

EXPLANATORY STATEMENT

Aged Care Legislation Amendment (New Commissioner Functions) Act 2019

Aged Care Legislation Amendment (New Commissioner Functions) (Transitional Provisions) Rules 2019

Authority

Subitem 36(1) of *Aged Care Legislation Amendment (New Commissioner Functions) Act 2019* (the Amending Act) provides that the Minister may, by legislative instrument, make rules prescribing matters required or permitted, or necessary or convenient to be prescribed for carrying out or giving effect to, Schedule 4 to the Amending Act. Subitem 36(2) clarifies that the matters permitted to be prescribed by such Rules include matters of a transitional nature relating to the amendments or repeals made by the Amending Act.

Purpose

The Amending Act amends the *Aged Care Act 1997* (Aged Care Act) and the *Aged Care Quality and Safety Commission Act 2018* (Quality and Safety Commission Act) to transfer aged care regulatory functions from the Secretary of the Department of Health to the Aged Care Quality and Safety Commissioner (Commissioner). These new functions include approving providers of aged care, and monitoring and enforcing their compliance with their aged care responsibilities.

The purpose of the *Aged Care Legislation Amendment (New Commissioner Functions) (Transitional Provisions) Rules 2019* (this Instrument) is to ensure an entity that has approved provider status but is not conducting an aged care service immediately before the commencement of the Amending Act maintains their approved provider status after the commencement of the Amending Act.

Background

This Instrument contributes to the establishment of the independent Aged Care Quality and Safety Commission as announced in the 2018-19 Budget. The Commission was established on 1 January 2019 and replaced the existing Australian Aged Care Quality Agency and Aged Care Complaints Commissioner and their functions. The second stage of the establishment of the Commission involves the transfer of the regulatory functions described above. The Amending Act gives effect to this transfer, in combination with this Instrument, the *Aged Care Legislation Amendment (New Commissioner Functions) Instrument 2019*, and the *Aged Care Quality and Safety Commission Amendment (Integration of Functions) Rules 2019*.

Together, the Amending Act and the instruments described above will enable the Commission to protect and enhance the safety, health, well-being and quality of life of aged care consumers; promote confidence and trust in the provision of aged care; and promote engagement with aged care consumers about the quality of care and services.

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 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 instruments are made.

Regulation Impact Statement (RIS)

The Office of Best Practice Regulation (OBPR) has acknowledged that as part of the Carnell-Paterson Review a process and analysis equivalent to a Regulation Impact Statement (RIS), was undertaken. This process 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 Instrument will commence on 1 January 2020.

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

Explanation of provisions for the *Aged Care Legislation Amendment (New Commissioner Functions) (Transitional Provisions) Rules 2019*

Section 1 - Name of Instrument

Section 1 provides how the Instrument is to be cited, that is, as the *Aged Care Legislation Amendment (New Commissioner Functions) (Transitional Provisions) Rules 2019*.

Section 2 - Commencement

This section provides for the Instrument to commence on 1 January 2020.

Section 3 - Authority

Section 3 provides that the Instrument is made under the authority of the *Aged Care Legislation Amendments (New Commissioner Functions) Act 2019* (the Amending Act).

The powers in subitem 36(1) of the Amending Act are relied upon for the making of this instrument. Subitem 36(1) allows the Minister to make rules prescribing matters required or permitted, or necessary or convenient to be prescribed for carrying out or giving effect to Schedule 4 of the Amending Act. Sub-paragraph (1)(b)(ii) of item 2 in Schedule 4 provides for the saving of the approval of approved providers if before the transition time, its approval is in effect, and the approved provider is (among other matters) an entity of the kind specified in the rules.

Section 4 – Definitions

Section 4 provides definitions for a number of terms used elsewhere in the Instrument.

Section 5 – Saving of approval of approved providers – specified entity

Schedule 4 to the Amending Act saves the approval of an entity approved before the commencement of the Amending Act, if immediately before that time, that entity's approval is in effect and the entity is either conducting an aged care service as provided under subparagraph (1)(b)(i), or the entity is of a kind specified in the transitional rules as provided under subparagraph (1)(b)(ii).

Section 5 specifies an entity for the purposes of subparagraph (1)(b)(ii) of item 2 of Schedule 4. It specifies that an entity who is an approved provider at the transition time, and that proposes to conduct an aged care service. An approved provider who is available to take on new care recipients (whether they currently have any care recipients or not) or is taking preparatory steps to providing care following its approval, is intended to be considered to be 'proposing to conduct an aged care service' for the purposes of subparagraph (1)(b)(ii) of item 2, after the transition time.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Aged Care Legislation Amendment (New Commissioner Functions) (Transitional Provisions) 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 legislative instrument provides arrangements for the performance of the functions of the Aged Care Quality and Safety Commissioner from 1 January 2020.

Human rights implications

The legislative instrument engages with the right of everyone to the opportunity to gain his living by work as contained in article 6(1) of the *International Convention on the Economic, Social and Cultural Rights*. The provisions to save the approved provider status for an entity which proposes to conduct an aged care service before the commencement of the Amending Act ensures their work can continue following the transition of the aged care regulatory functions from the Secretary of the Department of Health to the Aged Care Quality and Safety Commissioner.

Conclusion

The legislative instrument is compatible with human right of everyone to the opportunity to gain his living by work and is compatible with the human rights and freedoms recognised and 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