



Aged Care and Other Legislation Amendment (Royal Commission Response) Act 2022

No. 34, 2022

**An Act to amend the law relating to aged care,
health and aged care pricing, and information
sharing in relation to veterans and military
rehabilitation and compensation, 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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[Assented to 5 August 2022]

The Parliament of Australia enacts:

No. 34, 2022

*Aged Care and Other Legislation Amendment (Royal Commission
Response) Act 2022*

1

1 Short title

This Act is the *Aged Care and Other Legislation Amendment (Royal Commission Response) Act 2022*.

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.	5 August 2022
2. Schedule 1	As follows: (a) if this Act receives the Royal Assent before 1 October 2022—1 October 2022; (b) if this Act receives the Royal Assent on or after 1 October 2022—a single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	1 October 2022 (paragraph (a) applies)
3. Schedule 2	The day after this Act receives the Royal Assent.	6 August 2022
4. Schedule 3	1 December 2022.	1 December 2022
5. Schedule 4, Part 1	1 December 2022.	1 December 2022
6. Schedule 4, Part 2	The day after this Act receives the Royal Assent.	6 August 2022

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
7. Schedule 5	1 December 2022.	1 December 2022
8. Schedule 6	The day after this Act receives the Royal Assent.	6 August 2022
9. Schedule 7	The day after this Act receives the Royal Assent.	6 August 2022
10. Schedule 8	The seventh day after this Act receives the Royal Assent.	12 August 2022
11. Schedule 9	The day after this Act receives the Royal Assent.	6 August 2022

Note: This table relates only to the provisions of this Act as originally enacted.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—Residential aged care funding

Part 1—Amendments

Aged Care Act 1997

1 Section 5-1 (paragraph beginning “the recipient of the care”)

Omit “flexible care”, substitute “some kinds of flexible care”.

2 Section 5-1 (paragraph beginning “the recipient of the care”)

Omit “Part 2.4”, substitute “Parts 2.4 and 2.4A”.

3 Section 5-1

Omit:

Part 2.4A provides for the classification of recipients of residential care and some kinds of flexible care on the initiative of the Secretary. The effect of these classifications is limited (see section 29F-1).

4 After Division 17

Insert:

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.

5 Part 2.4 (heading)

Repeal the heading, substitute:

Part 2.4—Classification of care recipients before the transition day

6 At the end of section 24-1

Add “on a day before the *transition day”.

7 After subsection 25-1(1)

Insert:

- (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.

8 After subsection 25-3(1)

Insert:

- (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.

9 At the end of section 25-3

Add:

- (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.

10 Section 26-1

After “a care recipient”, insert “under this Part”.

11 Subsection 26-2(1)

After “a care recipient”, insert “under this Part”.

12 Section 26-3

After “a care recipient”, insert “under this Part”.

13 At the end of section 27-1

Add:

- (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.

14 After subsection 27-4(1)

Insert:

- (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.

15 After section 27-5

Insert:

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.

16 After subsection 27-6(1)

Insert:

- (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.

17 Subsection 29-1(1)

After “a classification”, insert “made under this Part”.

18 Part 2.4A (heading)

Omit “Secretary’s initiative”, substitute “or after the transition day”.

19 Section 29B-1

Omit “On the Secretary’s initiative, the Secretary”, substitute “The Secretary”.

20 Section 29B-1

Omit “The effect of a classification under this Part is limited (see section 29F-1).”, substitute “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.”.

21 Subsection 29C-2(7) (note)

Repeal the note.

22 Subsection 29C-3(1)

Omit “While a care recipient is being provided with”, substitute “If a care recipient is being provided, or was provided, with”.

23 At the end of subsection 29C-3(1)

Add:

- ; (c) reconsidering, under section 85-4 or 85-5, a decision made under subsection 29C-2(1), 29D-1(1) or 29E-1(1).

24 Subsection 29C-3(2)

Repeal the subsection, substitute:

- (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.

25 Subsection 29D-1(1)

Repeal the subsection, substitute:

- (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.

26 Division 29F

Repeal the Division.

27 Paragraphs 43-1(3)(b) and (d)

Repeal the paragraphs, substitute:

- (b) *capital repayment deductions (see section 43-6).

28 Section 43-8

Repeal the section.

29 Subsection 44-3(2)

Repeal the subsection, substitute:

- (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.

30 Before paragraph 44-3(3)(a)

Insert:

- (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;

31 Paragraph 44-3(3)(a)

Omit “being provided with residential care”, substitute “who have been classified under Part 2.4A”.

32 Paragraphs 44-3(3)(cb) and (cc)

Repeal the paragraphs.

33 Subsection 44-3(4)

Repeal the subsection, substitute:

- (4) The Minister may make provision for, or in relation to, a matter by conferring a power on the Secretary.

34 Subparagraph 44-5(1)(a)(iv)

Repeal the subparagraph.

35 Paragraph 44-17(a)

Repeal the paragraph.

36 Section 44-19

Repeal the section.

37 Subsection 44-21(2) (Care subsidy reduction calculator, step 4, paragraphs (a) and (b))

Repeal the paragraphs, substitute:

- | |
|---|
| <p>(a) the <i>adjusted basic subsidy amount</i> for the care recipient for the day (see subsection (6A));</p> <p>(b) any primary supplement amounts for the care recipient for the day.</p> |
|---|

38 Subsection 44-21(2) (Care subsidy reduction calculator, step 5, paragraphs (a) and (b))

Repeal the paragraphs, substitute:

- | |
|---|
| <p>(a) the <i>adjusted basic subsidy amount</i> for the care recipient for the day (see subsection (6A));</p> <p>(b) any primary supplement amounts for the care recipient for the day.</p> |
|---|

39 Subsection 44-21(3)

Omit all the words after “*care subsidy reduction*”, substitute:

for a day is the sum of the following amounts:

- (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.

40 After subsection 44-21(6)

Insert:

(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.

41 Subsection 44-21(7)

Repeal the subsection, substitute:

- (7) The *annual cap* is the amount determined by the Minister by legislative instrument.

42 Paragraph 44-28(2)(a)

Repeal the paragraph, substitute:

- (a) on that day the residential care provided to the care recipient is not provided on an extra service basis; and

43 Section 52C-5

Omit all the words after “reserving a place in the residential care service for that day”, substitute:

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.

44 Paragraph 63-1(1)(ha)

After “delegates of the Secretary”, insert “under subsection 96-2(15)”.

45 After section 63-1B

Insert:

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.

46 After subsection 85-4(3)

Insert:

- (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).

47 Subsection 85-4(4)

After “must”, insert “, subject to subsection (3B)”.

48 Subsection 85-5(4A)

Omit “subsection 29-1(1) or 29E-1(1) (which deal with a decision to change the classification of a care recipient under Part 2.4 or 2.4A)”, substitute “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)”.

49 Subsection 85-5(5)

After “and”, insert “must, subject to paragraph (5B)(b)”.

50 After subsection 85-5(5)

Insert:

- (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).

51 Subsection 85-6(1)

Omit “subsection 29-1(1) or 29E-1(1) (which deal with a decision to change the classification of a care recipient under Part 2.4 or 2.4A)”, substitute “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)”.

52 Paragraph 85-6(3)(b)

Omit “an approved provider”, substitute “a person”.

53 After subsection 96-2(15)

Insert:

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*.

54 Clause 1 of Schedule 1 (definition of *adjusted subsidy place*)

Repeal the definition.

55 Clause 1 of Schedule 1

Insert:

transition day means the day Schedule 1 to the *Aged Care and Other Legislation Amendment (Royal Commission Response) Act 2022* commences.

Aged Care (Transitional Provisions) Act 1997

56 Paragraph 42-1(2)(c)

Omit “subsections (3) and (4)”, substitute “subsection (3)”.

57 Subsection 42-1(4)

Repeal the subsection.

58 Paragraphs 43-1(3)(b) and (d)

Repeal the paragraphs, substitute:

- (b) *capital repayment deductions (see section 43-6).

59 Section 43-8

Repeal the section.

60 Subsection 44-3(2)

Repeal the subsection, substitute:

- (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.

61 Paragraphs 44-3(3)(a) and (aa)

Repeal the paragraphs, substitute:

- (a) the kind of residential care service through which residential care is provided to a care recipient;
- (aa) whether a care recipient being provided with residential care has been classified under Part 2.4A of the *Aged Care Act 1997*;
- (ab) the *classification levels for care recipients who have been classified under that Part;

62 Paragraphs 44-3(3)(cb), (cc) and (d)

Repeal the paragraphs.

63 Subsection 44-3(4)

Repeal the subsection, substitute:

- (4) The Minister may make provision for, or in relation to, a matter by conferring a power on the Secretary.

64 Paragraph 44-5(aa)

Repeal the paragraph.

65 Paragraph 44-5A(2)(a)

Repeal the paragraph.

66 Paragraph 44-6(2)(a)

Repeal the paragraph.

67 After subsection 44-6(2)

Insert:

- (3) The care recipient is also eligible for a concessional resident supplement on a particular day if the care recipient was eligible for either of the following on the day before the transition day (within the meaning of the *Aged Care Act 1997*):
 - (a) a charge exempt resident supplement under repealed section 44-8A;
 - (b) a transitional supplement under repealed section 33 of the Aged Care (Transitional Provisions) Principles.

68 Subsection 44-6(5)

Omit “Subject to subsection (6), the”, substitute “The”.

69 Subsection 44-6(6)

Repeal the subsection.

70 Sections 44-8A and 44-8B

Repeal the sections.

71 Paragraph 44-17(b)

Repeal the paragraph.

72 Section 44-19

Repeal the section.

73 Subsection 44-21(3) (Income tested reduction calculator, step 4, paragraph (c))

Repeal the paragraph (not including the note), substitute:

(c) the <i>subsidy related amount</i> for a care recipient for a day (see subsection (4)).
--

74 At the end of section 44-21

Add:

- (4) The *subsidy related amount* for a care recipient for a day is the total of the following amounts:
- (a) the adjusted basic subsidy amount for the care recipient for the day (see subsection (5));
 - (b) the amounts of any primary supplements worked out using Subdivision 44-C for the care recipient for the day;
less the amounts of any reductions in subsidy worked out using Subdivision 44-D for the care recipient for the day.
- (5) 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.

75 Paragraph 44-23(4)(b)

Repeal the paragraph, substitute:

- (b) the subsidy related amount worked out under subsection 44-21(4) for the care recipient for that day.

76 Paragraph 44-27(1)(b)

Repeal the paragraph.

77 Section 44-29

Repeal the section.

78 Paragraphs 57-2(1)(aa) and (ab)

Repeal the paragraphs, substitute:

- (a) subject to this subsection, an accommodation bond must be charged for the entry if:
 - (i) the care recipient enters the service within 28 days after the day on which the care recipient ceased (other than because the care recipient is on *leave) being provided with care through another such service (the *prior service*); and
 - (ii) an accommodation bond was paid by the care recipient for entry to the prior service;
- (aa) the care recipient is not a care recipient eligible for a concessional resident supplement under paragraph 44-6(3)(a);

79 Paragraph 57-2(1)(g)

Omit “paragraph 57-14(1)(b) or section 57-23”, substitute “or paragraph 57-14(1)(b)”.

80 Section 57-13

Repeal the section, substitute:

57-13 Maximum amount of accommodation bond if care recipient moves between aged care services

- (1) If paragraph 57-2(1)(a) applies in relation to the charging of an *accommodation bond for *entry by a care recipient to an *aged care service, the maximum amount of the accommodation bond for the entry of the care recipient to the service is the amount set out in subsection (2) of this section.
- (2) The amount is the *accommodation bond balance that was refunded or is payable to the care recipient under Division 52P of the *Aged Care Act 1997* in respect of the *accommodation bond referred to in subparagraph 57-2(1)(a)(ii).

81 Subdivision 57-H

Repeal the Subdivision.

82 Paragraphs 57A-2(1)(a) and (b)

Repeal the paragraphs, substitute:

- (a) subject to this subsection, an accommodation charge must be charged for the entry if:
 - (i) the care recipient enters the service within 28 days after the day on which the care recipient ceased (other than because the care recipient is on *leave) being provided with care through another such service (the *prior service*); and
 - (ii) an accommodation charge was payable by the care recipient for entry to the prior service;
- (b) the care recipient is not a care recipient eligible for a concessional resident supplement under paragraph 44-6(3)(a);

83 Section 57A-8A

Repeal the section, substitute:

57A-8A Maximum amount of accommodation charge if care recipient moves between aged care services

- (1) If paragraph 57A-2(1)(a) applies in relation to the charging of an *accommodation charge for *entry by a care recipient to an *aged care service, the maximum daily amount at which the accommodation charge accrues for the entry of the care recipient to the service is the amount set out in subsection (2) of this section.
- (2) The amount is the maximum daily amount of *accommodation charge that accrued under section 57A-6 for entry of the care recipient to the prior service referred to in subparagraph 57A-2(1)(a)(i).

84 Section 58-6

Omit all the words after “reserving a place in the residential care service for that day”, substitute:

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.

85 Section 85-1 (table item 47)

Repeal the table item.

86 After subsection 96-2(11)

Insert:

SES employee etc. in the Department

(11A) 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*.

87 Clause 1 of Schedule 1

Repeal the following definitions:

- (a) the definition of *adjusted subsidy place*;
- (b) the definition of *charge exempt resident*;
- (c) the definition of *high level of residential care*;
- (d) the definition of *lowest applicable classification level*;
- (e) the definition of *low level of residential care*.

Part 2—Application, transitional and saving provisions

Division 1—Introduction

88 Definitions

In this Part:

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

amending Part means Part 1 of this Schedule.

payment period has the meaning given by:

- (a) when used in relation to a provision of the Aged Care Act—section 43-2 of that Act; or
- (b) when used in relation to a provision of the Transitional Act—section 43-2 of that Act.

Transitional Act means the *Aged Care (Transitional Provisions) Act 1997*.

transition day means the day this item commences.

viability supplement decision means a decision made under subsection 44-29(2) of the Transitional Act to refuse to make a determination in respect of a residential care service.

Division 2—Classifications of care recipients

89 Application—classification, and renewal of classification, of care recipients by the Secretary

- (1) Subsection 25-1(1A) of the Aged Care Act, as inserted by the amending Part, applies in relation to an appraisal that is received, or that is taken to have been received, by the Secretary before, on or after the transition day.
- (2) Subsection 27-6(1A) of the Aged Care Act, as inserted by the amending Part, applies in relation to a reappraisal that is received by the Secretary before, on or after the transition day.

90 Saving—Classification Principles made in relation to assessments

- (1) This item applies to the Classification Principles made for the purposes of subsection 29C-3(2) of the Aged Care Act that are in force immediately before the transition day.
- (2) Despite the repeal of subsection 29C-3(2) of the Aged Care Act by the amending Part, those Classification Principles continue in force (and may be dealt with), on and after the transition day, as if they had been made for the purposes of that subsection as amended by the amending Part.

91 Application—application for reclassification of a care recipient

Section 29D-1 of the Aged Care Act, as amended by the amending Part, applies in relation to an application by an approved provider that is made on or after the transition day.

Division 3—Residential care subsidy on or after the transition day

92 Application—eligibility for residential care subsidy under the Transitional Act

Section 42-1 of the Transitional Act, as amended by the amending Part, applies in relation to a day that is on or after the transition day.

93 Application—basic subsidy amount under the Aged Care Act and Transitional Act

- (1) Subsection 44-3(2) of the Aged Care Act, and subsection 44-3(2) of the Transitional Act, as amended by the amending Part, apply in relation to a day that is on or after the transition day.
- (2) Subsections 44-3(3) and (4) of the Aged Care Act, and subsections 44-3(3) and (4) of the Transitional Act, as amended by the amending Part, apply in relation to a determination made on or after the transition day.

94 Application—other amendments relating to residential care subsidy under the Aged Care Act and Transitional Act

Aged Care Act

- (1) The following provisions of the Aged Care Act, as amended by the amending Part, apply in relation to a payment period that starts on or after the transition day:
 - (a) subsection 43-1(3);
 - (b) subsection 44-5(1);
 - (c) section 44-17;
 - (d) section 44-21;
 - (e) subsection 44-28(2).
- (2) The repeal of sections 43-8 and 44-19 of the Aged Care Act by the amending Part applies in relation to a payment period that starts on or after the transition day.

Transitional Act

- (3) The following provisions of the Transitional Act, as amended by the amending Part, apply in relation to a payment period that starts on or after the transition day:
 - (a) subsection 43-1(3);
 - (b) section 44-5;
 - (c) subsection 44-5A(2);
 - (d) section 44-6;
 - (e) section 44-17;
 - (f) section 44-21;
 - (g) paragraph 44-23(4)(b);
 - (h) subsection 44-27(1).
- (4) The repeal of sections 43-8, 44-8A, 44-8B, 44-19 and 44-29 of the Transitional Act by the amending Part applies in relation to a payment period that starts on or after the transition day.

Division 4—Residential care subsidy for a day that is before the transition day

95 Saving—eligibility for residential care subsidy under the Transitional Act

- (1) Despite the amendments of section 42-1 of the Transitional Act made by the amending Part, that provision, as in force immediately before the transition day, continues to apply, on and after that day, in relation to a day that is before the transition day.
- (2) Despite the repeal of the following definitions in clause 1 of Schedule 1 to the Transitional Act by the amending Part:
 - (a) the definition of *high level of residential care*;
 - (b) the definition of *low level of residential care*;those definitions continue to apply, on and after the transition day, for the purposes of subitem (1), as if the repeal had not happened.

96 Saving—non-compliance deductions under the Aged Care Act and Transitional Act

- (1) Despite:
 - (a) the amendment of subsection 43-1(3) of the Aged Care Act, and subsection 43-1(3) of the Transitional Act, made by the amending Part; and
 - (b) the repeal of section 43-8 of each of those Acts by that Part;those provisions, as in force immediately before the transition day, continue to apply, on and after that day, in relation to a payment period that starts before that day.
- (2) If:
 - (a) Subsidy Principles were made for the purposes of section 43-8 of the Aged Care Act before the transition day; and
 - (b) those Principles are in force immediately before that day;then, despite the repeal of that section by the amending Part, those Principles continue in force, on and after that day, for the purposes of subitem (1), as if the repeal had not happened.

- (3) If:
-

- (a) Aged Care (Transitional Provisions) Principles were made for the purposes of section 43-8 of the Transitional Act before the transition day; and
 - (b) those Principles are in force immediately before that day;
- then, despite the repeal of that section by the amending Part, those Principles continue in force, on and after that day, for the purposes of subitem (1), as if the repeal had not happened.

97 Saving—basic subsidy amount under the Aged Care Act and Transitional Act

- (1) Despite the amendments of the following provisions made by the amending Part:
 - (a) section 44-3 of the Aged Care Act;
 - (b) section 44-3 of the Transitional Act;those sections, as in force immediately before the transition day, continue to apply, on and after that day, in relation to a day that is before the transition day, as if the amendments had not been made.
- (2) If:
 - (a) a determination was made under subsection 44-3(2) of the Aged Care Act, or subsection 44-3(2) of the Transitional Act, before the transition day; and
 - (b) the determination is in force immediately before that day;then, despite the repeal of that subsection by the amending Part, the determination continues in force, on and after that day, for the purposes of subitem (1), as if the amendments had not been made.
- (3) Despite the repeal of the definition of *low level of residential care* in clause 1 of Schedule 1 to the Transitional Act by the amending Part, that definition continues to apply, on and after the transition day, for the purposes of subitem (1), as if the repeal had not happened.

98 Saving—charge exempt resident supplement and viability supplement under the Transitional Act

- (1) Despite:
 - (a) the amendments of section 44-5 and subsections 44-21(3) and 44-27(1) of the Transitional Act made by the amending Part; and
-

- (b) the repeal of sections 44-8A, 44-8B and 44-29 of that Act by that Part;
- those provisions, as in force immediately before the transition day, continue to apply, on and after that day, in relation to a payment period that starts before that day.
- (2) If:
- (a) Aged Care (Transitional Provisions) Principles were made for the purposes of section 44-8A or 44-29 of the Transitional Act before the transition day; and
- (b) those Principles are in force immediately before that day;
- then, despite the repeal of that section by the amending Part, those Principles continue in force, on and after that day, for the purposes of subitem (1), as if the repeal had not happened.
- (3) If:
- (a) a determination was made under subsection 44-8A(3), 44-29(2) or 44-29(8) of the Transitional Act before the transition day; and
- (b) the determination is in force immediately before that day;
- then, despite the repeal of that subsection by the amending Part, the determination continues in force, on and after that day, for the purposes of subitem (1), as if the repeal had not happened.
- (4) Despite the repeal of the definition of *charge exempt resident* in clause 1 of Schedule 1 to the Transitional Act by the amending Part, that definition continues to apply, on and after the transition day, for the purposes of subitem (1), as if the repeal had not happened.

99 Saving—eligibility for concessional resident supplement under the Transitional Act

- (1) Despite the amendments of section 44-6 of the Transitional Act made by the amending Part, that section, as in force immediately before the transition day, continues to apply, on and after that day, in relation to a payment period that starts before that day.
- (2) Despite the repeal of the definition of *lowest applicable classification level* in clause 1 of Schedule 1 to the Transitional Act by the amending

Part, that definition continues to apply, on and after the transition day, for the purposes of subitem (1), as if the repeal had not happened.

100 Saving—adjusted subsidy amount under the Aged Care Act and Transitional Act

- (1) Despite the repeal of the following provisions by the amending Part:
- (a) paragraph 44-17(a) and section 44-19 of the Aged Care Act;
 - (b) paragraph 44-17(b) and section 44-19 of the Transitional Act;
- those provisions, as in force immediately before the transition day, continue to apply, on and after that day, in relation to a payment period that starts before that day.
- (2) If:
- (a) a determination was made before the transition day under:
 - (i) paragraph 44-19(1)(b) or subsection 44-19(2) of the Aged Care Act; or
 - (ii) paragraph 44-19(1)(b) or subsection 44-19(2) of the Transitional Act; and
 - (b) the determination is in force immediately before that day;
- then, despite the repeal of that provision by the amending Part, the determination continues in force, on and after that day, for the purposes of subitem (1), as if the repeal had not happened.

101 Saving—care subsidy reduction under the Aged Care Act

Despite the amendments of section 44-21 of the Aged Care Act made by the amending Part, that section, as in force immediately before the transition day, continues to apply, on and after that day, in relation to a payment period that starts before that day.

102 Saving—daily income tested reduction under the Transitional Act

Despite the amendments of section 44-21 and paragraph 44-23(4)(b) of the Transitional Act made by the amending Part, those provisions, as in force immediately before the transition day, continue to apply, on and after that day, in relation to a payment period that starts before that day.

103 Saving—accommodation supplement under the Aged Care Act and Transitional Act

- (1) Despite the amendments of section 44-28 of the Aged Care Act, and section 44-5A of the Transitional Act, made by the amending Part, those sections, as in force immediately before the transition day, continue to apply, on and after that day, in relation to a payment period that starts before that day.
- (2) Despite the repeal of the definition of *lowest applicable classification level* in clause 1 of Schedule 1 to the Transitional Act by the amending Part, that definition continues to apply, on and after the transition day, for the purposes of subitem (1), as if the repeal had not happened.

Division 5—Resident fees

104 Application—maximum daily amount of resident fees on or after the transition day under the Aged Care Act and Transitional Act

Section 52C-5 of the Aged Care Act, and section 58-6 of the Transitional Act, as amended by the amending Part, apply in relation to a day that is on or after the transition day.

105 Saving—maximum daily amount of resident fees for a day that is before the transition day under the Aged Care Act and Transitional Act

Despite the amendments of section 52C-5 of the Aged Care Act and section 58-6 of the Transitional Act made by the amending Part, those sections, as in force immediately before the transition day, continue to apply, on and after that day, in relation to a day that is before the transition day.

Division 6—Accommodation bonds and charges

106 Application—accommodation bonds and charges under the Transitional Act

Sections 57-2, 57-13, 57A-2 and 57A-8A of the Transitional Act, as amended by the amending Part, apply in relation to the entry of a person to a residential care service, or flexible care service, on a day that is on or after the transition day.

Division 7—Viability supplement decisions under the Transitional Act

107 Application—reconsideration of viability supplement decisions at Secretary’s own initiative

Despite the repeal of item 47 of the table in section 85-1 of the Transitional Act by the amending Part:

- (a) section 85-4 of that Act continues to apply, on and after the transition day, in relation to a viability supplement decision made before that day, as if the repeal had not happened; and
- (b) section 85-8 of that Act continues to apply, on and after that day, in relation to any decision to confirm, vary or set aside the viability supplement decision under section 85-4 of that Act, as if the repeal had not happened.

108 Application—reconsideration of viability supplement decisions where reconsideration period has not ended

- (1) This item applies to a viability supplement decision if:
 - (a) the decision was made before the transition day; and
 - (b) immediately before that day, the period referred to in paragraph 85-5(3)(a) of the Transitional Act has not ended.
- (2) Despite the repeal of item 47 of the table in section 85-1 of the Transitional Act by the amending Part:
 - (a) section 85-5 of that Act continues to apply, on and after the transition day, in relation to the decision, as if the repeal had not happened; and
 - (b) section 85-8 of that Act continues to apply, on and after that day, in relation to any decision to confirm, vary or set aside

the viability supplement decision under section 85-5 of that Act, as if the repeal had not happened.

109 Application—pending request for reconsideration of viability supplement decisions

- (1) This item applies to a request made under subsection 85-5(1) of the Transitional Act for the reconsideration of a viability supplement decision if:
 - (a) the request was made before the transition day; and
 - (b) immediately before that day, the Secretary has not made a decision in relation to the request.
- (2) Despite the repeal of item 47 of the table in section 85-1 of the Transitional Act by the amending Part:
 - (a) section 85-5 of that Act continues to apply, on and after the transition day, in relation to the request, as if the repeal had not happened; and
 - (b) section 85-8 of that Act continues to apply, on and after that day, in relation to a decision to confirm, vary or set aside the viability supplement decision under section 85-5 of that Act, as if the repeal had not happened.

110 Application—review by the Administrative Appeals Tribunal of pre-transition viability supplement decisions

- (1) This item applies to a decision (the *reconsideration decision*) to confirm, vary or set aside, under section 85-4 or 85-5 of the Transitional Act, a viability supplement decision if:
 - (a) the reconsideration decision was made before the transition day; and
 - (b) immediately before that day:
 - (i) an application for review of the reconsideration decision by the Administrative Appeals Tribunal has not been made; and
 - (ii) the time for a person to make such an application has not ended (including any extensions of that time under section 29 of the *Administrative Appeals Tribunal Act 1975*).

- (2) Despite the repeal of item 47 of the table in section 85-1 of the Transitional Act by the amending Part, section 85-8 of that Act continues to apply, on and after the transition day, in relation to the reconsideration decision, as if the repeal had not happened.

Division 8—Other matters

111 Transitional rules

- (1) The Minister may, by legislative instrument, make rules prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by the amending Part.
- (2) 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;
 - (e) directly amend the text of this Schedule.
- (3) This Part (other than subitem (2)) does not limit the rules that may be made for the purposes of subitem (1).

Schedule 2—Star ratings

Aged Care Act 1997

1 In the appropriate position in Division 86

Insert:

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 residential care service, or another person, as a result of the publication of information under subsection (1).

2 Application provision

Section 86-11 of the *Aged Care Act 1997*, as inserted by this Schedule, applies in relation to information whether the information was acquired or created before, on or after the commencement of this item.

Schedule 3—Code of conduct and banning orders

Aged Care Act 1997

1 After paragraph 54-1(1)(f)

Insert:

- (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;

2 Clause 1 of Schedule 1

Insert:

aged care worker of an approved provider has the same meaning as in the *Quality and Safety Commission Act.

Code of Conduct has the same meaning as in the *Quality and Safety Commission Act.

governing person of an approved provider has the same meaning as in the *Quality and Safety Commission Act.

Aged Care Quality and Safety Commission Act 2018

3 Section 6 (after paragraph (d))

Insert:

(da) the code functions; and

4 Section 6 (paragraph beginning “This Act also”)

After “with the”, insert “Code of Conduct, the”.

5 Section 7

Insert:

ABN has the meaning given by the *A New Tax System (Australian Business Number) Act 1999*.

aged care worker of an approved provider means:

- (a) an individual employed or otherwise engaged (including on a voluntary basis) by the provider; or
- (b) an individual:
 - (i) who is employed or otherwise engaged (including on a voluntary basis) by a contractor or subcontractor of the provider; and
 - (ii) who provides care or other services to the care recipients provided with aged care through an aged care service of the provider.

Note: An individual engaged by an approved provider includes an independent contractor.

banning order means an order made under subsection 74GB(1) or (3).

code functions: see section 18A.

Code of Conduct means the code of conduct which the rules made for the purposes of subsection 74AE(1) make provision for or in relation to.

governing person of an approved provider means an individual who is one of the key personnel of the provider under paragraph 8B(1)(a) or (b).

6 After paragraph 8C(1)(a)

Insert:

- (aa) whether a banning order against the individual is, or has at any time been, in force;

7 Section 14 (after paragraph (d))

Insert:

(da) the code functions; and

8 After paragraph 16(1)(d)

Insert:

(da) the code functions;

9 After section 18

Insert:

18A Code functions of the Commissioner

- (1) The *code functions* of the Commissioner are:
- (a) to, in accordance with the rules, take action in relation to compliance by any of the following with the provisions of the Code of Conduct that apply or applied to them:
 - (i) an approved provider;
 - (ii) an individual who is or was an aged care worker of an approved provider;
 - (iii) an individual who is or was a governing person of an approved provider; and
 - (b) to do anything else relating to that matter that is specified in the rules.
- (2) Subsection (1), and any rules made for the purposes of that subsection, do not limit, or otherwise affect, the operation of any other provision of this Act in relation to the Code of Conduct.

10 After subsection 21(3)

Insert:

Code functions

- (3A) Without limiting subsection (1), the rules may make provision for the taking of action in relation to compliance by any of the following with the provisions of the Code of Conduct that apply or applied to them:
- (a) an approved provider;

- (b) an individual who is or was an aged care worker of an approved provider;
 - (c) an individual who is or was a governing person of an approved provider.
- (3B) Without limiting subsection (3A), the rules may make provision for, or in relation to, any one or more of the following:
- (a) how information about compliance with the Code of Conduct may be given to the Commissioner;
 - (b) the actions that may be taken by the Commissioner in relation to compliance with the Code of Conduct, which may include requiring an approved provider or other relevant person to do something;
 - (c) the roles, rights and responsibilities of:
 - (i) persons who give such information to the Commissioner; or
 - (ii) approved providers; or
 - (iii) individuals who are or were aged care workers, or governing persons, of approved providers; or
 - (iv) any other relevant persons;
 - (d) the review or reconsideration of decisions made in relation to compliance with the Code of Conduct.

11 After Part 8

Insert:

Part 8AA—Code of Conduct

Division 1—Introduction

74AA Simplified outline of this Part

Approved providers, and their aged care workers and governing persons, must comply with the provisions of the Code of Conduct that apply to them.

Approved providers have a responsibility under the Aged Care Act to comply with the provisions of the Code of Conduct that apply to

them. A failure to do so may result in a sanction being imposed under this Act. It may also result in a civil penalty order being made.

If an aged care worker, or a governing person, of an approved provider fails to comply with the provisions of the Code of Conduct that apply to them, it may result in a civil penalty order being made.

Division 2—Code of Conduct

74AB Contravention of Code of Conduct by approved providers

An approved provider contravenes this section if:

- (a) the provider is a corporation; and
- (b) the provider fails to comply with the provisions of the Code of Conduct that apply to the provider.

Note: Approved providers have a responsibility under paragraph 54-1(1)(g) of the Aged Care Act to comply with the Code of Conduct. Failure to comply with that responsibility may result in a sanction being imposed under section 63N of this Act.

Civil penalty: 250 penalty units.

74AC Aged care workers of approved providers must comply with Code of Conduct

- (1) An aged care worker of an approved provider must comply with the provisions of the Code of Conduct that apply to the worker.
- (2) An aged care worker of an approved provider contravenes this subsection if:
 - (a) the provider is a corporation; and
 - (b) the worker fails to comply with the provisions of the Code of Conduct that apply to the worker.

Civil penalty: 250 penalty units.

74AD Governing persons of approved providers must comply with Code of Conduct

- (1) A governing person of an approved provider must comply with the provisions of the Code of Conduct that apply to the person.
- (2) A governing person of an approved provider contravenes this subsection if:
 - (a) the provider is a corporation; and
 - (b) the person fails to comply with the provisions of the Code of Conduct that apply to the person.

Civil penalty: 250 penalty units.

74AE Code of Conduct

- (1) The rules may make provision for, or in relation to, a code of conduct that applies to the following:
 - (a) approved providers;
 - (b) aged care workers of approved providers;
 - (c) governing persons of approved providers.
- (2) Without limiting subsection (1), the rules may provide as follows:
 - (a) that a provision of the code of conduct applies to any or all of the following:
 - (i) approved providers;
 - (ii) aged care workers of approved providers;
 - (iii) governing persons of approved providers;
 - (b) that a provision of the code of conduct applies to the following:
 - (i) specified kinds of aged care workers of approved providers;
 - (ii) aged care workers of specified kinds of approved providers;
 - (iii) specified kinds of governing persons of approved providers;
 - (iv) governing persons of specified kinds of approved providers.

12 Part 8A (heading)

Repeal the heading, substitute:

Part 8A—Enforcement and compliance

13 Section 74A (paragraph beginning “An authorised officer may enter”)

Before:

- (a) whether a provision of Chapter 4 of the Aged Care Act has been, or is being, complied with;

insert:

- (aa) whether an aged care worker, or a governing person, of an approved provider has complied, or is complying, with the provisions of the Code of Conduct that apply to them;

14 Section 74A

Omit:

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.

substitute:

The following may be enforced by enforceable undertakings and injunctions under Parts 6 and 7 of the Regulatory Powers Act:

(a) compliance with the provisions of the Code of Conduct that apply to an aged care worker, or a governing person, of an approved provider;

(b) an approved provider’s responsibilities under Chapter 4 of the Aged Care Act.

15 At the end of section 74A

Add:

The Commissioner may, in certain circumstances, make a banning order against an individual who is or was an aged care worker, or a governing person, of an approved provider.

16 Subsection 74B(1)

Repeal the subsection, substitute:

Provisions subject to monitoring

- (1) The following provisions are subject to monitoring under Part 2 of the Regulatory Powers Act:
- (a) subsections 74AC(1) and 74AD(1) of this Act;
 - (b) a provision of Chapter 4 of the Aged Care Act.

Note: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether a provision has been complied with. It includes powers of entry and inspection.

17 Subsection 74B(3)

Omit “subsection (1)”, substitute “paragraph (1)(b)”.

18 Subsections 74B(4) to (7)

Omit “the provision”, substitute “a provision”.

19 Paragraph 74C(1)(a)

Omit “the provision”, substitute “a provision”.

20 Subsection 74EC(1)

Repeal the subsection, substitute:

Enforceable provisions

- (1) The following provisions are enforceable under Part 6 of the Regulatory Powers Act:
- (a) subsections 74AC(1) and 74AD(1) of this Act;
 - (b) a provision of Chapter 4 of the Aged Care Act.

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

21 Subsection 74ED(1)

Repeal the subsection, substitute:

Enforceable provisions

- (1) The following provisions are enforceable under Part 7 of the Regulatory Powers Act:
 - (a) subsections 74AC(1) and 74AD(1) of this Act;
 - (b) a provision of Chapter 4 of the Aged Care Act.

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

22 After subsection 74EE(1A)

Insert:

Code of Conduct

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

23 After section 74F

Insert:

74FA Notice to attend to answer questions etc. relevant to compliance with Code of Conduct

- (1) This section applies if the Commissioner believes on reasonable grounds that a person has information or documents relevant to either or both of the following matters:
 - (a) whether an individual who is or was an aged care worker of an approved provider that is a corporation is complying, or has complied, with a provision of the Code of Conduct that applies or applied to the individual;

- (b) whether an individual who is or was a governing person of an approved provider that is a corporation is complying, or has complied, with a provision of the Code of Conduct that applies or applied to the individual.
- (2) The Commissioner 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 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.
- (4) The day specified under paragraph (3)(b) must be at least 14 days after the notice is given.

Offence

- (5) 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.

Penalty: 30 penalty units.

Reasonable compensation

- (6) 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.

24 Paragraph 74G(1)(a)

After “subsection 74F(1)”, insert “or 74FA(2)”.

25 At the end of Division 3 of Part 8A

Add:

74GAA Privilege against self-incrimination not abrogated

- (1) Nothing in this Division affects the right of a person to refuse to answer a question, give information or give a document on the ground that answering the question, giving the information or giving the document might tend to incriminate the person.
- (2) The fact that this section is included in this Division does not imply that the privilege against self-incrimination is abrogated in any other Act.

26 At the end of Part 8A

Add:

Division 4—Banning orders

74GB Banning orders—aged care workers and governing persons of approved providers etc.

Current and former aged care workers etc.

- (1) Subject to subsection (2), the Commissioner may make an order (the **banning order**) prohibiting or restricting an individual who is or was an aged care worker, or who is or was a governing person, of an approved provider:
 - (a) from being involved in the provision of any type of aged care or specified types of aged care; or
 - (b) from engaging in specified activities as an aged care worker, or as a governing person, of the provider.
- Note: See section 74GE for when the Commissioner must give notice of an intention to make the banning order.
- (2) The Commissioner must not make the banning order against the individual under subsection (1) unless:
 - (a) the Commissioner reasonably believes that the individual did not comply, is not complying or is not likely to comply with

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- a provision of the Code of Conduct that applies or applied to the individual; or
- (b) the Commissioner reasonably believes that the individual is not suitable:
- (i) to be involved, or to continue to be involved, in the provision of any type of aged care or the specified types of aged care; or
 - (ii) to engage, or to continue to engage, in the specified activities as an aged care worker, or as a governing person, of the approved provider; or
- (c) the Commissioner reasonably believes there is an immediate or severe risk to the safety, health or well-being of one or more care recipients if the individual:
- (i) is involved, or continues to be involved, in the provision of any type of aged care or the specified types of aged care; or
 - (ii) engages, or continues to engage, in the specified activities as an aged care worker, or as a governing person, of the approved provider; or
- (d) the individual has at any time been convicted of an indictable offence involving fraud or dishonesty; or
- (e) the individual is an insolvent under administration.

Individual not suitable to be involved in the provision of aged care etc.

- (3) Subject to subsection (4), the Commissioner may make an order (the **banning order**) prohibiting or restricting an individual who has not previously been an aged care worker, or a governing person, of an approved provider:
- (a) from being involved in the provision of any type of aged care or specified types of aged care; or
 - (b) from engaging in specified activities as an aged care worker, or as a governing person, of the provider.

Note: See section 74GE for when the Commissioner must give notice of an intention to make the banning order.

- (4) The Commissioner must not make the banning order against the individual under subsection (3) unless the Commissioner reasonably believes that the individual is not suitable:
- (a) to be involved in the provision of any type of aged care or the specified types of aged care; or
 - (b) to engage in the specified activities as an aged care worker, or as a governing person, of the approved provider.

Suitability matters

- (5) In considering whether an individual is suitable to be involved in the provision of any type of aged care or specified types of aged care, the Commissioner must consider the suitability matters in relation to the individual.
- (6) Subsection (5) does not limit the matters the Commissioner may consider in considering the matter mentioned in that subsection.

Other

- (7) A banning order is not a legislative instrument.

74GC Application etc. of banning order made against an aged care worker etc.

- (1) This section applies if a banning order is made against an individual who is or was:
- (a) an aged care worker of an approved provider; or
 - (b) a governing person of an approved provider.

Application of banning order

- (2) The banning order may:
- (a) apply generally or be of limited application; and
 - (b) be permanent or for a specified period; and
 - (c) be made subject to specified conditions.
- (3) If the banning order is made against an individual who is an aged care worker, or a governing person, of an approved provider, the order continues to have effect even if the individual ceases to be such a worker or person (as the case may be).

Notice of banning order

- (4) The Commissioner must, as soon as is practicable after deciding to make the banning order, give the individual a written notice that:
 - (a) sets out the decision; and
 - (b) sets out the reasons for the decision; and
 - (c) specifies whether the order applies generally or the order is of limited application; and
 - (d) if the order is of limited application—specifies that limited application; and
 - (e) specifies the day on which the order takes effect; and
 - (f) if the order is to cease to have effect on a particular day—specifies that day; and
 - (g) specifies any conditions to which the order is subject; and
 - (h) sets out the effect of subsection (3); and
 - (i) states how the individual may apply for reconsideration of the decision.
- (5) If the Commissioner gives a notice under subsection (4) to an individual who is an aged care worker, or a governing person, of an approved provider, the Commissioner must, as soon as is practicable, give the provider a copy of the notice.

74GD Contraventions of banning orders etc.

- (1) An individual contravenes this subsection if:
 - (a) a banning order against the individual is in force; and
 - (b) the individual engages in conduct; and
 - (c) the conduct breaches the banning order or a condition to which the order is subject.

Civil penalty: 1,000 penalty units.

- (2) A corporation contravenes this subsection if:
 - (a) the corporation is an approved provider; and
 - (b) an individual is an aged care worker, or a governing person, of the approved provider; and
 - (c) a banning order against the individual is in force; and

- (d) the corporation fails to take reasonable steps to ensure that the individual does not engage in conduct that breaches the banning order or a condition to which the order is subject.

Civil penalty: 1,000 penalty units.

74GE Notice of intention to make a banning order

- (1) Before the Commissioner makes a banning order against an individual, the Commissioner must, by written notice, notify the individual that the Commissioner is considering making the order.
- (2) Subsection (1) does not apply if the Commissioner reasonably believes that there is an immediate and severe risk to the safety, health or well-being of one or more care recipients if the banning order is not made against the individual.
- (3) The notice must:
 - (a) set out the reasons why the Commissioner is considering making the banning order against the individual; and
 - (b) invite the individual to make submissions, in writing, to the Commissioner in relation to the matter within 14 days after receiving the notice; and
 - (c) inform the individual that the Commissioner may, after considering any submissions made by the individual, make the banning order against the individual.
- (4) The Commissioner must consider any submissions made by the individual in accordance with the notice.

74GF Variation or revocation of a banning order etc. on the Commissioner's own initiative

- (1) The Commissioner may, on the Commissioner's own initiative, vary or revoke a banning order made against an individual if the Commissioner is satisfied that it is appropriate to do so.
- (2) Without limiting subsection (1), the Commissioner may in varying a banning order do either or both of the following:
 - (a) vary, or revoke, a condition to which the order is subject;

- (b) specify one or more new conditions to which the order is to be subject.
- (3) If the Commissioner decides to vary or revoke a banning order made against the individual, the Commissioner must, as soon as is practicable, give the individual 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) if a condition to which the order is subject is varied—sets out the condition as varied; and
 - (e) specifies any conditions to which the order is subject that have been revoked; and
 - (f) specifies any new conditions to which the order is to be subject; and
 - (g) states how the individual may apply for reconsideration of the decision.
- (4) If the Commissioner gives a notice under subsection (3) to an individual who is an aged care worker, or a governing person, of an approved provider, the Commissioner must, as soon as is practicable, give the provider a copy of the notice.
- (5) A variation or revocation of a banning order is not a legislative instrument.

74GG Variation or revocation of a banning order on application made by an individual

Application for variation or revocation

- (1) If a banning order has been made against an individual, the individual may apply to the Commissioner for the order to be varied or revoked.

Note: See section 74GH for the variation or revocation of a condition to which a banning order is subject.

- (2) The application must:
 - (a) be made in writing; and

- (b) be in a form approved by the Commissioner; and
- (c) be accompanied by any documents or information specified by the Commissioner.

Variation or revocation of banning order

- (3) If an application is made under subsection (1) for the variation or revocation of a banning order made against an individual, the Commissioner may vary or revoke the order if satisfied it is appropriate to do so.

Notice of intention not to vary or revoke banning order

- (4) If the Commissioner proposes not to vary or revoke the banning order, the Commissioner must give the individual a written notice that:
 - (a) sets out the reasons why the Commissioner is proposing not to vary or revoke the order; and
 - (b) invites the individual 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) informs the individual that the Commissioner may, after considering any submissions made by the individual, decide not to vary or revoke the order.
- (5) The Commissioner must consider any submissions made by the individual in accordance with the notice.

Notice of decision

- (6) If the Commissioner decides to vary or revoke the banning order, the Commissioner must, as soon as is practicable, give the individual 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 individual may apply for reconsideration of the decision.
- (7) If the Commissioner decides not to vary or revoke the banning order, the Commissioner must, as soon as is practicable, give the individual a written notice that:
 - (a) sets out the decision; and
 - (b) sets out the reasons for the decision; and
 - (c) states how the individual may apply for reconsideration of the decision.

Other

- (8) A variation or revocation of a banning order is not a legislative instrument.

74GH Variation or revocation of a condition to which a banning order is subject on application made by an individual

Application for variation or revocation of condition

- (1) If a banning order has been made against an individual, the individual may apply to the Commissioner for a condition to which the order is subject to be varied or revoked.
- (2) The application must:
 - (a) be made in writing; and
 - (b) be in a form approved by the Commissioner; and
 - (c) be accompanied by any documents or information specified by the Commissioner.

Variation or revocation of condition etc.

- (3) If an application is made under subsection (1) for the variation or revocation of a condition to which a banning order made against an individual is subject, the Commissioner may do either or both of the following things if satisfied it is appropriate to do so:
 - (a) vary or revoke the condition;
 - (b) specify one or more new conditions to which the order is to be subject.

Notice of intention not to vary or revoke condition etc.

- (4) If the Commissioner proposes not to vary or revoke the condition to which the banning order is subject, or proposes to specify one or more new conditions to which the order is to be subject, the Commissioner must give the individual a written notice that:
- (a) sets out the reasons why the Commissioner is proposing not to vary or revoke the condition or is proposing to specify those new conditions; and
 - (b) invites the individual 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) informs the individual that the Commissioner may, after considering any submissions made by the individual, decide not to vary or revoke the condition or to specify those new conditions.
- (5) The Commissioner must consider any submissions made by the individual in accordance with the notice.

Notice of decision

- (6) If the Commissioner decides to do either or both of the things mentioned in subsection (3) in relation to the banning order, the Commissioner must, as soon as is practicable, give the individual a written notice that:
- (a) sets out the decision; and
 - (b) sets out the reasons for the decision; and
 - (c) if a condition to which the order is subject is varied—sets out the condition as varied and specifies the day on which the variation takes effect; and
 - (d) if a condition to which the order is subject is revoked—specifies the day on which the revocation takes effect; and
 - (e) specifies any new conditions to which the order is to be subject and when they take effect; and
 - (f) states how the individual may apply for reconsideration of the decision.

- (7) If the Commissioner decides not to do either of the things mentioned in subsection (3) in relation to the banning order, the Commissioner must, as soon as is practicable, give the individual a written notice that:
- (a) sets out the decision; and
 - (b) sets out the reasons for the decision; and
 - (c) states how the individual may apply for reconsideration of the decision.

Other

- (8) A variation or revocation of a banning order is not a legislative instrument.

74GI Register of banning orders

- (1) The Commissioner must establish and maintain a register that includes the following information in relation to each individual against whom a banning order has been made at any time:
- (a) the name of the individual;
 - (b) the individual's ABN (if any);
 - (c) the details of the banning order made against the individual (including any conditions to which the order is subject);
 - (d) if an application has been made under subsection 74GG(1) for the revocation of the banning order, and the application has not been finally determined—a statement to that effect;
 - (e) if a request has been made under subsection 74K(1) for the reconsideration of a decision to make the banning order or not to revoke the banning order, and a reconsideration decision has not yet been made—a statement to that effect;
 - (f) if a decision has been made under subsection 74M(1) to reconsider a decision to make the banning order or not to revoke the banning order, and a reconsideration decision has not yet been made—a statement to that effect;
 - (g) if an application has been made to the Administrative Appeals Tribunal for review of a reconsideration decision that relates to a decision to make the banning order or not to revoke the banning order, and the application has not been finally determined—a statement to that effect;

- (h) any other information specified in the rules.
- (2) Subsection (1) applies in relation to a banning order even if the banning order is no longer in force.
- (3) Despite subsection (2), subsection (1) does not apply in relation to a banning order that is no longer in force because:
- (a) the banning order has been revoked under section 74GG; or
 - (b) the decision to make the banning order has been set aside on reconsideration under Part 8B or on review.
- (4) The Commissioner must ensure that the register is kept up-to-date.
- (5) The register may be kept in any form that the Commissioner considers appropriate.
- (6) The rules must make provision for, or in relation to, the correction of information that is included in the register, including how an individual may access information about the individual that is included in the register and seek the correction of such information.
- (7) The rules may make provision for, or in relation to, the following matters:
- (a) making the register, in whole or in part, publicly available;
 - (b) making specified information that is included in the register publicly available;
 - (c) any other matter relating to the administration or operation of the register.

27 Section 74J (after table item 6)

Add:

6A	A decision to make a banning order against an individual	The individual
6B	A decision under section 74GF to vary a banning order made against an individual	The individual
6C	A decision under section 74GG not to vary or revoke a banning order made against an individual	The individual
6D	A decision under section 74GH not to vary or revoke a condition to which a banning order	The individual

against an individual is subject

6E	A decision under section 74GH to specify one or more new conditions to which a banning order against an individual is subject	The individual
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Schedule 4—Extension of incident management and reporting etc.

Part 1—Main amendments

Aged Care Act 1997

1 Paragraph 54-1(1)(e)

Omit “if the type of aged care is residential care or flexible care provided in a residential setting—”.

2 Subsection 54-3(2)

Omit “residential care, or flexible care provided in a residential setting, to a *residential”, substitute “*aged care to a”.

3 Paragraphs 54-3(2)(a) to (h)

Omit “residential care recipient”, substitute “care recipient”.

4 Subsection 54-3(3)

Repeal the subsection.

5 Paragraph 54-3(5)(a)

Omit “*residential”.

6 Paragraph 54-3(5)(b)

Omit “residential”.

7 Paragraphs 54-3(7)(a) and 54-4(1)(d)

Omit “*residential”.

8 Clause 1 of Schedule 1 (definition of *residential care recipient*)

Repeal the definition.

9 Application provision

The amendments of the *Aged Care Act 1997* made by this Part apply in relation to an incident that occurs, is alleged to have occurred or is suspected of having occurred on or after 1 December 2022.

Part 2—Other amendments

Aged Care Quality and Safety Commission Act 2018

10 Section 7 (definition of reportable incident)

Repeal the definition, substitute:

reportable incident means:

- (a) for an approved provider—a reportable incident within the meaning of the Aged Care Act; or
- (b) for a service provider of a Commonwealth-funded aged care service—an incident that is a reportable incident under the funding agreement that relates to the service.

11 Subsection 21(7)

Omit “reportable incidents”, substitute “a reportable incident for an approved provider”.

12 Paragraph 21(7)(a)

Omit “a reportable incident, which may include requiring an”, substitute “such a reportable incident, which may include requiring the”.

13 Paragraphs 21(7)(b) and (c)

Before “a reportable”, insert “such”.

14 At the end of the section 21

Add:

- (8) Without limiting subsection (1), the rules may make provision for, or in relation to, how the Commissioner deals with a reportable incident for a service provider of a Commonwealth-funded aged care service, including in relation to one or more of the following:
 - (a) action that may be taken by the Commissioner in dealing with such a reportable incident, which may include requiring the service provider to do something;

- (b) the circumstances in which the Commissioner may authorise or carry out an inquiry in relation to such a reportable incident on the Commissioner's own initiative;
- (c) how information given to the Commissioner about such a reportable incident may be dealt with.

15 At the end of Part 7

Add:

Division 5—Other matters

63AA Authorisations for the purposes of the *Privacy Act 1988*

- (1) A collection of sensitive information (within the meaning of the *Privacy Act 1988*) is taken to be authorised by this Act for the purposes of paragraph 3.4(a) of Australian Privacy Principle 3 if:
 - (a) the information is collected by a service provider of a Commonwealth-funded aged care service; and
 - (b) the service provider has a responsibility under the funding agreement that relates to that service to manage and report incidents, and to take reasonable steps to prevent incidents, in accordance with that agreement; and
 - (c) the information is collected for the purposes of complying with that responsibility.
- (2) A use or disclosure of personal information (within the meaning of the *Privacy Act 1988*) is taken to be authorised by this Act for the purposes of paragraph 6.2(b) of Australian Privacy Principle 6 if:
 - (a) the use or disclosure is by a service provider of a Commonwealth-funded aged care service; and
 - (b) the service provider has a responsibility under the funding agreement that relates to that service to manage and report incidents, and to take reasonable steps to prevent incidents, in accordance with that agreement; and
 - (c) the use or disclosure is for the purposes of complying with that responsibility.

16 Application provisions

- (1) Subsection 21(8) of the *Aged Care Quality and Safety Commission Act 2018*, as inserted by this Part, applies in relation to a reportable incident notified after the commencement of this item.
- (2) Section 63AA of the *Aged Care Quality and Safety Commission Act 2018*, as inserted by this Part, applies in relation to a collection, use or disclosure of information that occurs after the commencement of this item.

Schedule 5—Governance of approved providers etc.

Part 1—Amendments

Aged Care Act 1997

1 Section 6-1

Omit “sets out offences relating to disqualified individuals and”, substitute “deals with the *key personnel of approved providers and sets out”.

2 Section 9-1 (heading)

Repeal the heading, substitute:

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

3 Subsection 9-1(1)

Omit “28 days”, substitute “14 days”.

4 Subsection 9-1(3A)

Repeal the subsection.

5 Subsection 9-1(4)

Omit “28 day”, substitute “14 day”.

6 After section 9-1

Insert:

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
 - (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.

7 Section 9-2 (heading)

After “**status**”, insert “**etc.**”.

8 After subsection 9-2(1)

Insert:

(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.

9 Subsections 9-2(2) and (3)

Omit “with the request”, substitute “with a request made under subsection (1) or (1A)”.

10 Subsection 9-2(4)

Omit “The request”, substitute “A request made under subsection (1) or (1A)”.

11 Division 10A (heading)

Repeal the heading, substitute:

Division 10A—Key personnel of approved providers

12 Section 10A-2

Repeal the section, substitute:

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 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.

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:

- (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.

13 Paragraphs 10A-3(1)(a) to (c)

Repeal the paragraphs, substitute:

- (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.

14 Section 53-1

Omit “basic”.

15 Section 63-1A

Repeal the section, substitute:

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).

16 After section 63-1C

Insert:

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:
- (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:
 - (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
 - (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;
 - (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.

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;
- 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.

17 Clause 1 of Schedule 1 (definition of *disqualified individual*)

Repeal the definition.

18 Clause 1 of Schedule 1

Insert:

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.

local government authority has the same meaning as in the *Quality and Safety Commission Act.

reporting period for an approved provider has the meaning given by subsection 63-1G(3).

State or Territory authority has the same meaning as in the *Quality and Safety Commission Act.

suitability matter in relation to an individual has the same meaning as in the *Quality and Safety Commission Act.

Aged Care Quality and Safety Commission Act 2018

19 Section 7

Insert:

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

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

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

21 Section 7 (definition of ***disqualified individual***)

Repeal the definition.

22 Section 7 (paragraph (a) of the definition of ***eligible adviser***)

Repeal the paragraph.

23 Section 7

Insert:

NDIS banning order means a banning order made under section 73ZN of the *National Disability Insurance Scheme Act 2013*.

suitability matters in relation to an individual has the meaning given by section 8C.

24 Section 8A

Repeal the section.

25 After section 8B

Insert:

8C Meaning of *suitability matters* in relation to an individual

- (1) Each of the following matters is a **suitability matter** in relation to an individual:
- (a) the individual's experience in providing, at any time, aged care or other relevant forms of care;
 - (b) whether a NDIS banning order against the individual is, or has at any time been, in force;
 - (c) whether the individual has at any time been convicted of an indictable offence;
 - (d) whether a civil penalty order against the individual has been made at any time;
 - (e) whether the individual is, or has at any time been, an insolvent under administration;
 - (f) whether the individual is or has at any time been the subject of adverse findings or enforcement action by any of the following:
 - (i) a Department of the Commonwealth or of a State or Territory;
 - (ii) the Australian Securities and Investments Commission;
 - (iii) the Australian Charities and Not-for-profits Commission;
 - (iv) the Australian Competition and Consumer Commission;

- (v) the Australian Prudential Regulation Authority;
 - (vi) the Australian Crime Commission;
 - (vii) AUSTRAC;
 - (viii) another body established for a public purpose by or under a law of the Commonwealth;
 - (ix) a State or Territory authority (including, but not limited to, a body that is equivalent to a body mentioned in subparagraphs (ii) to (vii));
 - (x) a local government authority;
 - (g) whether the individual:
 - (i) is, or has at any time been, the subject of any findings or judgment in relation to fraud, misrepresentation or dishonesty in any administrative, civil or criminal proceedings; or
 - (ii) is currently party to any proceedings that may result in the individual being the subject of such findings or judgment;
 - (h) whether the individual is, or has at any time been, disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001*;
 - (i) any other matter specified in the rules.
- (2) This section does not affect the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them).

26 Paragraph 63D(2)(c)

Repeal the paragraph, substitute:

- (c) each individual who is one of the key personnel of the person is suitable to be involved in the provision of aged care.

27 After paragraph 63D(3)(e)

Insert:

- (ea) whether the person has at any time been convicted of an indictable offence;

- (eb) whether a civil penalty order against the person has been made at any time;

28 At the end of section 63D

Add:

Suitability of key personnel

- (7) In deciding whether an individual who is one of the key personnel of the applicant is suitable to be involved in the provision of aged care, the Commissioner must consider the suitability matters in relation to the individual.
- (8) Subsection (7) does not limit the matters the Commissioner may consider in deciding the matter mentioned in that subsection.

29 After paragraph 63J(3)(e)

Insert:

- (ea) whether the entity has at any time been convicted of an indictable offence;
- (eb) whether a civil penalty order against the entity has been made at any time;

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

Omit “the provider’s responsibilities under paragraph 54-1(1)(e) or (f) of the Aged Care Act”, substitute “certain aged care responsibilities”.

31 After subsection 74EE(1A)

Insert:

Information relating to reporting period

- (1B) The Commissioner may give to an approved provider a written notice if the Commissioner:
- (a) is satisfied that the approved provider is not complying with the provider’s responsibility under section 63-1G of the Aged Care Act; or
- (b) is aware of information that suggests that the approved provider may not be complying with that responsibility.

32 Section 74J (table item 6, column 1)

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

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

Add:

7	A decision to make a determination under subsection 10A-2(1) of the Aged Care Act in relation to an individual who is one of the key personnel of an approved provider	The individual or approved provider
8	A decision not to make a determination under subsection 63-1E(3) of the Aged Care Act in relation to an approved provider	The approved provider
9	A decision under subsection 63-1F(1) of the Aged Care Act to vary or revoke a determination made under subsection 63-1E(3) in relation to an approved provider	The approved provider

Part 2—Application and transitional provisions

34 Definitions

In this Part:

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

commencement day means 1 December 2022.

Commission Act means the *Aged Care Quality and Safety Commission Act 2018*.

35 Application—notification of change of circumstances

The amendments of section 9-1 of the Aged Care Act made by Part 1 of this Schedule apply in relation to a change of circumstances that occurs on or after the commencement day.

36 Application—responsibilities of approved providers relating to their governing bodies etc.

Existing approved providers

- (1) If a person is an approved provider immediately before the commencement day, section 63-1D of the Aged Care Act, as inserted by Part 1 of this Schedule, applies in relation to the person on and after 1 December 2023.

New approved providers

- (2) If a person becomes an approved provider on or after the commencement day, section 63-1D of the Aged Care Act, as inserted by Part 1 of this Schedule, applies in relation to the person on and after the day the person becomes an approved provider.

37 Application—responsibility relating to the giving of information relating to reporting periods

Section 63-1G of the Aged Care Act, as inserted by Part 1 of this Schedule, applies in relation to:

- (a) if paragraph 63-1G(3)(a) applies in relation to the provider—the reporting period for the provider that starts on 1 July 2022 and each later reporting period for the provider; or

- (b) if paragraph 63-1G(3)(b) applies in relation to the provider—the reporting period that starts on the first day determined for the provider under that paragraph and each later reporting period for the provider.

38 Application—responsibilities relating to constitution of certain approved providers

Existing approved providers

- (1) If a person is an approved provider immediately before the commencement day, section 63-1H of the Aged Care Act, as inserted by Part 1 of this Schedule, applies in relation to the person on and after 1 December 2023.

New approved providers

- (2) If a person becomes an approved provider on or after the commencement day, section 63-1H of the Aged Care Act, as inserted by Part 1 of this Schedule, applies in relation to the person on and after the day the person becomes an approved provider.

39 Application—new applications for approval of person as provider of aged care

The amendments of section 63D of the Commission Act made by Part 1 of this Schedule apply in relation to an application that is made on or after the commencement day.

40 Transitional—pending applications for approval of a person as provider of aged care

- (1) This item applies in relation to an application made under subsection 63B(1) of the Commission Act if:
 - (a) the application was made before the commencement day; and
 - (b) immediately before that day, the Commissioner has not made a decision on the application.
- (2) Section 63D of the Commission Act, as in force immediately before the commencement day, continues to apply in relation to the application.

41 Transitional rules

- (1) The Minister may, by legislative instrument, make rules prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendment of section 10A-3 of the Aged Care Act made by Part 1 of this Schedule.
- (2) 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;
 - (e) directly amend the text of this Schedule.
- (3) This Part (other than subitem (2)) does not limit the rules that may be made for the purposes of subitem (1).

Schedule 6—Information sharing

Part 1—Amendments

Aged Care Act 1997

1 Before paragraph 86-3(1)(d)

Insert:

- (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

2 Subparagraph 86-3(1)(f)(i)

After “breaches”, insert “, or may breach,”.

3 At the end of section 86-3

Add:

- (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 Act 1986*;
- (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.

Aged Care Quality and Safety Commission Act 2018

4 At the end of Division 2 of Part 7

Add:

58A Additional purpose of NDIS worker screening database

It is also a purpose of the NDIS worker screening database under subsection 181Y(3) of the *National Disability Insurance Scheme Act 2013* to share information in that database with the following:

- (a) the Commissioner, for the purpose of assisting in the performance of the functions, or the exercise of the powers, of the Commissioner;
- (b) the Secretary, for the purpose of assisting in the performance of the functions, or the exercise of the powers, of the Secretary under the Aged Care Act.

5 After paragraph 61(1)(d)

Insert:

- (da) if the Commissioner 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; or

6 Subparagraph 61(1)(f)(i)

After “breaches”, insert “, or may breach,”.

7 After paragraph 61(1)(i)

Insert:

(ia) if:

- (i) under a law of a State or Territory, a person or body has the function, or functions that include the function, of dealing with complaints or information about the provision of health or community services by a person or body; and
- (ii) the Commissioner believes, on reasonable grounds, that the information will assist in the performance of that function;

to the person or body for the purposes of performing that function; or

(ib) if:

- (i) a person or body performs functions or exercises powers under, or for the purposes of, an NDIS worker screening law (within the meaning of the *National Disability Insurance Scheme Act 2013*); and
- (ii) the Commissioner believes, on reasonable grounds, that the information will assist in the performance of those functions or the exercise of those powers;

to the person or body for the purposes of performing those functions or exercising those powers; or

8 At the end of section 61

Add:

(3) In this section:

receiving Commonwealth body means any of the following:

- (a) the Military Rehabilitation and Compensation Commission;
- (b) the National Disability Insurance Scheme Launch Transition Agency;
- (c) the NDIS Quality and Safeguards Commission;
- (d) the Repatriation Commission;
- (e) the Department administered by the Minister administering the *Disability Services Act 1986*;
- (f) the Department administered by the Minister administering the *Veterans' Entitlements Act 1986*;
- (g) 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 prescribed in the rules; that Department or authority.

Repatriation Commission means the Repatriation Commission continued in existence by section 179 of the *Veterans' Entitlements Act 1986*.

Military Rehabilitation and Compensation Act 2004

9 Subsection 409(2) (after table item 2C)

Insert:

2D	A receiving Commonwealth body	A purpose relating to the performance of a function, or the exercise of a power, by that body
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10 After subsection 409(2)

Insert:

(2A) If:

- (a) a person is entitled to treatment under Chapter 6 of this Act; and
- (b) the treatment is provided to the person through an arrangement, including a contractual arrangement, with a body that is not a corporate Commonwealth entity or a non-corporate Commonwealth entity;

the Commission (or a staff member assisting the Commission) may provide any information that relates to the provision of that treatment:

- (c) to a receiving Commonwealth body; and
- (d) for a purpose relating to the performance of a function, or the exercise of a power, by that body.

11 Subsection 409(5)

Insert:

corporate Commonwealth entity has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

non-corporate Commonwealth entity has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

receiving Commonwealth body means any of the following:

- (a) the Aged Care Quality and Safety Commission;
- (b) the National Disability Insurance Scheme Launch Transition Agency;
- (c) the NDIS Quality and Safeguards Commission;
- (d) the Repatriation Commission;
- (e) the Department administered by the Minister administering the *Aged Care Act 1997*;
- (f) the Department administered by the Minister administering the *Disability Services Act 1986*;
- (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 prescribed in the regulations;that Department or authority.

Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988

12 Subsection 151A(1) (at the end of the table)

Add:

- 7 A receiving Commonwealth body A purpose relating to the performance of a function, or the exercise of a power, by that body

13 After subsection 151A(1B)

Insert:

(1C) If:

- (a) a person who is, or was, an employee is entitled to compensation for medical treatment under this Act; and
- (b) the treatment is provided to the person through an arrangement, including a contractual arrangement, with a body that is not a corporate Commonwealth entity or a non-corporate Commonwealth entity;

the MRCC (or a staff member assisting the MRCC) may provide any information that relates to the provision of that treatment:

- (c) to a receiving Commonwealth body; and
- (d) for a purpose relating to the performance of a function, or the exercise of a power, by that body.

14 Paragraphs 151A(2)(a) and (b)

Omit “or (1B)”, substitute “, (1B) or (1C)”.

15 Subsection 151A(4)

Insert:

corporate Commonwealth entity has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

non-corporate Commonwealth entity has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

receiving Commonwealth body means any of the following:

- (a) the Aged Care Quality and Safety Commission;
- (b) the National Disability Insurance Scheme Launch Transition Agency;
- (c) the NDIS Quality and Safeguards Commission;
- (d) the Repatriation Commission;

- (e) the Department administered by the Minister administering the *Aged Care Act 1997*;
- (f) the Department administered by the Minister administering the *Disability Services Act 1986*;
- (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 prescribed in the regulations;that Department or authority.

Veterans' Entitlements Act 1986

16 After subsection 130(2)

Insert:

(2A) If:

- (a) an eligible person is entitled to treatment under Part V of this Act; and
- (b) the treatment is provided to the eligible person through an arrangement, including a contractual arrangement, with a body that is not a corporate Commonwealth entity or a non-corporate Commonwealth entity;

the Secretary or another officer of the Department may provide any information that relates to the provision of that treatment:

- (c) to a receiving Commonwealth body; and
- (d) for a purpose relating to the performance of a function, or the exercise of a power, by that body.

17 Subsection 130(3)

After "subsection (2)", insert "or (2A)".

18 Section 131

Insert:

corporate Commonwealth entity has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

eligible person means a person eligible under section 85, 86, 88A or 88B to be provided with treatment.

non-corporate Commonwealth entity has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

receiving Commonwealth body means any of the following:

- (a) the Aged Care Quality and Safety Commission;
 - (b) the Commission;
 - (c) the Military Rehabilitation and Compensation Commission;
 - (d) the National Disability Insurance Scheme Launch Transition Agency;
 - (e) the NDIS Quality and Safeguards Commission;
 - (f) the Department administered by the Minister administering the *Aged Care Act 1997*;
 - (g) the Department administered by the Minister administering the *Disability Services 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 prescribed in the regulations;
- that Department or authority.

Part 2—Application provisions

19 Application—disclosure or provision of information

- (1) The amendments of the *Aged Care Act 1997* made by this Schedule apply in relation to the disclosure of information on or after the commencement of this item, whether the information was obtained before, on or after that commencement.
- (2) The amendments of section 61 of the *Aged Care Quality and Safety Commission Act 2018* made by this Schedule apply in relation to the disclosure of information on or after the commencement of this item, whether the information was obtained before, on or after that commencement.
- (3) The amendments of the *Military Rehabilitation and Compensation Act 2004* made by this Schedule apply in relation to the provision of information on or after the commencement of this item, whether the information was obtained before, on or after that commencement.
- (4) The amendments of the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* made by this Schedule apply in relation to the provision of information on or after the commencement of this item, whether the information was obtained before, on or after that commencement.
- (5) The amendments of the *Veterans' Entitlements Act 1986* made by this Schedule apply in relation to the provision of information on or after the commencement of this item, whether the information was obtained before, on or after that commencement.

Schedule 7—Use of refundable deposits and accommodation bonds

Part 1—Amendments

Aged Care Act 1997

1 Section 9-3B (heading)

After “information”, insert “or documents”.

2 Subsection 9-3B(2)

After “information”, insert “or documents”.

3 After paragraph 9-3B(2)(d)

Insert:

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

4 After subsection 9-3B(2)

Insert:

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

5 Subsection 9-3B(3)

After “information”, insert “or documents”.

6 Paragraph 9-3B(4)(b)

Omit “information is”, substitute “information or documents are”.

7 Paragraph 9-3B(5)(a)

After “information”, insert “or documents”.

8 After subsection 9-3B(5A)

Insert:

- (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*.

9 At the end of section 9-3B

Add:

- (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.

10 Subparagraph 52N-1(2)(c)(iv)

Omit “paragraph (a) or (b)”, substitute “paragraph (a), (b), (d) or (e)”.

11 Paragraphs 52N-2(1)(d) and (2)(g)

Omit “2 years”, substitute “5 years”.

12 At the end of Division 52N

Add:

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:

- (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.

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 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.

13 Clause 1 of Schedule 1

Insert:

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.

Aged Care Quality and Safety Commission Act 2018

14 Paragraph 74EB(1)(d)

After “Division 9”, insert “, or section 52N-3,”.

Part 2—Application provisions

15 Definitions

In this Part:

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

commencement day means the day this item commences.

16 Application—approved provider may be requested to give information or documents

Section 9-3B of the Aged Care Act, as amended by Part 1 of this Schedule, applies in relation to a use of a refundable deposit or accommodation bond that occurs before, on or after the commencement day.

17 Application—offences relating to refundable deposits and accommodation bonds

The amendment of paragraphs 52N-2(1)(d) and (2)(g) of the Aged Care Act made by Part 1 of this Schedule applies in relation to a use of a refundable deposit or accommodation bond that occurs on or after the commencement day.

18 Application—borrower may be requested to give information or documents

Section 52N-3 of the Aged Care Act, as inserted by Part 1 of this Schedule, applies in relation to a use of a refundable deposit or accommodation bond that occurs before, on or after the commencement day.

Schedule 8—Independent Health and Aged Care Pricing Authority

Part 1—Amendment of the National Health Reform Act 2011

National Health Reform Act 2011

1 Paragraph 3(c)

Omit “Independent Hospital Pricing Authority”, substitute
“Independent Health and Aged Care Pricing Authority”.

2 Section 4

Omit “Independent Hospital Pricing Authority” (wherever occurring),
substitute “Independent Health and Aged Care Pricing Authority”.

3 Section 4

Before “are as follows”, insert “in relation to public hospitals and health
care pricing and costing”.

4 Section 4

Omit:

- | |
|---|
| <p>(c) to publish this, and other information, for the purpose of
informing decision makers in relation to the funding of
public hospitals.</p> |
|---|

substitute:

- | |
|--|
| <p>(c) to publish this, and other information, for the purpose of
informing decision makers in relation to the funding of
public hospitals;</p> <p>(d) if requested by the Minister or the Secretary, to advise
the Commonwealth in relation to certain health care
pricing and costing matters.</p> |
|--|

5 Section 4

Before:

- The main function of the Administrator of the National Health Funding Pool is to administer the National Health Funding Pool.

insert:

- The main functions of the Independent Health and Aged Care Pricing Authority in relation to aged care are as follows:
 - (a) to provide advice about certain aged care pricing and costing matters to each relevant Commonwealth Minister;
 - (b) to perform such functions as are conferred on the Independent Health and Aged Care Pricing Authority by the Aged Care Act.

6 Section 5

Insert:

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

Aged Care Act function has the meaning given by paragraph 131A(1)(e).

aged care information means information (including protected information within the meaning of the Aged Care Act) obtained in the course of:

- (a) the performance of the following functions, or the exercising of powers for or in connection with the performance of the following functions:
 - (i) a function of the Pricing Authority mentioned in subsection 131A(1) (other than an Aged Care Act function);
 - (ii) a function of the Aged Care Advisory Committee (other than a function that relates to an Aged Care Act function of the Pricing Authority);
 - (iii) a function of a subcommittee established under section 204V to advise or assist the Aged Care Advisory Committee in the performance of a function of the Aged

Care Advisory Committee covered by subparagraph (ii) of this paragraph;

- (iv) a function of a committee established under section 205 to advise or assist the Pricing Authority in the performance of a function of the Pricing Authority mentioned in subsection 131A(1) (other than an Aged Care Act function); or
- (b) assisting, under section 204Y or 207, in the performance of a function covered by paragraph (a) of this definition.

Aged Care Minister means the Minister administering the Aged Care Act.

health care pricing and costing information means information obtained in the course of:

- (a) the performance of the following functions, or the exercising of powers for or in connection with the performance of the following functions:
 - (i) a function of the Pricing Authority mentioned in subsection 131(1A);
 - (ii) a function of the Clinical Advisory Committee mentioned in paragraph 177(ba);
 - (iii) a function of a subcommittee established under section 191 to advise or assist the Clinical Advisory Committee in the performance of a function of the Clinical Advisory Committee mentioned in paragraph 177(ba);
 - (iv) a function of the Jurisdictional Advisory Committee mentioned in subparagraph 196(1)(a)(va);
 - (v) a function of a committee established under section 205 to advise or assist the Pricing Authority in the performance of a function of the Pricing Authority mentioned in subsection 131(1A); or
- (b) assisting, under section 194, 204 or 207, in the performance of a function mentioned in paragraph (a) of this definition.

member of the Aged Care Advisory Committee includes the Chair of the Aged Care Advisory Committee.

7 Section 5 (paragraph (b) of the definition of *member of the Pricing Authority*)

Omit “the Deputy Chair”, substitute “each Deputy Chair”.

8 Section 5 (definition of *Pricing Authority*)

Omit “Independent Hospital Pricing Authority”, substitute “Independent Health and Aged Care Pricing Authority”.

9 Section 5 (at the end of the definition of *protected Pricing Authority information*)

Add:

; but does not include protected information (within the meaning of the Aged Care Act) that is not aged care information.

10 Section 5

Insert:

relevant Commonwealth Minister means the following:

- (a) the Minister;
- (b) if the Minister is not also the Aged Care Minister—the Aged Care Minister.

11 Subsection 6(3)

Omit “7 offices”, substitute “6 offices”.

12 Subsection 6(3)

Omit “Deputy Chair”, substitute “2 Deputy Chairs”.

13 Chapter 4 (heading)

Repeal the heading, substitute:

Chapter 4—Independent Health and Aged Care Pricing Authority

14 Section 128

Omit “Independent Hospital Pricing Authority” (first and second occurring), substitute “Independent Health and Aged Care Pricing Authority”.

15 Section 128

Before “are as follows”, insert “in relation to public hospitals and health care pricing and costing”.

16 Section 128

Omit:

- (c) to publish this, and other information, in a report each year for the purpose of informing decision makers in relation to the funding of public hospitals.

substitute:

- (c) to publish this, and other information, in a report each year for the purpose of informing decision makers in relation to the funding of public hospitals;
- (d) if requested by the Minister or the Secretary, to advise the Commonwealth in relation to health care pricing and costing matters.

17 Section 128

Omit:

- This Chapter also sets up the Clinical Advisory Committee and the Jurisdictional Advisory Committee to assist the Independent Hospital Pricing Authority.

substitute:

- The main functions of the Independent Health and Aged Care Pricing Authority in relation to aged care are as follows:
 - (a) to advise each relevant Commonwealth Minister in relation to aged care pricing and costing matters;
 - (b) to perform such functions as are conferred on the Independent Health and Aged Care Pricing Authority by the Aged Care Act.
- This Chapter also sets up the following committees to assist the Independent Health and Aged Care Pricing Authority:

- | |
|---|
| <ul style="list-style-type: none">(a) the Clinical Advisory Committee;(b) the Jurisdictional Advisory Committee;(c) the Aged Care Advisory Committee. |
|---|

18 Section 129 (heading)

Repeal the heading, substitute:

129 Independent Health and Aged Care Pricing Authority

19 Subsection 129(1)

Repeal the subsection, substitute:

- (1) The body known immediately before the commencement of this subsection as the Independent Hospital Pricing Authority is continued in existence with the new name, the Independent Health and Aged Care Pricing Authority.

Note 1: See also section 25B of the *Acts Interpretation Act 1901*.

Note 2: In this Act, **Pricing Authority** means the Independent Health and Aged Care Pricing Authority—see section 5.

20 At the end of section 129

Add:

- (3) The Parliament also intends for the body to perform functions relating to:
 - (a) health care pricing and costing matters; and
 - (b) aged care matters.

21 Section 130

Before “The object”, insert “(1)”.

22 At the end of section 130

Add:

- (2) The object of the Pricing Authority is also to:
 - (a) on request, give independent advice to the Commonwealth in relation to health care pricing and costing matters; and

- (b) give independent advice to the Commonwealth in relation to aged care pricing and costing matters; and
- (c) perform other functions conferred on the Pricing Authority by the Aged Care Act or legislative instruments made under that Act.

23 Section 131 (at the end of the heading)

Add “—public hospitals and health care pricing and costing”.

24 After subsection 131(1)

Insert:

(1A) The Pricing Authority also has the following functions:

- (a) if the Minister or the Secretary requests, in writing, the Pricing Authority to do so—to advise the Commonwealth in relation to one or more health care pricing or costing matters (whether or not the matters relate to health care services provided by public hospitals);
- (b) to conduct, or arrange for the conduct of, costing and other studies:
 - (i) for the purpose of performing the function mentioned in paragraph (a); or
 - (ii) if the Minister or the Secretary requests, in writing, the Pricing Authority to do so;
- (c) to publish (whether on the internet or otherwise) reports and papers relating to the functions mentioned in paragraphs (a) and (b);
- (d) to do anything incidental to or conducive to the performance of any of the above functions.

25 Subsection 131(3)

Omit “its functions”, substitute “the functions mentioned in subsection (1)”.

26 At the end of section 131

Add:

- (4) A request under paragraph (1A)(a) or subparagraph (1A)(b)(ii) is not a legislative instrument.

27 After section 131

Insert:

131A Functions of the Pricing Authority—aged care

- (1) The Pricing Authority also has the following functions:
 - (a) to provide advice to each relevant Commonwealth Minister in relation to one or more aged care pricing or costing matters, including in relation to methods for calculating amounts of subsidies to be paid under the Aged Care Act or the *Aged Care (Transitional Provisions) Act 1997*;
 - (b) such functions relating to aged care (if any) as are specified in regulations made for the purposes of this paragraph;
 - (c) to conduct, or arrange for the conduct of, one or more of the following activities for the purpose of performing a function mentioned in paragraph (a) or (b):
 - (i) the collection and review of data;
 - (ii) costing and other studies;
 - (iii) consultations;
 - (d) to do anything incidental to or conducive to the performance of the above functions;
 - (e) such functions (an *Aged Care Act function*) as are:
 - (i) conferred on the Pricing Authority by the Aged Care Act or a legislative instrument made under that Act; or
 - (ii) specified in regulations made for the purposes of this subparagraph; or
 - (iii) incidental to or conducive to the performance of the functions mentioned in subparagraph (i) or (ii).
- (2) In performing a function mentioned in subsection (1), the Pricing Authority must have regard to:
 - (a) the objects of the Aged Care Act (as mentioned in section 2-1 of that Act); and
 - (b) the objects of the *Aged Care (Transitional Provisions) Act 1997* (as mentioned in section 2-1 of that Act).

28 Before subsection 132(1)

Insert:

Scope

- (1A) This section applies in relation to the functions of the Pricing Authority mentioned in subsection 131(1).

29 Before subsection 133(1)

Insert:

- (1A) This section applies in relation to the functions of the Pricing Authority mentioned in subsection 131(1).

30 Section 134

Repeal the section, substitute:

134 Constitutional limits

- (1) The Pricing Authority may perform its functions only:
- (a) with respect to:
 - (i) the provision of pharmaceutical, sickness or hospital benefits; or
 - (ii) the provision of medical or dental services; or
 - (b) with respect to a corporation to which paragraph 51(xx) of the Constitution applies; or
 - (c) with respect to the granting of financial assistance to a State on such terms and conditions as the Parliament thinks fit; or
 - (d) with respect to matters that are peculiarly adapted to the government of a nation and that cannot otherwise be carried on for the benefit of the nation; or
 - (e) with respect to the executive power of the Commonwealth; or
 - (f) with respect to statistics; or
 - (g) with respect to, or in, a Territory; or
 - (h) with respect to, or in, a Commonwealth place (within the meaning of the *Commonwealth Places (Application of Laws) Act 1970*); or
 - (i) with respect to trade or commerce:
 - (i) between Australia and places outside Australia; or
 - (ii) among the States; or

- (iii) within a Territory, between a State and a Territory or between 2 Territories; or
- (j) with respect to the use of a postal, telegraphic, telephonic or other like service within the meaning of paragraph 51(v) of the Constitution; or
- (k) with respect to the provision of a service to:
 - (i) the Commonwealth; or
 - (ii) an authority of the Commonwealth; for a purpose of the Commonwealth; or
- (l) with respect to insurance to which paragraph 51(xiv) of the Constitution applies; or
- (m) with respect to matters incidental to the execution of any of the legislative powers of the Parliament or the executive power of the Commonwealth.

(2) A term used in this section and the Constitution has the same meaning in this section as it has in the Constitution.

31 Paragraph 143(b)

Repeal the paragraph, substitute:

- (b) a Deputy Chair (Hospital Pricing);
- (ba) a Deputy Chair (Aged Care Pricing);

32 Paragraph 143(c)

Omit “7”, substitute “6”.

33 Section 143 (note)

Omit “the Deputy Chair”, substitute “each Deputy Chair”.

34 Subsection 144(2)

After “Deputy Chair”, insert “(Hospital Pricing)”.

35 Subsection 144(3)

Before “Deputy Chair”, insert “a”.

36 After subsection 144(3)

Insert:

- (3A) The Minister must ensure that the Deputy Chair (Hospital Pricing) and at least one other member of the Pricing Authority have:
- (a) substantial experience or knowledge; and
 - (b) significant standing;
- in either or both of the following fields:
- (c) public hospital strategic leadership or operational management;
 - (d) public hospital pricing and costing.
- (3B) The Minister must ensure that the Deputy Chair (Aged Care Pricing) and at least one other member of the Pricing Authority have:
- (a) substantial experience or knowledge; and
 - (b) significant standing;
- in either or both of the following fields:
- (c) aged care strategic leadership or operational management;
 - (d) aged care pricing and costing.

37 Subsection 146(2) (heading)

Omit “*Deputy Chair*”, substitute “*Deputy Chair (Hospital Pricing)*”.

38 Subsection 146(2)

Omit “Deputy Chair” (wherever occurring), substitute “Deputy Chair (Hospital Pricing)”.

39 After subsection 146(2)

Insert:

Acting Deputy Chair (Aged Care Pricing) of the Pricing Authority

- (2A) The Minister may appoint a person to act as the Deputy Chair (Aged Care Pricing) of the Pricing Authority:
- (a) during a vacancy in the office of the Deputy Chair (Aged Care Pricing) of the Pricing Authority (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the Deputy Chair (Aged Care Pricing) of the Pricing Authority:
 - (i) is absent from duty or Australia; or

(ii) is, for any reason, unable to perform the duties of the office.

40 Subsection 146(3) (heading)

Before “*Deputy Chair*”, insert “*a*”.

41 Subsection 146(3)

Before “Deputy Chair” (wherever occurring), insert “a”.

42 Subsection 146(4)

After “(2)”, insert “, (2A)”.

43 Subsection 152(1)

Repeal the subsection, substitute:

- (1) The Minister may at any time terminate the appointment of:
- (a) the Chair of the Pricing Authority; or
 - (b) the Deputy Chair (Aged Care Pricing) of the Pricing Authority.

44 Subsection 152(2)

After “Deputy Chair”, insert “(Hospital Pricing)”.

45 Subsection 152(3)

Omit “or Deputy Chair”, substitute “or a Deputy Chair”.

46 Subsection 155(2)

Omit “Deputy Chair of the Pricing Authority” (wherever occurring), substitute “Deputy Chair (Hospital Pricing) of the Pricing Authority”.

47 After subsection 155(2)

Insert:

- (2A) If:
- (a) neither the Chair of the Pricing Authority nor the Deputy Chair (Hospital Pricing) of the Pricing Authority is present at a meeting; and

(b) the Deputy Chair (Aged Care Pricing) of the Pricing Authority is present at the meeting;
the Deputy Chair (Aged Care Pricing) of the Pricing Authority is to preside.

48 Subsection 155(3)

Omit “the Deputy Chair”, substitute “either Deputy Chair”.

49 Subsection 157(2)

After “deliberative vote”, insert “and, if the votes are equal, a casting vote”.

50 Subsection 161(1)

Omit “The Pricing Authority may”, substitute “Subject to subsections (3) and (4), the Pricing Authority may”.

51 Subsections 161(2) and (3)

Repeal the subsections, substitute:

- (2) Subject to subsection (4), if:
- (a) the services of an officer or employee mentioned in paragraph 174(a) or (b) are made available to the Pricing Authority in connection with the performance of a function of the Pricing Authority; and
 - (b) the officer or employee is an SES employee or acting SES employee;
- the Pricing Authority may, in writing, delegate the function to the officer or employee.
- (3) The Pricing Authority must not delegate an Aged Care Act function to a member of the Pricing Authority.
- (4) The Pricing Authority must not delegate any of the following functions or powers:
- (a) a function set out in any of paragraphs 131(1)(a) to (f) or paragraph 131(1)(j);
 - (b) a function set out in paragraph 131(1A)(a);
 - (c) a function set out in paragraph 131A(1)(a);

- (d) any other function that involves giving advice to the Minister;
 - (e) a function or power under Part 4.8;
 - (f) the power to make, vary or revoke a legislative instrument.
- (5) In performing a delegated function or exercising a delegated power, the delegate must comply with any written directions of the Pricing Authority.

52 Subparagraph 177(b)(i)

After “Authority”, insert “mentioned in subsection 131(1)”.

53 After paragraph 177(b)

Insert:

- (ba) to advise the Pricing Authority in relation to matters that relate to the functions of the Pricing Authority mentioned in subsection 131(1A);

54 After subparagraph 196(1)(a)(v)

Insert:

- (va) matters that relate to the functions of the Pricing Authority mentioned in subsection 131(1A);

55 After Part 4.11

Insert:

Part 4.11A—Aged Care Advisory Committee

Division 1—Establishment and functions of the Aged Care Advisory Committee

204A Establishment of the Aged Care Advisory Committee

The Aged Care Advisory Committee is established by this section.

204B Functions of the Aged Care Advisory Committee

The Aged Care Advisory Committee has the following functions:

- (a) to advise the Pricing Authority in relation to the function of the Pricing Authority mentioned in paragraph 131A(1)(a);
- (b) to advise the Pricing Authority in relation to matters that:
 - (i) relate to the functions of the Pricing Authority mentioned in paragraph 131A(1)(b) or (c); and
 - (ii) are referred to the Aged Care Advisory Committee by the Pricing Authority;
- (c) to do anything incidental to or conducive to the performance of the above functions.

Division 2—Membership of the Aged Care Advisory Committee

204C Membership of the Aged Care Advisory Committee

- (1) The Aged Care Advisory Committee consists of the following members:
 - (a) the Deputy Chair (Aged Care Pricing) of the Pricing Authority;
 - (b) 6 other members.
- (2) The Deputy Chair (Aged Care Pricing) of the Pricing Authority is the Chair of the Aged Care Advisory Committee.
- (3) The Minister must appoint a member of the Pricing Authority (other than the Chair, or the Deputy Chair (Hospital Pricing), of the Pricing Authority) to be one of the members of the Aged Care Advisory Committee mentioned in paragraph (1)(b).

204D Appointment of members of the Aged Care Advisory Committee

- (1) Each member of the Aged Care Advisory Committee (other than the Deputy Chair (Aged Care Pricing) of the Pricing Authority) is to be appointed by the Minister by written instrument.

Note: A member of the Aged Care Advisory Committee may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

- (2) A member of the Aged Care Advisory Committee (other than the Deputy Chair (Aged Care Pricing) of the Pricing Authority) holds office on a part-time basis.
- (3) A member of the Aged Care Advisory Committee (other than the Deputy Chair (Aged Care Pricing) of the Pricing Authority) holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

204E Acting appointments

The Minister may, by written instrument, appoint a person to act as a member of the Aged Care Advisory Committee (other than the Chair):

- (a) during a vacancy in the office of a member of the Aged Care Advisory Committee (other than the Chair) (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when a member of the Aged Care Advisory Committee (other than the Chair):
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

204F Remuneration

- (1) A member of the Aged Care Advisory Committee is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that is prescribed by the regulations.
- (2) A member of the Aged Care Advisory Committee is to be paid the allowances that are prescribed by the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

204G Disclosure of interests to the Minister and Pricing Authority

A member of the Aged Care Advisory Committee must give written notice to the Minister and the Pricing Authority of all interests, pecuniary or otherwise, that the member has or acquires and that conflict or could conflict with the proper performance of the member's functions.

204H Disclosure of interests to the Aged Care Advisory Committee

- (1) A member of the Aged Care Advisory Committee who has an interest, pecuniary or otherwise, in a matter being considered or about to be considered by the Aged Care Advisory Committee must disclose the nature of the interest to a meeting of the Aged Care Advisory Committee.
- (2) The disclosure must be made as soon as possible after the relevant facts have come to the member's knowledge.
- (3) The disclosure must be recorded in the minutes of the meeting.
- (4) Unless the Aged Care Advisory Committee otherwise determines, the member:
 - (a) must not be present during any deliberation by the Aged Care Advisory Committee on the matter; and
 - (b) must not take part in any decision of the Aged Care Advisory Committee with respect to the matter.
- (5) For the purposes of making a determination under subsection (4), the member:
 - (a) must not be present during any deliberation of the Aged Care Advisory Committee for the purpose of making the determination; and
 - (b) must not take part in making the determination.
- (6) A determination under subsection (4) must be recorded in the minutes of the meeting.

204J Leave of absence

The Chair of the Aged Care Advisory Committee may grant leave of absence to another member of the Aged Care Advisory Committee on the terms and conditions that the Chair determines.

204K Resignation

- (1) A member of the Aged Care Advisory Committee may resign the member's appointment by giving the Minister a written resignation.
- (2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

204L Termination of appointment

The Minister may at any time terminate the appointment of a member of the Aged Care Advisory Committee.

204M Other terms and conditions

A member of the Aged Care Advisory Committee holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

Division 3—Decision-making by the Aged Care Advisory Committee

204N Holding of meetings

- (1) The Aged Care Advisory Committee is to hold such meetings as are necessary for the performance of its functions.
- (2) The Chair of the Aged Care Advisory Committee may convene a meeting at any time.

204P Presiding at meetings

- (1) The Chair of the Aged Care Advisory Committee presides at all meetings at which the Chair is present.
- (2) If the Chair is not present at a meeting of the Aged Care Advisory Committee, the members present must appoint one of themselves to preside.

204Q Quorum

At a meeting of the Aged Care Advisory Committee, 4 members of the Aged Care Advisory Committee constitute a quorum.

204R Voting at meetings etc.

- (1) At a meeting of the Aged Care Advisory Committee, a question is decided by a majority of the votes of members of the Aged Care Advisory Committee present and voting.
- (2) The person presiding at a meeting has a deliberative vote and, if the votes are equal, a casting vote.

204S Decisions without meetings

- (1) The Aged Care Advisory Committee is taken to have made a decision at a meeting if:
 - (a) without meeting, a majority of the members entitled to vote on the proposed decision indicate agreement with the decision; and
 - (b) that agreement is indicated in accordance with the method determined by the Aged Care Advisory Committee under subsection (2); and
 - (c) all the members were informed of the proposed decision, or reasonable efforts were made to inform all the members of the proposed decision.
- (2) Subsection (1) does not apply unless the Aged Care Advisory Committee:
 - (a) has determined that it may make decisions of that kind without meeting; and

- (b) has determined the method by which members are to indicate agreement with proposed decisions.
- (3) For the purposes of paragraph (1)(a), a member is not entitled to vote on a proposed decision if the member would not have been entitled to vote on that proposal if the matter had been considered at a meeting of the Aged Care Advisory Committee.

204T Conduct of meetings

The Aged Care Advisory Committee may, subject to this Act, regulate proceedings at its meetings as it considers appropriate.

Note: Section 33B of the *Acts Interpretation Act 1901* provides for participation in meetings by telephone etc.

204U Minutes

The Aged Care Advisory Committee must keep minutes of its meetings.

Division 4—Subcommittees

204V Subcommittees

- (1) The Aged Care Advisory Committee may, with the written approval of the Pricing Authority CEO, establish subcommittees to advise or assist the Aged Care Advisory Committee in the performance of its functions.
- (2) A subcommittee is to be constituted:
 - (a) partly by one or more members of the Aged Care Advisory Committee; and
 - (b) partly by one or more other persons.
- (3) The Pricing Authority may determine, in relation to a subcommittee established under this section:
 - (a) the subcommittee's terms of reference; and
 - (b) the terms and conditions of appointment of the members of the subcommittee; and
 - (c) the procedures to be followed by the subcommittee.

204W Remuneration and allowances

Scope

- (1) This section applies if a subcommittee is established under section 204V.

Remuneration and allowances

- (2) A subcommittee member is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that is prescribed by the regulations.
- (3) However, a subcommittee member is not entitled to be paid remuneration if the member holds an office or appointment, or is otherwise employed, on a full-time basis in the service or employment of:
- (a) a State; or
 - (b) a corporation (a **public statutory corporation**) that:
 - (i) is established for a public purpose by a law of a State; and
 - (ii) is not a tertiary education institution; or
 - (c) a company limited by guarantee, where the interests and rights of the members in or in relation to the company are beneficially owned by a State; or
 - (d) a company in which all the stock or shares are beneficially owned by a State or by a public statutory corporation.

Note: A similar rule applies to a subcommittee member who has a similar relationship with the Commonwealth or a Territory. See subsection 7(11) of the *Remuneration Tribunal Act 1973*.

- (4) A subcommittee member is to be paid the allowances that are prescribed by the regulations.
- (5) This section (other than subsection (3)) has effect subject to the *Remuneration Tribunal Act 1973*.

Division 5—Annual report

204X Annual report

The Chair of the Aged Care Advisory Committee must, as soon as practicable after the end of each financial year, prepare and give to the Minister, for presentation to the Parliament, a report on the operations of the Aged Care Advisory Committee during that year.

Note: See also section 34C of the *Acts Interpretation Act 1901*, which contains extra rules about annual reports.

Division 6—Pricing Authority may assist the Aged Care Advisory Committee and its subcommittees

204Y Pricing Authority may assist the Aged Care Advisory Committee and its subcommittees

- (1) The Pricing Authority may:
 - (a) assist the Aged Care Advisory Committee in the performance of its functions; or
 - (b) assist a subcommittee established under section 204V in the performance of its functions.
- (2) The assistance may include the following:
 - (a) the provision of information;
 - (b) the making available of resources and facilities (including secretariat services and clerical assistance).

56 Before section 208

Insert:

Division 1—Requirements for functions in relation to hospitals

57 Before subsection 208(1)

Insert:

Scope

- (1A) This section applies in relation to the functions of the Pricing Authority mentioned in subsection 131(1).

58 Subsection 209(2)

Omit “about the performance of functions or exercise of powers under the *Public Governance, Performance and Accountability Act 2013*.”, substitute:

about:

- (a) the performance of the functions of the Pricing Authority mentioned in subsection 131(1A) or 131A(1), or the exercise of powers for or in connection with the performance of those functions; or
- (b) the performance of the functions of the Clinical Advisory Committee mentioned in paragraph 177(ba), or the exercise of powers for or in connection with the performance of those functions; or
- (c) the performance of the functions of the Jurisdictional Advisory Committee mentioned in subparagraph 196(1)(a)(va), or the exercise of powers for or in connection with the performance of those functions; or
- (d) the performance of the functions of the Aged Care Advisory Committee, or the exercise of powers for or in connection with the performance of those functions; or
- (e) the performance of functions or the exercise of powers under the *Public Governance, Performance and Accountability Act 2013*.

59 Before subsection 210(1)

Insert:

- (1A) This section applies in relation to information and advice given by the Pricing Authority as a result of the performance of the functions of the Pricing Authority mentioned in subsection 131(1).

60 At the end of section 211

Add:

- (3) Subsection (1) also does not apply in relation to a report given under Division 2 or 3 of this Part.

61 After section 211

Insert:

Division 2—Requirements for functions in relation to health care pricing and costing

211A Minister may require the Pricing Authority to prepare reports in relation to health care pricing and costing functions

Reports

- (1) The Minister may, by written notice given to the Pricing Authority, require the Pricing Authority to:
- (a) prepare a report about one or more specified matters relating to the performance of the functions of the Pricing Authority mentioned in subsection 131(1A); and
 - (b) give copies of the report to the Minister within the period specified in the notice.

Information

- (2) The Minister may, by written notice given to the Pricing Authority, require the Pricing Authority to:
- (a) prepare a document setting out specified information relating to the performance of the functions of the Pricing Authority mentioned in subsection 131(1A); and
 - (b) give copies of the document to the Minister within the period specified in the notice.

Compliance

- (3) The Pricing Authority must comply with a requirement under subsection (1) or (2).

Publication of reports and documents

- (4) The Minister may cause to be published (whether on the internet or otherwise):
 - (a) a report under subsection (1); or
 - (b) a document under subsection (2).

211B Reporting to Parliament

- (1) This section applies in relation to advice given by the Pricing Authority in the performance of the functions of the Pricing Authority mentioned in subsection 131(1A).
- (2) The Pricing Authority must, as soon as practicable after the end of each financial year, prepare and give to the Minister, for presentation to the Parliament, a report on the advice (if any) given by the Pricing Authority in that year.
- (3) The report must include the following details of the advice:
 - (a) when the advice was given by the Pricing Authority;
 - (b) the content of the advice that was given.

Note: See also section 34C of the *Acts Interpretation Act 1901*, which contains extra rules about annual reports.

Division 3—Requirements for functions in relation to aged care

211C Relevant Commonwealth Minister may require the Pricing Authority to prepare reports in relation to aged care functions

Reports

- (1) A relevant Commonwealth Minister may, by written notice given to the Pricing Authority, require the Pricing Authority to:
 - (a) prepare a report about one or more specified matters relating to the performance of the functions of the Pricing Authority mentioned in subsection 131A(1); and
 - (b) give copies of the report to the relevant Commonwealth Minister within the period specified in the notice.

Information

- (2) A relevant Commonwealth Minister may, by written notice given to the Pricing Authority, require the Pricing Authority to:
- (a) prepare a document setting out specified information relating to the performance of the functions of the Pricing Authority mentioned in subsection 131A(1); and
 - (b) give copies of the document to the relevant Commonwealth Minister within the period specified in the notice.

Publication of reports and documents

- (3) A relevant Commonwealth Minister who receives:
- (a) a report under subsection (1); or
 - (b) a document under subsection (2);
- may, by written notice given to the Pricing Authority, direct the Pricing Authority to publish the report or document (whether on the internet or otherwise).

Compliance

- (4) Subject to subsection (5), the Pricing Authority must comply with the following:
- (a) a requirement under subsection (1) or (2);
 - (b) a direction under subsection (3).

Certain information not to be published

- (5) The Pricing Authority must not publish any part of a report or document that contains:
- (a) protected Pricing Authority information that is aged care information; or
 - (b) protected information (within the meaning of the Aged Care Act) that is not aged care information.

211D Reporting to Parliament

- (1) The Pricing Authority must, as soon as practicable after the end of each financial year, prepare and give to the Minister, for

presentation to the Parliament, a report on the performance of the Pricing Authority's functions mentioned in subsection 131A(1).

- (2) The report must include:
- (a) details of the advice provided by the Pricing Authority to each relevant Commonwealth Minister during the financial year in the performance of the Pricing Authority's functions mentioned in subsection 131A(1), including:
 - (i) when the advice was provided by the Pricing Authority to each relevant Commonwealth Minister; and
 - (ii) the content of the advice; and
 - (b) the following details relating to the Pricing Authority's Aged Care Act functions:
 - (i) the number of applications under section 52G-4 of the Aged Care Act that were made to the Pricing Authority during the financial year for approval to charge an accommodation payment higher than the maximum amount;
 - (ii) the number of such applications that were approved, rejected or withdrawn during the financial year;
 - (iii) the number of applications under Division 35 of that Act that were made to the Pricing Authority during the financial year for approval to charge an extra service fee;
 - (iv) any other details required by regulations made for the purposes of this subparagraph.

Note: See also section 34C of the *Acts Interpretation Act 1901*, which contains extra rules about annual reports.

Division 4—Other matters

62 Paragraph 213(2)(b)

Before “the disclosure”, insert “the protected Pricing Authority information is not health care pricing and costing information or aged care information and”.

63 After paragraph 213(2)(b)

Insert:

- ; (c) the protected Pricing Authority information is health care pricing and costing information and the disclosure or use is in compliance with a requirement under a law of the Commonwealth;
- (d) the protected Pricing Authority information is aged care information and the disclosure or use is in compliance with a requirement under a law of the Commonwealth.

64 Section 215 (at the end of the heading)

Add “—general”.

65 Subsection 215(1)

After “information”, insert “that is not aged care information”.

66 After section 215

Insert:

215A Disclosure to committees—aged care information

- (1) An official of the Pricing Authority may disclose protected Pricing Authority information that is aged care information to:
 - (a) the Aged Care Advisory Committee; or
 - (b) a committee established under section 205.
- (2) A person commits an offence if:
 - (a) the person is a member of a committee referred to in paragraph (1)(a) or (b); and
 - (b) protected Pricing Authority information has been disclosed under subsection (1) to the committee; and
 - (c) the person:
 - (i) discloses the information to another person; or
 - (ii) uses the information.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- (3) Subsection (2) does not apply if:
 - (a) the disclosure or use is for the purposes of this Act; or
 - (b) the disclosure or use is for the purposes of the performance of the functions of the committee under this Act; or

- (c) the disclosure or use is in the course of the person's service as a member of the committee.

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

67 After section 216

Insert:

216A Disclosure to Aged Care Minister

If the Minister is not also the Aged Care Minister, an official of the Pricing Authority may disclose protected Pricing Authority information that is aged care information to the Aged Care Minister.

68 Section 217

Before "An official", insert "(1)".

69 At the end of section 217

Add:

- (2) This section does not authorise the disclosure of protected Pricing Authority information that is:
- (a) health care pricing and costing information; or
 - (b) aged care information.

70 Section 218

Repeal the section, substitute:

218 Disclosure to the Secretary etc.

- (1) An official of the Pricing Authority may disclose protected Pricing Authority information to the Secretary.
- (2) An official of the Pricing Authority may disclose protected Pricing Authority information to the head (however described) of the Health Department of a State or Territory unless the information is:
 - (a) health care pricing and costing information; or
 - (b) aged care information.

71 Section 220 (at the end of the heading)

Add “—general”.

72 At the end of section 220

Add:

Certain protected Pricing Authority information not to be disclosed

- (5) This section does not authorise the disclosure of protected Pricing Authority information that is:
- (a) health care pricing and costing information; or
 - (b) aged care information.

73 After section 220

Insert:

220A Disclosure to relevant bodies or persons—health care pricing and costing information and aged care information

Scope

- (1) This section applies if the Chair of the Pricing Authority is satisfied that particular protected Pricing Authority information that is:
- (a) health care pricing and costing information; or
 - (b) aged care information;
- will enable or assist a relevant body or person to perform or exercise any of the functions or powers of the relevant body or person.

Disclosure

- (2) If an official of the Pricing Authority is authorised by the Chair of the Pricing Authority, in writing, for the purposes of this section, the official may disclose that particular information to the relevant body or person concerned.
- (3) If particular information is disclosed under subsection (2) to a relevant body or person, the relevant body or person must not disclose or use the information for a purpose other than the purpose

for which the information was disclosed to the relevant body or person.

Relevant body or person

- (4) For the purposes of this section, each of the following is a **relevant body or person**:
- (a) the Australian Institute of Health and Welfare;
 - (b) the Australian Statistician.

74 At the end of section 221

Add:

Certain protected Pricing Authority information not to be disclosed

- (4) This section does not authorise the disclosure of protected Pricing Authority information that is:
- (a) health care pricing and costing information; or
 - (b) aged care information.

75 Section 226 (at the end of the heading)

Add “—functions in relation to hospitals”.

76 Before subsection 226(1)

Insert:

- (1A) This section applies in relation to the functions of the Pricing Authority mentioned in subsection 131(1) and the powers that may be exercised by the Pricing Authority for or in connection with the exercise of those functions.

77 After section 226

Insert:

226A Minister may give directions to the Pricing Authority—other functions

- (1) This section applies in relation to the functions of the Pricing Authority mentioned in subsections 131(1A) and 131A(1) (other than the Aged Care Act functions) and the powers that may be

exercised by the Pricing Authority for or in connection with the exercise of those functions.

- (2) The Minister may, by legislative instrument, give directions to the Pricing Authority in relation to the performance of its functions and the exercise of its powers.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (3) A direction under subsection (2) must be of a general nature only.
- (4) The Pricing Authority must comply with a direction under subsection (2).

78 At the end of section 279

Add:

- (5) This section applies in relation to a care recipient (within the meaning of the Aged Care Act) and a continuing care recipient (within the meaning of that Act) in the same way as it applies in relation to a patient.

Part 2—Amendments of other Acts

Aged Care Act 1997

79 Paragraph 32-3(2)(f)

After “an application”, insert “(an *extra service fees application*)”.

80 After subsection 32-3(2)

Insert:

(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.

81 Subsection 35-1(1)

Omit “*Aged Care Pricing Commissioner”, substitute “*Pricing Authority”.

82 Subsection 35-1(2)

Omit “*Aged Care Pricing Commissioner”, substitute “*Pricing Authority”.

83 Paragraphs 35-1(2)(c) and (d)

Omit “Aged Care Pricing Commissioner”, substitute “Pricing Authority”.

84 Subsection 35-2(1)

Omit “*Aged Care Pricing Commissioner”, substitute “*Pricing Authority”.

85 Section 35-3

Omit “*Aged Care Pricing Commissioner” (wherever occurring), substitute “*Pricing Authority”.

86 Section 35-4

Repeal the section, substitute:

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.

87 Paragraph 52G-2(c)

Omit “*Aged Care Pricing Commissioner”, substitute “*Pricing Authority”.

88 Section 52G-4 (heading)

Omit “Aged Care Pricing Commissioner”, substitute “Pricing Authority”.

89 Subsections 52G-4(1), (2) and (3)

Omit “*Aged Care Pricing Commissioner”, substitute “*Pricing Authority”.

90 Subsection 52G-4(3)

Omit “the Commissioner”, substitute “the Pricing Authority”.

91 Subsections 52G-4(5) and (6)

Omit “*Aged Care Pricing Commissioner”, substitute “*Pricing Authority”.

92 After paragraph 63-1(1)(ha)

Insert:

- (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;

93 Paragraph 84-1(h)

Repeal the paragraph.

94 Paragraph 85-2(2)(a)

Omit “*Aged Care Pricing Commissioner”, substitute “*Pricing Authority”.

95 Paragraph 85-2(2)(c)

Omit “Aged Care Pricing Commissioner”, substitute “Pricing Authority”.

96 Paragraph 85-2(2)(c)

Omit “Commissioner’s”, substitute “Pricing Authority’s”.

97 Subsection 85-2(2)

Omit “Aged Care Pricing Commissioner” (second occurring), substitute “Pricing Authority”.

98 Section 85-3

Omit “*Aged Care Pricing Commissioner” (wherever occurring), substitute “*Pricing Authority”.

99 Subsection 85-4(1A)

Omit “*Aged Care Pricing Commissioner”, substitute “*Pricing Authority”.

100 Subsection 85-4(1A)

Omit “Aged Care Pricing Commissioner”, substitute “Pricing Authority”.

101 Subsections 85-4(3), (4), (5) and (6)

Omit “*Aged Care Pricing Commissioner”, substitute “*Pricing Authority”.

102 Subsection 85-5(1A)

Omit “*Aged Care Pricing Commissioner”, substitute “*Pricing Authority”.

103 Paragraph 85-5(3)(b)

Omit “*Aged Care Pricing Commissioner”, substitute “*Pricing Authority”.

104 Paragraph 85-5(3)(b)

Omit “Aged Care Pricing Commissioner”, substitute “Pricing Authority”.

105 Subsections 85-5(5) and (6)

Omit “*Aged Care Pricing Commissioner”, substitute “*Pricing Authority”.

106 Subsection 85-5(7)

Omit “*Aged Care Pricing Commissioner” (first occurring), substitute “*Pricing Authority”.

107 Subsection 85-5(7)

Omit “*Aged Care Pricing Commissioner” (second occurring), substitute “Pricing Authority”.

108 Subsection 85-5(8)

Omit “*Aged Care Pricing Commissioner” (first occurring), substitute “*Pricing Authority”.

109 Subsection 85-5(8)

Omit “*Aged Care Pricing Commissioner” (second occurring), substitute “Pricing Authority”.

110 After paragraph 86-3(1)(cb)

Insert:

(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

111 After section 86-4

Insert:

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.

112 Section 86-5 (heading)

Omit “or 86-4”, substitute “, 86-4 or 86-4A”.

113 Paragraph 86-5(b)

Omit “or 86-4”, substitute “, 86-4 or 86-4A”.

114 Part 6.7

Repeal the Part.

115 Section 96-1 (table item 9A)

Repeal the item.

116 Subsection 96-2(3)

Repeal the subsection, substitute:

Pricing Authority

- (3) The Secretary may, in writing, delegate to the *Pricing Authority the powers and functions of the Secretary that the Secretary 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)).

117 Clause 1 of Schedule 1 (definition of Aged Care Pricing Commissioner)

Repeal the definition.

118 Clause 1 of Schedule 1

Insert:

Pricing Authority has the same meaning as in the *National Health Reform Act 2011*.

Aged Care Quality and Safety Commission Act 2018

119 Section 7 (definition of Aged Care Pricing Commissioner)

Repeal the definition.

120 Section 7

Insert:

Pricing Authority has the same meaning as in the *National Health Reform Act 2011*.

121 Paragraph 61(1)(i)

Repeal the paragraph, substitute:

(i) to the Pricing Authority to assist in the performance of the Aged Care Act functions (within the meaning of the *National Health Reform Act 2011*) of the Pricing Authority; or

Part 3—Application, saving and transitional provisions

Division 1—Preliminary

122 Definitions

In this Part:

amended Aged Care Act means the *Aged Care Act 1997*, as amended by this Schedule.

commencement day means the day on which this Schedule commences.

National Health Reform Act means the *National Health Reform Act 2011*.

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

rules means rules made under item 137.

Division 2—Application etc. provisions relating to the National Health Reform Act 2011

123 Members of the Pricing Authority

Subject to item 124 of this Schedule, a person holding office as a member of the Independent Hospital Pricing Authority immediately before the commencement day continues, on and after that day, to hold office as a member of the Independent Health and Aged Care Pricing Authority for the balance of the person's term of appointment that remains immediately before that day.

124 Deputy Chair of the Pricing Authority

- (1) A person holding office as the Deputy Chair of the Independent Hospital Pricing Authority immediately before the commencement day holds office, on and after that day, as the Deputy Chair (Hospital Pricing) of the Independent Health and Aged Care Pricing Authority.
- (2) The person continues, on and after that day, to hold office as the Deputy Chair (Hospital Pricing) of the Independent Health and Aged Care Pricing Authority for the balance of the person's term of appointment as

the Deputy Chair of the Independent Hospital Pricing Authority that remains immediately before that day.

125 Appointment of members of the Pricing Authority

Section 144 of the National Health Reform Act, as amended by Part 1 of this Schedule, applies in relation to an appointment that is made on or after the commencement day.

126 Reporting to Parliament

- (1) Subject to subitem (2):
- (a) section 210 of the National Health Reform Act, as amended by Part 1 of this Schedule; and
 - (b) sections 204X, 211B and 211D of the National Health Reform Act, as inserted by Part 1 of this Schedule;

apply in relation to the financial year starting on 1 July 2022 and later financial years.

- (2) For the purposes of the financial year starting on 1 July 2022, paragraph 211D(2)(b) of the National Health Reform Act, as inserted by Part 1 of this Schedule, applies as if a reference in that paragraph to “the Pricing Authority” were a reference to “the Pricing Authority or the Aged Care Pricing Commissioner”.

Division 3—Application etc. provisions relating to the Aged Care Act 1997

127 Application—requirement to give certain applications to the Independent Health and Aged Care Pricing Authority

Subsection 32-3(2A) of the amended Aged Care Act applies in relation to an application that is made on or after the commencement day.

128 Saving—approvals under Division 35 of the Aged Care Act 1997

- (1) This item applies in relation to an approval that is in force under Division 35 of the old Aged Care Act immediately before the commencement day.

- (2) On and after that day:
- (a) the approval continues in force (and may be dealt with) as if it were an approval under Division 35 of the amended Aged Care Act; and
 - (b) the date of the approval for the purposes of the old Aged Care Act is taken to be the date of the approval for the purposes of the amended Aged Care Act.

129 Transitional—applications under Division 35 of the Aged Care Act 1997

- (1) This item applies in relation to an application that is made to the Aged Care Pricing Commissioner under Division 35 of the old Aged Care Act on a particular date (the *application date*) if:
- (a) the application date is before the commencement day; and
 - (b) the application is in a form approved by the Aged Care Pricing Commissioner for the purposes of subsection 35-2(1) of the old Aged Care Act; and
 - (c) either:
 - (i) no decision on the application has been made before the commencement day; or
 - (ii) a decision on the application has been made before the commencement day but notice of the decision has not been given to the applicant before that day.
- (2) If no decision on the application has been made before the commencement day, then, on and after that day:
- (a) the application is taken to have been made on the application date to the Independent Health and Aged Care Pricing Authority under Division 35 of the amended Aged Care Act; and
 - (b) the application is taken to be in a form approved by the Independent Health and Aged Care Pricing Authority for the purposes of subsection 35-2(1) of the amended Aged Care Act.
- (3) If a decision on the application has been made before the commencement day but notice of the decision has not been given to the applicant before that day, then, on and after that day section 35-4 and subsection 85-2(2) of the amended Aged Care Act apply in relation to

the decision as if the decision had been made by the Independent Health and Aged Care Pricing Authority.

Note: See also item 134 of this Schedule (Things done by, or in relation to, the Aged Care Pricing Commissioner).

130 Saving—approvals under section 52G-4 of the Aged Care Act 1997

- (1) This item applies in relation to an approval that is in force under subsection 52G-4(5) of the old Aged Care Act immediately before the commencement day.
- (2) On and after that day:
 - (a) the approval continues in force (and may be dealt with) as if it were an approval under subsection 52G-4(5) of the amended Aged Care Act; and
 - (b) the date of the approval for the purposes of the old Aged Care Act is taken to be the date of the approval for the purposes of the amended Aged Care Act.

131 Transitional—applications under section 52G-4 of the Aged Care Act 1997

- (1) This item applies in relation to an application that is made to the Aged Care Pricing Commissioner under section 52G-4 of the old Aged Care Act on a particular date (the *application date*) if:
 - (a) the application date is before the commencement day; and
 - (b) no decision on the application has been made before the commencement day.
- (2) The application is, on and after the commencement day, taken to have been made on the application date to the Independent Health and Aged Care Pricing Authority under section 52G-4 of the amended Aged Care Act.

Note: See also item 134 of this Schedule (Things done by, or in relation to, the Aged Care Pricing Commissioner).

132 Transitional—requests under subsection 85-5(1A) of the Aged Care Act 1997

- (1) This item applies in relation to a request to reconsider a reviewable decision that is made to the Aged Care Pricing Commissioner under subsection 85-5(1A) of the old Aged Care Act on a particular date (the *request date*) if:
- (a) the request date is before the commencement day; and
 - (b) either:
 - (i) no decision on the request has been made before the commencement day; or
 - (ii) a decision on the request has been made before the commencement day but notice of the decision has not been given to the applicant before that day.
- (2) If no decision on the request has been made before the commencement day, then, on and after that day, the request is taken to have been made on the request date to the Independent Health and Aged Care Pricing Authority under subsection 85-5(1A) of the amended Aged Care Act.
- (3) If a decision on the request has been made before the commencement day but notice of the decision has not been given to the applicant before that day, then, on and after that day, subsection 85-5(7) of the amended Aged Care Act applies in relation to the decision as if the decision had been made by the Independent Health and Aged Care Pricing Authority.

Note: See also item 134 of this Schedule (Things done by, or in relation to, the Aged Care Pricing Commissioner).

133 Transitional—legal proceedings involving the Aged Care Pricing Commissioner

If, immediately before the commencement day, the Aged Care Pricing Commissioner was a party to proceedings pending in any court or tribunal, the Independent Health and Aged Care Pricing Authority is substituted for the Aged Care Pricing Commissioner as a party to the proceedings on and after that day.

134 Things done by, or in relation to, the Aged Care Pricing Commissioner

- (1) If, before the commencement day, a thing was done by, or in relation to, the Aged Care Pricing Commissioner for the purposes of:
 - (a) the old Aged Care Act; or
 - (b) a legislative instrument made under the old Aged Care Act; or
 - (c) the *Aged Care Quality and Safety Commission Act 2018* as in force immediately before the commencement day;then the thing has effect, on and after that day, as if it had been done by, or in relation to, the Independent Health and Aged Care Pricing Authority.
- (2) The rules may provide that subitem (1) does not apply in relation to a specified thing done by, or in relation to, the Aged Care Pricing Commissioner.

135 Transfer of records

- (1) This item applies to any records or documents that were in the possession of the Aged Care Pricing Commissioner immediately before the commencement day.
- (2) The records and documents are to be transferred to the Independent Health and Aged Care Pricing Authority on or after that day.

136 References to the Aged Care Pricing Commissioner in instruments

- (1) This item applies to an instrument if:
 - (a) the instrument was in force immediately before the commencement day; and
 - (b) the instrument contains a reference to the Aged Care Pricing Commissioner.
- (2) The instrument has effect, on and after that day, as if a reference in the instrument to the Aged Care Pricing Commissioner were a reference to the Independent Health and Aged Care Pricing Authority.

- (3) The rules may provide that subitem (2) does not apply in relation to a specified instrument or a specified reference.
- (4) This item does not prevent the instrument from being amended or repealed after the commencement of this item.
- (5) In this item:
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.

Division 4—Transitional rules

137 Transitional rules

- (1) The Minister may, by legislative instrument, make rules prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by this Schedule.
- (2) However, 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;
 - (e) directly amend the text of this Schedule.
- (3) This Part (other than subitem (2)) does not limit the rules that may be made for the purposes of subitem (1).

Schedule 9—Restrictive practices

Aged Care Act 1997

1 After subsection 54-10(1)

Insert:

- (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 Subsection 54-10(3)

After “Subsections (1)”, insert “, (1A)”.

3 At the end of Division 54

Add:

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
 - (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.

4 Clause 1 of Schedule 1

Insert:

protected entity has the meaning given by subsection 54-11(3).

[*Minister's second reading speech made in—
House of Representatives on 27 July 2022
Senate on 27 July 2022*]

(52/22)
