of Australia;
 - (c) a court of a State or Territory that has jurisdiction in relation to the matter.

Crown not liable to pecuniary penalty

- (4) Despite section 3 of this Act and section 4-2 of the Aged Care Act, the Crown is not liable to a pecuniary penalty in relation to the provisions mentioned in subsection (1).

Extension to external Territories

- (5) Part 4 of the Regulatory Powers Act, as it applies in relation to the provisions mentioned in subsection (1), extends to the external Territories other than the Territory of Ashmore and Cartier Islands.

74EB Infringement notices

Provisions subject to an infringement notice

- (1) The following provisions are subject to an infringement notice under Part 5 of the Regulatory Powers Act:
- (a) a civil penalty provision of this Act;
 - (b) a civil penalty provision of Division 54 of the Aged Care Act;
 - (c) an offence provision in section 74GA;
 - (d) an offence provision in Division 9 of the Aged Care Act.

Note: Part 5 of the Regulatory Powers Act creates a framework for using infringement notices in relation to provisions.

Infringement officer

- (2) For the purposes of Part 5 of the Regulatory Powers Act, the Commissioner is an infringement officer in relation to the provisions mentioned in subsection (1).

Relevant chief executive

- (3) For the purposes of Part 5 of the Regulatory Powers Act, the Commissioner is the relevant chief executive in relation to the provisions mentioned in subsection (1).

Crown not liable to be given an infringement notice

- (4) Despite section 3 of this Act and section 4-2 of the Aged Care Act, the Crown is not liable to be given an infringement notice in relation to the provisions mentioned in subsection (1).

Extension to external Territories

- (5) Part 5 of the Regulatory Powers Act, as it applies in relation to the provisions mentioned in subsection (1), extends to the external Territories other than the Territory of Ashmore and Cartier Islands.

74EC Enforceable undertakings

Enforceable provisions

- (1) The provisions of Chapter 4 of the Aged Care Act are enforceable under Part 6 of the Regulatory Powers Act.

Note: Part 6 of the Regulatory Powers Act creates a framework for accepting and enforcing undertakings relating to compliance with provisions.

Authorised person

- (2) For the purposes of Part 6 of the Regulatory Powers Act, the Commissioner is an authorised person in relation to the provisions mentioned in subsection (1).

Relevant court

- (3) For the purposes of Part 6 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the provisions mentioned in subsection (1):
- (a) the Federal Court;
 - (b) the Federal Circuit Court;
 - (c) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

Extension to external Territories

- (4) Part 6 of the Regulatory Powers Act, as it applies in relation to the provisions mentioned in subsection (1) extends to the external Territories other than the Territory of Ashmore and Cartier Islands.

74ED Injunctions

- (1) The provisions of Chapter 4 of the Aged Care Act are enforceable under Part 7 of the Regulatory Powers Act.

Note: Part 7 of the Regulatory Powers Act creates a framework for using injunctions to enforce provisions.

Authorised person

- (2) For the purposes of Part 7 of the Regulatory Powers Act, the Commissioner is an authorised person in relation to the provisions mentioned in subsection (1).

Relevant court

- (3) For the purposes of Part 7 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the provisions mentioned in subsection (1):
- (a) the Federal Court;
 - (b) the Federal Circuit Court;
 - (c) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

Consent injunctions

- (4) A relevant court may grant an injunction under Part 7 of the Regulatory Powers Act in relation to the provisions mentioned in subsection (1) by consent of all the parties to proceedings brought under that Part, whether or not the court is satisfied that section 121 of that Act applies.

Extension to external Territories

- (5) Part 7 of the Regulatory Powers Act, as it applies in relation to the provisions mentioned in subsection (1), extends to the external Territories other than the Territory of Ashmore and Cartier Islands.
-

2 After Division 2 of Part 8A

Insert:

Division 2A—Compliance notices

74EE Compliance notices

- (1) The Commissioner may give to an approved provider a written notice (a ***compliance notice***) if the Commissioner:
 - (a) is satisfied that an approved provider is not complying with the provider's responsibilities under paragraph 54-1(1)(e) of the Aged Care Act (the ***incident management provisions***); or
 - (b) is aware of information that suggests that an approved provider may not be complying with the incident management provisions.
- (2) The compliance notice must:
 - (a) set out the name of the provider to which the notice is given; and
 - (b) set out brief details of the non-compliance or possible non-compliance; and
 - (c) specify action that the provider must take, or refrain from taking, in order to address the non-compliance or possible non-compliance; and
 - (d) specify a reasonable period within which the provider must take, or refrain from taking, the specified action; and
 - (e) if the Commissioner considers it appropriate—specify a reasonable period within which the provider must provide the Commissioner with evidence that the provider has taken, or refrained from taking, the specified action; and
 - (f) state that a failure to comply with the notice is subject to a civil penalty; and
 - (g) state that compliance with the notice will be considered in deciding whether to impose sanctions on the provider under Part 7B in relation to the non-compliance; and
 - (h) set out any other matters specified in the rules for the purposes of this paragraph.

- (3) An approved provider contravenes this subsection if the provider fails to comply with a compliance notice.

Civil penalty: 60 penalty units.

- (4) The Commissioner may, by written notice given to an approved provider, vary or revoke a compliance notice given to the provider if the Commissioner considers that it is appropriate in all the circumstances to do so.
- (5) In deciding whether to vary or revoke the compliance notice, the Commissioner must consider any submissions that are received from the provider before the end of the period mentioned in paragraph (2)(d).

3 At the end of Division 3 of Part 8A

Add:

74GA Power to require information or documents

- (1) The Commissioner may, by notice in writing given to a person, require the person, within a reasonable time stated in the notice, to:
- (a) give the Commissioner any information; or
 - (b) produce to the Commissioner any documents (or copies of documents);
- specified in the notice that the Commissioner requires for the performance of the Commissioner's functions.
- (2) The Commissioner may, by notice in writing given to the person, extend the time within which the information must be given or documents or copies of documents must be produced in accordance with the notice under subsection (1).

Circumstances in which a person is not required to comply

- (3) A person is not required to comply with a requirement of a notice given to the person under subsection (1) if the performance of the Commissioner's functions relates to the affairs of an approved provider, or former approved provider, that is not a corporation.

Offence

- (4) A person commits an offence of strict liability if:
- (a) the person is required to give the Commissioner information, or produce to the Commissioner documents or copies of documents, in accordance with a notice given to the person under subsection (1); and
 - (b) the person fails to comply with the requirement.

Penalty: 30 penalty units.

Reasonable compensation

- (5) A person is entitled to be paid by the Commonwealth reasonable compensation for complying with a requirement of a notice given to the person under subsection (1) to give copies of documents.

Part 2—Other amendments

Aged Care Act 1997

4 After subsections 9-2(3) and 9-3A(3)

Insert:

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

5 After subsection 9-3B(5)

Insert:

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

Aged Care Quality and Safety Commission Act 2018

6 Section 7

Insert:

civil penalty provision has the same meaning as in the Regulatory Powers Act.

compliance notice means a notice given under section 74EE.

7 After subsection 63N(1)

Insert:

(1A) The Commissioner may do so even if the Commissioner has given the approved provider a compliance notice in relation to the non-compliance (regardless of whether the provider has complied with the notice).

8 After paragraph 63N(3)(f)

Insert:

(fa) if the provider has given an undertaking under section 114 of the Regulatory Powers Act in relation to the non-compliance (as applied by section 74EC of this Act)—whether or not the provider has complied with the undertaking;

- (fb) if the provider has been given a compliance notice in relation to the non-compliance—whether or not the provider has complied with the notice;

9 Section 74A

Omit:

An authorised officer may, under Part 3 of the Regulatory Powers Act, gather material that relates to the contravention of offences against:

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

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

substitute:

An authorised officer may, under Part 3 of the Regulatory Powers Act, gather material that relates to the contravention of:

- (a) an offence provision of this Act or the Aged Care Act; or
- (b) an offence provision of the *Crimes Act 1914* or the *Criminal Code* that relates to this Act or the Aged Care Act; or
- (c) a civil penalty provision of this Act or Division 54 of the Aged Care Act.

Parts 2, 3 and 4 of the Regulatory Powers Act are applied by this Part with suitable modifications. The civil penalty provisions and some strict liability offence provisions are also subject to an infringement notice under Part 5 of the Regulatory Powers Act.

An approved provider's responsibilities under Chapter 4 of the Aged Care Act may be enforced by enforceable undertakings and injunctions under Parts 6 and 7 of the Regulatory Powers Act.

The Commissioner may give an approved provider a compliance notice requiring the provider to take, or refrain from taking, action in order to address non-compliance with the provider's responsibilities under paragraph 54-1(1)(e) of the Aged Care Act.

10 After paragraph 74D(1)(b)

Insert:

; or (c) a civil penalty provision of this Act or Division 54 of the Aged Care Act.

11 Section 74J (at the end of the table)

Add:

- | | | |
|---|---|---|
| 6 | A decision under section 74EE to give a compliance notice to an approved provider | A person whose interests are affected by the decision |
|---|---|---|

Part 3—Transitional provisions

12 Application of power to require information or documents

Section 74GA of the *Aged Care Quality and Safety Commission Act 2018* as inserted by this Schedule applies in relation to:

- (a) the performance of the Commissioner’s functions on or after the commencement of this Schedule, including in relation to the affairs of an approved provider or a former approved provider before, on or after that commencement; and
- (b) information and documents created before, on or after that commencement.

**Schedule 3—Amendments contingent on the
Federal Circuit and Family Court of
Australia Act 2021**

Aged Care Quality and Safety Commission Act 2018

1 Paragraphs 74EA(3)(b), 74EC(3)(b) and 74ED(3)(b)

Repeal the paragraphs, substitute:

- (b) the Federal Circuit and Family Court of Australia
(Division 2);

*[Minister's second reading speech made in—
House of Representatives on 2 December 2020
Senate on 3 February 2021]*

(163/20)
