



# **Aged Care (Consequential and Transitional Provisions) Act 2024**

**No. 109, 2024**

**An Act to deal with consequential and transitional  
matters arising from the enactment of the *Aged  
Care Act 2024*, and for related purposes**

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



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**An Act to deal with consequential and transitional matters arising from the enactment of the *Aged Care Act 2024*, and for related purposes**

*[Assented to 10 December 2024]*

The Parliament of Australia enacts:

## **1 Short title**

This Act is the *Aged Care (Consequential and Transitional Provisions) Act 2024*.

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## 2 Commencement

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

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Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 4 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	10 December 2024
2. Schedules 1 to 3	At the same time as the <i>Aged Care Act 2024</i> commences. However, the provisions do not commence at all if that Act does not commence.	

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Note: This table relates only to the provisions of this Act as originally enacted.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Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## 4 References to the *Aged Care Act 1997* etc.

- (1) Subsection (2) applies if, after the commencement of the *Aged Care Act 2024*, another Act refers to any of the following:
- (a) the *Aged Care Act 1997*;
  - (b) a provision of that Act;

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- (c) the *Aged Care Quality and Safety Commission Act 2018*;
  - (d) a provision of that Act;
  - (e) the *Aged Care (Transitional Provisions) Act 1997*;
  - (f) a provision of that Act.
- (2) The reference is taken, after that commencement, to be a reference to the following (as the case requires):
- (a) the *Aged Care Act 2024*;
  - (b) an equivalent, or nearly equivalent, provision of that Act.
- (3) Subsection (2) is subject to a contrary intention.
- (4) Subsection (5) applies if, after the commencement of the *Aged Care Act 2024*, another Act refers to:
- (a) Principles made under section 96-1 of the *Aged Care Act 1997*; or
  - (b) a provision of those Principles.
- (5) The reference is taken, after that commencement, to be a reference to the following (as the case requires):
- (a) the rules within the meaning of the *Aged Care Act 2024*;
  - (b) an equivalent, or nearly equivalent, provision of those rules.
- (6) Subsection (5) is subject to a contrary intention.

## Schedule 1—Consequential amendments

### *Crimes Act 1914*

#### **1 After Subdivision AA of Division 6 of Part VIIC**

Insert:

#### **Subdivision AB—Exclusions relating to work with individuals accessing funded aged care services**

##### **85ZZGO Object of Subdivision**

The object of this Subdivision is to protect individuals accessing funded aged care services from harm by permitting criminal history information to be disclosed and taken into account in assessing whether a person who works, or seeks to work, with an individual accessing funded aged care services poses a risk to such an individual.

##### **85ZZGP Exclusion: disclosing information to a person or body**

Divisions 2 and 3 do not apply in relation to the disclosure of information to a prescribed person or body if:

- (a) the person or body is required or permitted by or under a prescribed Commonwealth law, a prescribed State law or a prescribed Territory law, to obtain and deal with information about persons who work, or seek to work, with an individual accessing funded aged care services; and
- (b) the disclosure is for the purpose of the person or body obtaining and dealing with such information in accordance with the prescribed law.

##### **85ZZGQ Exclusion: person or body taking information into account**

Divisions 2 and 3 do not apply in relation to the taking into account of information by a prescribed person or body if:

- (a) the person or body is required or permitted by or under a prescribed Commonwealth law, a prescribed State law or a prescribed Territory law, to deal with information about



persons who work, or seek to work, with an individual accessing funded aged care services; and

- (b) the taking into account is:
  - (i) for the purpose of dealing with such information in accordance with the prescribed law; or
  - (ii) required by or under a Commonwealth law, a State law or a Territory law.

**85ZZGR Exclusion: person or body disclosing information**

Divisions 2 and 3 do not apply in relation to the disclosure of information by a prescribed person or body if:

- (a) the person or body is required or permitted by or under a prescribed Commonwealth law, a prescribed State law or a prescribed Territory law, to deal with information about persons who work, or seek to work, with an individual accessing funded aged care services; and
- (b) the disclosure is required by or under a Commonwealth law, a State law or a Territory law.

**85ZZGS Prescribed persons and bodies**

Before the Governor-General makes a regulation prescribing, for the purposes of section 85ZZGP, 85ZZGQ or 85ZZGR, a person or body:

- (a) to which information may be disclosed; or
- (b) by which information may be taken into account or disclosed;

the Minister must be satisfied that the person or body:

- (c) is required or permitted by or under a Commonwealth law, a State law or a Territory law to obtain and deal with information about persons who work, or seek to work, with an individual accessing funded aged care services; and
- (d) complies with applicable Commonwealth law, State law or Territory law relating to privacy, human rights and records management; and
- (e) complies with the principles of natural justice; and

- (f) has risk assessment frameworks and appropriately skilled staff to assess risks to the safety of an individual accessing funded aged care services.

### **85ZZGT Definitions**

In this Subdivision:

*funded aged care service* has the same meaning as in the *Aged Care Act 2024*.

*work* includes the following:

- (a) work:
  - (i) under a contract of employment, contract of apprenticeship or contract for services; or
  - (ii) in a leadership role in a religious institution, as part of the duties of a religious vocation or in any other capacity for the purposes of a religious institution; or
  - (iii) as an officer of a body corporate, member of the committee of management of an unincorporated body or association or member of a partnership; or
  - (iv) as a volunteer, other than unpaid work engaged in for a private or domestic purpose; or
  - (v) as a self-employed person;
- (b) practical training as part of a course of education or vocational training;
- (c) acting in a prescribed capacity or engaging in a prescribed activity.

### ***Freedom of Information Act 1982***

#### **2 Schedule 3**

Omit:

*Aged Care Act 1997*, subsection 86-2(1) and sections 86-5, 86-6 and 86-7.

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

## ***National Disability Insurance Scheme Act 2013***

### **3 Section 9**

Insert:

***aged care clearance decision*** has the same meaning as in the *Aged Care Act 2024*.

***aged care exclusion decision*** has the same meaning as in the *Aged Care Act 2024*.

***aged care worker screening check*** has the same meaning as in the *Aged Care Act 2024*.

***aged care worker screening law*** has the same meaning as in the *Aged Care Act 2024*.

***funded aged care service*** has the same meaning as in the *Aged Care Act 2024*.

***registered aged care provider*** means a registered provider within the meaning of the *Aged Care Act 2024*.

### **4 Subparagraph 67A(1)(da)(i)**

After “check”, insert “or aged care worker screening check”.

### **5 Subparagraph 67A(1)(da)(ii)**

After “law”, insert “or aged care worker screening law”.

### **6 After paragraph 67A(1)(da)**

Insert:

(daa) the disclosure or use of the information by the person is made for the purposes of complying with the worker screening requirements prescribed by rules made for the purposes of section 152 of the *Aged Care Act 2024*; or

### **7 Paragraph 181Y(3)(c)**

Repeal the paragraph, substitute:

(c) to share information in the database:

- (i) with persons or bodies (including employers and potential employers) for the purposes of the National Disability Insurance Scheme; or
- (ii) with the Commissioner of the Aged Care Quality and Safety Commission for the purposes of assisting the Commissioner to perform the Commissioner's functions or exercise the Commissioner's powers; or
- (iii) with registered aged care providers that are employers, or potential employers, of persons; or
- (iv) with persons or bodies (whether the persons or bodies are registered aged care providers or not) for the purposes of the *Aged Care Act 2024* or for the purposes of those persons or bodies facilitating the employment, engagement or training of other persons to work with individuals accessing funded aged care services;

## 8 After subsection 181Y(6)

Insert:

- (6A) The NDIS worker screening database may also include the following information:
- (a) information relating to persons (each of whom is a **screening applicant**) who:
    - (i) have made applications (each of which is a **screening application**) for an aged care worker screening check; and
    - (ii) are identified (in screening applications or otherwise) as seeking to work with people with disability;and information relating to those applications;
  - (b) information relating to each screening applicant in respect of whom a screening application is no longer being considered and the reasons for this;
  - (c) information relating to each screening applicant in respect of whom a decision (a **clearance decision**) (however described) is in force, under an aged care worker screening law, to the effect that the person, in working, or seeking to work, with individuals accessing funded aged care services does not pose a risk to such individuals and information relating to the decision;

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- (d) information relating to any decisions made under an aged care worker screening law, in relation to each screening applicant, while the screening applicant's application is pending;
  - (e) information relating to each screening applicant in respect of whom a decision (an **exclusion decision**) (however described) is in force, under an aged care worker screening law, to the effect that the person, in working, or seeking to work, with individuals accessing funded aged care services does pose a risk to such individuals and information relating to the decision;
  - (f) if a clearance decision or an exclusion decision specifies the period for which the decision is in force—information setting out that period;
  - (g) information relating to each person in respect of whom a decision (however described), under an aged care worker screening law, suspending a clearance decision has been made and information relating to the suspension;
  - (h) information relating to each person in respect of whom a decision (however described), under an aged care worker screening law, revoking a clearance decision or an exclusion decision has been made and information relating to the revocation;
  - (i) information relating to employers or potential employers of persons who have made screening applications.

### **9 Subsection 181Y(7)**

After “(j)”, insert “and (6A)(a) to (i)”.

### **10 After section 181Y**

Insert:

### **181Z Aged care clearance decision taken to be NDIS clearance decision**

- (1) This section applies if an aged care clearance decision is in force, under an aged care worker screening law, in respect of a person in working, or seeking to work, with individuals accessing funded aged care services.

- (2) The aged care clearance decision in respect of the person is taken, for the purposes of this Act (other than this Chapter), to be an NDIS clearance decision in force, under an NDIS worker screening law, in respect of the person in working, or seeking to work, with people with disability.

**181ZA Aged care exclusion decision taken to be NDIS exclusion decision**

- (1) This section applies if an aged care exclusion decision is in force, under an aged care worker screening law, in respect of a person in working, or seeking to work, with individuals accessing funded aged care services.
- (2) The aged care exclusion decision in respect of the person is taken, for the purposes of this Act (other than this Chapter), to be an NDIS exclusion decision in force, under an NDIS worker screening law, in respect of the person in working, or seeking to work, with people with disability.

## **Schedule 2—Application, saving and transitional provisions**

### **Part 1—Preliminary**

#### **1 Definitions**

(1) In this Schedule:

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

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

**new Act** means the *Aged Care Act 2024*.

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

**old law** means any of the following laws:

- (a) the old Act;
- (b) the Commission Act;
- (c) the old Transitional Provisions Act;
- (d) the old Principles;
- (e) the Commission Rules;
- (f) the old Transitional Provisions Principles.

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

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

**old Transitional Provisions Principles** means Principles made under section 96-1 of the old Transitional Provisions Act.

**transitional rules** means the rules made under item 65.

**transition time** means the time the new Act commences.

(2) An expression used in a provision of this Schedule and in the new Act has the same meaning in that provision as it has in the new Act, subject to subitem (3).

(3) An expression used in a provision of this Schedule and in the old law has the same meaning in that provision as it had in the old law to the extent that:

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**Part 1** Preliminary

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- (a) the use of the expression in that provision relates to an event that occurred, or a state of affairs that existed, under the old law before the transition time; or
- (b) the provision has the effect that a provision of the old law continues to apply despite the repeal of the old law.



## **Part 2—Transitional provisions for Chapter 2 of the new Act**

### **2 Access approvals for service groups home support, assistive technology and home modifications**

#### *Access approvals and related decisions*

- (1) The System Governor is taken to have made the following decisions at the transition time, in relation to an individual to whom subitem (2) applies:
- (a) an eligibility determination under subsection 57(1) of the new Act;
  - (b) a decision under subsection 65(1) of the new Act that the individual requires access to funded aged care services;
  - (c) for an individual referred to in paragraph (2)(a) or (e) of this item—a decision under paragraph 65(2)(a) of the new Act that the individual is approved for the following:
    - (i) the classification type ongoing for the service group home support;
    - (ii) the classification type short-term for the service group assistive technology;
    - (iii) the classification type short-term for the service group home modifications;
  - (d) for an individual referred to in paragraph (2)(b) of this item—a decision under paragraph 65(2)(a) of the new Act that the individual is approved for the following:
    - (i) the classification type short-term for the service group home support;
    - (ii) the classification type short-term for the service group assistive technology;
    - (iii) the classification type short-term for the service group home modifications;
  - (e) for an individual referred to in paragraph (2)(c) of this item—a decision under paragraph 65(2)(a) of the new Act that the individual is approved for the following:
    - (i) the classification type hospital transition for the service group home support;

- (ii) the classification type hospital transition for the service group assistive technology;
- (f) for an individual referred to in paragraph (2)(d) or (f) of this item—a decision under paragraph 65(2)(a) of the new Act that the individual is approved for the following:
  - (i) the classification types ongoing and short-term for the service group home support;
  - (ii) the classification type short-term for the service group assistive technology;
  - (iii) the classification type short-term for the service group home modifications;
- (g) for an individual referred to in paragraph (2)(g) of this item—a decision under paragraph 65(2)(a) of the new Act that the individual is approved for each service group and each classification type for that service group specified by the determination;
- (h) for an individual referred to in any paragraph in subitem (2) of this item and who is not an Aboriginal or Torres Strait Islander person:
  - (i) a decision under subparagraph 65(2)(b)(i) of the new Act that the individual is approved for all service types in each of those service groups; and
  - (ii) a decision under subparagraph 65(2)(b)(ii) of the new Act that the individual is approved for all funded aged care services in a service type to which that subparagraph applies.

*Individuals to whom transition applies*

- (2) This subitem applies to the individual if, as at immediately before the transition time, the individual:
  - (a) was approved under section 22-1 of the old Act as a recipient of home care; or
  - (b) was approved under section 22-1 of the old Act as a recipient of flexible care in the form of short-term restorative care (within the meaning of the old Principles); or
  - (c) was approved under section 22-1 of the old Act as a recipient of flexible care in the form of transition care (within the meaning of the old Principles); or

- (d) either:
    - (i) was accessing flexible care provided in a community setting through a multi-purpose service (within the meaning of the old Principles); or
    - (ii) was party to a written agreement with an approved provider (within the meaning of the old Act) of a multi-purpose service (within the meaning of the old Principles) which provides for the individual to commence accessing flexible care provided in a community setting through that service within the period of 3 months beginning at the transition time; or
  - (e) had been assessed as eligible for Commonwealth Home Support Programme services; or
  - (f) had, at any time in the previous 12 months, accessed services under the National Aboriginal and Torres Strait Islander Flexible Aged Care Program; or
  - (g) was in a class of individuals determined under subitem (3) by the System Governor to be a transitional cohort.
- (3) The System Governor may, by legislative instrument, determine a class of individuals to be a transitional cohort for the purposes of paragraph (2)(g) if:
- (a) the individuals in that class were eligible to access aged care (whether under the old Act or under a Commonwealth program) at any time in the 12 month period ending at the transition time; and
  - (b) the System Governor considers it reasonably necessary to make the determination to ensure continuity of aged care for those individuals.
- (4) A determination under subitem (3) may be made after the transition time.

*Limitations on funded aged care services to which transition applies for individuals eligible for Commonwealth Home Support Programme*

- (5) Despite subparagraph (1)(h)(i), that subparagraph does not apply in relation to an individual to whom paragraph (2)(e) applies and a service type (a ***new Act service type***) referred to in that subparagraph unless the individual had been assessed as eligible under the Commonwealth

Home Support Programme for a service type that corresponds as nearly as possible to the new Act service type.

*Limitations on funded aged care services to which transition applies for individuals who are not Aboriginal or Torres Strait Islander persons*

- (6) Despite subparagraph (1)(h)(i) or (ii), that subparagraph does not apply in relation to an individual who is not an Aboriginal or Torres Strait Islander person and a service type or funded aged care service referred to in that subparagraph unless:
- (a) the individual has a long-term physical, mental, sensory or intellectual impairment and the impairment may hinder the individual's participation in society on an equal basis with others as a result of the impairment's interaction with various barriers; and
  - (b) any of the following apply:
    - (i) each of the funded aged care services in the service type, or the funded aged care service, is an in-home, residential or other community support service and access to the funded aged care services in the service type, or the funded aged care service, is necessary to support the individual to live and be included in the community, and to prevent isolation or segregation of the individual from the community;
    - (ii) access to the funded aged care services in the service type, or the funded aged care service, will facilitate personal mobility of the individual in the manner and at the time of the individual's choice;
    - (iii) the funded aged care services in the service type each involve, or the funded aged care service involves, a mobility aid or device, or assistive technology, live assistance or intermediaries that will facilitate personal mobility of the individual;
    - (iv) the funded aged care services in the service type are each, or the funded aged care service is, a health service that the individual needs because of the individual's impairment or because of the interaction of the individual's impairment with various barriers;

- (v) the funded aged care services in the service type are each, or the funded aged care service is, a habilitation or rehabilitation service;
  - (vi) the funded aged care services in the service type are each, or the funded aged care service is, a service that will assist the individual to access a service mentioned in subparagraph (iv) or (v);
  - (vii) the funded aged care services in the service type, or the funded aged care service, will minimise the prospects of the individual acquiring a further impairment or prevent the individual from acquiring a further impairment;
  - (viii) the funded aged care services in the service type are each, or the funded aged care service is, a medical service required by the individual because of sickness.
- (7) For the purposes of paragraph (6)(a), an impairment may be long-term despite the fact it is episodic, fluctuating or varying in intensity over time.

### **3 Access approvals for service group residential care**

- (1) The System Governor is taken to have made the following decisions at the transition time, in relation to an individual to whom subitem (2) applies:
- (a) an eligibility determination under subsection 57(1) of the new Act;
  - (b) a decision under subsection 65(1) of the new Act that the individual requires access to funded aged care services;
  - (c) a decision under paragraph 65(2)(a) of the new Act that the individual is approved for the following:
    - (i) if paragraph (2)(a) of this item applies to the individual—the classification type ongoing for the service group residential care;
    - (ii) if paragraph (2)(b) of this item applies to the individual—the classification type short-term for the service group residential care;
    - (iii) if paragraph (2)(c), (e) or (f) of this item applies to the individual—the classification types ongoing and short-term for the service group residential care;

- (iv) if paragraph (2)(d) of this item applies to the individual—the classification type hospital transition for the service group residential care.
- (2) This subitem applies to the individual if, as at immediately before the transition time:
- (a) the individual was approved under section 22-1 of the old Act as a recipient of residential care and that approval did not include a limitation under paragraph 22-2(1)(c) of the old Act (which deals with the provision of respite care); or
  - (b) the individual was approved under section 22-1 of the old Act as a recipient of residential care and that approval included a limitation under paragraph 22-2(1)(c) of the old Act (which deals with the provision of respite care); or
  - (c) the individual was approved under section 22-1 of the old Act as a recipient of residential care and the terms of that approval expressly covers the provision of respite care; or
  - (d) the individual was approved under section 22-1 of the old Act as a recipient of residential care and flexible care in the form of transition care (within the meaning of the old Principles); or
  - (e) subitem (3) applies in relation to the individual and the individual was:
    - (i) accessing flexible care provided in a residential setting through a multi-purpose service (within the meaning of the old Principles); or
    - (ii) party to a written agreement with an approved provider (within the meaning of the old Act) of a multi-purpose service (within the meaning of the old Principles) which provides for the individual to commence accessing flexible care provided in a residential setting through that service within the period of 3 months beginning at the transition time; or
  - (f) the individual had, at any time in the previous 12 months, received services under the National Aboriginal and Torres Strait Islander Flexible Aged Care Program.
- (3) This subitem applies in relation to the individual if the individual has, by reason of sickness (within the meaning of the new Act), a continuing

need for funded aged care services (including nursing services) in the service group.

#### **4 Classification levels, priority category and place allocation decisions**

- (1) The System Governor must determine, by legislative instrument, for one or more classes of individuals to whom subitem 2(2) applies, the following:
  - (a) the classification level taken to be established for each of the individuals in the class under subsection 78(1) of the new Act at the transition time for a classification type for a service group that those individuals are taken to be approved for under subitem 2(1);
  - (b) if circumstances specified by the determination apply in relation to the individuals in the class and a classification type for a service group specified by the determination—the priority category that each of those individuals is taken to have been assigned for the classification type for the service group under subsection 86(1) of the new Act at the transition time;
  - (c) if circumstances specified by the determination apply in relation to the individuals in the class and a classification type for a service group specified by the determination—that a place is taken to have been allocated under subsection 92(1) of the new Act at the transition time to each of those individuals for the classification type for the service group.
  
- (2) The System Governor must determine, by legislative instrument, for one or more classes of individuals to whom subitem 3(2) applies, the following:
  - (a) the classification level taken to be established for each of the individuals in the class under subsection 78(1) of the new Act at the transition time for a classification type for the service group residential care that those individuals are taken to be approved for under subitem 3(1);
  - (b) if circumstances specified by the determination apply in relation to the individuals in the class and a classification type for the service group residential care specified by the determination—that a place is taken to have been allocated

**Schedule 2** Application, saving and transitional provisions  
**Part 2** Transitional provisions for Chapter 2 of the new Act

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under subsection 92(1) of the new Act at the transition time to each of those individuals for the classification type for the service group.



## **Part 3—Transitional provisions for Chapter 3 of the new Act**

### **Division 1—Provider registration**

#### **5 Registration of entities**

##### *Deeming of registered providers*

- (1) The following entities (within the meaning of the new Act) are taken, at the transition time, to be registered as a registered provider under paragraph 105(1)(a) of the new Act:
  - (a) an entity that is, immediately before the transition time, an approved provider within the meaning of section 7 of the Commission Act;
  - (b) an entity that is, immediately before the transition time, the holder of an approval under section 63D of the Commission Act that is suspended under section 63N of that Act.
- (2) Despite subitem (1), that subitem does not apply in relation to an entity if the System Governor determines, in accordance with any determination made under subitem (14), that the entity is an inactive provider because the entity had not, before the transition time, claimed subsidy (within the meaning of the old Act) for a period of time that the System Governor considers significant.

##### *Registration period*

- (3) For the purposes of subitem (1), the entity's registration period for the purposes of section 115 of the new Act is taken to be the period, of no less than 3 months and no more than 3 years and 3 months, determined, in accordance with any determination made under subitem (14), by the System Governor to be appropriate for the provider.
- (4) Before making a determination under subitem (3), the System Governor must seek, and take into account, the advice of the Commissioner.
- (5) In providing advice for the purposes of subitem (4), the Commissioner must have regard to:

- (a) the recency of any audits conducted under the Commission Act in relation to the entity; and
- (b) the desirability of ensuring a smooth sequence of audits conducted under section 110 of the new Act.

*Registration categories*

- (6) For the purposes of subitem (1), the entity is, for the purposes of paragraph 105(1)(a) of the new Act, taken to be registered in the registration categories determined by the System Governor (in accordance with any determination made under subitem (14)) to be appropriate for the entity having regard to the following:
  - (a) the general need for continued delivery of funded aged care services to individuals that correspond as nearly as possible to the types of aged care provided to individuals under the old Act and the services provided under agreements between aged care providers and the Commonwealth;
  - (b) any types of aged care the entity was, immediately before the transition time, approved to provide under section 63D of the Commission Act;
  - (c) any services covered in an agreement between the entity and the Commonwealth that was in effect immediately before the transition time;
  - (d) any types of aged care or services the entity had actually provided to individuals in the period of 12 months ending at the transition time.

*Residential care homes and service delivery branches*

- (7) For the purposes of subitem (1), each of the following places is taken, as determined by the System Governor, having regard to any rules made for the purposes of subsection 10(5) of the new Act and in accordance with any determination under subitem (9) of this item, to be, or be part of, an approved residential care home in relation to the entity for the purposes of paragraph 105(1)(b) and section 112 of the new Act:
  - (a) any place through which the entity provided either of the following as at immediately before the transition time:
    - (i) a residential care service that meets its accreditation requirement at the transition time;

- (ii) a flexible care service through which the entity provides flexible care in the form of transition care (within the meaning of the old Principles);
  - (b) any place which, as at immediately before the transition time, was covered by an agreement between the entity and the Commonwealth for the entity to provide flexible care through a multi-purpose service (within the meaning of the old Principles).
- (8) For the purposes of subitem (1), each of the following aged care services through which the entity provided care as at immediately before the transition time is taken to be a service delivery branch of the registered provider for the purposes of the new Act:
  - (a) a home care service;
  - (b) a flexible care service through which flexible care is provided as either transition care or short-term restorative care (within the meaning of the old Principles).
- (9) For the purposes of subitem (7), the System Governor may, by legislative instrument and having regard to the matters referred to in that subitem, determine how that subitem applies to different kinds of places.
- (10) Despite subitem (7), the System Governor must not determine a place to be, or be part of, an approved residential care home under that subitem unless the System Governor is satisfied that the place, or the places combined, are a residential care home within the meaning of the new Act.
- (11) For the purposes of subitem (7), the determination of an approved residential care home must include a determination of the total number of beds for the home, having regard to:
  - (a) the total number of places allocated under section 14-1 of the old Act to the entity which include a condition under paragraph 14-5(3)(b) of that Act that the place is allocated in respect of an aged care service referred to in paragraph (7)(a) of this item in relation to the residential care home; and
  - (b) any other matter the System Governor considers relevant.
- (12) The total number of beds for an approved residential care home determined in accordance with subitem (11) is taken to be the total

number of beds in relation to the approved residential care home for the purposes of paragraph 112(1)(b) of the new Act.

*Suspended providers*

- (13) For the purposes of applying the new Act to an entity that is suspended as referred to in paragraph (1)(b) of this item:
- (a) the suspension is taken to be a suspension by the Commissioner under section 129 of the new Act; and
  - (b) the period of suspension for the purposes of subsection 129(2) of the new Act is taken to end at the earlier of the following:
    - (i) the end of the day (if any) specified under section 63N of the Commission Act as the day the suspension ends;
    - (ii) the end of the period of 90 days beginning at the transition time.

*Determinations by System Governor*

- (14) For the purposes of subitem (2), (3) or (6), the System Governor may, by legislative instrument and having regard to the matters referred to in that subitem, determine how that subitem applies to different kinds of registered providers.

**6 Deemed registered providers**

- (1) The System Governor may determine, in writing, that an entity is taken to be registered as a registered provider under paragraph 105(1)(a) of the new Act.
- (2) The determination must specify:
- (a) the name of the entity; and
  - (b) the reasons for making the determination; and
  - (c) the registration period, being 3 months or such longer period as is specified in the determination; and
  - (d) the day on which the registration period starts; and
  - (e) each provider registration category in which the entity is taken to be registered under paragraph 105(1)(a) of the new Act; and

- (f) if the entity is taken to be registered in the residential care category—each approved residential care home taken to be covered by the entity’s registration; and
  - (g) the conditions to which the registration is subject under section 142 of the new Act; and
  - (h) any other matter prescribed by the transitional rules.
- (3) The System Governor must not make a determination under subitem (1) unless the System Governor is satisfied that:
  - (a) the determination will ensure that the provision of certain types of care under the old Act, or services delivered under an agreement between the entity and the Commonwealth, may continue as funded aged care services under the new Act that correspond as nearly as possible to those types of care or services; and
  - (b) any other requirements prescribed by the transitional rules are met.
- (4) The System Governor must give notice of the determination to the entity and the Commissioner.
- (5) The Commissioner must record or update the details of the entity’s registration on the Provider Register as soon as practicable after receiving the notice.
- (6) A determination under subitem (1) is not a legislative instrument.

## **7 Deemed approval of residential care homes**

- (1) For the purposes of paragraph 6(2)(f) of this Schedule, the System Governor may determine, in writing, that a place, or one or more places, are taken to be approved as a residential care home in relation to a registered provider for the purposes of paragraph 105(1)(b) and section 112 of the new Act.
- (2) The determination must specify:
  - (a) the name of the registered provider; and
  - (b) the name and address of the residential care home; and
  - (c) the total number of beds to be covered by the approval; and
  - (d) the reasons for making the determination; and
  - (e) the day on which the approval period starts; and

- (f) any other matter prescribed by the transitional rules.
- (3) The System Governor must not make the determination unless the System Governor is satisfied that both of the following apply:
  - (a) the place or combination of places meets the definition of *residential care home* in section 10 of the new Act;
  - (b) the registered provider and those places meet any other requirements prescribed by the transitional rules.
- (4) The System Governor must give notice of the determination to the registered provider and the Commissioner.
- (5) The Commissioner must update the details of the registered provider's registration on the Provider Register as soon as practicable after receiving the notice.
- (6) A determination under subitem (1) is not a legislative instrument.

### **8 Provider Register and information to be provided by registered providers**

- (1) An entity that is taken to be a registered provider under subitem 6(1) of this Schedule must, within the period of 6 months beginning at the transition time, give the Commissioner a notice, in the approved form, specifying the information referred to in subsection 104(3) of the new Act.
- (2) Subitem (1) does not apply if the registered provider makes an application to renew the provider's registration under subsection 107(1) of the new Act before the end of that period.
- (3) Subsection 141(3) (other than paragraphs (3)(a), (e) and (f)) and subsections 141(4), (5) and (6) of the new Act (which deal with the Provider Register) do not apply to an entity referred to in subitem (1) for the period referred to in that subitem.

### **9 Pending applications for approval as a provider**

- (1) An application made by a person in accordance with section 63B of the Commission Act for which the Commissioner had not made a decision on the application before the transition time is taken, after that time, to be an application made by the person in accordance with section 104 of the new Act.

- (2) For the purposes of subitem (1):
- (a) any request, made under subsection 63C(1) of the Commission Act for further information in relation to the application, and for which the period for giving the further information had not ended before the transition time, is taken to be a request made under subsection 588(1) of the new Act; and
  - (b) the period within which any such further information is required to be given under subsection 588(2) of the new Act is taken to be the period referred to in paragraph (a) of this subitem; and
  - (c) the period within which the decision on the application must be made under subsection 105(2) of the new Act is taken to be the period within which a decision was required to be made under subsection 63D(1) of the Commission Act.

## **10 Revocations of provider approvals**

### *Pending notices of revocation of approval*

- (1) A notice given to a person by the Commissioner in accordance with section 63K of the Commission Act for which the Commissioner had not made a decision before the transition time is taken, after that time, to be a notice given to the person in accordance with section 132 of the new Act.
- (2) For the purposes of subitem (1), the period within which the person may make submissions in relation to the matter for the purposes of paragraph 132(2)(b) of the new Act is taken to be the period within which the person was permitted to make submissions in relation to the matter in accordance with paragraph 63K(2)(b) of the Commission Act.

### *Pending requests for revocation of approval*

- (3) A request given to the Commissioner in accordance with section 63H of the Commission Act for which the Commissioner had not made a decision before the transition time is taken, after that time, to be a request given to the Commissioner in accordance with subsection 131(3) of the new Act.

*Pending revocations of approval on request by provider*

- (4) If, before the transition time, the Commissioner has revoked the approval of an entity as an approved provider under subsection 63H(3) of the Commission Act but that revocation had not taken effect before the transition time, the Commissioner is taken to have decided to revoke the approval of the entity as a registered provider under subsection 131(3) of the new Act.
- (5) For the purposes of subitem (4), if, before the transition time, a notice of the decision had been given under subsection 63H(4) of the Commission Act, the notice is taken to be a notice given under subsection 135(1) of the new Act which includes the same revocation day.

*Pending revocations of approval on initiative of Commissioner*

- (6) If, before the transition time, the Commissioner had revoked the approval of an entity as an approved provider under subsection 63J(1) or (2) of the Commission Act but that revocation had not taken effect before the transition time, the Commissioner is taken to have revoked the approval of the entity as a registered provider under subsection 131(1) of the new Act.
- (7) For the purposes of subitem (6), if, before the transition time, a notice of the decision had been given under subsection 63L(2) of the Commission Act, the notice is taken to be a notice given under subsection 134(4) of the new Act which includes the same revocation day.

*Notices about revocation sanctions*

- (8) If:
  - (a) an entity is, because of subitem 5(1) of this Schedule, taken to be a registered provider under paragraph 105(1)(a) of the new Act; and
  - (b) a non-compliance notice (within the meaning of the Commission Act) notifying the entity that the Commissioner is considering imposing a sanction revoking the approval of the entity as an approved provider (whether or not the notice also notifies the entity of other kinds of sanctions the



Commissioner is considering imposing) was given to the entity before the transition time; and

- (c) the period for making submissions in relation to the notice had not expired before the transition time;

the notice is taken, after the transition time, to be a notice given to the entity under subsection 132(1) of the new Act.

- (9) For the purposes of subitem (8), the period within which the entity may make submissions in relation to the matter for the purposes of paragraph 132(2)(b) of the new Act is taken to be the period within which the entity was permitted to make submissions in relation to the matter in accordance with paragraph 63S(3)(e) of the Commission Act.

*Revocation sanctions that have not come into effect*

- (10) If:

- (a) an entity is, because of subitem 5(1) of this Schedule, taken to be a registered provider under paragraph 105(1)(a) of the new Act; and
- (b) a sanction revoking the approval of the entity as an approved provider was imposed on the entity under section 63N of the Commission Act before the transition time; and
- (c) the day specified for the purposes of paragraph 63N(5)(f) of the Commission Act in relation to the sanction is the day of the transition time or a later day;

the notice is taken, after the transition time, to be a notice of revocation given to the entity in accordance with section 134 of the new Act that specifies as the revocation day the day that was specified for the purposes of paragraph 63N(5)(f) of the Commission Act.

## **11 Suspensions of provider approvals**

*Notices about suspension sanctions*

- (1) If:

- (a) an entity is, because of subitem 5(1) of this Schedule, taken to be a registered provider under paragraph 105(1)(a) of the new Act; and
- (b) a non-compliance notice (within the meaning of the Commission Act) notifying the entity that the Commissioner

is considering imposing a sanction suspending the approval of the entity as an approved provider (whether or not the notice also notifies the entity of other kinds of sanctions the Commissioner is considering imposing) was given to the entity before the transition time; and

- (c) the period for making submissions in relation to the notice had not expired before the transition time;

the notice is taken, after the transition time, to be a notice given to the entity under subsection 132(1) of the new Act.

- (2) For the purposes of subitem (1), the period within which the entity may make submissions in relation to the matter for the purposes of paragraph 132(2)(b) of the new Act is taken to be the period within which the entity was permitted to make submissions in relation to the matter in accordance with paragraph 63S(3)(e) of the Commission Act.

*Pending requests for lifting of suspension sanctions*

- (3) Subitem (4) applies if:
- (a) an entity is, because of subitem 5(1) of this Schedule, taken to be a registered provider under paragraph 105(1)(a) of the new Act; and
  - (b) because of subitem 5(13) of this Schedule, the registration of the entity as a registered provider is taken to have been suspended by the Commissioner under section 129 of the new Act; and
  - (c) before the transition time, the entity made an application under subsection 63V(1) of the Commission Act for the lifting of the suspension sanction under section 63N of that Act; and
  - (d) the Commissioner had not made a decision on the application before the transition time.
- (4) The application is taken, after the transition time, to be a request, by the entity and made in accordance with section 559 of the new Act, for reconsideration of the decision of the Commissioner to suspend the registration under section 129 of the new Act.
- (5) For the purposes of subitem (4):
- (a) any request, made under subsection 63W(1) of the Commission Act for further information in relation to the

application, and for which the period for giving the further information had not ended before the transition time, is taken to be a request made under subsection 588(1) of the new Act; and

- (b) the period within which any such further information is required to be given under subsection 588(2) of the new Act is taken to be the period referred to in paragraph (a) of this subitem; and
- (c) the period within which the decision must be reconsidered for the purposes of paragraph 560(5)(c) of the new Act is taken to be the period within which the decision whether to lift the sanction was required to be made under subsection 63X(1) of the Commission Act.

## **Division 2—General information gathering requirements**

### **12 Statutory requirement to give documents or information**

- (1) This item applies if:
  - (a) immediately before the transition time, a person or body was an approved provider within the meaning of the old Act; and
  - (b) before the transition time, the person or body was required, by a provision of the old Act or an instrument made under that Act, to give a document (however described) or information to the Secretary in relation to a period that had ended before the transition time; and
  - (c) the person or body had not complied with the requirement before the transition time.
- (2) Despite the repeal of the old Act by this Act, the requirement continues to apply as if the repeal had not happened.

### **13 Notice to give documents or information**

- (1) This item applies if:
  - (a) immediately before the transition time, a person or body was an approved provider within the meaning of the old Act; and
  - (b) before the transition time, the Secretary had given a written notice to the person or body under the old Act, or under an instrument made under that Act, requiring the person or body

to give specified documents or information to the Secretary within a period that had not ended before the transition time; and

- (c) at the transition time, the person or body had not complied with the requirement.
- (2) Despite the repeal of the old Act by this Act, the requirement continues to apply as if the repeal had not happened.

### **Division 3—Specific information gathering requirements**

#### **14 Obligations relating to reporting, notifications and information etc.**

- (1) Despite the repeal of the old Act by this Act, section 9-1 of the old Act continues to apply after the transition time, as if the repeal had not happened, in relation to a change of circumstances that occurs before the transition time if, before the transition time:
- (a) the period for giving a notification in relation to the change had not ended; and
  - (b) the required notification had not been given.
- (2) Despite the repeal of the old Act by this Act, section 9-2A of the old Act continues to apply after the transition time, as if the repeal had not happened, in relation to an event that occurred before the transition time if, before the transition time:
- (a) the period for giving a notification in relation to the event had not ended; and
  - (b) the required notification had not been given.
- (3) Despite the repeal of the old Act by this Act, sections 9-2, 9-3, 9-3A and 9-3B of the old Act continue to apply after the transition time, as if the repeal had not happened, in relation to a request made before the transition time if, before the transition time:
- (a) the period for complying with the request had not ended; and
  - (b) the request had not been complied with.
- (4) Despite the repeal of the Commission Act by this Act, sections 63 and 63A of the Commission Rules continue to apply after the transition time, as if the repeal had not happened, in relation to a notice given to

an approved provider before the transition time if, before the transition time:

- (a) the period for complying with the notice had not ended; and
- (b) the notice had not been complied with.

## **15 Agreements relating to considered revocations**

- (1) Subitem (2) applies if:
  - (a) an entity is, because of subitem 5(1) of this Schedule, taken to be a registered provider under paragraph 105(1)(a) of the new Act; and
  - (b) an agreement referred to in paragraph 63U(2)(a) of the Commission Act was given by the entity before the transition time; and
  - (c) the agreement had not been complied with before the transition time.
- (2) The agreement is taken, after the transition time, to be an agreement referred to in paragraph 133(2)(a) of the new Act.
- (3) Subitem (4) applies if:
  - (a) an entity is, because of subitem 5(1) of this Schedule, taken to be a registered provider under paragraph 105(1)(a) of the new Act; and
  - (b) a notice was given to the entity under subsection 63U(2) of the Commission Act before the transition time; and
  - (c) the entity had not given the agreement required by the notice before the transition time.
- (4) The notice is taken, after the transition time, to be a notice given under subsection 133(2) of the new Act.

## **16 Conditions of registration—determinations relating to membership of governing bodies**

### *Determinations in force*

- (1) A determination under section 63-1E of the old Act that is in force immediately before the transition time continues in force (and may be dealt with) after the transition time as if it were a determination under section 159 of the new Act that relates to:

- (a) for a determination that relates to the responsibility set out in paragraph 63-1D(2)(a) of the old Act—the condition set out in paragraph 157(2)(a) of the new Act; and
- (b) for a determination that relates to the responsibility set out in paragraph 63-1D(2)(b) of the old Act—the condition set out in paragraph 157(2)(b) of the new Act.

*Pending applications for determinations*

- (2) Subitem (3) applies in relation to an application made in accordance with section 63-1E of the old Act if:
  - (a) the application was made before the transition time; and
  - (b) no decision on the application had been made before the transition time.
- (3) The application is taken, after the transition time, to be an application made in accordance with section 159 of the new Act.

**17 Conditions of registration—Commission Act sanctions**

- (1) This item applies if:
  - (a) an entity is, because of subitem 5(1) of this Schedule, taken to be a registered provider under paragraph 105(1)(a) of the new Act; and
  - (b) a sanction was imposed on the entity under section 63N of the Commission Act before the transition time; and
  - (c) the sanction is of a kind mentioned in paragraph 63R(b) or (c) of the Commission Act; and
  - (d) the sanction is in effect immediately before the transition time.
- (2) The sanction has effect (except for the purposes of section 556 of the new Act), and may be dealt with, after the transition time as if it were the following condition imposed by the Commissioner under section 143 of the new Act on the registered provider's registration:
  - (a) for a sanction of the kind mentioned in paragraph 63R(b) of the Commission Act—a condition restraining the registered provider from delivering funded aged care services other than through a service delivery branch, or approved residential care home, of the registered provider as at the transition time;

- (b) for a sanction of the kind mentioned in paragraph 63R(c) of the Commission Act—a condition that the registered provider is not eligible for subsidy in relation to the delivery of funded aged care services to an individual if payment of subsidies under the old Act in relation to the individual was prohibited by the sanction.
- (3) To avoid doubt, this item does not limit:
- (a) the ability of the Commissioner to impose any other condition on the registration of the registered provider under section 143 of the new Act; or
  - (b) any other condition to which the registration of the registered provider is subject (whether because of the new Act or this Act).

## **18 Non-compliance notices**

- (1) This item applies if:
- (a) an entity is, because of subitem 5(1) of this Schedule, taken to be a registered provider under paragraph 105(1)(a) of the new Act; and
  - (b) a non-compliance notice (within the meaning of the Commission Act) was given to the entity before the transition time; and
  - (c) the period for making submissions in relation to the notice had not expired before the transition time; and
  - (d) subitem 10(8) of this Schedule does not apply to the notice.
- (2) The notice is taken, after the transition time, to be a notice given to the entity under section 125 of the new Act.
- (3) For the purposes of subitem (2), the period within which the entity may make submissions in relation to the matter for the purposes of paragraph 125(3)(b) of the new Act is taken to be the period within which the entity was permitted to make submissions in relation to the matter in accordance with paragraph 63S(3)(e) of the Commission Act.

## 19 Responsible person determinations

### *Determinations in force*

- (1) A determination under subsection 10A-2(1) of the old Act in relation to an individual that is in force immediately before the transition time continues in force (and may be dealt with) after the transition time as if it were a determination under subsection 170(1) of the new Act in relation to the individual.

### *Notices of intention to make determination*

- (2) Subitem (3) applies in relation to a notice in relation to an individual given in accordance with subsections 10A-2(4) and (5) of the old Act if:
  - (a) the notice was given before the transition time; and
  - (b) the period referred to in the notice, in accordance with paragraph 10A-2(5)(b) of the old Act, for the making of submissions in relation to the notice had not expired before the transition time.
- (3) The notice is taken, after the transition time, to be a notice in relation to the individual given in accordance with subsections 170(4) and (5) of the new Act.
- (4) To avoid doubt, the notice is taken to invite, for the purposes of paragraph 170(5)(b) of the new Act, the making of submissions by the end of the same period as the period referred to in paragraph (2)(b) of this item.

## 20 Notice to complete aged care workforce census

- (1) This item applies if:
  - (a) immediately before the transition time, a person or body was an approved provider within the meaning of the old Act; and
  - (b) before the transition time, the person or body was required by section 46 of the *Accountability Principles 2014* to complete and return an aged care workforce census form to the Department by a date that is on or after the day the transition time occurs; and
  - (c) the person or body had not complied with the requirement before the transition time.



- (2) Despite the repeal of the old Act by this Act, the requirement continues to apply as if the repeal had not happened.

## **Part 4—Transitional provisions for Chapter 5 of the new Act**

### **Division 1—Establishment of the Aged Care Quality and Safety Commission**

#### **21 Commissioner’s report for period ended before transition time**

- (1) This item applies if:
  - (a) the transition time occurs after the end of a reporting period for the Commission under the old Act; and
  - (b) the annual report referred to in section 46 of the *Public Governance, Performance and Accountability Act 2013* for that reporting period had not been prepared before that time.
- (2) The Commissioner under the new Act must prepare the report.

#### **22 Commissioner’s report for period in which transition time occurs**

- (1) This item applies if the transition time occurs during a reporting period for the Commission under the old Act.
- (2) The first annual report prepared by the Commissioner under the new Act under section 46 of the *Public Governance, Performance and Accountability Act 2013* must, for the part of the reporting period before the transition time, include the matters that would have been included in the annual report for the Commission under the old Act if the old Act had not been repealed.

#### **23 Records**

Records and documents that were in the possession of the Commission under the old Act before the transition time are to be transferred to the Commission under the new Act after the transition time.

## **24 Staff**

- (1) This item applies to a person who, immediately before the transition time, was a staff member of the Commission under section 33 of the Commission Act.
- (2) The person is taken, at the transition time, to be engaged as a staff member of the Commission under section 369 of the new Act on the same terms and conditions.
- (3) The repeal of the Commission Act by this Act does not affect the continuity of employment of the person.

## **25 Persons assisting the Commissioner**

- (1) This item applies to a person who, immediately before the transition time, was made available to the Commissioner under section 34 of the Commission Act.
- (2) The person is taken, at the transition time, to be made available to the Commission under section 370 of the new Act on the same terms and conditions.
- (3) Nothing in this item is taken to affect the time at which the person was made available to the Commissioner under the Commission Act.

## **26 Consultants**

- (1) This item applies to a person who, immediately before the transition time, was engaged as a consultant under section 35 of the Commission Act.
- (2) The person is taken, at the transition time, to be engaged as a consultant under section 371 of the new Act on the same terms and conditions.
- (3) The repeal of the Commission Act by this Act does not affect the continuity of the engagement of the person.

## **27 Chief Clinical Advisor**

- (1) This item applies to the person who, immediately before the transition time, was appointed as the Chief Clinical Advisor under section 35A of the Commission Act.

- (2) The person is taken, at the transition time, to have been appointed as the Chief Clinical Advisor under section 354 of the new Act on the same terms and conditions.
- (3) Nothing in this item is taken to affect the time at which the person was appointed.

## **28 Requirement to prepare reports or give information— Commissioner**

- (1) This item applies if:
  - (a) the Commissioner under the Commission Act is required, by written notice given by the Minister under section 58 of that Act, to give the Minister, within a period that ends after the transition time:
    - (i) a report about a specified matter relating to the performance of the Commissioner's functions; or
    - (ii) a document setting out specified information relating to the performance of the Commissioner's functions; and
  - (b) the report or document had not been given to the Minister before that time.
- (2) The Commissioner under the new Act must comply with the requirement.
- (3) However, if the specified matter or specified information relates, in whole or in part, to the performance of the complaints functions of the Complaints Commissioner under the new Act, the Commissioner under the new Act may, in writing, delegate the preparation of the report or document, or relevant part of the report or document, to the Complaints Commissioner under the new Act.

## **29 Things done by or in relation to Commission under the Commission Act**

- (1) This item applies if:
    - (a) at a time (the *initial time*) before the transition time, a thing was done by, or in relation to, the Commission under the Commission Act; and
-

- (b) immediately after the transition time, the new Act provides for that thing to be done by, or in relation to, the Commission under the new Act.
- (2) The thing has effect, and may be dealt with, after the transition time as if it had been done at the initial time by or in relation to the Commission under the new Act.
- (3) However, subitem (2) is not intended to change the initial time the thing was done.

### **30 Things done by or in relation to Commissioner under the Commission Act**

- (1) This item applies if:
  - (a) at a time (the *initial time*) before the transition time, a thing was done by, or in relation to, the Commissioner under the Commission Act; and
  - (b) immediately after the transition time, the new Act provides for that thing to be done by, or in relation to, the Commissioner under the new Act.
- (2) The thing has effect, and may be dealt with, after the transition time as if it had been done at the initial time by or in relation to the Commissioner under the new Act.
- (3) However, subitem (2) is not intended to change the initial time the thing was done.

## **Division 2—Commissioner of the Commission**

### **31 Commissioner**

- (1) This item applies to the person who, immediately before the transition time, was appointed as the Commissioner under section 24 of the Commission Act.
- (2) The person is taken, at the transition time, to have been appointed as the Commissioner under section 347 of the new Act:
  - (a) on terms and conditions (including remuneration) that are equal to, or better than, the terms and conditions on which

the person held office as the Commissioner under the Commission Act; and

- (b) for the remainder of the period for which the person was appointed as the Commissioner under the Commission Act.

Note: The person's remuneration will not be better than their remuneration as Commissioner under section 24 of the Commission Act unless a higher level of remuneration is determined by the Remuneration Tribunal.

### **32 Acting Commissioner**

- (1) This item applies to a person who, immediately before the transition time, was appointed to act as the Commissioner under section 25 of the Commission Act.
- (2) The person is taken, at the transition time, to have been appointed to act as an acting Commissioner under section 362 of the new Act:
- (a) on terms and conditions (including remuneration) that are equal to, or better than, the terms and conditions on which the person was appointed as the acting Commissioner under the Commission Act; and
- (b) for the remainder of the period for which the person was appointed as the acting Commissioner under the Commission Act.

## **Division 3—Establishment of the Aged Care Quality and Safety Advisory Council**

### **33 Records**

Records and documents that were in the possession of the Advisory Council under the Commission Act immediately before the transition time are to be transferred to the Advisory Council under the new Act after the transition time.

### **34 Chair of Advisory Council**

- (1) This item applies to the person who, immediately before the transition time, was appointed as the Chair of the Advisory Council under section 41 of the Commission Act.

- (2) The person is taken, at the transition time, to have been appointed as the Chair of the Advisory Council under section 386 of the new Act:
- (a) on terms and conditions (including remuneration) that are equal to, or better than, the terms and conditions on which the person held office as the Chair under the Commission Act; and
  - (b) for the remainder of the period for which the person held office as the Chair under the Commission Act.

Note: The person's remuneration will not be better than their remuneration as Chair of the Advisory Council under section 41 of the Commission Act unless a higher level of remuneration is determined by the Remuneration Tribunal.

### **35 Other members of Advisory Council**

- (1) This item applies to a person who, immediately before the transition time, was appointed as a member, other than the Chair, of the Advisory Council under section 41 of the Commission Act.
- (2) The person is taken, at the transition time, to have been appointed as a member, other than the Chair or Deputy Chair, of the Advisory Council under section 386 of the new Act:
- (a) on terms and conditions (including remuneration) that are equal to, or better than, the terms and conditions on which the person held office as a member of the Advisory Council under the Commission Act; and
  - (b) for the remainder of the period for which the person held office as a member of the Advisory Council under the Commission Act.

Note: The person's remuneration will not be better than their remuneration as a member of the Advisory Council under section 41 of the Commission Act unless a higher level of remuneration is determined by the Remuneration Tribunal.

### **36 Acting Chair of Advisory Council**

- (1) This item applies to the person who, immediately before the transition time, was appointed to act as the Chair under subsection 42(1) of the Commission Act.
- (2) The person is taken, at the transition time, to have been appointed to act as the Chair under subsection 387(1) of the new Act:

- (a) on terms and conditions (including remuneration) that are equal to, or better than, the terms and conditions on which the person was appointed to act as the Chair under the Commission Act; and
- (b) for the remainder of the period for which the person was appointed to act as the Chair under the Commission Act.

### **37 Acting members of Advisory Council**

- (1) This item applies to a person who, immediately before the transition time, was appointed to act as an Advisory Council member, other than the Chair, of the Advisory Council under subsection 42(2) of the Commission Act.
- (2) The person is taken, at the transition time, to have been appointed to act as an Advisory Council member, other than the Chair or Deputy Chair of the Advisory Council, under subsection 387(2) of the new Act:
  - (a) on terms and conditions (including remuneration) that are equal to, or better than, the terms and conditions on which the person was appointed to act as an Advisory Council member of the Advisory Council under the Commission Act; and
  - (b) for the remainder of the period for which the person was appointed to act as an Advisory Council member of the Advisory Council under the Commission Act.

### **38 Procedures of Advisory Council**

A written direction given by the Minister to the Advisory Council under section 50 of the Commission Act is taken, at the transition time, to have been given by the Minister to the Advisory Council under subsection 395(2) of the new Act.

### **39 Disclosure of interests to the Minister**

- (1) This item applies to a person who is taken, by this Division, to be a member of the Advisory Council under the new Act.
- (2) A notice that was given under section 45 of the Commission Act before the transition time is taken to have been given under section 390 of the new Act.



## **Part 5—Transitional provisions for Chapter 6 of the new Act**

### **Division 1—Regulatory powers**

#### **40 Application of regulatory powers provisions of the new Act**

##### *Monitoring powers*

- (1) Part 2 of Chapter 6 of the new Act applies as if:
- (a) the following provisions were mentioned in subsection 397(1) of that Act:
    - (i) sections 25-3, 27-3 and 27-5 of the old Act;
    - (ii) Chapter 4 of the old Act;
    - (iii) subsections 74AC(1) and 74AD(1) of the Commission Act; and
  - (b) the following information were mentioned in subsection 397(2) of the new Act:
    - (i) information given in compliance, or purported compliance, with a provision of Chapter 3 of the old Act or Chapter 3 of the old Transitional Provisions Act;
    - (ii) information given in compliance or purported compliance with a provision of Chapter 4 of the old Act; and
  - (c) for the purposes of section 399 and paragraph 410(3)(a) of the new Act—the provisions mentioned in subparagraph (a)(ii) and (iii), and the information mentioned in subparagraph (b)(ii), of this subitem related to a function of the Commissioner or Complaints Commissioner; and
  - (d) for the purposes of section 400 and paragraph 411(2)(a) of the new Act—the provisions mentioned in subparagraph (a)(i), and the information mentioned in subparagraph (b)(i), of this subitem related to a function of the System Governor.

- (2) However, subitem (1) does not authorise or apply in relation to an entry to premises that occurs after the end of 18 months starting at the transition time.

*Investigation powers*

- (3) Part 3 of Chapter 6 of the new Act applies as if:
- (a) the following provisions were mentioned in section 412 of that Act:
    - (i) an offence provision of the old Act or the Commission Act;
    - (ii) an offence provision of the *Crimes Act 1914* or the *Criminal Code*, to the extent that it relates to the old Act or the Commission Act;
    - (iii) a civil penalty provision of the old Act (other than a civil penalty provision in Division 54 of that Act);
    - (iv) a civil penalty provision of the Commission Act or in Division 54 of the old Act; and
  - (b) for the purposes of section 414 and paragraph 425(3)(a) of the new Act—the provisions mentioned in subparagraphs (a)(i), (ii) and (iv) of this subitem related to a function of the Commissioner or Complaints Commissioner; and
  - (c) for the purposes of section 415 and paragraph 426(2)(a) of the new Act—the provisions mentioned in subparagraph (a)(iii) of this subitem related to a function of the System Governor.

**Division 2—Notices to answer questions or give information or documents**

**41 Saving notices under the old Act to attend to answer questions or give information or documents**

- (1) This item applies if:
- (a) a notice was given to a person under subsection 93-1(2) of the old Act before the transition time; and
  - (b) the notice required the person to attend before an authorised officer to do a thing at a time that is after the transition time.

- (2) Division 93 of the old Act continues to apply after the transition time in relation to the notice as if:
- (a) subsection 93-1(2) of that Act authorised the Secretary to require the person to attend before an authorised System Governor officer; and
  - (b) the authorised officer specified in the notice were an authorised System Governor officer.

**42 Saving notices under the Commission Act to attend to answer questions or give information or documents**

- (1) This item applies if:
- (a) a notice was given to a person under subsection 74F(1) or 74FA(2) of the Commission Act before the transition time; and
  - (b) the notice required the person to attend before an authorised officer to do a thing at a time that is after the transition time.
- (2) Division 3 of Part 8A of the Commission Act continues to apply after the transition time in relation to the notice as if:
- (a) subsections 74F(1) and 74FA(2) of that Act authorised the Commissioner to require the person to attend before an authorised Commission officer; and
  - (b) the authorised officer specified in the notice were an authorised Commission officer.

**43 Saving notices under the Commission Act to give information or produce documents**

- (1) This item applies if:
- (a) a notice was given to a person under subsection 74GA(1) of the Commission Act before the transition time; and
  - (b) the notice required the person to give the Commissioner information or produce to the Commissioner documents or copies of documents, within a time that ends after the transition time; and
  - (c) the notice was not complied with before the transition time.
- (2) Division 3 of Part 8A of the Commission Act continues to apply after the transition time in relation to the notice as if:

- (a) subsection 74GA(1) of that Act authorised the Commissioner to require the person to give the information, or to produce the documents or copies, to the Commissioner (within the meaning of the new Act); and
- (b) the references in subsections 74GA(2), (3) and (4) of that Act to the Commissioner were references to the Commissioner (within the meaning of the new Act).

### **Division 3—Compliance notices and banning orders**

#### **44 Compliance notices**

- (1) This item applies if:
  - (a) an entity is, because of subitem 5(1) of this Schedule, taken to be a registered provider under paragraph 105(1)(a) of the new Act; and
  - (b) a compliance notice (within the meaning of the Commission Act) was given to the entity before the transition time; and
  - (c) the notice had not been complied with before the transition time.
- (2) The notice is taken, after the transition time, to be a notice given under section 481 of the new Act.

#### **45 Banning orders in force immediately before the transition time**

- (1) This item applies in relation to a banning order against an individual made under subsection 74GB(1) or (3) of the Commission Act that is in force immediately before the transition time.
- (2) The banning order continues in force (and may be dealt with), after the transition time, as if it were a banning order against the individual made under section 498 of the new Act.
- (3) For the purposes of the application of the new Act to the banning order after the transition time:
  - (a) if the banning order was made against an individual who is or was a governing person—the order is taken to have been made against the individual as a responsible person; and

- (b) if the banning order related to the individual’s involvement in the provision of any type of aged care—the order is taken to relate to the individual’s involvement in the delivery of funded aged care services generally; and
  - (c) if the banning order related to the individual’s involvement in the provision of a specified type of aged care—the order is taken to relate to the delivery of funded aged care services of the specified service type or specified types that the Commissioner considers correspond as nearly as possible to the specified type of aged care to which the order related before the transition time.
- (4) To avoid doubt, the banning order is taken, for the purposes of the new Act:
  - (a) if the banning order was made for a specified period—to remain in force for that period; and
  - (b) if the banning order was made subject to specified conditions—to be subject to the same conditions.

#### **46 Banning orders that had expired before the transition time**

- (1) This item applies in relation to a banning order (an *expired banning order*) against an individual made under subsection 74GB(1) or (3) of the Commission Act that had ceased to be in force before the transition time.
- (2) Paragraph 13(1)(b) of the new Act (which relates to suitability matters) applies, after the transition time, as if the reference in that paragraph to a banning order included a reference to an expired banning order.
- (3) Subsection 141(6) of the new Act (which relates to the Provider Register) applies, after the transition time, as if the reference in that subsection to a banning order that was in force under section 498 included a reference to an expired banning order.
- (4) Section 507 of the new Act (which relates to the register of banning orders) applies, after the transition time, as if:
  - (a) each reference in that section to a banning order included a reference to an expired banning order; and
  - (b) paragraph (2)(a) of that section included a reference to revocation under section 74GG of the Commission Act; and

- (c) paragraph (2)(b) of that section included a reference to reconsideration under Part 8B of the Commission Act.

#### **47 Notices of intention to make banning orders**

- (1) This item applies in relation to a notice given to an individual in accordance with section 74GE of the Commission Act if:
  - (a) the notice was given before the transition time; and
  - (b) the period referred to in paragraph 74GE(3)(b) of the Commission Act for the making of submissions in relation to the notice had not expired before the transition time.
- (2) The notice is taken, after the transition time:
  - (a) to be a notice given to the individual in accordance with section 499 of the new Act; and
  - (b) to invite, for the purposes of paragraph 499(3)(b) of the new Act, the making of submissions by the end of the same period as the period referred to in paragraph (1)(b) of this item.

#### **48 Pending applications for variations or revocations of banning orders**

- (1) This item applies in relation to an application made in accordance with section 74GG or 74GH of the Commission Act if:
  - (a) the application was made before the transition time; and
  - (b) no decision on the application had been made before the transition time.
- (2) The application is taken, after the transition time, to be an application made in accordance with section 505 of the new Act.
- (3) If a notice of intention in relation to the application was given in accordance with subsection 74GG(4) or 74GH(4) of the Commission Act before the transition time, the notice is taken, after the transition time:
  - (a) to be a notice given in accordance with subsection 505(4) of the new Act; and
  - (b) if the period specified in the notice in accordance with paragraph 74GG(4)(b) or 74GH(4)(b) of the Commission Act for the making of submissions in relation to the notice had not expired before the transition time—to invite, for the

purposes of paragraph 505(4)(b) of the new Act, the making of submissions by the end of that period.

## **Division 4—Sanctions, undertakings and Code of Conduct requirements**

### **49 Commission Act sanctions not complied with before the transition time**

- (1) This item applies if:
  - (a) an entity is, because of subitem 5(1) of this Schedule, taken to be a registered provider under paragraph 105(1)(a) of the new Act; and
  - (b) a sanction was imposed on the entity under section 63N of the Commission Act before the transition time; and
  - (c) the sanction was of a kind mentioned in paragraph 63R(k), (m), or (o) of the Commission Act; and
  - (d) the sanction was in effect immediately before the transition time; and
  - (e) the sanction had not been complied with before the transition time.
- (2) Despite the repeal of the Commission Act by this Act, the obligation to comply with the sanction continues after the transition time.

### **50 Commission Act undertakings not complied with before transition time**

- (1) This item applies if:
  - (a) an entity is, because of subitem 5(1) of this Schedule, taken to be a registered provider under paragraph 105(1)(a) of the new Act; and
  - (b) the entity gave, before the transition time, an undertaking as required by a notice given to the entity under section 63T of the Commission Act; and
  - (c) the undertaking had not been complied with before the transition time.
- (2) Despite the repeal of the Commission Act by this Act, the obligation to comply with the undertaking continues after the transition time.

**51 Commission Act Code of Conduct requirements not complied with before transition time**

- (1) This item applies if:
- (a) an entity is, because of subitem 5(1) of this Schedule, taken to be a registered provider under paragraph 105(1)(a) of the new Act; and
  - (b) before the transition time, the Commissioner gave:
    - (i) the entity; or
    - (ii) an individual who is or was an aged care worker or a governing person of the entity;a requirement under section 23BD of the Commission Rules; and
  - (c) the requirement had not been complied with before the transition time.
- (2) Despite the repeal of the Commission Act by this Act, the requirement continues after the transition time.



## **Part 6—Transitional provisions for Chapter 7 of the new Act**

### **52 Protected information**

- (1) This item applies to information that, immediately before the transition time, was:
  - (a) protected information within the meaning of the old Act; or
  - (b) protected information within the meaning of the Commission Act.
- (2) For the purposes of the new Act, the information is taken, after the transition time, to be protected information within the meaning of that Act.

### **53 Retention of records by approved providers**

- (1) This item applies to a person or body who, immediately before the transition time, was an approved provider within the meaning of the old Act.
- (2) Despite the repeal of the old Act by this Act, sections 88-1 to 88-3 and 89-1 of that Act continue to apply to the person or body in relation to a record that was made before the transition time as if the repeal had not happened.
- (3) For the purposes of subitem (2), the reference in section 88-2 of the old Act to the Records Principles is taken to be a reference to the Records Principles made by the Minister under section 96-1 of that Act, as in force immediately before the transition time.
- (4) Nothing in this item is intended to change the time at which the requirement to retain a record referred to in subsection 89-1(2) of the old Act arises.

### **54 Retention of records by former approved providers**

- (1) This item applies to a person or body who, immediately before the transition time, was required to comply with section 89-1 of the old Act.

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- (2) Despite the repeal of the old Act by this Act, section 89-1 of that Act continues to apply to the person or body as if the repeal had not happened.

## **Part 7—Transitional provisions for Chapter 8 of the new Act**

### **Division 1—Reconsideration and review of decisions**

#### **55 Notice of decisions**

- (1) This item applies if:
  - (a) a decision was made under the old law; and
  - (b) the old law required notice of the decision to be given to a person; and
  - (c) the notice was not given before the transition time.
- (2) Despite the repeal of the old Act, the Commission Act and the old Transitional Provisions Act by this Act, the notice must be given as if those repeals had not happened.

#### **56 Notice of review rights**

- (1) This item applies if:
  - (a) a decision was made under the old law; and
  - (b) the old law required notice of review or appeal rights in relation to the decision to be given to a person; and
  - (c) the notice was not given before the transition time.
- (2) Despite the repeal of the old Act, the Commission Act and the old Transitional Provisions Act by this Act, the notice must be given as if those repeals had not happened.

#### **57 Reasons for decisions**

- (1) This item applies if:
  - (a) a decision was made under the old law; and
  - (b) the old law required reasons for the decision to be given to a person; and
  - (c) the reasons were not given before the transition time.

- (2) Despite the repeal of the old Act, the Commission Act and the old Transitional Provisions Act by this Act, the reasons must be given as if those repeals had not happened.

## **58 Review of decisions made under old law**

### *Continued application of Part 6.1 of old Act*

- (1) Despite the repeal of the old Act by this Act, Part 6.1 (reconsideration and review of decisions) of the old Act continues to apply, after the transition time, in relation to the following as if the repeal had not happened:
- (a) a reviewable decision made before the transition time;
  - (b) a decision of the Secretary or the Pricing Authority (whether made before or after the transition time) under section 85-4 or 85-5 of the old Act following a reconsideration of a reviewable decision made before the transition time.

### *Continued application of Part 6.1 of old Transitional Provisions Act*

- (2) Despite the repeal of the old Transitional Provisions Act by this Act, Part 6.1 (reconsideration and review of decisions) of the old Transitional Provisions Act continues to apply, after the transition time, in relation to the following as if the repeal had not happened:
- (a) a reviewable decision made before the transition time;
  - (b) a decision of the Secretary (whether made before or after the transition time) under section 85-4 or 85-5 of the old Transitional Provisions Act following a reconsideration of a reviewable decision made before the transition time.

### *Continued application of Part 8B of Commission Act*

- (3) Despite the repeal of the Commission Act by this Act, Part 8B (reconsideration and review of decisions) of the Commission Act continues to apply, after the transition time, in relation to the following as if the repeal had not happened:
- (a) a reviewable decision made before the transition time;
  - (b) a reconsideration decision of an internal decision reviewer (whether made before or after the transition time) under section 74L or 74M of the Commission Act following a

reconsideration of a reviewable decision made before the transition time.

*Continued application of Part 7 of Commission Rules*

- (4) Despite the repeal of the Commission Act by this Act, Part 7 (reconsideration and review of decisions) of the Commission Rules continues to apply, after the transition time, in relation to the following as if the repeal had not happened:
- (a) a reviewable Commissioner decision made before the transition time;
  - (b) a reconsideration decision of an internal reviewer (whether made before or after the transition time) following a reconsideration of a reviewable Commissioner decision made before the transition time.

**Division 2—Annual reports**

**59 Annual report for financial year ending before transition time**

- (1) This item applies if:
- (a) the transition time occurs after the end of a financial year; and
  - (b) the annual report referred to in section 63-2 of the old Act for that financial year had not been laid before each House of the Parliament before that time.
- (2) Despite the repeal of the old Act by this Act, section 63-2 of the old Act continues to apply to that report as if the repeal had not happened.

**60 Annual report for financial year in which transition time occurs**

- (1) This item applies if the transition time occurs during a financial year.
- (2) The first annual report prepared by the System Governor under section 599 of the new Act must, for the part of the financial year before the transition time, include information about the matters that would have been covered by an annual report referred to in section 63-2 of the old Act if the old Act had not been repealed by this Act.

## **Part 8—Miscellaneous**

### **61 Delegation of System Governor’s functions and powers under this Act**

Section 567 of the new Act applies in relation to the System Governor’s functions and powers under this Act in the same way as that section applies in relation to the System Governor’s functions and powers under the new Act.

### **62 Delegation and subdelegation of Commissioner’s functions and powers under this Act**

- (1) This item applies to the Commissioner under the new Act.
- (2) Sections 574 and 575 of the new Act apply in relation to the Commissioner’s functions and powers under this Act in the same way as those sections apply in relation to the Commissioner’s functions and powers under the new Act.

## **Part 9—Transitional provisions for amendments to the National Disability Insurance Scheme Act 2013**

### **63 Protected Commission information**

The amendments to section 67A of the *National Disability Insurance Scheme Act 2013* made by Schedule 1 to this Act apply in relation to any making of a record of, or disclosure or use of, protected Commission information after the transition time, whether the information was obtained before or after that time.

### **64 NDIS worker screening database**

The amendment of paragraph 181Y(3)(c) of the *National Disability Insurance Scheme Act 2013* made by Schedule 1 to this Act applies to information in the NDIS worker screening database regardless of whether the information was entered into that database before or after the transition time.

## Part 10—Transitional rules

### 65 Transitional rules

- (1) The Minister may, by legislative instrument, make rules prescribing matters:
  - (a) required or permitted by this Act to be prescribed by the rules; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting subitem (1), the rules may prescribe matters of a transitional nature (including prescribing any saving or application provisions) relating to:
  - (a) the amendments or repeals made by this Act; or
  - (b) the enactment of the new Act.
- (3) Without limiting subitem (2), rules made for the purposes of that subitem before the end of the period of 12 months starting at the transition time may modify the operation of the provisions of this Act or the new Act or any other Act or instrument.
- (4) Despite subsection 12(2) of the *Legislation Act 2003* and subject to subitem (5), the rules may be expressed to take effect from a date before the rules are registered under that Act.
- (5) If:
  - (a) the rules are expressed to take effect from a date before the rules are registered under the *Legislation Act 2003*; and
  - (b) a person engaged in conduct before the registration date; and
  - (c) but for the retrospective effect of the rules, the conduct would not have contravened a provision of an Act;then a court must not convict the person of an offence, or order the person to pay a pecuniary penalty, in relation to the conduct on the grounds that it contravened a provision of that Act.
- (6) 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;
  - (e) directly amend the text of this Act or the new Act.
- (7) This Schedule does not limit the rules that may be made for the purposes of subitem (1).

## Schedule 3—Repeals

### *Aged Care Act 1997*

#### **1 The whole of the Act**

Repeal the Act.

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

#### **2 The whole of the Act**

Repeal the Act.

### *Aged Care (Transitional Provisions) Act 1997*

#### **3 The whole of the Act**

Repeal the Act.

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[Minister's second reading speech made in—  
House of Representatives on 21 November 2024  
Senate on 27 November 2024]

(151/24)