

EXPLANATORY STATEMENT

Aged Care Quality and Safety Commission Act 2018

Aged Care Quality and Safety Commission Amendment (Integration of Functions) Rules 2019

Authority

The *Aged Care Quality and Safety Commission Act 2018* (the Commission Act) establishes the Aged Care Quality and Safety Commission (the Commission) and its functions and powers. Subsection 77(1) of the Commission Act provides that the Minister may, by legislative instrument make rules prescribing matters required or permitted by the Commission Act to be prescribed by the rules, or necessary or convenient to be prescribed for carrying out or giving effect to the Commission Act. Section 22 of the Commission Act provides that the Minister may, by legislative instrument, give written directions to the Commissioner about the performance of the Commissioner's functions.

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 Amendment (Integration of Functions) Rules 2019 (amending instrument) is to amend the *Aged Care Quality and Safety Commission Rules 2018* (the Commission Rules) to integrate the performance of the Commissioner's existing complaints functions and regulatory functions, with the Commissioner's new 'transferred functions' *under the Aged Care Legislation Amendment (New Commissioner Functions) Act 2019* (amending Act).

The amending instrument will integrate functions by ensuring the arrangements for performing the Commissioner's existing functions under the Commission Act are consistent with the new functions imposed by the amending Act. This will be achieved by:

- ensuring the Commissioner has the discretion to make full use of all her functions and powers, where appropriate;
- streamlining functions and operating arrangements to ensure clarity of role and purpose;
- reducing the extent to which the performance of the Commissioner's functions are prescribed in the rules; and
- removing redundant provisions and duplication with the Commissioner's transferred functions.

This will provide the Commission with (among other things) a set of graduated and escalating responses to ensuring compliance with the aged care responsibilities of approved providers. These responses are proportionate to ensuring the object to protect and enhance the safety, health, well-being and quality of life of aged care consumers etc, under subsection 5(1) of the Commission Act is achieved.

Other miscellaneous amendments will also improve the Commission's operations.

An explanation of the provisions of the amending instrument is at Attachment A. A human rights compatibility statement is at the end of this document.

Background

The Aged Care Quality and Safety Commission was established on 1 January 2019 and replaced the existing Australian Aged Care Quality Agency (Quality Agency) and Aged Care Complaints Commissioner (Complaints Commissioner) and their functions. The Commission Rules provides arrangements for complaints and provider responsibilities (Part 2), the accreditation of residential aged care services (Part 3), the quality review of services, (Part 4) and the monitoring of services (Part 5). The Rules also establish arrangements for the registration of quality assessors (Part 6), for reconsideration and review of decisions (Part 7), and for information sharing and confidentiality (Part 8).

As part of the reform agenda, it was also intended that additional functions, relating to matters such as the approval of providers of aged care and compliance, will be conferred on the Commissioner through further legislative change. To give effect to this policy commitment, the amending Act commenced on 13 December 2019 and its amending schedules are intended to commence on 1 January 2020, as fixed by proclamation. From 1 January 2020, the amending Act will confer on the Commissioner, and provide arrangements for the performance of the following 'transferred functions':

- approving providers of aged care under para 16(1)(aa) and Part 7A of the Commission Act (see item 57 and 64 of Schedule 1);
- ensuring compliance with the aged care responsibilities and related provisions under para 16(1)(ac), including the regulatory powers conferred under Part 8A of the Commission Act (see items 47 and 85 of Schedule 2); and
- imposing sanctions on approved providers for non-compliance under para 16(ab), including the powers to take other actions by notice before sanctions are imposed under Part 7B of the Commission Act (see items 47 and 52 of Schedule 2).

The amending instrument will contribute to the establishment of the independent Aged Care Quality and Safety Commission as announced in the 2018-19 Budget by integrating the Commissioner's existing functions under the Commission Rules, and transferred functions under the amending Act.

Incorporation by reference

Relevantly, section 77 of the Commission Act enables the Minister to make rules prescribing matters which incorporate by reference to any matter contained in any other instrument or document as in force or existing from time to time.

The amending instrument will incorporate the Quality Review Guidelines, which is a framework governing the quality review of, and process for monitoring the quality of care and services funded under the National Aboriginal and Torres Strait Islander Flexible Aged Care Program.

In performing the Commissioner's functions, the Rules provide for the Commissioner to undertake the following activities in accordance with the Quality Framework:

- Quality review an Aboriginal and Torres Strait Islander service under section 58;
- Monitor an Aboriginal and Torres Strait Islander service under section 86; and
- Give the Secretary information about any failure by a service provider to comply under section 108.

The Quality Framework is published by the Department, as existing from time to time, and is freely available from its website.

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 consultation with the aged care sectors on the reforms introduced by the Amending Act and this Instrument was undertaken in 2019, consisting of a briefing paper provided to selected stakeholders, including aged care peak organisations, members of the Aged Care Sector Committee and members of the Aged Care Quality and Safety Advisory Council, with an offer of follow-up face-to-face meetings and submissions. .

These consultations broadly informed the structure and scope of the legislative framework within which the Rules are made.

In relation to the instrument itself, the Department developed the Rules, in close consultation with the former Australian Aged Care Quality Agency and the Aged Care Complaints Commissioner. These consultations were undertaken to ensure the workability of the Rules and identified opportunities to refine and clarify processes, where appropriate.

Given the Rules largely consolidate existing functions no further consultation was undertaken.

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 2020. This instrument is a legislative instrument for the purpose of the Legislation Act 2003.

ATTACHMENT A

Explanation of provisions for the Aged Care Quality and Safety Commission Amendment (Integration of Functions) Rules 2019 (amending instrument).

Clause 1 – Short Title

Clause 1 provides that the name of the instrument is the ‘Aged Care Quality and Safety Commission Amendment (Integration of Functions) Rules 2019.’

Clause 2 – Commencement

This clause provides the whole of the amending instrument, including its schedules, will commence on the specified date of 1 January 2020. This date coincides with the date proclaimed for the commencement of the *Aged Care Legislation Amendment (New Commissioner Functions) Act 2019* (amending Act).

Clause 3 – Authority

The amending instrument is made pursuant to subsection 77(1) of the *Aged Care Quality and Safety Commission Act 2018* (Commission Act).

Clause 4 – Schedules

Clause 4 establishes the schedule through which the Age Care Quality Safety Commission Rules 2018 (Commission Rules) will be the specified instrument amended by each item under Schedule 1, according to its terms. Currently, the Commission Rules provide arrangements through which the Commissioner’s existing complaints functions and regulatory functions are performed. Schedule 1 will amend these arrangements, to accommodate the performance of the Commissioner’s transferred functions established under the amending Act.

Schedule 1 - Amendments to the Aged Care Quality and Safety Commission Rules 2018

Part 1 – Preliminary

Item 1 - Section 4 (definition of assessment team, after paragraph (a))

Item 1 will insert a definition for the term ‘assessment team’.

Item 2 - Section 4 (definitions of final report and interim report)

Item 2 will repeal the definitions of ‘final report’ and ‘interim report’ which are prepared in relation to quality review of a home service. These reports will be replaced by a ‘performance report’ and ‘quality audit report’ respectively.

Item 3 - Section 4

Item 3 will define ‘performance report’ as the report prepared in accordance with paragraph 40A(1)(a), paragraph 57(1)(a), paragraph 68A(1)(a) or paragraph 76A(1)(a).

Item 5 – Section 4 definitions

Item 5 will define two new terms, ‘Quality Review Guidelines’ and ‘recommencing service’.

The ‘Quality Review Guidelines’ means the Quality Review Guidelines for the program known as the National Aboriginal and Torres Strait Islander Flexible Aged Care Program, published by the Commission and as in force from time to time. intended to apply in place of the Quality Framework.

A ‘recommencing service’ defines a previously accredited service as a recommencing service if: (a) the approved provider of the service has made an application under subsection 27(2) for the re-accreditation of the service; and (b) the approved provider of the service has been allocated places for the service under Part 2.2 of the Aged Care Act; and (c) at the time the application was made, residential care was not being provided for those places through the service.

Item 6 – Section 5 meaning of assessment contact

Item 6 will repeal the definition of an assessment contact under section 5 of the Commission Rules. Section 5 relevantly provides that an assessment contact with the approved provider of an accreditation service is any form of contact between a regulatory official and the approved provider for the purposes listed under subsection 5(1) and 5(2). These include: (a) to assess the provider’s performance against the Aged Care Quality Standards; (b) to for assist the provider’s process of continuous improvement; (c) to identify whether there is a need for a review audit or quality review of the service; and (d) to give information and education about related aspects of the Commissioner’s regulatory functions.

An assessment contact however does not include contact made through the conduct of a site audit, review audit or quality review.

Item 6 will substitute this definition with a more streamlined definition that limits the purposes of an assessment contact to: (a) to assess the provider's performance, in relation to the service, against the Aged Care Quality Standards; and (b) to monitor the quality of care and services provided by the provider through the service. Other purposes were removed in recognition that these may be achieved through the Commissioner's education functions.

Item 7 – Section 7 meaning of deemed accredited service

Item 7 will repeal and substitute the definition of 'deemed accredited service' with a more a simplified definition. A service is a 'deemed accredited service' if: (a) flexible care in the form of short-term restorative care is provided through a flexible care service; and (b) the short-term restorative care is provided in a facility where residential care is provided through a residential care service; and (c) the residential care service is an accredited service for a particular period; the flexible care service is a deemed accredited service for that period.

Part 2 - Complaints and provider responsibility information

Items 8 and 9 – Section 9 and Paragraph 13(1)(b)

Item 8 will amend the simplified outline for Part 2, as a consequence of the amendments made under item 9.

Item 9 will amend paragraph 13(1)(b). Subsection 13(1) provides that if the Commissioner receives a complaint, the Commissioner must, in relation to each issue raised in the complaint decide to take one of the actions listed under subsection 13(1), one of which may include to quickly resolve the issue to the satisfaction of the complainant under paragraph 13(1)(b).

Item 9 will change the description of this action the Commissioner may take, after receiving a complaint, under para 13(1)(b) from to 'quickly' resolve an issue raised in relation to a complaint to the satisfaction of the complainant to 'take appropriate action' to resolve such an issue. This is not intended to change what the Commissioner can do.

The experience of administering this provision has led to two policy concerns regarding perceptions a complaint undergoing a 'quick resolution' is treated less seriously than a complaint undergoing a resolution process; and that it will be resolved in a very short space of time.

The amendment under item 9 is intended to counter these perceptions and better reflect the policy intention of the provision, which is that the complaint will be resolved in an administrative manner that leads to an outcome satisfactory to the complainant.

Item 10 – Paragraph 13(2)(c)

Paragraph 13(2)(c) provides that the Commissioner may request information from any person for the purposes of dealing with a complaint in accordance with subsection 13(1).

Item 10 will amend the paragraph 13(2)(c) to allow the Commissioner to request documents from any person for the purposes of dealing with a complaint in accordance with subsection 13(1). This will complement the Commissioner's entry and search powers under section 67 of Part 8 of the Commission Act where a regulatory official may only request a person at the premises to produce relevant documents or records.

Items 11, 12 and 13 – Paragraphs 21(2)(b) and 21(2)(c) and subsection 21(3)

Items 11 and 12 will make consequential amendments related to the amendment under Item 13.

Item 13 will repeal subsection 21(3). Subsection 21(3) provides that the Commissioner must give to the Secretary a copy of a notice to a relevant provider that fails to comply with a direction issued under subsection 19(1). This subsection is repealed since the information in this notice will no longer be relevant to the performance of the Secretary's functions under Part 4.4 and 6.4, which will transfer to the Commissioner under the amending Act on 1 January 2020.

Part 3 – Accreditation of residential aged care services

Items 14 – Section 24

Item 14 will repeal and substitute the simplified outline under section 24 with a new outline, as a consequence of amendments made under item 15.

Re-accreditation of a recommending service

Item 15 – Subdivision C of Division 3 of Part 3

Item 15 will repeal Subdivision C of Division 3 of Part 3 which currently provides for the accreditation of a commencing service, if an application is made under subsection 27(1) for accreditation by an approved provider of a commencing service. Item 15 will substitute this with a new subdivision that will also provide for the reaccreditation of a recommending service, if an application is made under 27(2) for reaccreditation by an approved provider of a recommending service. This will enable an application made under subsection 27(2) for the reaccreditation of a recommending service to be decided, and for this decision to be notified, in largely the same way as an application made under subsection 27(1) for the accreditation of a commencing service under Subdivision C of Division 3 of Part 3.

Specifically, in addition to dealing with an application for the accreditation of a commencing service, section 29 will provide that the Commissioner must decide whether to re-accredit a recommending service if the Commissioner receives an application for reaccreditation under subsection 27(2), taking into account the application and other specified matters under subsection 29(3). Deciding whether to re-accredit a recommending service generally on an application is appropriate given that a recommending service will only include services where

the approved provider for the service has been allocated places for the service under Part 2.2 of the Aged Care Act, and was not providing residential care for those places, at the time of the application was made under subsection 27(2).

Paragraph 29(2)(a) will provide that a decision under section 29 must be made within 14 days rather than 16 days, as currently required. This will ensure consistency with the timeframes the Commissioner must follow for making other regulatory decisions.

The Commissioner must notify an approved provider of the decision to accredit a commencing service or re-accredit a recommencing service, within 14 days after making the decision in accordance with subsection 30(1), or not to accredit a commencing service or not to re-accredit a recommencing service, within 14 days after making the decision in accordance with subsection 31(1). In addition, if the Commissioner decides to accredit a commencing service or re-accredit a recommencing service under subsection 30(2), the Commissioner must, within 28 days after making the decision, give the approved provider of the service a certificate that states the period of accreditation or re-accreditation for the service.

Item 16, 17 and 18 - Subdivision D of Division 3 of Part 3 (heading) and subsections 32(1) 33(1)

Item 16 will remove ‘recommencing services’ from the heading of Subdivision D of Division 3 of Part 3 which provides for the re-accreditation of residential services. This is consistent with the amendments made by items 17 and 18 which will remove applications for the reaccreditation of a recommencing service from this subdivision by replacing references to a “previously accredited service,” with a “previously accredited service (other than a recommencing service)” under subsections 32(1) and 33(1).

Subsection 32(1) provides that if an application is made under subsection 27(2) by the approved provider of an accredited service or a previously accredited service, the Commissioner must, as soon as practicable after receiving the application (a) appoint one or more quality assessors to form an assessment team to conduct a site audit of the service; and (b) give the team any information or documents that accompanied the application under paragraph 28(1)(d).

Further, subsection 33(1) provides that if an application is made under subsection 27(2) by the approved provider of an accredited service or a previously accredited service, the Commissioner must, as soon as practicable after receiving the application, give the provider: (a) a written notice specifying the form of words to be used to tell care recipients of the service, and the nominated representatives of those care recipients, about the site audit of the service that is to be conducted; and (b) a poster to inform those care recipients and representatives about the site audit.

The effect of items 17 and 18 will be to no longer require the Commissioner to: appoint under subsection 32(1) an assessment team to conduct a site audit of a previously accredited service that is also a recommencing service; and to provide the approved provider notice of the forms of words, and the poster required under subsection 33(1), if an application for re-accreditation of a recommencing service is made under subsection 27(2). It would not be appropriate to appoint an assessment team to conduct a site audit of a recommencing service given that a recommencing service will only include services where the approved provider for the service

has been allocated places for the service under Part 2.2 of the Aged Care Act, and was not providing residential care for those places, at the time of the application was made under subsection 27(2). These applications will instead be decided in accordance with new Subdivision C of Division of Part 3, under item 15.

However, an application made under subsection 27(2) for the re-accreditation of a 'previously accredited service' other than a 'recommencing service' will continue to be re-accredited in accordance with Subdivision D, Division 3, Part 3.

Conduct of a site audit

Item 19 – Section 35

Item 19 will repeal section 35. Section 35 requires at the start of a site audit of a residential service, the Commissioner to give the approved provider of the service a written notice that sets out the full name of each member of the assessment team for the audit. Given there are no longer grounds to appeal decisions regarding the appointment of assessment team members which existed under the former Quality Agency Principles 2013, the requirement to give this notice is now redundant.

Item 20 – Subparagraph 36(2)(b)(ii)

Item 20 will amend subparagraph 36(2)(b)(ii). Paragraph 36(2)(b) requires an assessment team to (among other things) to consider any relevant information about the quality of care and services provided through the service that was given to the team under subparagraph 36(2)(b)(i) by a care recipient, or former care recipient, of the service, and under subparagraph 36(2)(b)(ii) by a nominated representative of such a care recipient; in conducting the site audit of the residential service.

Item 20 will make it clear that the assessment team must consider relevant information given to the team not only by a nominated representative of a care recipient as currently expressed under subparagraph 36(2)(b)(ii), but also the nominated representative of a *former* care recipient, consistent with the requirements under subparagraph 36(2)(b)(i) to consider this information if given by a care recipient or former care recipient.

Items 21 and 22 - Paragraphs 36(2)(c) and 36(2)(e)

Item 21 will repeal paragraph 36(2)(c). Paragraph 36(2)(c) requires an assessment team to consider any relevant information about the approved provider of the service given to the team by the Secretary. This paragraph will be removed given the Secretary will generally not have information about an approved provider which would need to be considered by an assessment team, given the transfer of the Secretary's functions under Parts 2.1, 4.4 and 6.4 of the Aged Care Act from 1 January 2020.

It would also be open to the Secretary to pass this information onto the Commissioner, who could provide the information to the assessment team, where the assessment team would be required to consider the information under paragraph 36(2)(d).

Items 23 - Section 38 (heading)

Item 23 will amend the heading for section 38 – site audit meetings – to also refer to ‘discussions.’ This will broaden the heading to include any talks which will be able to be requested by a former care recipient or a nominated representative for the care recipient, during a site audit, as a result of the amendments under item 24.

Items 24 - At the end of section 38

Item 24 will introduce a new requirement at the end of section 38. New subsection 38(4) will require an approved provider of the service, to tell a member of the assessment team about any request by a former care recipient of the residential service, or a nominated representative of such a recipient to talk to the assessment team, or a member of the team, during the site audit of the service. This is intended to facilitate the provision of relevant information from former care recipients or their representatives, through discussions which are not limited to a site audit meeting.

Site audit report of a residential service

Item 25 – Section 40 (heading)

Item 25 will amend the heading for section 40 – site audit report – to include a reference to the person who prepares the site audit report. This is intended to help distinguish the site audit report that is prepared by an assessment team under section 40, and the performance report that is prepared by Commissioner under section 40A, as inserted under item 26.

Item 26 – Section 41

Item 26 will repeal section 41. Section 41 provides that if the Commissioner is given, under subsection 40(3), a site audit report about a site audit of a residential service, the Commissioner must decide whether to re-accredit the service. Item 26 will substitute this with:

- section 40A which will provide for the Commissioner to prepare a performance report
- section 41 which will require the Commissioner to decide whether to reaccredit the residential service

Performance report about a site audit of a residential service

Subsection 40A(1) will provide that if the Commissioner is given, under subsection 40(3), a site audit report about a site audit of a residential service, the Commissioner must, within 28 days after the Commissioner is given the report: (a) prepare a **performance report** about the service; and (b) give a copy of the performance report to the approved provider of the service. Paragraphs 40(2)(a) and (b) will provide that in preparing the performance report, the Commissioner must take into account the following matters: (a) the site audit report; (b) any response to the site audit report given to the Commissioner by the approved provider of the service under subsection 40(5).

The new requirement for the Commissioner to prepare a performance report will be an additional step which must be taken, after receiving a site audit report, before the Commissioner makes a decision about the reaccreditation of a residential service under section 41. This is intended to provide a more robust basis for informing the decision under section 41, while increasing transparency in making these decisions by publishing these reports. Currently, subparagraph 41(2)(a)(ii) only requires a response to the site audit report given to the Commissioner by the approved provider of the service to be taken into account in deciding whether to re-accredit the residential service, and is not incorporated into the site audit report which must be currently published by the Commissioner under subsection 48(2).

In preparing the performance report, paragraph 40(2)(c) will also require the Commissioner to take into account any relevant information given to the Commissioner, or to the assessment team for the site audit of the service: (i) by a care recipient, or former care recipient, of the service; or (ii) by a nominated representative of such a care recipient or former care recipient. Paragraphs 40(2)(d) and (e) provides that the Commissioner must also consider (d) any relevant information about the approved provider of the service given to the Commissioner by the Secretary and any other relevant matter.

These considerations largely reflect the same kind of matters which are currently required to be taken into account under subsection 41(2) in making a decision about whether to re-accredit a residential service under subsection 41(1), for the purposes of the preparing the performance report but with some minor changes. Specifically, this includes subparagraph 41(2)(a)(iii) which currently requires the Commissioner to consider any relevant information given to the Commissioner, or to the assessment team for the site audit of the service, by a care recipient, or former care recipient, of the accredited service or by a nominated representative of such a care recipient. Paragraph 40A(2)(c) will make it clear that this includes relevant information given to the team not only by a nominated representative of a care recipient, but also the nominated representative of a *former* care recipient, consistent with the amendments to subparagraph 36(2)(b)(ii).

Subsection 40(3) will also provide that the performance report must include an assessment of the approved provider's performance, in relation to the residential service, against the Aged Care Quality Standards. In addition, paragraph 40(3)(a) will also provide that the performance report may specify any areas in which improvements in relation to the residential service must be made to ensure the Aged Care Quality Standards are complied with; and paragraph 40(3)(c) allows any other matters the Commissioner considers relevant to also be considered. This provision is similar to the decision which must be made under existing paragraph 41(3)(b), if the Commissioner decides to re-accredit the residential service under subsection 41(1), further explained below.

Decision about whether to re-accredit a residential service

Section 41 will require the Commissioner to decide whether to re-accredit the residential service within 7 days of preparing and giving the performance report to the approved provider of the residential service. In making this decision, subsection 41(2) requires the Commissioner to take into account the same kinds of matters considered in preparing the performance report for the relevant service under subsection 40A(2). In addition, the Commissioner must also take into account whether the Commissioner is satisfied the approved provider will undertake continuous improvement if the provider was to be reaccredited. Together, these are the same considerations which must be currently considered by the Commissioner in making this decision under paragraph 41(2)(a).

Areas of improvement

Subsection 41(3) provides that if the Commissioner decides to re-accredit the residential service, the Commissioner must decide the period for accreditation, consistent with existing requirements para 41(3)(a). However, under new subsection 41(3), the Commissioner will no longer be required to determine whether there are any areas in which improvements must be made to ensure the Aged Care Quality Standards are complied with as required under paragraphs 41(3)(b). The Commissioner will instead have the option to decide whether to specify any areas of improvement within the performance report, with notification of any areas of improvement to be achieved when a copy is given to the approved provider under subsection 40A(1).

Making it optional to determine whether there are any areas of improvement following an assessment of a provider's performance is intended to accommodate other possible actions or decisions the Commissioner may take from 1 January 2020, subject only to the Commissioner deciding to re-accredit a residential service. This is intended to facilitate the integration of the Commissioner's transferred functions under the amending Act, subject only to the regulatory decision the Commissioner must make under section 41.

The Commissioner may choose not to notify or seek improvements from an approved provider if the Commissioner is considering not to re-accredit a residential service, or taking other actions in response to an assessment of a provider's performance, given these actions could conflict which overtake the need to notify an approved provider of areas of improvement. For example, this might occur where an assessment of a provider's performance might reveal matters related to the provider's performance which also renders the provider no longer suitable to be a provider and the Commissioner decides to give notice under section 63F to revoke its approval. Given the Commissioner must revoke approval in circumstances where a provider is no longer suitable, identifying improvements would be unnecessary. In other circumstances, identifying improvements may conflict with compliance action.

Where improvements are included in a performance report, this is intended to indicate where improvements will be required if the Commissioner were to decide to either re-accredit a residential service or not revoke the accreditation for an accredited service.

Arrangements for assessment contacts

In relation to the requirement to determine arrangements for making assessment contacts under paragraph 41(3)(c) and notify an approved provider of these arrangements under paragraph 42(1)(e), these provisions will be removed by item 26. Removing dedicated provisions for making arrangements for assessment contacts is intended to better enable the Commission to monitor the quality of care and services in a manner that is responsive to changes in regulatory risks over time, to complement the conduct of site audits or other systematic and routine performance assessment activities.

It is intended that assessment contacts will instead be made in accordance with Division 5 of Part 5 as amended under item 45. Item 45 will provide general provisions for making assessment contacts without prescribing the operating conditions in which these contacts will be made. This is intended to better allow assessment contacts to be used to monitor the quality of care and services based on risk. Given this will depend on the circumstances which will typically change over time, these matters will be generally left to the discretion of the Commissioner to determine rather than prescribing requirements for making pre-arranged assessment contacts in the Commission Rules.

Item 27 - Paragraphs 42(1)(d), (e) and (f)

Item 27 will repeal paragraphs 42(1)(d). This paragraph provides that if the Commissioner decides to re-accredit a residential service under section 41, the Commissioner must, within 14 days after making the decision, give written notice of various matters, one of which includes notifying an approved provider of a residential service of any areas in which improvements in relation to the service must be made to ensure that the Aged Care Quality Standards are complied with, and the timetable for making the improvements. This requirement has been removed given areas of improvement will be notified through the provision of a copy of the performance report under subsection 40A(1). In addition, the requirement to notify of a timetable for improvement will also be removed given the need for greater flexibility in when these timetables are issued. It is intended that these timeframes will be issued by the Commissioner, as and when appropriate, as part of the administrative actions the Commissioner might take to ensuring compliance with the aged care responsibilities.

In addition, the requirement to notify an approved provider of arrangements for assessment contacts under paragraphs 42(1)(e) if the Commissioner decides to re-accredit a residential service under section 41, will also be repealed as a consequence of removing the requirement make arrangements for assessment contacts under item 26 and leaving this generally to the discretion of a regulatory official to decide. Further, the requirement to notify an approved provider of the circumstances in which a review audit of the service may be conducted under paragraph 42(1)(f) is also repealed. Like arrangements for assessment contacts, review audits will be conducted as and when appropriate and does not need to be included specifically in this notice.

Giving notices to the Secretary

Item 28, 29, 30, 31 and 32 – Subsections 42(3), 43(1), 43(3) and 45(2)

Items 28, 30 and 32 repeal subsections 42(3), 43(3) and 45(2) which requires the Commissioner to give the Secretary a copy of the notice of the Commissioner's decision to either re-accredit the residential service, not to re-accredit the residential service or to revoke the accreditation of a residential service, which is given to an approved provider. The information contained in these notices will no longer be necessary to the performance of the Secretary's functions under Parts 2.1, 4.4 and 6.4 of the Aged Care Act, following their transfer to the Commissioner from 1 January 2020.

Items 29 and 31 make consequential amendments to subsection 43(1) and 45(1) as a result of repealing subsection 43(3) under item 30 and subsection 45(2) under item 32.

Publishing performance report and decision after site audit

Item 33 – Section 48

Item 33 will repeal and substitute section 48 with a new section of the same number, to provide similar requirements for the publication of decisions relating to the accreditation of a service.

Specifically, subsection 48(1) will provide that if the Commissioner decides under section 29 to accredit a commencing service or re-accredit a recommencing service, the Commissioner must, as soon as practicable after making the decision, publish the decision on the Commission's website. Subsection 48(2) will provide that if: (a) the Commissioner decides under section 29 not to accredit a commencing service or not to re-accredit a recommencing service; and (b) no request for the reconsideration of the decision is made within the reconsideration period mentioned in paragraph 99(3)(c); the Commissioner must, within 28 days after the end of the reconsideration period, publish the decision on the Commission's website.

Subsection 48(3) will also provide that if: (a) the Commissioner: (i) decides under section 41 to re-accredit a residential service for a further period; or (ii) decides under section 41 not to re-accredit a residential service; or (iii) decides under section 44 to revoke the accreditation of an accredited service; and (b) no request for the reconsideration of the decision is made within the reconsideration period mentioned in paragraph 99(3)(c); the Commissioner must, within 28 days after the end of the reconsideration period, publish on the Commission's website the decision and the performance report about the service considered in making the decision.

Notably, the key changes to section 48, is that new subsections 48(1) and (2) will also include specific provisions for the publication of decisions relating to the reaccreditation of a recommencing service. Given applications to re-accredit a recommencing service require similar decisions to determine as applications to accredit a commencing service, decisions relating to the re-accreditation of a recommencing service will be subject to largely the same publication requirements as a commencing service.

Additionally, item 33 will also require the Commissioner to publish the performance report rather than the site audit report, which is considered by the Commissioner in making the relevant accreditation decision, together with the decision itself. Publishing the performance report will ensure any assessment of an approved provider's performance is published only after an opportunity to respond has been afforded and taken into account if a response is given by the approved provider.

Item 34 – Section 49

Item 34 will repeal and substitute the simplified outline under section 49 with a new outline, as a consequence of amendments made under items 35 and 36.

Part 4 - Quality reviews of services

Item 35 – Sections 53 to 57

Item 35 will repeal and substitute sections 53 to 57 with new sections to provide arrangements for conducting a site visit of a home service, which are more consistent with the arrangements for conducting a site audit of a residential service under Part 3, or review audit of an accredited service under Division 6, Part 5 of the Commission Rules.

Conduct of a quality audit of a home service

The principal changes to provisions governing the conduct of a quality review of a home service are summarised below.

Section 53 will amend existing subsection 53(1) to remove the requirement to conduct a 'site visit' to the specified premises, and instead require a 'quality audit' of the home service, to be included in a quality review of a home service. The concept of conducting a 'quality audit' will more closely align with the arrangements for assessing an approved provider's performance by conducting a site audit of the residential service provided by the provider.

Section 53A will introduce a new requirement for the Commissioner to appoint one or more quality assessors to form an assessment team to conduct a quality audit of a home service. Subsection 53A(2) will also provide that the Commissioner must not appoint a quality assessor to form the assessment team to conduct the quality audit of the service if: (a) at any time during the 3 year period preceding the proposed appointment, the assessor was employed by, or provided services to, the home service provider of the service; or (b) the assessor has a pecuniary or other interest that could conflict with the proper conduct of the audit to prevent the appointment of members in circumstances where this could undermine the independence of the assessment team. Section 53A is consistent with a similar requirement that applies to the conduct of a site audit under section 32. In addition, this provision will support amendments under item 66 which will extend the requirements for publishing assessments of a provider's performance to include home services.

Section 53B will reproduce subsections 53(2) to 53(5), to set out the circumstances in which notice of a quality audit of a home service must be given by the Commissioner to a home service provider, the contents of these notices, and the notices a home service provider must in turn provide its consumer and their nominated representatives.

Section 54 will largely reproduce existing section 54 to set out key requirements which will govern the conduct of a quality audit and the information which must be considered in conducting a quality audit. However, subsection 54(1) will also require the assessment team to conduct a quality audit in accordance with the directions of the Commissioner. This requirement will mirror para 35(1)(b) which imposes a similar requirement for the conduct of a site audit, to provide greater consistency with the arrangements for conducting a site audit.

In addition, the new section 54 will incorporate a range of amendments which apply more broadly across the Commission Rules. These include:

- Subparagraph 54(2)(b)(ii) will be amended to require an assessment team to consider relevant information given to the team by not only a nominated representative of a care recipient, but also the nominated representative of a *former* care recipient. This change is consistent with the requirement under the preceding subparagraph 54(2)(b)(i) to consider this information if given by a care recipient or former care recipient.
- Paragraph 54(2)(c) will be amended to require an assessment team to consider relevant information that is given to the team by the Commissioner rather than directly from the Secretary. This is because the Secretary will generally not have information about an approved provider which would need to be considered by an assessment team, given the transfer of the Secretary's functions under Parts 2.1, 4.4 and 6.4 of the Aged Care Act from 1 January 2020. It would also be open to the Secretary to pass this information onto the Commissioner, who could provide the information to the assessment team.

Section 55 will largely reproduce the existing section 55, with an amendment to subsection 55(1) to qualify the requirement to meet each day on what a quality audit of the home service is conducted with the home service provider, to only those days on which the quality audit is conducted on the premises of the home service provider. This amendment takes into account the potential burden of meeting with a home service provider each day a quality audit is conducted may impose on assessment team if the audit is conducted at another premises.

Subsection 55(3) will introduces a new requirement for an approved provider to pass on any request from a former care recipient or nominated representative to talk to a member of the assessment team about the residential service. This is intended to facilitate the provision of relevant information from former care recipients or their representatives, which complements the requirement for the assessment team to consider this information in conducting a site audit as amended under subparagraph 54(2)(b)(ii). No further requirements (like under subsection 55(1)) are specified in relation to whether, where, when or how this talk occurs to ensure there will be flexibility in talking with these persons given they are less likely to be as accessible as existing care recipients and their nominated representatives.

As a consequence of the amendment made under subsections 53(1) and 55(3), the heading for this section has also been updated to reference the quality audits which must be conducted and the talks, which may be requested by a former care recipient or their nominated representative, during a site audit.

Section 55A will introduce a new requirement for the assessment team hold an exit meeting on the last day of the quality audit of a home service is conducted. This provision mirrors the requirements for an exit meeting when a site audit of a residential service is conducted and will help improve consistency with the conduct of a site audit.

Quality audit report about a home service

Section 56 will largely reproduce the substantive requirements under existing section 56, for reporting about the performance of a home service provider. However, there will be some minor amendments to take into account the requirement to conduct a ‘quality audit’ of a home service under subsection 53(1), and to substitute references to the ‘interim report’ with references to the ‘quality audit report’.

Section 57 will amend existing section 56 to require a performance report about a home service to be prepared by the Commissioner instead of a final report. Like existing subsection 57(1), the Commissioner will be required to prepare the performance report about the home service within 28 days after receiving the quality audit report.

Performance report about quality review of a home service

Subsection 57(2) will require the Commissioner to take into account a range of matters in preparing the performance report, which are not currently required in preparing a ‘final report’. These include the same or similar kinds of matters which must be considered by an assessment team in conducting a quality audit under subsection 54(2). Subsection 57(3) will limit what a performance report must include to only an assessment of the home service provider’s performance. Unlike existing ‘final reports’, a performance report about a home service is not required to specify any areas in which improvements must be made, where its inclusion by the Commissioner is made optional under paragraph 57(3)(b). Further, requirements to determine arrangements for assessment contacts have been removed, consistent with section 40A.

Publication of performance report about quality review

In addition subsection 57(1) will require the Commissioner to publish the performance report about a quality review of a home service. This is a new requirement, and together with items 33 and 66 will require all performance reports to be published.

Quality review of Aboriginal and Torres Strait Islander services

Item 36 - Section 58

Item 36 will replace ‘Quality Framework’ with ‘Quality Review Guidelines’ under section 58. This will require the Commissioner to conduct a quality review of an Aboriginal and Torres Strait Islander service in accordance with the Quality Review Guidelines. The Quality Review Guidelines function in the same way as the Quality Framework, but has been updated to take into account the Aged Care Quality Standards.

Service providers may find a copy of the Quality Review Guidelines on the Commission's website, free of charge. The Commission will publish any updates to the Quality Review Guidelines on its website and will ensure that any changes are communicated to the providers under that program.

Item 37 - Section 59

Item 37 will repeal and substitute the simplified outline under section 59 with a new outline, as a consequence of amendments made under items 38 to 68.

Part 5 – Monitoring of services

Item 38 – Section 62 (heading)

Item 38 will repeal and substitute the heading for section 62 as a consequence of the amendment under Item 39.

Plans for continuous improvement

Item 39 Subsection 62(1)

Item 39 will insert 'residential service' under section 62(1) to require not only an approved provider of a residential service, to have a plan for continuous improvement for the service, in addition to approved providers of an accredited service and the home service provider of a home service.

Item 39 will in effect require approved providers of a previously accredited service to have a plan for continuous improvement for the service given a residential service is defined as a previously accredited service or an accredited service, to which an application under subsection 27(2) has been made. This is intended to ensure that if the Commissioner revokes the accreditation of an accredited service, the approved provider for that previously accredited service, will be required to have a plan for continuous improvement, but only if the provider has made an application for reaccreditation of the previously accredited service under subsection 27(2).

Approved providers of a previously accredited service, that has not made an application under subsection 27(2) will not be required to have a plan for continuous improvement given these providers since these providers are likely to be exiting the Commonwealth subsidised market.

Item 40 Subsection 62(2) (note 2)

Item 40 will replace the reference to section 84 with 63A, and section 84 will be repealed by item 67.

Items 41 and 42 Subsection 62(3) and At the end of Division 4 of Part 5

Item 41 will repeal subsection 62(3) and item 42 will insert section 63 to provide that the Commissioner may request, by written notice, plans for continuous improvement and providers must comply within 14 days of the notice. This is currently provided under subsection 62(3), except section 63 will extend this to include approved providers of a residential service.

Item 42 will also insert section 63A to provide that the Commissioner may direct revision of plans for continuous improvement in certain circumstances. This provision in effect reproduces existing section 84 with amendments which ensure its workability and extends the power issue directions to include approved providers of a residential service. Section 84 will be repealed by item 67.

Assessment contacts across services

Items 43 and 44 - Division 5 of Part 5 (heading), Subdivision A of Division 5 of Part 5 (heading)

Items 43 and 44 will repeal and substitute headings as a consequence of amendments under item 45.

Item 45 - Sections 64 to 66

Item 45 will repeal and substitute sections 64 to 66, to provide for the making of assessment contacts by regulatory officials with approved providers of an accredited service and home service providers of a home service, including assessment contacts which includes a visit to the premises of that service.

Item 45 will consolidate provisions existing section 64 to 66 to provide for the making of assessment contacts with an approved provider of an accredited service or previously accredited service, or a home service provider of a home service together. These provisions also make clear that assessment contacts may be made at the same time or in combination with one or more specified providers, of one or more specified services.

For example this may include situations where the approved provider of a residential service is also the home service provider of a home service or where an approved provider of a residential service provides a service from the same premises as a home service provider may provide a home service, or situations where the contact will consider organisational governance across a number of the provider's services or other aspects of performance which may adopt common organisational processes, systems or practices across different services.

In addition, item 45 will extend the ability for regulatory officials to make an assessment contact to include approved providers of a previously accredited service. This is intended to ensure that if the Commissioner revokes the accreditation of an accredited service, assessment contacts may be made with the approved provider for the previously accredited service, to monitor the quality of care and services provided through that service. It is intended that assessment contacts will be able to be made with approved providers of a previously accredited service, whether or not the provider has applied for reaccreditation under subsection 27(2).

This is unlike the requirement to have plans for continuous improvement introduced under item 39, where it is only approved providers of a residential service who will be required to have plans for continuous improvement. While an approved provider of a residential service includes an approved provider of a previously accredited service, it does not include an approved provider of a previously accredited service to which an application for re-accreditation has not been made under subsection 27(2).

Item 46 - Paragraph 67(1)(a)

Item 46 will amend section 67(1)(a) to extend the ability for a regulatory official to request information or documents, to include requests from an approved provider of a previously accredited service, as part of an assessment contact that does not include a visit to the premises of the service. This change will be consistent with the amendment under item 45.

Performance report about contact to assess performance

Item 47 - Section 68

Items 47 will insert section 68 to provide for the Commissioner to prepare a performance report about an assessment contact, if the purpose of making the contact is to assess a provider's performance in relation to a service, against the Aged Care Quality Standards.

Subsections 68(1) and 68(2) will provide that where the purpose of an assessment contact is to assess performance as provided for under para (a) of the definition of an assessment contact, rather than to monitor the quality of care and services as provided under para (b) of this definition, a regulatory official must prepare an assessment contact report about the service. The same or similar requirements for preparing a quality audit report under section 56, will apply to an assessment contact report.

Section 68A will provide that if the Commissioner receives an assessment contact report from a regulatory official under subsection 68(4), the Commissioner must prepare a performance report. The same or similar requirements for preparing a performance report about a quality audit of a home service under section 57 will apply to a performance report about an assessment contact under section 68A.

There are no requirements specified for preparing an assessment contact report or performance report if the assessment contact is conducted for the purposes of monitoring the quality of care and services provided by through a service. This may include where an assessment contact is made, to monitor any areas of improvements which were notified to an approved provider of an accredited service or residential service or home service provider of a home service following a site audit, quality audit or review audit, where an assessment of a provider's performance in the form an audit would have already occurred and been reported on. This also means the performance reports about a service which are published have been subject to the same assessment process.

Item 48 - Subdivision B of Division 5 of Part 5

Item 48 will repeal subdivision B of the above, which provide for the Commissioner to vary arrangements for assessment contacts. This will be repealed as a consequence of repealing requirement to make arrangements for assessment contacts when certain regulatory decisions are made on the basis that assessment contacts will be made as and when required, on the basis of regulatory risk.

When a review audit is conducted

Items 49, 50, 51 and 52 - Section 70 (heading), Subparagraph 70(1)(b)(iii), Paragraphs 70(1)(c) and (d), Subsection 70(2)

Item 49 and 50 will amend the heading for section 70 and subparagraph 70(1)(b)(iii), as a consequence of the amendments under items 51, 52 and 53.

Items 51 and 52 will repeal paragraphs 70(1)(c) and (d) and subsection 70(2) which specify circumstances for conducting a review audit in circumstances where the Commissioner considers the approved provider has not complied with the arrangements for assessment contacts relating to the service notified to the provider, the approved provider of the service has requested the reconsideration of a regulatory reviewable decision (other than a decision of a kind mentioned in item 8 of the table in section 98), or the Secretary requests a review audit to be conducted, in relation to which the Commissioner must comply. A review audit will not be necessary to conduct in any of the circumstances mentioned given the Commissioner's transferred functions under the amending Act.

Conduct of a review audit of an accredited service

Items 53, 54, 55 and 56 - Subparagraph 73(2)(b)(ii), Paragraph 73(2)(c), Section 74 (heading) and At the end of section 74

Items 53, 54, 55 and 56 will incorporate a range of amendments which apply more broadly across the Commission Rules. These include:

- Subparagraph 73(2)(b)(ii) will be amended to require an assessment team to consider relevant information given to the team by not only a nominated representative of a care recipient, but also the nominated representative of a *former* care recipient. This change is consistent with the requirement under the preceding subparagraph 73(2)(b)(i) to consider this information if given by a care recipient or former care recipient.
- Paragraph 73(2)(c) will be amended to require an assessment team to consider relevant information that is given to the team by the Commissioner rather than directly from the Secretary. This change reflects the changing roles of both the Secretary and Commissioner after 1 January 2020, where the interests of the Secretary in the conduct of a particular quality audit will shift to a policy focus.
- Section 74 will introduces a new requirement for an approved provider to pass on any request from a former care recipient or nominated representative to talk to a member of the assessment team about the residential service. This is intended to facilitate the provision of relevant information from former care recipients or their representatives, which complements the requirement for the assessment team to consider this

information in conducting a site audit as amended under subparagraph 73(2)(b)(ii). As a consequence of the amendment made under section 74, the heading for this section has been updated to reference the talks which may be requested by a former care recipient or their nominated representative, during a review audit.

Performance report about a review audit of an accredited service

Items 57, 58 and 59 - Section 76 (heading), At the end of Subdivision A of Division 6 of Part 5

Items 57 will repeal and substitute the heading for section 76, which makes it clear the review audit report is prepared by the assessment, as distinct from the performance report which is to be prepared by the Commissioner under item 59.

Item 59 will insert a new section 76A to provide for the preparation of a performance report about the review audit of an accredited service. The same or similar requirements for preparing a performance report about a site audit of a residential service under section 40A will apply to a performance report about a review audit of an accredited service under section 76A.

Item 58 - Subsection 76(3)

Item 58 will change the period within which a review audit report must be given to the Commissioner from 14 to 7 days. This is consistent with the timeframes which relate to a site audit report.

Decision about whether to revoke accreditation

Item 60 - Section 77

Item 60 will repeal and substitute section 77 with a new section of the same number, requiring the Commissioner to decide whether to revoke the accreditation of the accredited service. Amendments have been made which take into account the performance report in making this decision.

Section 77 will require the Commissioner to decide whether to re-accredit the residential service within 7 days of preparing and giving the performance report to the approved provider of the residential service. In making this decision, subsection 77(2) requires the Commissioner to take into account the same kinds of matters considered in preparing the performance report for the relevant service and the performance report itself. In addition, the Commissioner must also take into account whether the Commissioner is satisfied the approved provider will undertake continuous improvement if the accreditation of the service was not revoked.

If the Commissioner does not revoke accreditation, subsection 77(4) requires the Commissioner to decide whether to vary the period of accreditation.

Areas of improvement

If the Commissioner decides not to revoke accreditation, the Commissioner will no longer be required to determine whether there are any areas in which improvements must be made to ensure the Aged Care Quality Standards are complied with as required under existing paragraph 77(4)(b). The Commissioner will instead have the option to decide whether to specify any areas of improvement within the performance report, with notification of any areas of improvement to be achieved when a copy is given to the approved provider under subsection 76A(1).

Making it optional for the Commissioner to determine whether there are any areas of improvement following an assessment of a provider's performance is intended to accommodate other possible actions or decisions the Commissioner may take from 1 January 2020, subject only to the Commissioner deciding to re-accredit a residential service. This is intended to facilitate the integration of the Commissioner's transferred functions under the amending Act, subject only to the regulatory decision the Commissioner must make under section 77.

The Commissioner may choose not to notify or seek improvements from an approved provider if the Commissioner is considering not to re-accredit a residential service, or taking other actions in response to an assessment of a provider's performance, given these actions could conflict which overtake the need to notify an approved provider of areas of improvement. For example, this might occur where an assessment of a provider's performance might reveal matters related to the provider's performance which also renders the provider no longer suitable to be a provider and the Commissioner decides to give notice under section 63F to revoke its approval. Given the Commissioner must revoke approval in circumstances where a provider is no longer suitable, identifying improvements would be unnecessary. In other circumstances, identifying improvements may conflict with compliance action.

Where improvements are included in a performance report, this is intended to indicate where improvements will be required if the Commissioner were to decide to either re-accredit a residential service or not revoke the accreditation for an accredited service.

Giving notices to the Secretary

Items 61, 62, 63 and 65 - Subsection 78(1), Subsection 78(2), Subparagraph 79(1)(c)(ii), Subsection 79(3)

Items 62 and 65 will repeal subsections 78(2) and 79(3) which requires the Commissioner to give the Secretary a copy of the notice given to the approved provider of the accreditation service of the Commissioner's decisions to either revoke or not revoke the accreditation of the service. The information contained in these notices will no longer be necessary to the performance of the Secretary's functions under Parts 2.1, 4.4 and 6.4 of the Aged Care Act, following their transfer to the Commissioner from 1 January 2020.

Items 61 and 63 make consequential amendments to subsection 78(1) and 79(1) as a result of repealing subsection 78(2) under item 62 and subsection 79(3) under item 65.

Arrangements for assessment contacts

Item 64 - Paragraph 79(1)(d)

Item 64 will repeal paragraph 79(1)(d) which require any arrangements for assessment contacts to be determined, if the Commissioner decides not to revoke the accreditation of the accredited service. Removing dedicated provisions for making arrangements for assessment contacts is intended to allow the Commission to monitor the quality of care and services in a manner that is responsive to changes in regulatory risks over time, without being constrained by prearranged assessment contacts or burdened with their variation.

It is intended that assessment contacts will instead be made in accordance with Division 5 of Part 5 as amended under item 45. Item 45 will provide general provisions for making assessment contacts without prescribing the operating conditions in which these contacts will be made. This is intended to better allow assessment contacts to be used to monitor the quality of care and services based on risk. Given this will depend on the circumstances which will typically change over time, these matters will be generally left to the discretion of the Commissioner to determine rather than prescribing requirements for making pre-arranged assessment contacts in the Commission Rules.

Publishing performance report and decision after a review audit

Item 66 - Subsections 80(1) and (2)

Item 66 will amend subsection 80(1) and (2) to require the Commissioner to publish performance reports about a review audit either as soon as practicable after making the decision, or within 28 days after the reconsideration period for the decision if applicable.

Dealing with non-compliance

Item 67 - Division 7 of Part 5

Item 67 will repeal Division 7 of Part 5 which provides arrangements for dealing with non-compliance with the Aged Care Quality Standards. With the exception of the directions for revising plans for continuous improvement under section 84, Division 7 of Part 5 will be repealed without replacement. This is to avoid duplication and inconsistencies in the performance of the Commissioner's transferred functions under the amending Act. This will include the Commissioner's functions of ensuring compliance with the aged care responsibilities of approved providers under Part 8A and imposing sanctions for non-compliance with an aged care responsibility under Part 7B of the Commission Act.

Monitoring of Aboriginal and Torres Strait Islander services

Item 68 - Section 86

Item 68 will replace 'Quality Framework' with 'Quality Review Guidelines' under section 86. This will require the Commissioner to monitor an Aboriginal and Torres Strait Islander service in accordance with the Quality Review Guidelines. The Quality Review Guidelines function in the same way as the Quality Framework, but has been updated to take into account the Aged Care Quality Standards.

Service providers may find a copy of the Quality Review Guidelines on the Commission's website, free of charge. The Commission will publish any updates to the Quality Review Guidelines on its website and will ensure that any changes are communicated to the providers under that program.

Part 6 - Registration of quality assessors

Item 69 - paragraph 91(2)(d)

Item 69 will repeal paragraph 91(2)(d) which requires an application for registration as a quality assessor to be accompanied by evidence that the applicant has completed, during the applicant's current period of registration. This will be repealed since it will not be necessary. If the Commissioner decides, this may form a condition of registration, where compliance with this requirement can be demonstrated during the period of registration, rather at the point before registration for a further period. This would also avoid congesting the application process.

Part 7 - Reconsideration and review of decisions

Regulatory reviewable decisions

Items 70, 71, 74 and 75 - Section 98 (after table items 3 and 7), Paragraph 101(3)(b)

Item 70 will amend section 98 to make a decision not to re-accredit a recommencing service under section 29 - this is appropriate given the reaccreditation of this kind of previously accredited service will no longer be a decision made under section 41 and therefore reviewable under item 4. Item 74 will provide for this decision to be reconsidered in the same way as a decision not to accredit a commencing service by amending paragraph 101(3)(b).

Item 75 will amend paragraph 101(3)(b) which provides that an internal reviewer must give the affected person for the reviewable decision (except those listed under items 3 and 4 of section 98) written notice of a reconsideration decision and reasons for the decision within 14 days of receiving the request. To ensure consistency the timeframes for reconsidering complaints reviewable decisions under subsection 100(2), item 75 will increase the 14 day timeframe to a 28 day timeframe.

Item 71 will also amend section 98 to make a decision under subsection 90(3) and 92(3) reviewable. Under subsection 90(3) the Commissioner may refuse to register a person as a quality assessor and under subsection 92(3) the Commissioner may refuse to register a person as a quality assessor for a further period - these amendments respond to the scrutiny concerns raised by the Regulation and Ordinances Committee in relation to the Aged Care Quality and Safety Commission Rules 2018, after it was first tabled.

Complaints reviewable decisions

Items 72, 73 and 74 - Subsection 100(3), Subsection 100(4), Paragraph 101(3)(a)

Item 72 will amend subsection 100(3) to increase the time the Commissioner has for reconsidering a complaints reviewable decision from 28 to 56 days from the date of receiving the application.

Subsection 100(4) provides that if, following reconsideration, the Commissioner decides to set the original complaints decision aside and undertake a new resolution process, the Commissioner has a further 62 days to complete that process (a total of 90 days from receipt of application).

Item 73 will amend subsection 100(4) to allow the Commissioner a total of 126 days (18 weeks) to undertake a new resolution process from receipt of the application for review. This additional time is required given to finalise decisions to be affirmed in the initial review period given the nature of a complaints resolution process which may involve negotiation and agreement between voluntary parties and may deal with sensitive issues and circumstances, such as where a person has died. Further, this additional time is necessary to ensure where there the opportunity to resolve a complaint through satisfactory outcomes is maximised given the finality of reconsidered complaints reviewable decisions, which are not suitable for appeal to the Administrative Appeals Tribunal. This will also allow additional information to be taken into account or updated where relevant which may be sourced through the Commissioner's existing complaints and regulatory functions, as well as the Commissioner's transferred functions from 1 January 2020.

Part 8 – Information sharing and confidentiality

Item 76 - Section 107

Item 76 will repeal section 107 which provides for information about a failure to comply with the responsibilities of an approved provider under Chapter 4 of the Aged Care Act to give this information to the Secretary for the purposes of the Secretary's functions or powers.

Given the amending Act will transfer the Secretary's functions under Parts 2.1, 4.4 and (related parts of) 6.4 of the Aged Care Act to the Commissioner, this provision will become redundant after 1 January 2020.

Items 77, 78 and 79 - Section 108 (heading), Subsection 108(1), Section 112

Items 77, 78 and 79 will amend parts of section 108 and 112, to reference the Quality Review Guidelines instead of the Quality Framework, as a consequence of amendments under items 36 and 68.

While section 108 also provides for the Commissioner to give the Secretary information about failures by a service provider of an Aboriginal and Torres Strait Islander service to comply with its responsibilities, unlike section 107 this provision will not be repealed given the Secretary's functions as it relates to the enforcement of responsibilities under funding agreements for Commonwealth funded aged care services will not be transferred to the Commissioner from 1 January 2020. (This same applies to information about failures by a service provider of a home support service under section 109).

Part 9 – Transitional, application and savings provisions

Item 80 will insert transitional provisions under Division 3 of Part 9 for particular activities which are likely to be affected by the amending instrument.

In relation to most processes or applications started or made, but not completed or decided before 1 January 2020, the transitional provisions will provide for these processes or applications to be completed or determined in accordance with the corresponding amended provisions, after 1 January 2020. This will apply to the following:

- a pending (and new) application for accreditation of a commencing service under subsection 27(1), which will be determined in accordance with amended Subdivision C of Division 3 of Part 3 as provided under section 152.
- a pending application for re-accreditation of an accredited service or previously accredited service under subsection 27(2) (other than what would be considered a recommencing service after 1 January 2020) to be determined in accordance with amended Subdivision D of Division 3 of Part 3 as provided under section 153.
- an incomplete quality review of an Aboriginal and Torres Strait Islander service to be completed in accordance with the new Quality Review Guidelines amended as provided for under section 157.
- an incomplete assessment contact with an approved provider of an accredited service or home service provider of a home service, to be completed in accordance with amended sections 68 and 68A, as provided for under section 158. Subsection 158(2) provides that these assessment contact are to be treated *as if* its purpose was to assess a provider's performance. This means the Commissioner will be required to prepare and publish performance reports for *all* assessment contacts which were made but not yet completed immediately before 1 January 2020.
- an incomplete review audit, the conduct of which will be completed in accordance with amended Subdivision A of Division 6 of Part 5, as provided for under section 160.
- an incomplete review audit, to be determined in accordance with amended Subdivisions B and C of Division 6 of Part 5 in relation to a decision whether to revoke as provided for under section 161. This means that in relation to review audits which have commenced but are not completed before 1 January 2020, the Commissioner will be required to decide and notify, and prepare and publish the performance report about the review audit of the accredited service.

In relation to the other processes or applications initiated or made, but not completed or decided before 1 January 2020, the transitional provisions will provide for these processes or applications to be completed or determined in accordance with the *unamended* applicable provisions, after 1 January 2020. This will apply to the following:

- an incomplete quality review of a home service commenced under Subdivision B of Division 3 of Part 4 as in force before 1 January 2020, will be completed in accordance with this unamended subdivision, on or after 1 January 2020 as provided under section 155.
- unpublished decisions mentioned under subsection 48(2) as in force before 1 January 2020, will be published after 1 January 2020 in accordance with the unamended subsection 48(2) on or after 1 January 2020 as provided under section 154.
- unpublished decisions mentioned under section 80 as in force before 1 January 2020, will be published in accordance with unamended section 80 on or after 1 January 2020, as provided for under section 162.

For certain amendments, these will apply *before*, as well as on or after 1 January 2020. These include:

- amendments to section 13 regarding how the Commissioner deals with complaints, as provided for under section 151.
- amendments to section 98 which extends the definition of a reviewable decision as provided for under section 163.
- amendments to section 100 which provides extended timeframes relating to the reconsideration of complaints reviewable decisions, as provided for under section 164.
- amendments to section 101 which provides extended timeframes relating to the reconsideration of regulatory reviewable decisions, as provided for under section 165.

In addition, section 156 will provide that the new requirement to publish performance reports for a quality review of a home service under paragraph 57(1)(c) will only start to apply to performance reports prepared on or after the delayed date of 1 July 2020. This requirement will apply to regardless of when the quality review may have commenced.

In addition, if a relevant regulatory reviewable decision was made before 1 January 2020 and a request of the kind contemplated under paragraph 70(1)(d) was made by an approved provider to reconsider this decision, section 159 will provide that despite the repeal of paragraph 70(1)(d), it will remain open to the Commissioner to arrange to conduct a review audit on the grounds of this paragraph. This transitional provision will ensure that in relation to regulatory reviewable decisions made before 1 January 2020, an approved provider affected by this decision is not disadvantaged.

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 Amendment (Integration of Functions) Rules
2019

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 Aged Care Quality and Safety Commission Amendment (Integration of Functions) Rules 2019 (amending instrument) amends the Aged Care Quality and Safety Commission Rules 2018 which provide arrangements for the performance of certain functions of the Aged Care Quality and Safety Commissioner from 1 January 2020.

Human rights implications

The amending instrument does not engage any human rights or interfere with any legally enforceable rights or obligations of any natural person. The amending instrument only provides for the performance of the Commissioner's functions.

While the amending instrument amends arrangements which govern the exercise of the Commissioner's regulatory powers under Part 8 of the *Aged Care Quality and Safety Commission Act 2018* (Commission Act), these regulatory powers can only be exercised with consent. All coercive regulatory and enforcement powers are provided for and governed entirely under Parts 7B and 8A of the Commission Act, and Parts 2 and 3 of the *Regulatory Powers (Standard Provisions) Act 2014* and are not the subject of the amending instrument.

Conclusion

The amending 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*.

Senator, the Hon Richard Colbeck

Minister for Aged Care and Senior Australians

Minister for Youth and Sport