

EXPLANATORY STATEMENT

Aged Care Quality and Safety Commission Act 2018

Aged Care Quality and Safety Commission Rules 2018

Authority

The *Aged Care Quality and Safety Commission Act 2018* (the Act) provides for the establishment of the Aged Care Quality and Safety Commission (the Commission) and describes the functions, appointment processes and operational matters relating to the Commission. The object of the Act is to protect and enhance the safety, health, well-being and quality of life for aged care consumers and to promote their confidence and trust in, and engagement about the provision of, aged care services and Commonwealth-funded aged care services.

Subsection 77(1) of the Act provides that the Minister may make rules providing for matters required or permitted, or necessary or convenient to give effect to, the Act. Subsection 4(2) of the *Acts Interpretation Act 1901* provides that a power may be exercised before the start time of an enactment, as if commencement had occurred. Subsection 4(5) provides that an instrument made under subsection 4(2) takes effect at the start time or a later time specified in that instrument.

These powers provide the authority to make this instrument.

Purpose

The purpose of the *Aged Care Quality and Safety Commission Rules 2018* (the Rules) is to give operational effect to the processes of the Commission in relation to complaint management and resolution, and accreditation, assessment and monitoring of aged care services and Commonwealth-funded aged care services.

These Rules establish a scheme for dealing with complaints made to the Commission (Part 2), and make provision for the accreditation (Part 3), quality review (Part 4) and monitoring (Part 5) of aged care services and Commonwealth-funded aged care services. The Rules also establish arrangements for the registration of quality assessors (Part 6), for reconsideration and review of certain decisions made under these Rules (Part 7), and for the sharing of certain information (Part 8).

Background

The Aged Care Quality and Safety Commission replaces the existing Australian Aged Care Quality Agency (Quality Agency) and Aged Care Complaints Commissioner (Complaints Commissioner) on 1 January 2019 by bringing together these functions into the Commission. This will result in the Commission being responsible for the accreditation, assessment and monitoring of, and resolution of complaints about, aged care services and Commonwealth-funded aged care services. As part of the reform agenda, it is intended that

amendments will be proposed for consideration by the Parliament to give the Commission responsibility for the approval of providers of aged care, compliance and compulsory reporting of assaults from 1 January 2020 (stage two).

In accordance with the Rules and the *Aged Care Quality and Safety Commission (Consequential Amendments) Rules 2018* (the Consequential Rules), from 1 January 2019, these Rules will replace the existing *Quality Agency Principles 2013*, *Quality Agency Reporting Principles 2013*, *Complaints Principles 2015*, *Commissioner Principles 2015*, and the *Australian Aged Care Quality Agency (Other Functions) Instrument 2015*.

Implementing the Rules contributes to the establishment of the independent Aged Care Quality and Safety Commission as announced in the 2018-19 Budget.

Consultation

As part of the Review of National Aged Care Quality Regulatory Processes (Carnell-Paterson Review) extensive public consultation took place with a range of stakeholders including aged care regulators, consumers, carers and approved providers to inform the recommendations of the Carnell–Paterson Review. Targeted sector meetings were held.

The Department of Health has met with the Aged Care Quality Advisory Council - established under section 29 of the *Australian Aged Care Quality Agency Act 2013* and the Aged Care Sector Committee Quality Subgroup. A targeted sector meeting was also held in early August 2018 to discuss the establishment of the Commission. Information from these meetings has helped to inform the development of the Rules.

As the Rules replace the existing applicable subordinate legislation these Rules reflect the outcomes of previous consultation that was undertaken with the existing legislation. Where significant changes to processes in stage two are identified, consultation with appropriate parties will occur.

These Rules have been developed in partnership with the Quality Agency and Complaints Commissioner.

Regulation Impact Statement (RIS)

The Office of Best Practice Regulation (OBPR) acknowledged as part of the Carnell-Paterson Review a process and analysis equivalent to a Regulation Impact Statement (RIS), was undertaken that addressed all seven RIS questions for the purposes of examining the likely impacts of associated new policy proposals.

OBPR has published the certification letter and review on the online RIS website: <https://ris.pmc.gov.au/2018/09/19/more-choices-longer-life-package>.

The reference number for this matter is 22277.

The Rules will commence on 1 January 2019. This instrument is a legislative instrument for the purpose of the *Legislation Act 2003*.

Explanation of provisions for the *Aged Care Quality and Safety Commission Rules 2018*

The *Aged Care Quality and Safety Commission Rules 2018* (the Rules) are in nine Parts:

- **Part 1** Provides the introductory details, definitions and specifies Commonwealth programs for the purposes of these Rules
- **Part 2** Describes the resolution and management of Complaints
- **Part 3** Sets out the process for accreditation
- **Part 4** Sets out the process for quality reviews
- **Part 5** Provides for the monitoring of services
- **Part 6** Provides for the registration of quality assessors
- **Part 7** Sets out the process for the reconsideration and review of decisions
- **Part 8** Provides for information sharing
- **Part 9** Transitional provisions

Part 1—Preliminary

Division 1—Introduction

Section 1 - Name of Instrument

Section 1 provides how the instrument is to be cited, that is, as the *Aged Care Quality and Safety Commission Rules 2018*.

Section 2 - Commencement

This section provides for the *Aged Care Quality and Safety Commission Rules 2018* to commence on 1 January 2019.

Section 3 - Authority

Section 3 provides that the Rules are made under the authority of the *Aged Care Quality and Safety Commission Act 2018* (the Act). This Act will commence on 1 January 2019.

Subsection 4(2) of the *Acts Interpretation Act 1901* provides that a power may be exercised before the start time of an enactment, as if commencement had occurred. Subsection 4(5) provides that an instrument made under subsection 4(2) takes effect at the start time or a later time specified in that instrument.

The power in section 77(1) of the Act to make Rules is relied on for the making of this instrument.

Division 2—Definitions

Section 4 - Definitions

This section defines certain terms that are used in these Rules and notes that several terms used in these Rules are defined in the Act. Where the terms are not defined here, in general the definitions are explained in discussing the sections where the terms are used in the Rules.

The *Accreditation Standards*, *Home Care Standards*, and the *Flexible Care Standards* are given the same meaning as these terms have in the *Quality of Care Principles 2014*. In this document, these standards are referred to as ‘the applicable quality standards.’

An *accredited service* is defined to mean:

- a residential care service or a flexible care service that has been accredited or re-accredited by the Commission under these Rules and where the period of that accreditation has not expired;
- a residential care service that has had its accreditation revoked, but is continuing to meet its accreditation requirement because the Secretary of the Department (the Secretary) has decided that ‘exceptional circumstances’ apply under section 42-5 of the *Aged Care Act 1997* (the Aged Care Act); or
- a flexible care service that has been deemed to be an accredited service under section 7 of these Rules.

Accredited services are subject to, among other things, ongoing compliance monitoring by the Commission, as set out in Part 5 of these Rules.

A *nominated representative* of an aged care consumer is, for care recipients of aged care services, the person nominated by the care recipient as their representative, or the person who puts themselves forward as a representative where the provider is satisfied that the person has a sufficient connection with the care recipient and is concerned for their safety, health and well-being. This is consistent with the definition contained in the *Records Principles 2014*. For recipients of Commonwealth-funded aged care services, the representative is defined as the person who represents the consumer. Both of these definitions would include persons such as the consumer’s partner, family member, holder of power of attorney, or someone appointed by a State or Territory guardianship board. Importantly, a consumer may have more than one representative, or different representatives for different purposes.

A *previously accredited service* is a residential care service or a flexible care service that was, but is no longer, an accredited service, with the relevant accreditation having either expired or been revoked. This would include a flexible care service that was but is no longer a deemed accredited service. In addition, a flexible care service that has never been an accredited service may also be a previously accredited service, if it is provided in a facility where the residential care service through which residential care is provided, is a previously accredited service. Previously accredited services are required to go through the re-accreditation process should they wish to become an accredited service – they are not able to be a commencing service under section 6 of these Rules.

Provider responsibility information is information received by the Commission that raises concerns about a provider’s compliance with its responsibilities, either under the Aged Care Act or under the funding agreement for that service. The Commission is empowered to deal with that information in the same manner as it deals with complaints under Part 2 of these Rules.

The *Quality Framework* means the Quality Framework for the National Aboriginal and Torres Strait Islander Flexible Aged Care Program published by the Department, as in force from time to time. Subsection 77(3) of the Act permits the Rules to incorporate instruments like the Quality Framework (which is not a legislative instrument) into the Rules as in force

from time to time, despite the general rule contained in subsection 14(2) of the *Legislation Act 2003*.

Providers are able to find a copy of the Quality Framework on the Department's website. At the time of writing, the applicable link for the Quality Framework was https://agedcare.health.gov.au/sites/g/files/net1426/f/documents/10_2014/ati-flex-combined.pdf. The Department would publish any updates to the Quality Framework on its website and would ensure that any changes are communicated to the providers under that program. The Quality Framework is supported by guidance publications that were previously published by the Quality Agency, which will be available on the website of the Commission going forward.

Section 5 - Meaning of assessment contact

An assessment contact is any interaction between a regulatory official of the Commission and a provider (other than the specific interactions involved in site audits (in Part 2 of these Rules), review audits (in Part 5 of these Rules) and quality reviews (in Part 4 of these Rules)) for the purposes set out in the Rules.

These interactions are designed to assess the provider's performance against the applicable quality standards, monitor the provider's continuous improvement, identify whether a more detailed review is required (in the form of a review audit or quality review, as applicable) or to provide information to or conduct education with the provider.

Assessment contacts encompass a wide range of interactions between the Commission and providers from an unannounced visit through to telephone calls and email surveys.

Section 6 - Meaning of commencing service

This section defines a commencing service to be a service that is to be operated by an approved provider that has been allocated places under Part 2.2 of the Aged Care Act where residential care has not been previously provided for those places through the service and the service does not meet the definition of an accredited service or previously accredited service (explained under section 4).

This means that where an existing service moves location, or where the approved provider that is the owner/operator of a service changes, the service does not become a commencing service.

In effect, a commencing service is any service where residential or flexible care has not been provided previously. Only commencing services may apply for accreditation – other services are either accredited services or previously accredited services and they must apply through the re-accreditation process.

Section 7 - Meaning of deemed accredited service

This provision operates to ensure that when flexible care places are allocated to an approved provider and care is to be provided through an accredited residential care service, the flexible care service is deemed to be an accredited service and subject to assessment contacts and monitoring under these rules. This provision reflects the short term nature of restorative care.

Division 3—Commonwealth-funded programs

Section 8 - Specification of programs

Subsection 8(1) of the Act defines a ‘Commonwealth-funded aged care service’ as a service that is provided under a program of a kind that is specified in the Rules.

This section specifies the Commonwealth Home Support Programme and the National Aboriginal and Torres Strait Islander Flexible Aged Care Program as programs of a kind, under which a Commonwealth-funded aged care service is provided.

A Commonwealth-funded aged care service is defined to distinguish these services from an aged care service, as defined under the Aged Care Act.

Part 2—Complaints and provider responsibility information

Part 2 deals with the management and resolution of complaints (previously administered by the Complaints Commissioner under the *Complaints Principles 2015*).

This Part establishes a scheme for dealing with complaints made, or provider responsibility information given, to the Commissioner about the following matters:

- an approved provider’s responsibilities under the Aged Care Act or the Aged Care Principles;
- the responsibilities of a service provider of a Commonwealth-funded aged care service under the funding agreement that relates to the service.

If the Commissioner receives a complaint that raises an issue about such responsibilities, the Commissioner must in relation to each issue decide to take no further action in relation to the issue, quickly resolve the issue to the satisfaction of the complainant, or decide to undertake a resolution process in relation to the issue.

If the Commissioner receives provider responsibility information that raises an issue about such responsibilities, the Commissioner may decide to undertake a resolution process in relation to the issue.

Division 3—Making complaints to the Commissioner

Sections 11-12 - How a person may make a complaint or raise an issue

A person may make a complaint or raise an issue or issues about an approved provider’s responsibilities under the Aged Care Act or the Aged Care Principles or the responsibilities of a service provider of a Commonwealth-funded aged care service under the related funding agreement with the Commonwealth. A complaint can be made either orally or in writing, and it can be made anonymously or confidentially.

A person who makes the complaint (the complainant) may make their complaint anonymously. Where a person makes an anonymous complaint, the Commissioner will still deal with the complaint, but will be unable to give resolution information to the complainant under sections 14 and 17.

A complaint can also be made on a confidential basis, where the complainant requests the Commissioner to keep either their identity, the identity of a consumer or other details confidential. It should be noted that all personal information under the Act is protected information and can only be released in certain circumstances as set out in section 61 of the Act.

A complainant may withdraw their complaint at any time, by informing the Commissioner either orally or in writing. When a complaint is withdrawn, the Commissioner may still continue dealing with the complaint, even though the complainant has withdrawn their complaint. For example, in circumstances where a consumer has died and a complaint has been made by a family member, the family member may decide to withdraw their complaint because it is too upsetting for them to continue to be involved in the resolution process. However, if the Commissioner continues to have concerns about the care that was provided to the consumer prior to their death and that poor care may be ongoing with respect to other consumers, the Commissioner can continue dealing with the complaint, although no resolution information would be given to the complainant in these circumstances.

Division 4—Dealing with complaints and provider responsibility information

Sections 14-16 - What action can the Commissioner take when a complaint is received

In summary, the Commissioner must do one of three things:

Decide to take no further action on an issue raised by the complaint.

There are a number of amended circumstances that have been included such as the issue is frivolous, vexatious or not raised in good faith; or where the issue is better dealt with by another person or body such as the Australian Health Practitioner Regulation Agency or the Department of Health.

Quickly resolve the issue raised in the complaint, to the satisfaction of the complainant, by giving assistance and advice to the complainant.

An example of this would be if the Commissioner received a complaint in relation to a consumer's blood glucose levels not being monitored, recorded and considered prior to administering the consumer's medicine. The Commissioner might contact the approved provider and learn that a new staff member in the area where the resident lives has not been properly trained in the approved provider's monitoring process.

The approved provider undertakes to investigate how the oversight occurred, instruct the new staff member in relation to the approved provider's processes and contact the complainant to consult about and explain these actions. In this instance, if the complainant is satisfied that the complaint has been properly addressed, there would be no need for further involvement of the Commissioner in the case.

It is important to note that if the Commissioner quickly resolves an issue to the satisfaction of the complainant there will be no formal feedback or opportunity for reconsideration. This is because the issue has been resolved quickly, a positive outcome has been achieved (or the complainant has otherwise agreed that they wish to pursue the matter themselves) and the complainant does not need the Commissioner to be further involved. Essentially it is the decision of the complainant, as communicated to the Commissioner, which stops the process.

Undertake a resolution process.

This is the process that would be adopted if the Commissioner cannot otherwise quickly resolve the issue to the satisfaction of the complainant and it is appropriate to continue to progress the complaint.

The Commissioner may decide to undertake a resolution process in relation to an issue raised in a complaint or an issue raised in provider responsibility information received by the Commissioner. There are a number of options available to the Commissioner for dealing with the identified issue:

- request the approved provider to examine and attempt to resolve the complaint and report back to the Commissioner;
- where there is a complainant request that the complainant, the relevant provider and any other person participate in a conciliation process;
- undertake an investigation of the issue; or
- refer the issue to mediation.

In dealing with a complaint, the Commissioner may do one or more of the following:

- consider documents;
- discuss the issue with the complainant (if any), the relevant provider or any other person, in person or by other means; or
- request information from any person.

The Commissioner may visit the location at which the services are provided by the approved provider or the offices of the approved provider for the purpose of resolving the identified issue.

If the Commissioner decides to undertake a resolution process the relevant provider for the issue must be given written notice, as soon as practicable, of the issue as mentioned in subsection 16(1). The Commissioner does not have to give notice if they consider that doing so will:

- impede the resolution of the issue; or
- place the safety, health or well-being of the complainant (if any), an aged care consumer or any other person at risk; or
- place the complainant (if any) or an aged care consumer at risk of intimidation or harassment.

Section 17 - Ending a resolution process

To end a resolution process the Commissioner must consider and be satisfied that a set of circumstances have been met, including:

- if the issue was raised in a complaint—the issue has been resolved because the complainant and the relevant provider for the issue have agreed on an outcome;
- the relevant provider for the issue has addressed the issue to the satisfaction of the Commissioner;
- the Commissioner has given a direction under section 19 to the relevant provider for the issue;

- if the relevant provider for the issue is an approved provider—the Commissioner has been notified that the Secretary has initiated action under Part 4.4 of the Aged Care Act which relates to the issue;
- if the relevant provider for the issue is a service provider of a Commonwealth-funded aged care service—the Commissioner has been notified that the Commonwealth has initiated, under the funding agreement that relates to the service, action which relates to the issue;
- the complaint has been withdrawn under section 12;
- the issue is better dealt with by another person or body;
- the continuation of the resolution process is not required because:
 - despite reasonable inquiries by the Commissioner, the circumstances giving rise to the issue cannot be determined;
 - the issue is frivolous, vexatious or not raised in good faith;
 - the issue is, or has been, the subject of legal proceedings;
 - the issue is already being dealt with, or has already been dealt with, under this Part or a former complaints scheme;
 - the issue is better dealt with, or is already being dealt with, under this instrument (other than this Part);
 - the issue is subject to a coronial inquiry;
 - an aged care consumer identified in the complaint, or in the provider responsibility information, does not wish the issue to be considered by the Commissioner;
- having regard to all the circumstances, the continuation of the resolution process is not required.

Section 18 - Sharing information with interested parties

The Commissioner can share information in relation to a resolution process to any person or organisation who has a sufficient interest in the issue. For example, the Commissioner may provide feedback to a consumer (or their representative) where that person was not the complainant. Where that information includes ‘protected information’, the disclosure would be subject to the provisions of Part 7, Division 4 of the Act.

Division 5—Directions

Sections 19-21 - Procedure for issuing directions

The Commissioner may issue directions to relevant providers. If, as part of a resolution process in relation to one or more issues, the Commissioner is concerned that a service provider is not meeting its responsibilities under the Aged Care Act or the Aged Care Principles or the responsibilities of a service provider of a Commonwealth-funded aged care service under the related funding agreement, the Commissioner can direct the provider to take specified action.

Before issuing directions, the Commissioner must give the service provider a notice of intention to issue directions. The notice of intention to issue directions is a procedural fairness step that allows the service provider to have a chance to respond to the Commissioner's concerns. The notice of intention to issue directions must include:

- the concerns of the Commissioner about:
 - if the relevant provider is an approved provider of an aged care service—the apparent failure of the provider to meet the provider's responsibilities under the Aged Care Act or the Aged Care Principles; or
 - if the relevant provider is a service provider of a Commonwealth-funded aged care service—the apparent failure of the provider to meet the provider's responsibilities under the funding agreement that relates to the service; and
- invite the relevant provider to respond, in writing, to the notice within a period specified in the notice.

The Commissioner must consider any response given within the specified time period.

The Commissioner may, after considering any response from the relevant provider, give written directions to that provider directing them to take specified action in order to meet its responsibilities under the Aged Care Act, Aged Care Principles or relevant funding agreement. The relevant provider must comply with these directions.

Failure by the relevant provider to comply with directions will result in the Commissioner notifying the relevant provider that the Commissioner is not satisfied that the relevant provider has sufficiently taken the specified action to meet its responsibilities. This notice will include details of the information that the Commissioner relied on in determining that the relevant provider did not take the actions stated in the directions. The notice will also be provided to the Secretary.

Failure by an approved provider to comply with directions may then result in the Secretary initiating action under Part 4.4 of the Aged Care Act, in accordance with the processes set out in Part 4.4.

Failure by a service provider of a Commonwealth-funded aged care service to comply with directions may then result in the Secretary initiating action under the funding agreement that relates to the service.

Division 6—other matters

Section 22 - Referral of issue to Secretary etc

This section provides that nothing in the Rules prevents the Commissioner from referring an issue raised in a complaint or provider responsibility information to the Secretary or another body or person. Section 22 also states that the Commissioner may continue to deal with an issue raised in a complaint or provider information even if the Commissioner has referred the issue to another body or person.

Section 23 - Taking of other action not prevented by this Part

This section provides that nothing in this instrument prevents the Secretary from taking action under Part 4.4 of the Aged Care Act in relation to an issue raised in a complaint or provider responsibility information.

The Commissioner may refer the matter to the Secretary so that the Secretary may consider taking action under Part 4.4 of the Aged Care Act (i.e. commencing the process relating to the imposition of sanctions). Part 4.4 of the Aged Care Act describes the matters that the Secretary must take into account when deciding whether or not to impose sanctions. This includes, for example, the seriousness of the non-compliance, whether the non-compliance has occurred before and the desirability of deterring future non-compliance.

Part 4.4 of the Aged Care Act also describes the types of sanctions that may be imposed by the Secretary. These include, but are not limited to, revoking the approved provider's approval as a provider of aged care, restricting the payment of subsidy and prohibiting the charging of refundable accommodation deposits or accommodation bonds.

Nothing in this Part prevents the Commonwealth from taking action under the funding agreement that relates to a Commonwealth-funded aged care service in relation to an issue raised in a complaint or provider responsibility information.

Part 3—Accreditation of residential aged care services

Part 3 deals with the accreditation of commencing and re-accreditation of residential services. These matters were previously dealt with under the *Quality Agency Principles 2013*.

If an application is made to the Commissioner to accredit a commencing service the Commissioner must decide whether to accredit the service for a period of 1 year.

If an application for re-accreditation of a residential service is made the Commissioner can do one of two things, re-accredit the service or not re-accredit the service. If a decision is made not to re-accredit, the Commissioner may also decide to revoke the service's accreditation.

Division 2—Specified aged care services

Section 25 - Specification of aged care services

For the purposes of the Commissioner's regulatory functions, subparagraph 19(a)(ii) of the Act allows the Rules to specify, in addition to residential care services, other aged care services of a kind to accredit in accordance with these Rules.

This section specifies a flexible care service through which short-term restorative care is provided in a residential care setting as another kind of aged care service, for this purpose.

Division 3—Accreditation of residential aged care services
Subdivision B—Applications for accreditation or re-accreditation

Sections 27 – 28 - Application process

An approved provider of a commencing service, an accredited service or a previously accredited service may apply to the Commissioner for accreditation or re-accreditation. When an application is made it must:

- be made in writing; and
- be in the form approved by the Commissioner; and
- include an undertaking by the provider, that if the service were to be accredited or re-accredited, to undertake continuous improvement in relation to the service as measured against the applicable quality standards; and
- be accompanied by any other information or documents specified by the Commissioner; and
- be accompanied by any fee specified by the Commissioner.

Subdivision C—Accreditation of commencing services

Sections 29 - 31 - Accrediting a commencing service

The Commissioner must decide whether to accredit a commencing service. Once an application for accreditation from a commencing service has been received the Commissioner has up to 16 days, or longer if agreed with the approved provider, to make a decision to accredit the service or not.

When making the decision to accredit the commencing service the Commissioner must take into account:

- the application; and
- any relevant information about the approved provider given to the Commissioner by the Secretary; and
- whether the Commissioner is satisfied that, if the commencing service were to be accredited, the approved provider will undertake continuous improvement in relation to the service as measured against the applicable quality standards.

The Commissioner may take into account any other relevant matter when deciding to accredit the commencing service.

If the Commissioner makes the decision to accredit the commencing service, they must accredit the service for 1 year, and decide if there are any areas the service needs to make improvements to ensure they are compliant with the applicable quality standards. The Commissioner will also decide the arrangements for assessment contacts with the approved provider for this period.

Once the Commissioner has made the decision to accredit the commencing service they must write to the approved provider within 14 days notifying them of the decision. The written notification letter must include:

- the decision;
- the period of accreditation (which will be a period of 1 year);
- any areas in which improvements in relation to the service must be made to ensure that the Accreditation Standards or Flexible Care Standards (as applicable) are complied with, and the timetable for making the improvements;
- the arrangements for assessment contacts with the provider of the service;
- the circumstances in which a review audit of the service may be conducted;
- how the provider may apply for the re-accreditation of the service.

The Commissioner must provide the approved provider of the commencing service with a certificate of accreditation within 28 days after making the decision. The Commissioner must also inform the Secretary as soon as possible.

If the Commissioner decides not to accredit the commencing service. The Commissioner must provide the approved provider with written notice within 14 days of making the decision. The written notice must include:

- the decision;
- the reasons for the decision;
- how the provider may apply for the reconsideration of the decision; and
- a copy of any information given to the Commissioner by the Secretary that was taken into account in making the decision.

A copy of the notice not to accredit must be provided to the Secretary as soon as practicable.

Subdivision D—Re-accreditation of residential services

Sections 32 - 43 - Conducting a site audit

If the Commissioner receives an application for re-accreditation, the Commissioner must conduct a site audit as soon as practicable with one or more quality assessors.

The Commissioner must provide the names of the assessment team members to the approved provider at the start of the site audit.

Prior to the site audit the Commissioner provides the approved provider with the form of words and poster to be used to tell consumers and their nominated representatives about the site audit. The approved provider must take all reasonable steps to ensure that the consumers and their nominated representatives are informed of the upcoming site audit, which may include emailing them. The purpose of informing all consumers and their nominated representatives is to ensure they are provided with an opportunity to speak to Commission staff prior to the site audit and/or the members of the assessment team.

In conducting the site audit a member of the assessment team must meet with the person in charge of the service on a daily basis to discuss the progress of the audit, this may include discussing the program for the day, issues identified during the audit, the expected timeframe for the audit to continue and which consumers are available to talk to the assessment team. The assessment team must also meet with 10 percent of consumers or nominated representatives during the audit.

In conducting the site audit the assessment team must:

- assess the quality of care and services provided through the service against the applicable quality standards;
- consider any relevant information about the quality of care and services provided through the service that was given to the team:
 - by a care recipient, or former care recipient, of the service; or
 - by a nominated representative of a care recipient;
- consider any relevant information about the approved provider of the service given to the team by the Secretary;
- consider any relevant information given to the team by the Commissioner; and
- consider any relevant information given to the team by the approved provider of the service.

A site audit report is provided to the Commissioner within 7 days of the completion of the audit. The Commissioner must provide this report to the approved provider as soon as practicable for their review and response. It is not mandatory for the approved provider to respond to the Commissioner. If the approved provider responds to the report, the response must be in writing and be within 14 days of their receipt of the report from the Commissioner.

The Commissioner has 28 days from receiving the audit report from the assessment team to decide to either re-accredit the service or not. The timeframe for the decision to be made can be extended beyond 28 days if the Commissioner and the approved provider both agree.

If the Commissioner decides to re-accredit the service under subsection 41(1), the Commissioner must also decide the further period of accreditation, as well as areas for improvement and arrangements for assessment contacts as required under subsection 41(3).

Section 42 requires the Commissioner to, within 14 days after making the decision to re-accredit the service under subsection 41(1), give written notice of this decision, including the following:

- the decision;
- the further period of accreditation, and the reasons for deciding that further period;
- how the provider may apply for the reconsideration of the further period of accreditation;
- any areas in which improvements in relation to the service must be made to ensure that the applicable quality standards are complied with, and the timetable for making the improvements;
- the arrangements for assessment contacts with the provider of the service;
- the circumstances in which a review audit of the service may be conducted;
- how the provider may apply for the re-accreditation of the service.

If the Commissioner decides not to re-accredit the service the approved provider must be informed in writing within 14 days after making the decision. The written notice must include:

- the decision;
- the reasons for the decision;
- how the provider may apply for the reconsideration of the decision; and
- a copy of any information given to the Commissioner by the Secretary that was taken into account in making the decision.

A copy of the notice not to re-accredit must be provided to the Secretary as soon as practicable.

Subdivision E—Revocation of accreditation of accredited service

Sections 44 – 45 - What happens if accreditation is revoked

If the Commissioner decides not to re-accredit an accredited service under section 41, the Commissioner may revoke the accreditation of the accredited service.

The Commissioner must decide the day that the revocation is to take place and must within 14 days after making the decision, provide the written notice to the approved provider. The written notice must include:

- the decision;
- the reasons for the decision;
- the day the revocation is to take effect;
- how the provider may apply for the reconsideration of the decision.

A copy of the notice to revoke accreditation must be provided to the Secretary as soon as practicable.

Subdivision F—Reminder notices about accreditation

Sections 46 - 47 - Process for reminder notices about re-accreditation

The Commissioner may notify an approved provider that their service's accreditation is due to end shortly. The notification may include the date on which the accreditation is due to end and the date on which the approved provider must apply for re-accreditation under section 27(2) in order for the application not to be late (see section 47).

If the application for re-accreditation is made after the Commissioner has provided a reminder notice and specified the day on which the provider must apply for re-accreditation of the service as specified in section 46, the Commissioner is not required to complete the audit before the service's accreditation period ends or make a decision any faster than what is specified in section 41(1).

Subdivision G—Publication of decisions relating to accreditation

Section 48 - Commissioner must publish decisions relating to accreditation

The Commissioner must publish all accreditation decisions made in subdivisions C, D and E on their website. This includes a decision not to accredit a commencing service under section 29, a decision to not accredit or to re-accredit a residential service for a further period under section 41, a decision to revoke accreditation of a service under section 44.

In relation to a decision made under section 29, subsection 48(1) requires the Commissioner to, as soon as practicable after making the decision, publish the decision on the Commission's website

In relation to a decision made under sections 41 or 44, subsection 48(2) requires the Commissioner to wait for the period of reconsideration and within 28 days after this period publish their decision and any site audit report of the service on the website.

Part 4—Quality reviews of services

This Part sets out how the process for quality reviews will be undertaken and which aged care services are subject to quality reviews. These matters were previously dealt with under the *Quality Agency Principles 2013*.

Division 2—Specified aged care service

Section 50 - Specification of aged care service

Subparagraph 19(b)(ii) of the Act allows the Rules to specify which aged care services are subject to quality reviews, in addition to home care services (which are subject to quality reviews by subparagraph 19(b)(i) of the Act). This section specifies that flexible care services providing short-term restorative care in a home care setting (as defined in the *Subsidy Principles 2014*) are subject to quality reviews.

Division 3—Quality reviews of services

Subdivision B—Quality reviews of home service

Section 52 - Quality reviews must be conducted every 3 years

The Commissioner is required to conduct a quality review of a relevant service at least once every 3 years. It remains open to the Commissioner to conduct quality reviews more regularly and this may occur if the Commissioner considers that a provider is not meeting its requirements, which could be based on information that the Commissioner receives, for example from a complaint from a consumer.

Where the same provider operates several different aged care services, the Commissioner may conduct the quality review of these services at the same time. For example, the same provider could offer a home care service, a short-term restorative care service in a home care setting, and also be a provider under the Commonwealth Home Support Programme. This provision would allow the Commission to review these services at the same time for administrative efficiency.

Sections 53 – 55 - Procedures for the conduct of site visits

Each quality review of a service must include a site visit to the premises of the provider, and may also include a site visit to the premises where services are provided, to assess the quality of care provided against the applicable quality standards.

This means that the site visits can be made to all relevant premises for the the purpose of assessing the quality of care and services provided, including the head office of the provider, any operational premises of the provider like a kitchen for meal services or garage for transport services, as well as the homes of consumers. Under sections 68 and 69 of the Act, regulatory officials can only enter premises with the consent of the occupier, although when this is the approved provider, the approved provider is also required to cooperate with the regulatory officials, under paragraph 63-1(1)(ba) of the Aged Care Act.

The Commissioner is required to give notice to the provider of when the site visit to the premises of the provider will occur, although no notice is required when the Commissioner considers that the provider may not be complying with the applicable quality standards. There is also no minimum notice period, meaning that the Commissioner can balance considerations of ensuring relevant staff and documentation will be available at the time of the visit, and the need for the care observed during the visit to be reflective of the normal quality of care. Previously, the CEO of the Quality Agency was required to give a provider 28 days notice before conducting a site visit, which is inappropriate in circumstances where there is an identified risk to consumers.

In providing notice, the Commissioner must set out the form of words that the provider must use to inform their consumers and their representatives about the site visit. The provider must take reasonable steps to provide this information to their consumers and their representatives, with reasonableness likely to depend on factors like the period of notice given by the Commissioner and the geographic spread of the consumers.

When conducting the site visit, the quality assessors are required to consider information that they receive from a consumer, former consumer or their representative, information the Commissioner or the quality assessors receive from the provider, or information that the Commissioner received from the Secretary.

On every day of the site visit (whether or not on the provider's premises), a quality assessor is required to meet with the provider of the service to discuss the progress of the quality review. These meetings enable the quality assessors to communicate their initial findings, including any gaps that the provider may need to respond to prior to the conclusion of the site visit. Where a consumer or their representative requests to meet with the quality assessors, the provider is also required to arrange a private meeting with one of the quality assessors.

Sections 56 – 57 - Interim and final reports

After completing the site visits for a quality review, the quality assessors are required to prepare an interim report for the Commissioner that includes an assessment of the provider's performance against the applicable quality standards. The report must be provided to the Commissioner within 7 days of completing the site visits, who then provides it to the provider. The provider then has 14 days to provide the Commissioner with a response to the interim report, which the Commissioner must consider in the preparation of the final report.

The Commissioner is required to prepare the final report and provide a copy of this report to the provider and to the Secretary. The final report must set out the same matters as were included in the interim report (taking into account any response to that report from the provider) along with the arrangements for assessment contacts that will apply for the service under Part 5 of these Rules. The Commissioner is able to amend these arrangements under section 69 of these Rules.

The final report must also include any areas where improvements must be made by the provider to ensure they comply with the applicable quality standards and can also provide a timetable the provider must meet in making those improvements. For example, if the Commissioner determines that a provider has not complied with one of the Home Care Standards, the final report would specify that the provider needs to make improvements to comply with the standard and the timeframes in which those improvements must be made.

The timetable for improvement would continue to be considered by the Commission under Part 5 of these Rules including for example, the conduct of assessment contacts to determine if the provider has made sufficient improvement to satisfy the Commissioner that the level of care and services provided comply with the applicable quality standards at the end of the period for making improvement.

Subdivision C—Quality reviews of Aboriginal and Torres Strait Islander services

Section 58 - Quality review of Aboriginal and Torres Strait Islander services

This section specifies that services under the National Aboriginal and Torres Strait Islander Flexible Aged Care Program are to be conducted in accordance with the Quality Framework. The Quality Framework is a defined term and explained under section 4.

Part 5—Monitoring of services

Part 5 provides for the monitoring of accredited services, home services and Aboriginal and Torres Strait Islander services. This part generally consolidates provisions across the *Quality Agency Principles 2013* to provide arrangements for continuous improvement, assessment contacts, review audits, and dealing with non-compliance.

Division 3—Specified aged care services

Section 60 – Specification of aged care services for monitoring

Subparagraph 19(c)(iii) of the Act allows the Rules to specify which aged care services are subject to monitoring, in addition to residential care services and home care services (which are subject to monitoring by subparagraphs 19(c)(i) and 19(c)(ii) of the Act). This section specifies that flexible care services providing short-term restorative care in a residential care setting and in a home care setting (as defined in the *Subsidy Principles 2014*) are specified. Division 3 specifies the aged care services and Commonwealth-funded aged care services to which Part 5 applies as provided under sections of the Act.

Division 4—Continuous improvement plans

Sections 62 – 63 – Providers must have plan for continuous improvement

The approved provider of an accredited service and the home service provider of a home service must have a plan for continuous improvement. These providers have obligations of continuous improvement under the applicable quality standards, and the undertaking that is given by approved providers of an accredited service.

The plan must set out how the provider will comply with the provider's obligations of continuous improvement in relation to the service and must also set out if there are any areas in which improvements are needed to ensure that the applicable quality standards are complied with and how those improvements will be made by the provider.

Note that section 84 empowers the Commissioner to direct a provider to revise a plan for continuous improvement, if the Commissioner finds that the approved provider has failed to comply with the applicable quality standards.

The Commissioner may request a provider give the Commissioner a copy of the plan for continuous improvement for the service at any time. If the Commissioner requests the provider give the Commissioner a copy of the plan for continuous improvement for the service, the provider must comply with this request.

In addition, regulatory officials may, in certain circumstances, request a copy of the plan for continuous improvement from providers. This may be requested, either in accordance with:

- section 67 of the Rules, if the request is made other than in the form of a visit to the premises of a service (see below for further details); or
- section 70 of the Act, if the request is made during a visit to premises.

Division 5—Assessment contacts

Subdivision A – Assessment contacts by regulatory officials

Sections 64 – 65 - Assessment contacts by regulatory officials of providers

An assessment contact is any form of contact between a regulatory official and an approved provider of an accredited service, or a home service provider of a home service.

The purpose of an assessment contact is to:

- assess the provider's performance against the applicable quality standards;
- assist the provider's process of continuous improvement;
- identify whether there is a need for a review audit or quality review, as applicable; or
- give the provider additional information or education about the accreditation or quality review process and requirements.

Regulatory officials have the power to make arrangements for assessment contacts with providers. Assessment contacts may be made in accordance with the arrangements made during the accreditation of a service under Part 3, or when providing the final quality review report for a home service under section 57, or as varied pursuant to section 69.

Assessment contacts may also be made at any other time, with or without notice. The form that the assessment contact takes is a matter for the regulatory official to determine and may include phone discussions, emails or a visit. Given the wide variety of possible assessment contacts, a regulatory official may decide not to give notice to the approved provider before contact takes place.

If a provider provides two or more of the different kinds of care listed in relation to either a residential service or home service under subsections 64(2) or 65(2) respectively, the Commissioner may conduct assessment contacts to the services at the same time. These provisions enable the Commissioner to streamline assessment contacts, particularly where a visit is involved.

Section 66 - Assessment contacts in the form of a visit

Where the assessment contact is made in accordance with arrangements notified to the provider under Part 3, section 57 or 69, the regulatory official must either give the approved provider of an accredited service a poster, or the home service provider, the form of words to use, to inform consumers and their nominated representatives about the assessment contact. The approved provider of an accredited service must display the poster as soon as practicable in prominent locations at the premises of the residential service. The home service provider must take reasonable steps to use the form of words given by the regulatory official to inform consumers and their representatives about the assessment contact.

Greater flexibility is afforded to home care service providers to inform aged care consumers about an assessment contact in the form of a visit, since there may be many premises where a home service is provided or where a home service provider is located, and various ways in which aged care consumers may be effectively contacted.

A regulatory official who conducts an assessment contact in the form of a visit may enter premises, and exercise search powers under Division 3 of Part 8 of the Act.

Section 67 - Requesting information or documents for certain assessment contacts

Regulatory officials have the power to request from a provider specified information or documents relating to the purposes of an assessment contact. A regulatory official may also specify the timeframe within which the specified information or documents must be provided.

However, a regulatory official may only request information or documents under section 67 where the assessment contact is otherwise made in the form of a visit to the premises of the service. This is intended to complement the search powers which regulatory officials may exercise under section 70 of the Act, which allows a regulatory official to ask any person to produce any document or information, provided certain steps are followed.

Section 68 - Action following assessment contact

Following an assessment contact, the regulatory officials are required to, within 21 days, give the provider notice of any areas in which improvements may be made to ensure compliance with the applicable quality standards, and a timetable for making these improvements. Further actions may be taken by a regulatory official under Division 7 if the response by providers is unsatisfactory.

Subdivision B—Variation of arrangements for assessment contacts

Section 69 - Commissioner may vary arrangements for assessment contacts

The Commissioner has the power to vary arrangements for assessment contacts that were previously notified to the provider. The Commissioner must provide written notice to the provider of such changes.

Division 6—Review audits of accredited services

Subdivision A—Conduct of review audits of accredited services

Sections 70 - 76 - Process for conducting a review audit

This subdivision sets out arrangements for conducting review audits of accredited services, which was previously provided for in the *Quality Agency Principles 2014*.

A review audit may be conducted in relation to an accredited service if:

- the Commissioner considers on reasonable grounds that the approved provider may not be complying with the applicable quality standards
- the Commissioner becomes aware of certain changes in relation to the circumstances of the approved provider, or their allocated places, or the premises where the service is provided
- the Commissioner considers that the approved provider has not complied with the arrangements for assessment contacts relating to the service
- the approved provider of the service has requested the reconsideration of certain regulatory reviewable decisions.

The Commissioner must also arrange for a review audit of an accredited service at the request of the Secretary.

A review audit may be arranged with or without notice being given to the approved provider of the service.

The Commissioner must appoint an assessment team to undertake the review audit and prepare a review audit report. Similar requirements regarding who may be appointed as a member of the assessment team apply as for site audits.

The Commissioner or the assessment team must provide the approved provider a poster to inform consumers and their nominated representatives about the review audit. The approved provider must display the poster as soon as practicable at prominent locations at the premises of the service.

Similar arrangements and requirements for the conduct of a review audit and review audit meetings apply as for those required in relation to site audits.

A member of the assessment team must meet with the approved provider daily during the review audit to discuss the progress of the audit. In addition, the assessment team must meet with at least 10 percent of consumers or their representatives during the review audit to discuss the care and services provided. If a consumer asks to meet the team, the approved

provider must also take all reasonable steps to enable a member of the team to meet the consumer or their nominated representative privately.

On the last day of the review audit, the assessment team must meet with the person in charge to discuss the key issues that the team identified during the audit.

The assessment team is required to prepare a written review audit report and provide this to the Commissioner within 14 days of completing the audit. As soon as practicable after receiving the report, the Commissioner must give a copy to the approved provider, who may respond to the Commissioner in writing within 14 days of receiving the report.

Unlike the arrangements provided under section 2.40 and 2.41 of the *Quality Agency Principles 2013*, the assessment team will no longer be required to provide a written report of major findings to approved providers at the exit meeting, to which providers used to have 7 days within which to respond.

Subdivision B—Revocation of accreditation of accredited service following review audit

Section 77 - Commissioner must make a decision after review audit

Within 14 days after receiving a review audit report, the Commissioner must decide whether to: revoke the accreditation of the service (and if so, the day the revocation takes effect); or not to revoke the accreditation.

In making a decision, the Commissioner must take into account:

- the review audit report
- any response to the review audit report that is given to the Commissioner by the approved provider;
- any relevant information given to the Commissioner or the assessment team by a consumer, a former consumer or their nominated representative;
- any relevant information given to the Commissioner from the Secretary; and
- whether the Commissioner is satisfied that the approved provider will undertake continuous improvement, measured against the applicable standards.

The Commissioner may also take into account any other relevant matter.

If the Commissioner decides not to revoke the accreditation of a service, the Commissioner must decide:

- whether to vary the period of accreditation by fixing a new period for which the service is accredited; and
- whether there are any areas in which improvements in relation to the service would be necessary to ensure that the applicable quality standards are complied with and the arrangements for assessment contacts.

Section 78 - Notification of decision to revoke

If the Commissioner decides to revoke the accredited service's accreditation, the Commissioner must, within 14 days after making this decision, notify the approved provider in writing, about:

- the decision and the reasons for it;
- the date on which the revocation takes effect; and
- the process for applying for reconsideration of the decision.

While the Commissioner is not required to also notify the provider of areas of improvement, the Commissioner will be required to deal with any non-compliance by an approved provider of an accredited service that the Commissioner finds, in accordance with Division 7 of Part 5 of the Rules.

Section 79 - Notification of decision not to revoke

If the Commissioner decides not to revoke an accredited service's accreditation, the Commissioner must within 14 days after making the decision, notify the approved provider, in writing, about:

- the decision and the reasons for it; and
- any areas in which improvements must be made to meet the applicable quality standards and the timetable for making the improvements (if applicable)

These requirements apply whether or not the Commissioner decides to vary the accreditation period of the service.

If the Commissioner decides to vary the residential care service's accreditation period, the Commissioner must within 28 days after making the decision, give the approved provider a new certificate of accreditation which reflects the updated period. This timeframe takes into account the period for requesting reconsideration, so that the certificate is given after the period for requesting reconsideration of a decision to vary the accreditation period, has expired.

Subdivision C—Publication of decisions relating to accreditation

Section 80 - Commissioner must publish decisions

The Commissioner must, as soon as practicable, publish on the Commission's website a decision about the revocation of an accredited service's accreditation, and any review audit report considered in making the decision.

However, under subsection 80(2) if a decision made is subject to reconsideration (and no request for reconsideration has been made), the Commissioner must publish the decision and the review audit report within 28 days after the expiration of the period during which the provider could have requested reconsideration.

Division 7—Dealing with non-compliance with relevant Standards

Subdivision A—Timetables for improvement

Sections 81 - 83 - Timetables for improvement

Sections 30, 42, 57, 68 and 79 require the Commissioner to give a timetable for improvement in accordance with the respective arrangements set up under those provisions, when notifying providers of areas for improvement to ensure that the applicable quality standards are complied with. In general, these steps are taken following an assessment process, such as part of providing the final report for a quality review under section 57.

The Commissioner is required to notify as soon as practicable, but no later than 14 days after the end of the improvement period, both the provider and the Secretary about any care and services where the Commissioner is not satisfied that the provider has complied with the applicable quality standards.

The Commissioner may extend any timetables for improvement where necessary.

Subdivision B—Non-compliance with relevant Standards

Sections 84 - 85 - Action following findings of non-compliance

The Commissioner may make a finding of non-compliance with the applicable quality standards, by any means available to the Commissioner, whether it is found in relation to an accreditation or quality review process, or other means.

In these circumstances, the Commissioner is required to inform the provider of the finding, the reasons for the finding, and direct the provider to revise their plan for continuous improvement to set out how the provider will make improvements to ensure compliance with the applicable quality standards, within 14 days of notification.

The Commissioner is also required to decide, as soon as practicable after making a finding that a provider has not complied with the applicable quality standards, whether that failure places or may place the safety, health, or well-being of the aged care consumer at serious risk. If the Commissioner determines that serious risk exists, they must give the provider a written notice of the finding of non-compliance, the reasons for the finding, and the reasons the Commissioner decided that serious risk exists. The Commissioner must also notify the Secretary of this decision.

Division 8—Monitoring of Aboriginal and Torres Strait Islander services

Sections 86 - Monitoring of Aboriginal and Torres Strait Islander services

The Commissioner must monitor an Aboriginal and Torres Strait Islander service in accordance with the Quality Framework. The Quality Framework is a defined term, discussed under section 4.

Part 6—Registration of quality assessors

This Part describes the requirements for the registration of quality assessors and the matters that the Commissioner must give consideration to.

Division 2—Registration of quality assessors

Sections 89 – 96 - People seeking to become registered as quality assessors.

A person may apply (or reapply) in writing to the Commissioner to be registered (or registered for a further period) as a quality assessor. The Commissioner must register them for a period of 1 year if they meet the application requirements and the Commissioner is satisfied that the applicant has:

- successfully completed any relevant course specified by the Commissioner;
- participated in an orientation program delivered by the Commission;
- a police report, issued for the applicant after the application was made, that does not record that the applicant has a serious offence conviction in Australia;
- not been convicted of a serious offence, at any time after turning 16, in a country other than Australia that they have been a citizen or permanent resident of;
- performed the functions, and exercised the powers, of a quality assessor to a satisfactory level if they have previously been registered as a quality assessor; and
- met any other requirements specified by the Commissioner.

If the Commissioner agrees to register the applicant as a quality assessor then they must be given written notice of the decision that includes the period of registration and the applicant's obligations as a quality assessor.

The Commissioner must refuse to register the applicant as a quality assessor if the Commissioner is not satisfied that the applicant meets the requirements listed in section 90. The Commissioner must inform the applicant in writing of their decision and the reasons for the decision.

A person who is a registered quality assessor must give written notice informing the Commissioner if they have a serious offence conviction recorded against them in Australia or another country as soon as practicable after the conviction is recorded. The Commissioner must in turn cancel their registration.

If a person requests in writing that the Commissioner cancels their registration as a quality assessor then the Commissioner must do so. An example of this may be, if a quality assessor was to take employment in the aged care sector prior to the end of their 1 year registration period and the person wished to avoid any perceived conflict of interest.

The Commissioner may cancel a person as a quality assessor if the Commissioner is satisfied that the person's performance of the functions, and exercise of the powers, as a quality assessor has not been satisfactory or the person has failed to comply with the obligations as a quality assessor. The Commissioner must give written notice of the cancellation and the reasons for the cancellation.

Part 7—Reconsideration and review of decisions

This Part provides for the reconsideration and review of decisions made under the Rules. This part consolidates the schemes established under Part 6 of Chapter 2 of the *Quality Agency Principles 2014* and Part 7 of the *Complaints Principles 2015*.

Division 2—Reconsideration and review of decisions

Section 98 - Reviewable decisions and affected persons

This section identifies the decisions that may be reconsidered and the affected persons who may request reconsideration of those decisions under section 99.

Complaints reviewable decisions

In relation to the Commissioner's complaints functions, item 1 provides that a complainant may seek reconsideration of a decision to take no further action under section 14. A provider is not able to request reconsideration of such a decision since up until this point the provider would remain unaffected by the decision.

Item 2 provides that a complainant or relevant provider may request reconsideration of a decision to end a resolution process under section 17. However, if a complaint is withdrawn under section 12, reconsideration cannot be requested by the complainant in relation to either the decision to take no further action or to end the resolution process.

A decision listed under item 1 and 2 is defined as a complaints reviewable decision in section 4.

Regulatory reviewable decisions

In relation to the Commissioner's regulatory functions, items 3 to 7 list an approved provider as an affected person for the following reviewable decisions:

- not to accredit a commencing service
- not to re-accredit a residential service
- the further period of accreditation for a residential service
- to revoke accreditation of an accredited service
- to vary the period of accreditation for an accredited service

In addition, item 8 identifies the person whose registration as a quality assessor is cancelled as an affected person, who may request reconsideration of this decision.

These decisions are defined as regulatory reviewable decisions.

Section 99 - Period for requesting reconsideration

An affected person may request reconsideration of a reviewable decision made by the Commissioner. There are different timeframes and processes for reconsiderations of complaints and regulatory reviewable decisions.

Complaints reviewable decisions

An affected person may request reconsideration of a complaints reviewable decision in writing or orally, by setting out the reasons for the request. The request must be made to the Commissioner within 42 days from notification of the decision.

The 42 day period for requesting reconsideration of a complaints reviewable decision allows complainants who may have relatively limited means and may be dealing with a recent death of a family member (whether or not connected with the complaint) more time to decide whether to apply. This timeframe would not adversely affect the interests of approved providers.

Regulatory reviewable decisions

For regulatory reviewable decisions, an affected person may request reconsideration of a decision in writing and setting out the reasons for the request. The request must be made to the Commissioner within 14 days from notification of the decision.

Sections 100 – 101 - Reconsideration of decision

Complaints reviewable decisions

The Commissioner or their appropriate delegate (‘the internal reviewer’) must either: affirm the decision to take no further action or to end the resolution process; or set aside the decision and decide to undertake a new resolution process. An affected person must be notified of a decision within 28 days from receipt by the internal reviewer of the request for reconsideration.

If the internal reviewer decides, as a result of the reconsideration, to undertake a new resolution process the Commissioner must complete the new resolution process within 90 days of receiving the request for reconsideration.

The 90 day time frame can also be increased by a further 14 days if the internal reviewer gives notice of the extension to the complainant and the relevant provider, including the reasons for the extension.

If an internal reviewer makes a new decision to end the resolution process this decision is generally not reviewable, except where:

- the new decision to end the resolution process is made because the Commissioner has given a direction; and
- the original decision that was set aside, was a decision to end a resolution on any of the grounds listed under subsection 17(1) other than the Commissioner issuing the provider directions.

This means that the outcome of a new resolution process is generally not subject to further reconsideration, other than where the new resolution process has resulted in the issuing of directions for the first time in relation to the complaint, to afford natural justice to the provider.

Regulatory reviewable decisions

If a request for reconsideration of a decision is made under section 99(3), the internal reviewer must reconsider the decision and either confirm, vary or set the decision aside and substitute a new decision.

The internal reviewer must notify the affected persons and the Secretary of the reconsidered decision in writing:

- within 56 days of receiving the request if the reconsideration relates to a decision by the Commissioner not to accredit a commencing service, or not to re-accredit a residential service or to revoke accreditation of an accredited service,
- within 14 days of receiving if the regulatory reviewable decision relates to the further period of accreditation for a residential service or to vary the period of accreditation for an accredited service, or to cancel a person's registration as a quality assessor.

A reconsideration decision is generally treated in the same way as the original decision except it is not a reviewable decision.

For example, if a decision on the further period of accreditation was set aside and substituted with a new decision made in accordance with paragraph 41(1)(3)(a) regarding the period, subsection 42(2) would also then apply to require the Commissioner to give the approved provider of the residential service a certificate of accreditation that states the substituted further period of accreditation.

Section 103 - Review by Administrative Appeals Tribunal

This section provides for review by the Administrative Appeals Tribunal (AAT) of regulatory reviewable decisions. An affected person may only apply to the AAT for review of such a decision after it has been reconsidered by the Commissioner or their delegate.

Applications to the AAT for reconsidered complaints reviewable decisions would not have been suitable for external merits review. Subsection 103(2) limits applications to the AAT to affected persons, or persons applying on their behalf in relation to regulatory reviewable decisions.

Section 104 - Publication

The Commissioner must publish a reconsideration decision, and any site audit report or review audit report, for a regulatory reviewable decision on their website within 28 days of making the decision.

If an affected person has applied to the AAT for a review of the reconsideration decision, the Commissioner must publish a notice stating the decision is subject to review by the AAT. The Commissioner is also required to publish the AAT's decision on their website within 28 days after the AAT reviews the decision.

Part 8—Information sharing

This Part deals with the Commissioner sharing information and disclosing protected information in certain circumstances. These provisions are designed to assist in the operation of the aged care regulatory framework and reduce risk to aged care consumers by requiring the Commissioner to share information with the Secretary and permitting the Commissioner to provide information to aged care providers in specific circumstances.

Division 2—Information sharing

Sections 107 – 109 - Information about failure to comply with the requirements of the Aged Care Act or the applicable quality standards

Subsection 56(1) of the Act requires the Commissioner to give information to the Secretary as specified in the Rules. The Secretary performs a range of functions under the Aged Care Act for which the information specified in this part would be essential, in particular the sanctioning of aged care providers in Part 4.4 of the Aged Care Act.

For Commonwealth-funded aged care services, the Secretary is also the relevant representative of the Commonwealth for the administration of the funding agreement, so would require this information to manage the contract.

These sections require the Commissioner to give the Secretary information where the Commissioner becomes aware, through the performance of the regulatory functions, of a failure of a provider to meet their responsibilities, which are:

- for aged care services, these are the requirements to comply with Parts 4.1, 4.2 and 4.3 of the Aged Care Act;
- for services part of the National Aboriginal and Torres Strait Islander Flexible Aged Care Program, these are the requirements of the Quality Framework; and
- for services part of the Commonwealth Home Support Programme, these are the requirements to comply with the Home Care Standards.

For example, if regulatory officials from the Commission conduct an assessment contact with a home care service under section 64 of these Rules, and make a finding that the Home Care Standards have not been complied with, the Commissioner will be required to inform the Secretary of this finding as soon as possible.

Division 3—Protected information

Section 111 - Permitted disclosure of protected information by Commissioner if aged care consumer's safety, health or well-being at risk

Paragraph 61(1)(j) of the Act permits the Commissioner to disclose protected information in circumstances where set out in the Rules. Protected information is a defined term in the Act to be either personal information or information about the business affairs of an approved provider. Protected information can only be disclosed in limited, specified, circumstances, with unauthorised disclosure of protected information attracting a criminal penalty under the Act.

This section permits the Commissioner to disclose protected information to the approved provider of an aged care service or the service provider of a Commonwealth-funded aged care service where the Commissioner has a reasonable belief that not disclosing the information will place an aged care consumer's safety health or well-being at risk.

The Act already permits the Commissioner to disclose protected information to any person to lessen or prevent a 'serious risk' to an aged care consumer in paragraph 61(1)(e). Section 111 would provide an additional ground on which the Commissioner may decide to permit disclosure of protected information, the effect of which includes extending permitted disclosures which may not have otherwise been permitted under section 61(1)(e).

For example, a consumer may make an anonymous complaint relating to the care provider's apparent failure to properly manage the behaviours of a fellow resident. If the complainant, during the course of the Commissioner's resolution process, calls the Commissioner and threatens to take matters into his own hands by threatening harm to the fellow resident, the Commissioner could then disclose this information to the approved provider in order to protect the resident that was the subject of the complaint.

Part 9—Transitional, application and savings provisions

Division 1—Preliminary

Section 112 – Definitions

This section defines certain terms that are used in the transitional provisions.

Division 2—Complaints

Sections 113 – 116 – Transitional provisions for complaints

Collectively, these provisions operate to ensure that the Commissioner is empowered to continue to consider complaints and information that were being dealt with by the Aged Care Complaints Commissioner in accordance with the *Complaints Principles 2014*. The Commissioner will deal with these complaints and information in accordance with these Rules.

These provisions also save any notice of intention to issue directions or any directions issued by the Complaints Commissioner as if they were issued by the Commissioner under these Rules, meaning that they continue to have effect and can be dealt with in accordance with Part 2 of these Rules.

Division 3—Accreditation of residential aged care services

Section 117 - Saving of accreditation of residential aged care services

This section provides for services that received an accreditation decision from the CEO of the Quality Agency under the *Quality Agency Principles 2013* to be taken to be accredited by the Commissioner under these Rules. The accreditation period will remain the same time as was determined by the CEO of the Quality Agency.

Sections 118 – 121 - Transitional provisions for accreditation processes

These sections allow the Commissioner to continue to progress all aspects of applications for accreditation and re-accreditation that were underway under the Quality Agency Principles. These sections save the operation of any reminder notices about accreditation, allow the Commissioner to continue to deal with applications with any steps undertaken under the Quality Agency Principles to be taken to have been done under these Rules.

Division 4—Quality reviews of services

Sections 122 - 124 - Transitional provisions for quality reviews

These sections allow the Commissioner to continue a quality review that had commenced prior to 1 January 2019 under Part 4 of these Rules, with all steps having being completed prior to that time to be taken to have been done under these Rules.

Division 5—Monitoring of services

Sections 125 – 129 - Transitional provisions for monitoring processes

Collectively, these sections allow the Commissioner to continue with any monitoring process that had commenced prior to the commencement of these Rules, as if all steps had been undertaken under these Rules.

In particular, these sections save any timetable for improvement (including the day by which these improvements must be made by a provider), a direction to revise a plan for continuous improvement and any arrangements for assessment contacts that have been notified to a provider.

Division 6—Registration of quality assessors

Section 130 - Continuation of registration as quality assessor

This section provides for all persons who are registered quality assessors under the *Quality Agency Principles 2013* to become quality assessors under Part 6 of these Rules, with their registration notices continuing to have effect with the same period of registration applying.

Division 7—Reconsideration and review of decisions

Sections 131 – 137 - Transitional provisions for continuing reconsideration and review processes

These provisions operate to ensure that any affected person that may wish to seek a reconsideration or a review of a decision that was made prior to 1 January 2019 will still have the same timeframe to make the application, and will be able to have that application considered under these Rules.

These provisions also enable the Commissioner and the Administrative Appeal Tribunal to continue to deal with any active application for reconsideration or review under these Rules, including where the CEO of the Quality Agency had commenced an own initiative reconsideration of an accreditation decision.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Aged Care Quality and Safety Commission Rules 2018

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the legislative instrument

The legislative instrument provides arrangements for the performance of the functions of the Aged Care Quality and Safety Commissioner from 1 January 2019.

Human rights implications

Division 3 of Part 8 of this instrument engages the right to not be subjected to arbitrary or unlawful interference with their privacy under Article 17 of the *International Covenant on Civil and Political Rights* by permitting the disclosure of protected information, which includes personal information, in circumstances specified in the Rules. Under the *Aged Care Quality and Safety Commission Act 2018* (the Act), the disclosure of protected information is prohibited unless permitted in the circumstances specified under the Act or the rules made under section 61(1)(j).

For the purposes of paragraph 61(1)(j), section 111 provides a limited discretion for the Commission to disclose protected information as permitted under this Rule. In particular disclosures are limited to providers, who are legally responsible for providing care and services to consumers, and who have been approved or vetted to protect the safety, health and well-being of consumers.

Further, disclosures of protected information can only be made if the Commissioner believes, on reasonable grounds, that not disclosing the information would place the safety, health and well-being of consumers at risk. Requiring the Commissioner to exercise his or her discretion on a case by case basis ensures the burdens imposed by this measure on the right to information privacy is proportionate in its application, while also ensuring there is sufficient flexibility to balance other competing considerations, which will depend on the circumstances.

While there are no specific requirements to consider the privacy of an individual in making a decision under section 111, it is unlikely a decision to disclose could be properly made on the grounds it protected the safety, health and well-being of consumers, without considering the privacy of consumers, to the extent possible. Privacy is inherently linked to notions of personal autonomy and human dignity – it includes the idea that individuals should have an area of autonomous development – and fundamental to the well-being, health and safety of aged care consumers.

Conclusion

The legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The instrument appropriately balances the purposes of the permitted disclosure with the burdens imposed on the right to privacy to ensure it is sufficiently circumscribed to ensure disclosures of personal information are not made arbitrarily.

The Hon Ken Wyatt AM, MP

Minister for Senior Australians and Aged Care, and

Minister for Indigenous Health