



# **Aged Care and Other Legislation Amendment (Royal Commission Response No. 1) Act 2021**

**No. 57, 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/>)



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## Contents

1	Short title.....	1
2	Commencement.....	2
3	Schedules.....	2
<b>Schedule 1—Amendments relating to restrictive practices</b>		<b>3</b>
	<i>Aged Care Act 1997</i>	3
	<i>Aged Care Quality and Safety Commission Act 2018</i>	5
<b>Schedule 2—Amendments relating to home care assurance reviews</b>		<b>6</b>
	<i>Aged Care Act 1997</i>	6
<b>Schedule 3—Amendments relating to the Aged Care Financing Authority</b>		<b>11</b>
	<i>Aged Care Act 1997</i>	11





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**No. 57, 2021**

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

*[Assented to 28 June 2021]*

The Parliament of Australia enacts:

### **1 Short title**

*This Act is the **Aged Care and Other Legislation Amendment  
(Royal Commission Response No. 1) Act 2021**.*

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*No. 57, 2021*

*Aged Care and Other Legislation Amendment (Royal Commission  
Response No. 1) Act 2021*

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## 2 Commencement

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

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	28 June 2021
2. Schedule 1	1 July 2021.	1 July 2021
3. Schedule 2	The day after this Act receives the Royal Assent.	29 June 2021
4. Schedule 3	1 July 2021.	1 July 2021

Note: This table relates only to the provisions of this Act as originally enacted.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—Amendments relating to restrictive practices**

### *Aged Care Act 1997*

#### **1 After paragraph 54-1(1)(e)**

Insert:

- (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;

#### **2 Paragraph 54-3(2)(g)**

Omit “physical restraint or chemical restraint”, substitute “a \*restrictive practice”.

#### **3 At the end of Division 54**

Add:

#### **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 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.
- (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) 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).

#### 4 Clause 1 of Schedule 1

Insert:

*restrictive practice*, in relation to a care recipient, has the meaning given by section 54-9.

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

**5 Section 7 (definition of *compliance notice*)**

Omit “section 74EE”, substitute “subsection 74EE(1) or (1A)”.

**6 Section 74A (paragraph beginning “The Commissioner may give”)**

After “paragraph 54-1(1)(e)”, insert “or (f)”.

**7 Before subsection 74EE(1)**

Insert:

*Incident management provisions*

**8 Subsection 74EE(1)**

Omit “(a *compliance notice*)”.

**9 After subsection 74EE(1)**

Insert:

*Use of restrictive practices*

- (1A) The Commissioner may give to an approved provider a written notice if the Commissioner:
- (a) is satisfied that an approved provider is not complying with the provider’s responsibility under paragraph 54-1(1)(f) of the Aged Care Act; or
  - (b) is aware of information that suggests that an approved provider may not be complying with that responsibility.

*Compliance notice*

**10 Section 74J (table item 6, column 1)**

Omit “section 74EE”, substitute “subsection 74EE(1) or (1A)”.

## Schedule 2—Amendments relating to home care assurance reviews

### *Aged Care Act 1997*

#### 1 At the end of section 84-1

Add:

; (i) home care assurance reviews (see Part 6.8).
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#### 2 After paragraph 86-9(1)(l)

Insert:

- (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;

#### 3 At the end of Chapter 6

Add:

## 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;
  - (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 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 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.

#### **4 After subsection 96-2(1)**

Insert:

- (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*.

#### **5 Clause 1 of Schedule 1**

Insert:

*assurance review*: see section 95BA-1.

## **Schedule 3—Amendments relating to the Aged Care Financing Authority**

### *Aged Care Act 1997*

#### **1 Subsection 96-3(1)**

Repeal the subsection, substitute:

- (1) For the purposes of this Act and the *Aged Care (Transitional Provisions) Act 1997*, the Minister may establish one or more committees.

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*[Minister's second reading speech made in—  
House of Representatives on 27 May 2021  
Senate on 23 June 2021]*

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(66/21)