

## EXPLANATORY STATEMENT

Aged Care Act 1997

Aged Care Act (Transitional Provisions) Act 1997

Aged Care Quality and Safety Commission Act 2018

Aged Care Quality and Safety Commission (Consequential Amendments)  
Rules 2018

### Authority

This instrument is made under section 96-1 of the *Aged Care Act 1997*, section 96-1 of the *Aged Care (Transitional Provisions) Act 1997*, and section 77 of the *Aged Care Quality and Safety Commission Act 2018*. 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.

In addition, subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

These powers provide the authority to make the amendments set out in this instrument.

### Purpose

The purpose of the *Aged Care Quality and Safety Commission (Consequential Amendments) Rules 2018* (Consequential Amendments Rules) is to amend and repeal various legislative instruments, as a consequence of the establishment of the new Aged Care Quality and Safety Commission (Commission), from 1 January 2019.

The Commission is established under the *Aged Care Quality and Safety Commission Act 2018* (Act) and arrangements for the performance of the new functions is provided for under the *Aged Care Quality and Safety Commission Rules 2018* (Rules), commencing 1 January 2019.

From 1 January 2019, aspects of the Act and the Rules will operate in place of various instruments made under section 96-1 of the *Aged Care Act 1997* (Aged Care Principles) and section 12(h) of the *Australian Aged Care Quality Agency 2013*, which govern the performance of the functions of the Australian Aged Care Quality Agency and Aged Care Complaints Commissioner. The Consequential Amendments Rules give effect to this.

## Documents incorporated by reference

The Consequential Amendments Rules repeals the *Australian Aged Care Quality Agency (Other Functions) Instrument 2015*. Paragraph (1)(a) of this instrument incorporates by reference the “Quality Framework” in specifying other functions pursuant to section 12(h) of the *Australian Aged Care Quality Agency Act 2013*. Note the document is incorporated by reference under the Rules.

## 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. These consultations have broadly informed the Consequential Amendments Rules.

The Consequential Amendments 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 Review of *National Aged Care Quality Regulatory Processes* (the Carnell 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 Consequential Amendments Rules will commence on 1 July 2019 and are a legislative instrument for the purpose of the *Legislation Act 2003*.

**Explanation of provisions of the *Aged Care Quality and Safety Commission (Consequential Amendments) Rules 2018***

Sections 1 to 4 of the *Aged Care Quality and Safety Commission (Consequential Amendments) Rules 2018* (Consequential Amendments Rules) provides the name of the instrument, the commencement of this instrument to be 1 January 2019, the authorities under which this instrument is made, and the schedules of this instrument.

**Schedule 1 - Amendments**

Schedule 1 updates definitions and cross references to principles made in accordance with section 96-1 of the *Aged Care Act 1997* (Aged Care Principles) and repeals provisions which are no longer required following the commencement of the *Aged Care Quality and Safety Commission Act 2018* (Act) and the *Aged Care Quality and Safety Commission Rules 2018* (Rules). Other miscellaneous consequential changes are also made.

**Items 1, 3, 4, 9 to 14, and 15 to 19**

Items 1, 3, 4, 9 to 14, and 15 to 19 of Schedule 1 remove references relating to the “Quality Agency”, “Aged Care Complaints Commissioner” and their enabling instruments and, where relevant, substitute these with corresponding references relating to the Commission or the Rules. These amendments are made in relation to the *Accountability Principles 2014*, *Aged Care (Transitional Provisions) Principles 2014*, *Information Principles 2014*, *Subsidy Principles 2014* and *User Rights Principles 2014*.

It may be noted that sub-items 1(e) to (g) of Schedule 1 removes the definitions of “quality assessor” and “quality reviewer”, and “relevant official” under Part 2 of the *Accountability Principles 2014*, which have been replaced by the terms “quality assessor” and “regulatory official” respectively, as defined in the Act.

**Items 2, 5, 17 and 18**

In addition, Schedule 1 repeals the following provisions in the Aged Care Principles which continue on or after 1 January 2019, since they deal with matters that are now covered under the Act. Specifically:

- item 2 of Schedule 1 repeals Part 2 of the *Accountability Principles 2014* and its related definitions which deal with access to aged care services, noting equivalent provisions and definitions are provided for under Part 8 of the Act which deals with search and entry powers.
- items 5 and 6 repeal paragraphs 6(b) and (d) and Part 3 of the *Information Principles 2014*, which deal with disclosures of protected information by the Aged Care Complaints Commissioner and the CEO of the Quality Agency to the Secretary, noting equivalent provisions for information sharing are provided for under Part 7 of the Act.

- items 17 and 18 repeal requirements relating to access to an aged care service by authorised complaints officers under the *User Rights Principles 2014*, noting that matters concerning the entry of authorised complaints officers to premises are dealt with under Division 2, Part 8 of the Act.

### **Items 7 and 8**

Items 7 and 8 repeals the definition of “premises” while replacing references to “premises of the service” with “any premises where the operation or administration of the service occurs” in the definition of service staff under the *Quality of Care Principles 2014*, to maintain consistency with the use of the term “premises” in the Rules.

### **Schedule 2 - Repeals**

Schedule 2 repeals in whole the instruments, including Aged Care Principles, which are made redundant, with the commencement of the Act and Rules. From 1 January 2019, the Act and Rules are intended to generally operate in place of the instruments repealed under Schedule 2.

These include the *Australian Aged Care Quality Agency (Other Functions) Instrument 2015*, *Commissioner Principles 2015*, *Complaints Principles 2015*, *Quality Agency Principles 2013* and the *Quality Agency Reporting Principles 2013* noting that the *Commissioner Principles 2015* have not been replaced.

## 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 (Consequential Amendments) 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

This legislative instrument makes consequential amendments to various instruments made under sections 96-1 of the *Aged Care Act 1997* and section 12(h) of the *Australian Aged Care Quality Agency Act 2013*, as a consequence of the *Aged Care Quality and Safety Commission Act 2018* and the *Aged Care Quality and Safety Commission Rules 2018* commencing 1 January 2019.

### Human rights implications

This instrument does not engage any further human rights, to those engaged by the *Aged Care Quality and Safety Commission Act 2018*, *Aged Care Quality and Safety Commission (Transitional and Consequential Amendments) Act 2018* or *Aged Care Quality and Safety Commission Rules 2018*.

### 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 Hon Ken Wyatt AM, MP

Minister for Senior Australians and Aged Care, and  
Minister for Indigenous Health