



## **Aged Care Legislation Amendment (New Commissioner Functions) Instrument 2019**

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I, Richard Colbeck, Minister for Aged Care and Senior Australians, make the following instrument.

Dated 19 December 2019

Richard Colbeck  
Minister for Aged Care and Senior Australians

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## 1 Name

This instrument is the *Aged Care Legislation Amendment (New Commissioner Functions) Instrument 2019*.

## 2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 January 2020.	1 January 2020

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

## 3 Authority

This instrument is made under the following:

- (a) the *Aged Care Act 1997*;
- (b) the *Aged Care Quality and Safety Commission Act 2018*.

## 4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

## Schedule 1—Amendments

### *Accountability Principles 2014*

#### **1 Section 4 (after paragraph (a) of the note to the heading)**

Insert:

(aa) disqualified individual;

#### **2 Section 4 (after paragraph (c) of the note to the heading)**

Insert:

(ca) key personnel;

(cb) Quality and Safety Commissioner;

#### **3 After Part 1**

Insert:

## **Part 2—Information to be given to Quality and Safety Commissioner**

### **5 Purpose of this Part**

For the purposes of paragraph 63-1(1)(m) of the Act, this Part specifies the responsibilities of an approved provider of a residential care service to give certain information about the service to the Quality and Safety Commissioner.

### **6 Information about unexplained absence of care recipients**

- (1) An approved provider of a residential care service must inform the Quality and Safety Commissioner if:
  - (a) a care recipient is absent from the service; and
  - (b) the absence is unexplained; and
  - (c) the absence is reported to the police.
- (2) The information must be given to the Quality and Safety Commissioner as soon as reasonably practicable, but not later than 24 hours after the care recipient's absence is reported to the police.

### **4 Section 25**

Repeal the section.

### **5 Section 52 (paragraph (b) of the note)**

Omit “Secretary”, substitute “Quality and Safety Commissioner”.

### **6 Paragraph 53(2)(b)**

Repeal the paragraph, substitute:

- (b) the earlier allegation or suspicion was reported in accordance with subsection 63-1AA(2) of the Act.

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**7 After Part 7**

Insert:

**Part 7A—Reasonable steps to ensure suitability of key personnel****53A Purpose of this Part**

For the purposes of subsection 63-1A(2) of the Act, this Part specifies reasonable steps that an approved provider must take to ensure that none of its key personnel is a disqualified individual.

**53B Reasonable steps to be taken by approved provider**

- (1) An approved provider must take the following steps in relation to each person who is a key personnel of the provider:
  - (a) the provider must ensure that the person understands the obligations of key personnel and of approved providers under the Act and the Quality and Safety Commission Act in relation to disqualified individuals;
  - (b) if the provider reasonably believes that the person is unable to perform the person's duties as a key personnel of the provider because of mental incapacity—the provider must make arrangements for the person to be examined by a registered medical practitioner;
  - (c) if the provider reasonably believes that the person is a disqualified individual—the provider must take one or more of the steps referred to in subsection (2) to ascertain if the person is a disqualified individual; and
  - (d) if the provider has ascertained that the person is a disqualified individual—the provider must ensure that the person ceases to be one of the provider's key personnel.
- (2) An approved provider must take the following steps in relation to a person before, or as soon as practicable after, the person becomes a key personnel of the provider:
  - (a) the provider must obtain (with the person's written consent) a police certificate for the person;
  - (b) the provider must conduct a search of bankruptcy records;
  - (c) the provider must conduct previous employment and referee checks.

***Aged Care Quality and Safety Commission Rules 2018*****8 Section 4 (definition of *affected person*)**

Repeal the definition.

**9 Section 4 (definition of *complaints reviewable decision*)**

After "a reviewable", insert "Commissioner".

**10 Section 4 (definitions of *flexible care* and *flexible care service*)**

Repeal the definitions.

**11 Section 4**

Insert:

*interested person*: see section 98.

**12 Section 4 (definition of *regulatory reviewable decision*)**

After “a reviewable”, insert “Commissioner”.

**13 Section 4 (definition of *residential care*)**

Repeal the definition.

**14 Section 4**

Insert:

*reviewable Commissioner decision*: see section 98.

**15 Section 4 (definition of *reviewable decision*)**

Repeal the definition.

**16 Subsections 13(1) and 15(2) (notes)**

Omit “complaints”.

**17 Paragraph 17(1)(d)**

Omit “been notified that the Secretary has initiated action under Part 4.4 of the Aged Care Act”, substitute “initiated action under Part 7B of the Commission Act”.

**18 Section 21 (note 1)**

Omit “Secretary may initiate action under Part 4.4 of the Aged Care Act”, substitute “Commissioner may initiate action under Part 7B of the Commission Act”.

**19 Subsection 23(1)**

Omit “Secretary from taking action under Part 4.4 of the Aged Care Act”, substitute “Commissioner from taking action under Part 7B of the Commission Act”.

**20 After paragraph 70(1)(a)**

Insert:

(aa) the approved provider of the service has notified the Commissioner of a change of circumstances under section 9-1 of the Aged Care Act; or

**21 Subparagraph 70(1)(b)(i)**

Repeal the subparagraph.

**22 Section 96**

Omit “affected person for a reviewable decision may request the Commissioner to reconsider the decision. If the affected”, substitute “interested person for a reviewable Commissioner decision may request the Commissioner to reconsider the decision. If the interested”.



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**23 Section 96**

Omit “affected person for a reviewable” (second occurring), substitute “interested person for a reviewable Commissioner”.

**24 Section 98 (heading)**

Repeal the heading, substitute:

**98 Reviewable Commissioner decisions and interested persons****25 Section 98**

Omit “a *reviewable decision*”, substitute “a *reviewable Commissioner decision*”.

**26 Section 98**

Omit “the *affected person*”, substitute “the *interested person*”.

**27 Section 98 (table heading)**

Repeal the heading, substitute:

**Reviewable Commissioner decisions and interested persons**

**28 Section 98 (table, heading to column 2)**

Omit “Affected”, substitute “Interested”.

**29 Section 99 (heading)**

Repeal the heading, substitute:

**99 Interested person may request reconsideration of reviewable Commissioner decision****30 Subsection 99(1)**

Omit “affected person for a reviewable”, substitute “interested person for a reviewable Commissioner”.

**31 Paragraphs 99(2)(c) and (3)(c)**

Omit “affected”, substitute “interested”.

**32 Subsections 100(1) and (3)**

Omit “affected”, substitute “interested”.

**33 Subsection 100(7)**

After “a reviewable”, insert “Commissioner”.

**34 Subsections 101(1) and (3), 102(2) and (4) and 103(2)**

Omit “affected”, substitute “interested”.

**35 After Part 8**

Insert:

## **Part 8A—Approval of providers of aged care**

### **111A Circumstances in which Commissioner may require further information to be given within a shorter period**

For the purposes of subsection 63C(3) of the Commission Act, the following circumstances are specified in relation to an application made under subsection 63B(1) of that Act:

- (a) the Commissioner is satisfied that the care for care recipients may be prejudiced by delay in deciding whether to approve the applicant as a provider of aged care;
- (b) the Commissioner is satisfied that the applicant, or one of the key personnel of the applicant, has:
  - (i) previously been refused approval as a provider of aged care; or
  - (ii) had their approval as a provider of aged care revoked.

Note: For paragraph (a), an example of when delay in deciding whether to approve a person as a provider of aged care may prejudice care for care recipients is when allocated places have been transferred and it is necessary to relocate care recipients.

## **Part 8B—Sanctions for non-compliance with aged care responsibilities of approved providers**

### **Division 1—Introduction**

#### **111B Simplified outline of this Part**

This Part specifies matters relating to the imposition of sanctions under section 63N of the Commission Act and the lifting of such sanctions.

### **Division 2—Imposition of sanctions by the Commissioner**

#### **111C When sanctions come into effect and cease to have effect—matters to which Commissioner must have regard**

For the purposes of subsection 63N(6) of the Commission Act, in doing any one or more of the matters mentioned in paragraph 63N(6)(a), (b) or (c) of that Act in relation to a sanction imposed on an approved provider for non-compliance with one or more of the aged care responsibilities of the provider, the Commissioner must have regard to the following matters:

- (a) whether the non-compliance is of a minor or serious nature;
- (b) whether the non-compliance has occurred previously and, if so, how many times it has previously occurred;
- (c) whether the non-compliance threatens the health, welfare or interests of care recipients to whom the provider is providing care;
- (d) whether the non-compliance would threaten the health, welfare or interests of care recipients to whom the provider may provide care in the future;

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- (e) if the provider has given an undertaking as required by a notice given to the provider under subsection 63T(2) of the Commission Act—whether or not the provider has complied with the undertaking;
  - (f) if the provider has agreed to do one or more things as required by a notice given to the provider under subsection 63U(2) of the Commission Act—whether or not the provider has complied with the agreement;
  - (g) any risks to the health, welfare or interests of care recipients to whom the provider is providing care or may provide care in the future;
  - (h) the period likely to be needed to establish whether any improvement in the provider’s compliance with those responsibilities can be sustained;
  - (i) the period needed for the taking of reasonable steps to inform the following persons about the imposition of the sanction and the consequences of the imposition of the sanction:
    - (i) each care recipient who is likely to be affected by the imposition of the sanction;
    - (ii) the nominated representative of such a care recipient.

### **111D Other sanctions that may be imposed on approved providers**

For the purposes of paragraph 63R(o) of the Commission Act, the following sanctions are specified:

- (a) if an approved provider has not made a payment as required under section 21F of the *User Rights Principles 2014*—requiring the provider to make the payment within a specified period;
- (b) if an approved provider has charged a care recipient to whom the provider provides home care an amount for, or in relation to, the care or a service that is greater than the amount that the provider is permitted to charge under section 21M of the *User Rights Principles 2014*—requiring the provider to repay the overcharged amount within a specified period.

## **Division 3—Notices that must, or may, be given before sanctions are imposed**

### **111E Period to appoint eligible adviser—matters Commissioner must take into account when specifying period**

For the purposes of subsection 63U(4) of the Commission Act, in specifying the period within which an approved provider must appoint an eligible adviser, the Commissioner must take into account:

- (a) the location of the aged care service conducted by the provider; and
- (b) the nature of the provider’s non-compliance with the aged care responsibilities of the provider; and
- (c) whether there is an immediate and severe risk to the safety, health and well-being of care recipients to whom the provider is providing care as a result of the non-compliance; and
- (d) the availability of persons who have appropriate qualifications, skills or experience to assist the provider to comply with the provider’s aged care responsibilities; and
- (e) any other relevant matter.

## **Division 4—Lifting of sanctions imposed on approved providers**

### **111F Lifting of sanctions—other matters to which the Commissioner must have regard**

For the purposes of paragraph 63X(3)(b) of the Commission Act, in deciding whether it is appropriate for a sanction imposed on an approved provider for non-compliance with one or more of the aged care responsibilities of the approved provider to be lifted, the Commissioner must have regard to:

- (a) the matters mentioned in paragraphs 111C(a) to (g) of this instrument; and
- (b) whether any changes made by the provider are likely to result in a sustained improvement in the provider's compliance with those responsibilities.

### **36 Paragraphs 131(2)(b), 132(2)(b), 133(2)(b), 134(2)(b) and 135(2)(b) and (c)**

Omit “affected”, substitute “interested”.

### ***Allocation Principles 2014***

### **37 Paragraphs 51(1)(f) and 62(1)(f)**

Omit “Part 4.4 of the Act”, substitute “Part 7B of the Quality and Safety Commission Act”.

## **Schedule 2—Repeals**

### *Approved Provider Principles 2014*

#### **1 The whole of the instrument**

Repeal the instrument.