

EXPLANATORY STATEMENT

Aged Care Quality and Safety Commission Act 2018

Aged Care Quality and Safety Commission Amendment (Administrative Review Tribunal) Rules 2024

Purpose and operation

The *Aged Care Quality and Safety Commission Rules 2018* (the Commission Rules) provides for rules that give effect to matters in the *Aged Care Quality and Safety Commission Act 2018* (the Act), including those relating to the functions and decisions made by the Aged Care Quality and Safety Commissioner (the Commissioner).

The *Aged Care Quality and Safety Commission Amendment (Administrative Review Tribunal) Rules 2024* (the Instrument) amends the Commission Rules by replacing references to the Administrative Appeals Tribunal with the newly established Administrative Review Tribunal.

The *Administrative Review Tribunal Act 2024* (ART Act) establishes the new Administrative Review Tribunal (the Tribunal), which replaces the Administrative Appeals Tribunal (AAT). As such, existing references to the *Administrative Appeals Tribunal Act 1975* and the Administrative Appeals Tribunal have been replaced with the ART Act and the Tribunal respectively in the Instrument. The Instrument provides an interested person the opportunity to apply for review of a reconsideration decision relating to a regulatory reviewable decision with the Tribunal.

Section 136 of the Commission Rules provides for review by the AAT of certain pre-transition decisions. This section is not amended as it is a transitional provision concerning decisions made prior to the commencement of the Commission Rules. As such, it is not affected by the introduction of the Tribunal and the ART Act.

Background

Establishment of the Administrative Review Tribunal

In March 2022, the Senate Legal and Constitutional Affairs Committee reported on the performance and integrity of the administrative review system. The report recommended the abolition of the AAT and establishment of a new federal administrative review body, with a transparent merit-based selection process for its members, as well as the re-establishment of the Administrative Review Council. The ART Act gives effect to these recommendations.

Authority

The Instrument is made under section 77 of the Act. Subsection 77(1) of the Act provides that the Minister may, by legislative instrument, make rules prescribing matters required or permitted by the Act, or necessary or convenient, for carrying out or giving effect to the Act.

Reliance on subsection 33(3) of the *Acts Interpretation Act 1901*

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

Commencement

The Instrument commences on 14 October 2024.

Consultation

The ART Act will commence on 14 October 2024. The Attorney-General's Department has led extensive consultation on the ART Act and further consequential amendments. The amendments in the Instrument give effect to the Tribunal and commence in alignment with the commencement date of the Tribunal. Due to the minor nature of the amendments to the Instrument, further consultation was considered unnecessary.

General

The Instrument is a disallowable legislative instrument for the purposes of the *Legislation Act 2003*.

Details of the Instrument are set out in **Attachment A**.

The Instrument is compatible with the rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility with human rights is set out in **Attachment B**.

Aged Care Quality and Safety Commission Amendment (Administrative Review Tribunal) Rules 2024

Section 1 – Name

This section provides that the name of the Instrument is the *Aged Care Quality and Safety Commission Amendment (Administrative Review Tribunal) Rules 2024*.

Section 2 – Commencement

This section provides that the Instrument commences on 14 October 2024.

Section 3 – Authority

This section provides that the Instrument is made under section 77 of the *Aged Care Quality and Safety Commission Act 2018*.

Section 4 – Schedule

This section provides that each instrument that is specified in a Schedule to the 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

Aged Care Quality and Safety Commission Rules 2018

Item 1 – Amendments of listed provisions – Administrative Review Tribunal

Item 1 omits “Administrative Appeals Tribunal” wherever it occurs in section 96, subsection 103(1), subsection 104(2) and subsection 104(3) of the *Aged Care Quality and Safety Commission Rules 2018* and substitutes it with “Administrative Review Tribunal”.

This replaces the existing Administrative Appeals Tribunal reference with the new Administrative Review Tribunal.

Item 2 – Amendments of listed provisions – Section 266 of the *Administrative Review Tribunal Act 2024*

Item 2 omits “Section 27A of the *Administrative Appeals Tribunal Act 1975*” wherever it occurs in the notes in subsection 101(3) and subsection 102(4) of the *Aged Care Quality and Safety Commission Rules 2018* and substitutes it with “Section 266 of the *Administrative Review Tribunal Act 2024*”.

This replaces the existing *Administrative Appeals Tribunal Act 1975* reference and

provision with the updated provision in the *Administrative Review Tribunal Act 2024*.

Item 3 – Section 103 (heading)

Item 3 omits “Administrative Appeals Tribunal” from the heading of section 103 of the *Aged Care Quality and Safety Commission Rules 2018* and substitutes it with “Administrative Review Tribunal”.

This replaces the existing Administrative Appeals Tribunal reference with the new Administrative Review Tribunal.

Item 4 – Subsection 103(3)

Item 4 omits “subsection 27(1) of the *Administrative Appeals Tribunal Act 1975*”, from subsection 103(3) of the *Aged Care Quality and Safety Commission Rules 2018* and substitutes it with “subsection 17 of the *Administrative Review Tribunal Act 2024*”.

This replaces the existing *Administrative Appeals Tribunal Act 1975* reference and provision with the updated provision in the *Administrative Review Tribunal Act 2024*.

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 (Administrative Review Tribunal) Rules 2024

This disallowable 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 Rules 2018* (the Commission Rules) provides for rules that give effect to matters in the *Aged Care Quality and Safety Commission Act 2018* (the Act), including those relating to the functions and decisions made by the Aged Care Quality and Safety Commissioner (the Commissioner).

The purpose of the *Aged Care Quality and Safety Commission Amendment (Administrative Review Tribunal) Rules 2024* (the Instrument) is to replace references from the existing Administrative Appeals Tribunal with the new Administrative Review Tribunal (the Tribunal) from 14 October 2024.

Human rights implications

The Instrument engages the following human rights contained in the *Universal Declaration of Human Rights* (UDHR), the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), the *Convention of the Rights of Persons with Disabilities* (CRPD) and the *International Covenant on Civil and Political Rights* (ICCPR):

- the right to an adequate standard of living, including with respect to food, clothing and housing, and the continuous improvement of living conditions (Article 11(1) of ICESCR), including without discrimination on the basis of disability (Article 28(1) of CPRD);
- the right to the enjoyment of the highest attainable standard of physical and mental health (Article 12(1) of ICESCR), including without discrimination on the basis of disability (Article 25 of the CPRD);
- the right to an effective remedy (Article 8 of the UDHR);
- the right to a fair and public hearing (Article 14 of ICCPR);
- the right of equality and non-discrimination (Articles 2, 16 and 26 of ICCPR); and
- the right of access to justice for persons with a disability (Article 13 of the CRPD).

The Commission Rules provides for regulatory decisions made by the Commissioner that concern aged care matters under the Act. This includes those relating to the

accreditation of aged care residential care services and flexible care services under section 29 and subsections 41(1), 41(3), 44(1), 44(2), 77(1), 77(3), 77(4). This supports the right for older Australians to have an “adequate standard of living” for the purposes of Article 11(1) of the ICESCR. It further provides for the Commissioner to make decisions concerning the registration of persons as quality assessors under subsections 90(3), 92(3) and 94(3). This supports the rights under Articles 12(1) of the ICESCR and Articles 28(1) and 25 of the CPRD by ensuring the quality and safety of aged care services that are offered to older Australians.

Additionally, the Tribunal’s objective will be to provide an independent mechanism of review that:

- is fair and just;
- resolves applications as quickly, and with as little formality and expense, as a proper consideration of matters before the Tribunal permits;
- is accessible and responsive to the diverse needs of parties to proceedings;
- improves the transparency and quality of government decision-making, and
- promotes public trust and confidence in the Tribunal.

The Instrument provides that an interested person, who disagrees with a reconsideration decision that relates to a regulatory reviewable decision made by the Commissioner or their delegate under the Commission Rules, may seek a review of that decision by the Tribunal.

As provided above, the purpose of the Instrument preserves the right of interested persons for relevant regulatory reviewable decisions to seek continued access to merits review of those decisions with the Tribunal, under section 103 of the Commission Rules. This promotes the rights under Article 8 of the UDHR, Articles 2, 14, 16 and 26 of the ICCPR and Article 13 of the CRPD.

Conclusion

The Instrument is compatible with human rights as it further promotes the realisation of relevant rights under the UDHR, ICESCR, CPRD and ICCPR.

**The Hon Anika Wells MP
Minister for Aged Care**