

2016-2017-2018

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Aged Care Quality and Safety
Commission Bill 2018**

No. , 2018

(Health)

**A Bill for an Act to establish the Aged Care Quality
and Safety Commission, and for related purposes**

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**A Bill for an Act to establish the Aged Care Quality
and Safety Commission, and for related purposes**

The Parliament of Australia enacts:

Part 1—Preliminary

Division 1—Preliminary

1 Short title

This Act is the *Aged Care Quality and Safety Commission Act
2018*.

Section 2

2 Commencement

- (1) Each provision of this Act 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 Act	1 January 2019.	1 January 2019

Note: This table relates only to the provisions of this Act as originally enacted.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

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

3 Act binds the Crown

This Act binds the Crown in each of its capacities.

4 Extension to external Territories

This Act extends to the external Territories other than the Territory of Ashmore and Cartier Islands.

5 Object of this Act

- (1) The object of this Act is to establish a regulatory framework that will:
- (a) protect and enhance the safety, health, well-being and quality of life of aged care consumers; and
 - (b) promote aged care consumers' confidence and trust in the provision of aged care services and Commonwealth-funded aged care services; and

- (c) promote engagement with aged care consumers about the quality of care and services provided by:
 - (i) approved providers of aged care services; and
 - (ii) service providers of Commonwealth-funded aged care services.
- (2) It is Parliament's intention to further the object of this Act by conferring, through future legislative change, additional functions on the Commissioner relating to matters such as the approval of providers of aged care and compliance.

6 Simplified outline of this Act

This Act establishes the Aged Care Quality and Safety Commission and provides for there to be a Commissioner of the Commission.

A number of functions are conferred on the Commissioner, including:

- (a) the function of protecting and enhancing the safety, health, well-being and quality of life of aged care consumers; and
- (b) the function of promoting the provision of quality care and services by approved providers of aged care services and service providers of Commonwealth-funded aged care services; and
- (c) the consumer engagement functions; and
- (d) the complaints functions; and
- (e) the regulatory functions; and
- (f) the education functions.

The Aged Care Quality and Safety Advisory Council is also established and has specified functions relating to the giving of advice in relation to the Commissioner's functions.

This Act also deals with the sharing of information, confidentiality and powers to enter premises and exercise the search powers in relation to premises for certain purposes.

Division 2—Definitions

7 Definitions

In this Act:

Advisory Council means the Aged Care Quality and Safety Advisory Council established by section 37.

Advisory Council member means a member of the Advisory Council and includes the Chair.

aged care has the same meaning as in the Aged Care Act.

Aged Care Act means the *Aged Care Act 1997*.

aged care consumer means:

- (a) a care recipient; or
- (b) a person who is a recipient of a Commonwealth-funded aged care service.

Aged Care Pricing Commissioner has the same meaning as in the Aged Care Act.

Aged Care Principles means Principles made under section 96-1 of the Aged Care Act.

aged care service has the same meaning as in the Aged Care Act.

annual operational plan means the annual operational plan given to the Minister under section 54.

approved provider has the same meaning as in the Aged Care Act.

authorised complaints officer means a person appointed under subsection 73(1) as an authorised complaints officer.

care has the same meaning as in the Aged Care Act.

care recipient means a person approved under Part 2.3 of the Aged Care Act as a recipient of aged care.

Chair means the Chair of the Advisory Council.

Commission means the Aged Care Quality and Safety Commission established by section 11.

Commissioner means the Commissioner of the Commission.

Commonwealth-funded aged care service: see subsection 8(1).

complaints functions: see section 18.

consumer engagement functions: see section 17.

education functions: see section 20.

funding agreement that relates to a Commonwealth-funded aged care service: see subsection 8(2).

home care service has the same meaning as in the Aged Care Act.

identity card means an identity card issued under subsection 74(1).

paid work means work for financial gain or reward (whether as an employee, a self-employed person or otherwise).

people with special needs has the same meaning as in the Aged Care Act.

personal information means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

place has the same meaning as in the Aged Care Act.

protected information: see subsection 60(2).

quality assessor means a person registered as a quality assessor under the rules.

regulatory functions: see section 19.

regulatory official means the Commissioner or a quality assessor.

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relevant data: see subsection 72(3).

residential care service has the same meaning as in the Aged Care Act.

rules means the rules made under section 77.

search powers: see sections 71 and 72.

Secretary means the Secretary of the Department.

service provider of a Commonwealth-funded aged care service: see subsection 8(3).

staff of the Commission means the staff of the Commission referred to in section 33.

vacancy, in relation to the office of an Advisory Council member, has a meaning affected by section 9.

8 Meaning of *Commonwealth-funded aged care service* etc.

- (1) A *Commonwealth-funded aged care service* is a service provided under a program that is a program (the *funded program*) of a kind specified in the rules for the purposes of this subsection.
- (2) A *funding agreement* that relates to a Commonwealth-funded aged care service is the agreement between a person or body and the Commonwealth that relates to a funded program under which the service is, or is to be, provided.
- (3) A *service provider* of a Commonwealth-funded aged care service is a person or body that is a party to the funding agreement that relates to the service.

9 Vacancy in the office of an Advisory Council member

For the purposes of a reference in:

- (a) this Act to a *vacancy* in the office of an Advisory Council member; or
- (b) the *Acts Interpretation Act 1901* to a *vacancy* in the membership of a body;

there are taken to be 10 offices of Advisory Council members in addition to the Chair.

Part 2 Aged Care Quality and Safety Commission

Division 1 Introduction

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Part 2—Aged Care Quality and Safety Commission

Division 1—Introduction

10 Simplified outline of this Part

This Part establishes the Commission.

The Commission consists of the Commissioner and the staff of the Commission. It has the function of assisting the Commissioner in the performance of the Commissioner's functions.

Division 2—Establishment etc. of the Commission

11 Establishment of the Aged Care Quality and Safety Commission

- (1) The Aged Care Quality and Safety Commission is established by this section.
- (2) For the purposes of the finance law (within the meaning of the *Public Governance, Performance and Accountability Act 2013*):
 - (a) the Commission is a listed entity; and
 - (b) the Commissioner is the accountable authority of the Commission; and
 - (c) the following persons are officials of the Commission:
 - (i) the Commissioner;
 - (ii) the staff of the Commission;
 - (iii) persons assisting the Commissioner referred to in section 34;
 - (iv) consultants engaged under section 35; and
 - (d) the purposes of the Commission include:
 - (i) the function of the Commission referred to in section 13; and
 - (ii) the functions of the Commissioner referred to in section 16.

12 Constitution of the Commission

The Commission consists of:

- (a) the Commissioner; and
- (b) the staff of the Commission.

13 Function of the Commission

The Commission's function is to assist the Commissioner in the performance of the Commissioner's functions.

Part 3—Commissioner

Division 1—Introduction

14 Simplified outline of this Part

There is to be a Commissioner of the Commission with functions that include:

- (a) protecting and enhancing the safety, health, well-being and quality of life of aged care consumers; and
- (b) promoting the provision of quality care and services by approved providers of aged care services and service providers of Commonwealth-funded aged care services; and
- (c) the consumer engagement functions; and
- (d) the complaints functions; and
- (e) the regulatory functions; and
- (f) the education functions.

The Minister is to appoint the Commissioner and may give written directions about the performance of the Commissioner's functions.

The Commissioner may charge fees for services provided by the Commissioner in performing the Commissioner's functions.

Division 2—Functions and powers of the Commissioner

15 Commissioner

There is to be a Commissioner of the Commission.

16 Functions of the Commissioner

- (1) The Commissioner has the following functions:
 - (a) to protect and enhance the safety, health, well-being and quality of life of aged care consumers;
 - (b) to promote the provision of quality care and services by:
 - (i) approved providers of aged care services; and
 - (ii) service providers of Commonwealth-funded aged care services;
 - (c) the consumer engagement functions;
 - (d) the complaints functions;
 - (e) the regulatory functions;
 - (f) the education functions;
 - (g) such other functions as are conferred on the Commissioner by:
 - (i) this Act or the rules; or
 - (ii) the Aged Care Act or the Aged Care Principles; or
 - (iii) any other law of the Commonwealth;
 - (h) if the Commissioner considers it is appropriate to do so in particular circumstances—to seek and consider clinical advice that is relevant to the performance of any of the above functions;
 - (i) to provide, at the request of the Minister, advice to the Minister in relation to any of the above functions;
 - (j) to do anything incidental or conducive to the performance of any of the above functions.
- (2) The Commissioner has the power to do all things necessary or convenient to be done for, or in connection with, the performance of the Commissioner's functions.

17 Consumer engagement functions of the Commissioner

The *consumer engagement functions* of the Commissioner are:

- (a) to develop, in consultation with aged care consumers, best practice models for the engagement of approved providers of aged care services, and service providers of Commonwealth-funded aged care services, with their aged care consumers; and
- (b) to promote those best practice models to such approved providers and service providers.

18 Complaints functions of the Commissioner

The *complaints functions* of the Commissioner are to, in accordance with rules, deal with complaints made, or information given, to the Commissioner about the following matters:

- (a) an approved provider's responsibilities under the Aged Care Act or the Aged Care Principles;
- (b) the responsibilities of a service provider of a Commonwealth-funded aged care service under the funding agreement that relates to the service.

19 Regulatory functions of the Commissioner

The *regulatory functions* of the Commissioner are:

- (a) to accredit the following aged care services in accordance with the rules:
 - (i) residential care services;
 - (ii) any other aged care services of a kind specified in the rules; and
- (b) to conduct quality reviews of the following services in accordance with the rules:
 - (i) home care services;
 - (ii) any other aged care services of a kind specified in the rules;
 - (iii) Commonwealth-funded aged care services; and

- (c) to monitor, in accordance with the rules, the quality of care and services provided by approved providers of the following aged care services:
 - (i) residential care services;
 - (ii) home care services;
 - (iii) any other aged care services of a kind specified in the rules; and
- (d) to monitor, in accordance with the rules, the quality of care and services provided by service providers of Commonwealth-funded aged care services; and
- (e) to register, in accordance with the rules, persons as quality assessors for the purposes of performing functions, or exercising powers, under this Act or the rules.

20 Education functions of the Commissioner

The *education functions* of the Commissioner are:

- (a) to provide information and education about matters relating to any one or more of the Commissioner's functions referred to in section 16 to any or all of the following:
 - (i) approved providers;
 - (ii) service providers of Commonwealth-funded aged care services;
 - (iii) aged care consumers;
 - (iv) representatives of aged care consumers;
 - (v) the public; and
- (b) to collect, correlate, analyse and disseminate information relating to any one or more of the Commissioner's functions referred to in section 16.

21 Rules may make provision for, or in relation to, the performance of a function of the Commissioner

- (1) The rules may make provision for, or in relation to, the performance of a function conferred on the Commissioner by section 16.

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Complaints functions

- (2) Without limiting subsection (1), the rules may establish a scheme for dealing with complaints made, or information given, to the Commissioner about the following matters:
- (a) an approved provider's responsibilities under the Aged Care Act or the Aged Care Principles;
 - (b) the responsibilities of a service provider of a Commonwealth-funded aged care service under the funding agreement that relates to the service.
- (3) Without limiting subsection (2), the rules may make provision in relation to any one or more of the following:
- (a) how complaints about a matter referred to in that subsection may be made, managed and resolved;
 - (b) how information given to the Commissioner about a matter referred to in that subsection may be dealt with;
 - (c) the roles, rights and responsibilities of complainants, approved providers, service providers of Commonwealth-funded aged care services and any other relevant persons;
 - (d) the considerations relevant to resolving such complaints or dealing with such information;
 - (e) the actions that may be taken to address such complaints, or to deal with such information, which may include requiring an approved provider or service provider of a Commonwealth-funded aged care service to do something;
 - (f) the review or reconsideration of decisions made under the scheme.

Regulatory functions

- (4) Without limiting subsection (1), the rules may make provision for or in relation to:
- (a) the accreditation of an aged care service referred to in paragraph 19(a); and
 - (b) the circumstances in which an aged care service is taken to be accredited for the purposes of the rules; and

- (c) the conduct of quality reviews of a service referred to in paragraph 19(b); and
 - (d) the monitoring of the quality of care and services provided by approved providers of an aged care service referred to in paragraph 19(c); and
 - (e) the monitoring of the quality of care and services provided by service providers of Commonwealth-funded aged care services; and
 - (f) the registration of persons as quality assessors for the purposes of performing functions, or exercising powers, under this Act or the rules; and
 - (g) the functions to be performed, or the powers to be exercised, by quality assessors; and
 - (h) the review or reconsideration of decisions relating to the accreditation of an aged care service or the registration of a quality assessor.
- (5) Without limiting paragraph (4)(d), the rules may do any or all of the following:
- (a) require approved providers of aged care services to have a written plan for continuous improvement in the quality of care and services they provide;
 - (b) make provision in relation to the setting of timetables for improvement in the quality of care and services provided by approved providers of aged care services;
 - (c) make provision in relation to forms of contact between approved providers of aged care services, and the Commissioner or a quality assessor, for specified purposes;
 - (d) provide for the conduct of audits of aged care services in specified circumstances.
- (6) Without limiting paragraph (4)(e), the rules may do any or all of the following:
- (a) require service providers of Commonwealth-funded aged care services to have a written plan for continuous improvement in the quality of care and services they provide;
 - (b) make provision in relation to the setting of timetables for improvement in the quality of care and services provided by

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service providers of Commonwealth-funded aged care services;

- (c) make provision in relation to forms of contact between service providers of Commonwealth-funded aged care services, and the Commissioner or a quality assessor, for specified purposes;
- (d) provide for the conduct of audits of Commonwealth-funded aged care services in specified circumstances.

22 Minister may give directions to the Commissioner

- (1) The Minister may, by legislative instrument, give written directions to the Commissioner about the performance of the Commissioner's functions.

Note: Section 42 (disallowance) and Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* do not apply to the directions (see regulations made for the purposes of paragraphs 44(2)(b) and 54(2)(b) of that Act).

- (2) A direction given by the Minister under subsection (1):
 - (a) must be of a general nature only; and
 - (b) must not relate to a particular aged care consumer, approved provider or service provider of a Commonwealth-funded aged care service.
- (3) The Commissioner must comply with a direction under subsection (1).
- (4) Subsection (3) does not apply to the extent that the direction relates to the Commissioner's performance of functions, or exercise of powers, under the following Acts in relation to the Commission:
 - (a) the *Public Service Act 1999*;
 - (b) the *Public Governance, Performance and Accountability Act 2013*.

23 Fees

- (1) The Commissioner may charge fees for services provided by the Commissioner in performing the Commissioner's functions.

(2) A fee must not be such as to amount to taxation.

Division 3—Appointment of the Commissioner

24 Appointment

- (1) The Commissioner is to be appointed by the Minister by written instrument, on a full-time basis.

Note: The Commissioner may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

- (2) The Commissioner holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

25 Acting Commissioner

The Minister may, by written instrument, appoint a person to act as the Commissioner:

- (a) during a vacancy in the office of the Commissioner (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the Commissioner:
- (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

Division 4—Terms and conditions of appointment

26 Remuneration and allowances

- (1) The Commissioner is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Commissioner is to be paid the remuneration that is specified in the rules.
- (2) The Commissioner is to be paid the allowances that are specified in the rules.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

27 Leave of absence

- (1) The Commissioner has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant the Commissioner leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

28 Other paid work

The Commissioner must not engage in paid work outside the duties of the Commissioner's office without the Minister's approval.

29 Other terms and conditions

The Commissioner holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined, in writing, by the Minister.

30 Resignation

- (1) The Commissioner may resign the Commissioner's appointment by giving the Minister a written resignation.

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- (2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

31 Termination of appointment

- (1) The Minister may terminate the appointment of the Commissioner:
- (a) for misbehaviour; or
 - (b) if the Commissioner is unable to perform the duties of the office because of physical or mental incapacity.
- (2) The Minister may terminate the appointment of the Commissioner if:
- (a) the Commissioner:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with the Commissioner's creditors; or
 - (iv) makes an assignment of the Commissioner's remuneration for the benefit of the Commissioner's creditors; or
 - (b) the Commissioner is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
 - (c) the Commissioner engages, except with the Minister's approval, in paid work outside the duties of the Commissioner's office (see section 28); or
 - (d) fails, without reasonable excuse, to comply with section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) or rules made for the purposes of that section.

Part 4—Staff of the Commission etc.

32 Simplified outline of this Part

The staff of the Commission are to be persons engaged under the *Public Service Act 1999*.

The Commissioner may also be assisted by certain other officers and employees.

The Commissioner may engage consultants to assist in the performance of the Commissioner's functions.

33 Staff

- (1) The staff of the Commission are to be persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
 - (a) the Commissioner and the staff of the Commission together constitute a Statutory Agency; and
 - (b) the Commissioner is the Head of that Statutory Agency.

34 Persons assisting the Commissioner

- (1) The Commissioner may also be assisted by:
 - (a) officers and employees of Agencies (within the meaning of the *Public Service Act 1999*), and of authorities of the Commonwealth, whose services are made available to the Commissioner in connection with the performance of any of the Commissioner's functions; and
 - (b) persons whose services are made available under arrangements made under subsection (2).
- (2) The Commissioner may, on behalf of the Commonwealth, make an arrangement with the appropriate authority or officer of:

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- (a) a State or Territory government; or
 - (b) a State or Territory government authority;
under which the government or authority makes officers or employees available to the Commissioner to perform services in connection with the performance of any of the Commissioner's functions.
- (3) An arrangement under subsection (2) may provide for the Commonwealth to reimburse a State or Territory with respect to the services of a person or persons to whom the arrangement relates.
- (4) When performing services for the Commissioner under this section, a person is subject to the directions of the Commissioner.

35 Consultants

- (1) The Commissioner may, on behalf of the Commonwealth, engage consultants to assist in the performance of the Commissioner's functions.
- (2) The consultants are to be engaged on the terms and conditions that the Commissioner determines in writing.

Part 5—Aged Care Quality and Safety Advisory Council

Division 1—Introduction

36 Simplified outline of this Part

This Part establishes the Advisory Council. It has the functions of providing:

- (a) on its own initiative or on request, advice to the Commissioner in relation to the Commissioner's functions; and
- (b) on request, advice to the Minister about matters arising in relation to the performance of those functions.

The Advisory Council is to consist of a Chair and at least 6, but not more than 10, other members. The members are to be appointed by the Minister and must have substantial experience or knowledge in a specified field.

The Minister may give written directions to the Advisory Council about the performance of its functions or the procedures to be followed in relation to its meetings.

Division 2—Establishment and functions of the Advisory Council

37 Establishment of the Aged Care Quality and Safety Advisory Council

The Aged Care Quality and Safety Advisory Council is established by this section.

38 Functions of the Advisory Council

The functions of the Advisory Council are:

- (a) on its own initiative or at the request of the Commissioner, to provide advice to the Commissioner in relation to the Commissioner's functions; and
- (b) at the request of the Minister, to provide advice to the Minister about matters arising in relation to the performance of the Commissioner's functions.

39 Minister may give directions about the Advisory Council's functions

- (1) The Minister may, by legislative instrument, give written directions to the Advisory Council about the performance of the Advisory Council's functions.

Note: Section 42 (disallowance) and Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* do not apply to the directions (see regulations made for the purposes of paragraphs 44(2)(b) and 54(2)(b) of that Act).

- (2) A direction given by the Minister under subsection (1):
 - (a) must be of a general nature only; and
 - (b) must not relate to a particular aged care consumer, approved provider or service provider of a Commonwealth-funded aged care service.
- (3) The Advisory Council must comply with a direction under subsection (1).

Division 3—Membership of the Advisory Council

40 Membership of the Advisory Council

The Advisory Council consists of the following members:

- (a) a Chair;
- (b) at least 6, and not more than 10, other members.

41 Appointment of Advisory Council members

- (1) Each Advisory Council member is to be appointed by the Minister by written instrument, on a part-time basis.

Note: An Advisory Council member may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

- (2) An Advisory Council member holds office for the period specified in the instrument of appointment. The period must not exceed 3 years.
- (3) A person is not eligible for appointment to the Advisory Council unless the Minister is satisfied that the person has substantial experience or knowledge in at least one of the following fields:
 - (a) evaluation of quality management systems;
 - (b) provision of care and services to aged care consumers, including provision of care and services to people with special needs;
 - (c) aged care consumer issues;
 - (d) geriatrics;
 - (e) gerontology;
 - (f) aged care nursing;
 - (g) psychiatry of the older person;
 - (h) adult education;
 - (i) public administration;
 - (j) management, including human resources management and information and data management;
 - (k) law;
 - (l) health consumer issues;

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- (m) any other appropriate field of expertise.

42 Acting appointments

Chair

- (1) The Minister may appoint a person to act as the Chair:
 - (a) during a vacancy in the office of the Chair (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the Chair:
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.

Other Advisory Council members

- (2) The Minister may appoint a person to act as an Advisory Council member (other than the Chair):
 - (a) during a vacancy in the office of an Advisory Council member (other than the Chair), whether or not an appointment has previously been made to the office; or
 - (b) during any period, or during all periods, when an Advisory Council member (other than the Chair):
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.

Eligibility

- (3) A person is not eligible for appointment under subsection (1) or (2) unless the person is eligible for appointment as an Advisory Council member.

Note 1: For eligibility to be appointed as an Advisory Council member, see subsection 41(3).

Note 2: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

43 Remuneration and allowances

- (1) An Advisory Council member is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that is specified in the rules.
- (2) However, an Advisory Council member is not entitled to be paid remuneration if the member holds an office or appointment, or is otherwise employed, on a full-time basis in the service or employment of:
 - (a) a State; or
 - (b) a corporation (a *public statutory corporation*) that:
 - (i) is established for a public purpose by a law of a State; and
 - (ii) is not a tertiary education institution; or
 - (c) a company limited by guarantee, where the interests and rights of the members in or in relation to the company are beneficially owned by a State; or
 - (d) a company in which all the stock or shares are beneficially owned by a State or by a public statutory corporation.

Note: A similar rule applies to an Advisory Council member who has a similar relationship with the Commonwealth or a Territory: see subsection 7(11) of the *Remuneration Tribunal Act 1973*.

- (3) An Advisory Council member is to be paid the allowances that are specified in the rules.
- (4) This section (other than subsection (2)) has effect subject to the *Remuneration Tribunal Act 1973*.

44 Leave of absence

- (1) The Minister may grant leave of absence to the Chair on the terms and conditions that the Minister determines.
- (2) The Chair may grant leave of absence to another Advisory Council member on the terms and conditions that the Chair determines.

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45 Disclosure of interests to the Minister

An Advisory Council member must give written notice to the Minister of all interests, pecuniary or otherwise, that the member has or acquires and that conflict or could conflict with the proper performance of the member's functions.

46 Disclosure of interests to the Advisory Council

- (1) An Advisory Council member who has an interest, pecuniary or otherwise, in a matter being considered or about to be considered by the Advisory Council must disclose the nature of the interest to a meeting of the Advisory Council.
- (2) The disclosure must be made as soon as possible after the relevant facts have come to the Advisory Council member's knowledge.
- (3) The disclosure must be recorded in the minutes of the meeting of the Advisory Council.
- (4) Unless the Advisory Council otherwise determines, the Advisory Council member:
 - (a) must not be present during any deliberation by the Advisory Council on the matter; and
 - (b) must not take part in any decision of the Advisory Council with respect to the matter.
- (5) For the purposes of making a determination under subsection (4), the Advisory Council member:
 - (a) must not be present during any deliberation of the Advisory Council for the purpose of making the determination; and
 - (b) must not take part in making the determination.
- (6) A determination under subsection (4) must be recorded in the minutes of the meeting of the Advisory Council.

47 Resignation

- (1) An Advisory Council member may resign the member's appointment by giving the Minister a written resignation.

- (2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

48 Termination of appointment

- (1) The Minister may terminate the appointment of an Advisory Council member:
- (a) for misbehaviour; or
 - (b) if the Advisory Council member is unable to perform the duties of the office because of physical or mental incapacity.
- (2) The Minister may terminate the appointment of the Advisory Council member if:
- (a) the Advisory Council member:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with the member's creditors; or
 - (iv) makes an assignment of the member's remuneration for the benefit of the member's creditors; or
 - (b) the Advisory Council member is absent, except on leave of absence, from 3 consecutive meetings of the Advisory Council; or
 - (c) fails, without reasonable excuse, to comply with section 45 or 46 (which deal with the disclosure of interests).

49 Other terms and conditions

An Advisory Council member holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined, in writing, by the Minister.

Division 4—Procedures of the Advisory Council

50 Procedures of the Advisory Council

- (1) The Minister may give the Advisory Council written directions about the procedures to be followed in relation to meetings of the Advisory Council.
- (2) A direction given under subsection (1) is not a legislative instrument.

Part 6—Reporting and planning

51 Simplified outline of this Part

This Part makes provision in relation to the annual report and corporate plan for the Commission.

The Commissioner is also required to give the Minister an annual operational plan that meets the requirements of this Part.

52 Annual report

The annual report prepared by the Commissioner and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* for a period must include:

- (a) an assessment of the extent to which the Commission's operations during the period have contributed to the priorities set out in the annual operational plan for the period; and
- (b) particulars of any variations of the annual operational plan during the period; and
- (c) an evaluation of the Commission's overall performance during the period against the performance indicators set out in the annual operational plan for the period.

53 Consulting on corporate plans

In preparing a corporate plan under section 35 of the *Public Governance, Performance and Accountability Act 2013*, the Commissioner must consult the Minister and the Advisory Council.

54 Annual operational plans

- (1) The Commissioner must give the Minister a written annual operational plan for:

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- (a) the period beginning on the day this Act commences and ending on 30 June 2019; and
 - (b) the financial year starting on 1 July 2019 and each later financial year.
- (2) The plan must:
- (a) set out particulars of the action that the Commissioner intends to take during the period to give effect to, or further, the objectives set out in the plan; and
 - (b) set out the Commissioner's priorities for work to be undertaken during the period; and
 - (c) set out how the Commissioner will apply the resources of the Commission to achieve those objectives; and
 - (d) include an assessment of risks faced by the Commission for the period together with a plan to manage those risks; and
 - (e) include such performance indicators as the Commissioner considers appropriate for assessing the performance of the Commissioner during the period.
- (3) In preparing the plan, the Commissioner must consult the Minister and the Advisory Council.
- (4) The plan is not a legislative instrument.

Part 7—Information sharing and confidentiality etc.

Division 1—Introduction

55 Simplified outline of this Part

Certain information must be shared by the Commissioner and Secretary for the purposes of their functions or powers. The Commissioner may also be required by the Minister to prepare reports, or give information, about matters relating to the performance of the Commissioner's functions.

The Commissioner may make specified information about an aged care service publicly available but that information must not include personal information.

Information acquired under, or for the purposes of, this Act or the rules will be protected information under this Act if the information:

- (a) is personal information; or
- (b) relates to the affairs of an approved provider or service provider of a Commonwealth-funded aged care service.

A person must not make a record of, or use or disclose, protected information except in accordance with Division 4 of this Part. The Commissioner is permitted to disclose protected information in certain circumstances.

Division 2—Information sharing

56 Commissioner must give information to the Secretary in certain circumstances

- (1) The Commissioner must, in circumstances specified in the rules, give information of a kind specified in the rules to the Secretary for the purposes of the Secretary's functions or powers.
- (2) If:
 - (a) the Secretary requests the Commissioner to give the Secretary information that the Secretary requires for the purposes of the Secretary's functions or powers; and
 - (b) the information is available to the Commissioner;the Commissioner must give the information to the Secretary.
- (3) Subsection (1) does not limit the information that the Secretary may request under subsection (2).

57 Secretary must give information to the Commissioner on request

- If:
- (a) the Commissioner requests the Secretary to give the Commissioner information that the Commissioner requires for the purposes of the Commissioner's functions or powers; and
 - (b) the information is available to the Secretary;
- the Secretary must give the information to the Commissioner.

58 Minister may require the Commissioner to prepare reports or give information

Reports

- (1) The Minister may, by written notice given to the Commissioner, require the Commissioner to:
 - (a) prepare a report about one or more specified matters relating to the performance of the Commissioner's functions; and

- (b) give the report to the Minister within the period specified in the notice.

Information

- (2) The Minister may, by written notice given to the Commissioner, require the Commissioner to:
 - (a) prepare a document setting out specified information relating to the performance of the Commissioner's functions; and
 - (b) give the document to the Minister within the period specified in the notice.

Compliance

- (3) The Commissioner must comply with a requirement under subsection (1) or (2).

Publication of reports and documents

- (4) The Minister may publish (whether on the internet or otherwise):
 - (a) a report given to the Minister under subsection (1); or
 - (b) a document given to the Minister under subsection (2).

Division 3—Making information publicly available

59 Information about an aged care service may be made publicly available

- (1) The Commissioner may make publicly available the following information about an aged care service:
 - (a) the name and address of the service;
 - (b) the number of places included in the service;
 - (c) the services provided by the service;
 - (d) the facilities and activities available to care recipients receiving care through the service;
 - (e) the name of the approved provider of the service;
 - (f) information about the variety and type of service provided by the approved provider;
 - (g) information about the service's status under this Act or the Aged Care Act (for example, the service's accreditation record);
 - (h) information about the approved provider's performance in relation to the provider's responsibilities under this Act or the Aged Care Act;
 - (i) any action taken, or intended to be taken, under this Act or the rules to protect the welfare of care recipients receiving care through the service, and the reasons for that action;
 - (j) any other information of a kind specified in the rules for the purposes of this paragraph.
- (2) Information disclosed under subsection (1) must not include personal information.

Division 4—Protected information**60 Prohibition on use or disclosure etc. of protected information***Offence*

- (1) A person commits an offence if:
- (a) the person obtains information in the course of performing functions, or exercising powers, under or for the purposes of this Act or the rules; and
 - (b) the information is protected information; and
 - (c) the person:
 - (i) makes a record of the information; or
 - (ii) uses the information; or
 - (iii) discloses the information to another person.

Penalty: Imprisonment for 2 years.

- (2) **Protected information** is information acquired under, or for the purposes of, this Act or the rules that:
- (a) is personal information; or
 - (b) relates to the affairs of an approved provider or a service provider of a Commonwealth-funded aged care service.

Exceptions

- (3) Subsection (1) does not apply if:
- (a) the person makes the record of, or uses or discloses, the information in the course of performing functions, or exercising powers, under or in relation to:
 - (i) this Act or the rules; or
 - (ii) the Aged Care Act or the Aged Care Principles; or
 - (b) the conduct is authorised by the person or body to whom the information relates; or

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- (c) the conduct is otherwise authorised under this Act, the rules or any other Act.

Note: A defendant bears an evidential burden in relation to the matters in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

- (4) Subsection (1) does not apply to a disclosure of information if:
 - (a) the disclosure is to the person or body to whom the information relates; or
 - (b) the disclosure is to the Minister or the Secretary.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

61 Permitted disclosures of protected information by Commissioner

- (1) The Commissioner may disclose protected information:
 - (a) if the Commissioner determines, in writing, that it is necessary in the public interest to disclose the information in a particular case—to such persons and for such purposes as the Commissioner determines; and
 - (b) to a person who is, in the opinion of the Commissioner, expressly or impliedly authorised by the person or body to whom the information relates to obtain it; and
 - (c) to the Secretary to assist in the performance of the functions, or the exercise of the powers, of the Secretary; and
 - (d) to the Chief Executive Medicare for the purposes of payment of subsidies under the Aged Care Act; and
 - (e) if the Commissioner believes, on reasonable grounds, that the disclosure is necessary to prevent or lessen a serious risk to the safety, health or well-being of an aged care consumer—to such persons as the Commissioner determines, for the purpose of preventing or lessening the risk; and
 - (f) if the Commissioner believes, on reasonable grounds, that:
 - (i) a person’s conduct breaches the standards of professional conduct of a profession of which the person is a member; and

- (ii) the person should be reported to a body responsible for standards of conduct in the profession;
to that body, for the purposes of maintaining standards of professional conduct in the profession; and
 - (g) if a person has temporarily taken over the provision of care through a particular service to aged care consumers—to the person for the purposes of enabling the person to properly provide that care; and
 - (h) if the Commissioner believes, on reasonable grounds, that disclosure of the information is necessary for:
 - (i) the enforcement of the criminal law; or
 - (ii) the enforcement of a law imposing a pecuniary penalty;
or
 - (iii) the protection of the public revenue;
to an agency whose functions include that enforcement or protection, for the purposes of that enforcement or protection; and
 - (i) to the Aged Care Pricing Commissioner to assist in the performance of the Aged Care Pricing Commissioner's functions under the Aged Care Act; and
 - (j) to a person of a kind specified in the rules, for the purposes specified in the rules in relation to persons of that kind.
- (2) If a determination under paragraph (1)(a) or (e) is made in writing, the determination is not a legislative instrument.

62 Limits on use or disclosure etc. of protected information disclosed by the Commissioner

A person commits an offence if:

- (a) the person makes a record of, or uses or discloses, information; and
- (b) the information is information that was disclosed to the person under section 61; and

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- (c) the purpose for which the person makes the record of, or uses or discloses, the information is not the purpose for which the information was disclosed under that section.

Penalty: Imprisonment for 2 years.

63 Disclosure to court etc.

A court, or any other body or person that has power to require the production of documents or the answering of questions, may require a person or body to disclose protected information only if one of the following applies:

- (a) the disclosure is required for the purposes of:
 - (i) this Act or the rules; or
 - (ii) the Aged Care Act or the Aged Care Principles;
- (b) the information was originally disclosed to the person or body under section 61 of this Act and the disclosure is required for the purpose for which it was disclosed under that section;
- (c) the person or body to whom the information relates has consented, in writing, to the disclosure.

Part 8—Entry and search powers

Division 1—Introduction

64 Simplified outline of this Part

This Part deals with the powers of authorised complaints officers, and regulatory officials, to enter premises and to exercise the search powers in relation to the premises.

Premises may only be entered with the consent of the occupier of the premises and only for specified purposes.

The Commissioner is to appoint authorised complaints officers. The Commissioner must also ensure that identity cards are issued to authorised complaints officers and quality assessors.

Division 2—Powers of authorised complaints officers in relation to premises

65 Power to enter premises and exercise search powers in relation to complaints etc.

- (1) This section applies if:
 - (a) in accordance with the rules, the Commissioner is dealing with a complaint or information about:
 - (i) an approved provider's responsibilities under the Aged Care Act or the Aged Care Principles; or
 - (ii) the responsibilities of a service provider of a Commonwealth-funded aged care service under the funding agreement that relates to the service; and
 - (b) the Commissioner considers that, for the purposes of resolving the complaint or dealing with the information, it is necessary for an authorised complaints officer to exercise powers under this Division.
- (2) An authorised complaints officer may:
 - (a) enter any premises; and
 - (b) exercise the search powers in relation to the premises; for the purposes of the Commissioner resolving the complaint or dealing with the information.
- (3) However, an authorised complaints officer is not authorised to enter premises unless the occupier of the premises has consented to the entry.

Note: An authorised complaints officer must leave the premises if the consent ceases to have effect (see section 66).

66 Consent

- (1) Before obtaining the consent of an occupier of premises for the purposes of subsection 65(3), an authorised complaints officer must:

- (a) inform the occupier that the occupier may refuse to give consent or may withdraw consent; and
- (b) if the occupier is an approved provider—inform the occupier that the occupier has a responsibility under paragraph 63-1(1)(ba) of the Aged Care Act to cooperate with a person who is exercising powers under this Part.

Note: Failure to comply with that responsibility may result in a sanction being imposed on the approved provider under Part 4.4 of the Aged Care Act.

- (2) A consent has no effect unless the consent is voluntary.
- (3) A consent may be expressed to be limited to entry during a particular period. If so, the consent has effect for that period unless the consent is withdrawn before the end of that period.
- (4) A consent that is not limited as mentioned in subsection (3) has effect until the consent is withdrawn.
- (5) If an authorised complaints officer entered premises because of the consent of the occupier of the premises, the officer must leave the premises if the consent ceases to have effect.
- (6) If:
 - (a) an authorised complaint officer enters premises because of the consent of the occupier of the premises; and
 - (b) the officer has not shown the occupier the officer's identity card before entering the premises;the officer must do so on, or as soon as is reasonably practicable after, entering the premises.

67 Asking questions and seeking production of documents

- (1) If an authorised complaints officer enters premises in accordance with section 65, the officer may request a person at the premises:
 - (a) to answer any questions put by the officer; and
 - (b) to produce any documents or records requested by the officer.

Part 8 Entry and search powers

Division 2 Powers of authorised complaints officers in relation to premises

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- (2) Before the authorised complaints officer makes a request of an approved provider under subsection (1), the officer must inform the provider that the provider has a responsibility under paragraph 63-1(1)(ba) of the Aged Care Act to cooperate with a person who is exercising powers under this Part.

Note: Failure to comply with that responsibility may result in a sanction being imposed on the approved provider under Part 4.4 of the Aged Care Act.

- (3) A person is not required to comply with a request made under subsection (1).

Division 3—Powers of regulatory officials in relation to premises

68 Power to enter premises and exercise search powers for regulatory purposes

- (1) This section applies if the Commissioner considers that it is necessary for a regulatory official to exercise powers under this Division for a purpose (the *regulatory purpose*) relating to:
 - (a) the accreditation of an aged care service; or
 - (b) a quality review of an aged care service or a Commonwealth-funded aged care service; or
 - (c) the monitoring of the quality of care and services provided by an approved provider of an aged care service; or
 - (d) the monitoring of the quality of care and services provided by a service provider of a Commonwealth-funded aged care service.
- (2) The regulatory official may do the following for the regulatory purpose:
 - (a) enter any premises;
 - (b) exercise the search powers in relation to the premises.
- (3) However, the regulatory official is not authorised to enter premises unless the occupier of the premises has consented to the entry.

Note: The regulatory official must leave the premises if the consent ceases to have effect (see section 69).

69 Consent

- (1) Before obtaining the consent of an occupier of premises for the purposes of subsection 68(3), a regulatory official must:
 - (a) inform the occupier that the occupier may refuse to give consent or may withdraw consent; and
 - (b) if the occupier is an approved provider—inform the occupier that the occupier has a responsibility under

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paragraph 63-1(1)(ba) of the Aged Care Act to cooperate with a person who is exercising powers under this Part.

Note: Failure to comply with that responsibility may result in a sanction being imposed on the approved provider under Part 4.4 of the Aged Care Act.

- (2) A consent has no effect unless the consent is voluntary.
- (3) A consent may be expressed to be limited to entry during a particular period. If so, the consent has effect for that period unless the consent is withdrawn before the end of that period.
- (4) A consent that is not limited as mentioned in subsection (3) has effect until the consent is withdrawn.
- (5) If a regulatory official entered premises because of the consent of the occupier of the premises, the official must leave the premises if the consent ceases to have effect.
- (6) If:
 - (a) the Commissioner enters premises because of the consent of the occupier of the premises; and
 - (b) the Commissioner has not shown the occupier evidence of the Commissioner's identity before entering the premises;the Commissioner must do so on, or as soon as is reasonably practicable after, entering the premises.
- (7) If:
 - (a) a quality assessor enters premises because of the consent of the occupier of the premises; and
 - (b) the assessor has not shown the occupier the assessor's identity card before entering the premises;the assessor must do so on, or as soon as is reasonably practicable after, entering the premises.

70 Asking questions and seeking production of documents

- (1) If a regulatory official enters premises in accordance with section 68, the official may request a person at the premises:

- (a) to answer any questions put by the official; and
 - (b) to produce any documents or records requested by the official.
- (2) Before the regulatory official makes a request of an approved provider under subsection (1), the official must inform the provider that the provider has a responsibility under paragraph 63-1(1)(ba) of the Aged Care Act to cooperate with a person who is exercising powers under this Part.
- Note: Failure to comply with that responsibility may result in a sanction being imposed on the approved provider under Part 4.4 of the Aged Care Act.
- (3) A person is not required to comply with a request made under subsection (1).

Division 4—Search powers

71 Search powers

- (1) This section applies if:
 - (a) an authorised complaints officer enters premises in accordance with section 65; or
 - (b) a regulatory official enters premises in accordance with section 68.
- (2) The following are the *search powers* that the authorised complaints officer or regulatory official may exercise in relation to the premises:
 - (a) the power to search the premises and any thing on the premises;
 - (b) the power to examine or observe any activity conducted on the premises;
 - (c) the power to inspect, examine, take measurements of or conduct tests on any thing on the premises;
 - (d) the power to make any still or moving image or any recording of the premises or any thing on the premises;
 - (e) the power to inspect any document on the premises;
 - (f) the power to take extracts from, or make copies of, any such document;
 - (g) the power to take onto the premises such equipment and materials as the officer or official (as the case may be) requires for the purpose of exercising powers in relation to the premises;
 - (h) the powers set out in subsections 72(1) and (4).

72 Operating electronic equipment

- (1) The *search powers* include the power to:
 - (a) operate electronic equipment on the premises entered in accordance with section 65 or 68; and
 - (b) use a disk, tape or other storage device that:
 - (i) is on the premises; and
-

- (ii) can be used with the equipment or is associated with it.
- (2) The **search powers** include the powers referred to in subsection (4) if relevant data is found in the exercise of the power under subsection (1).
- (3) **Relevant data** means:
 - (a) if an authorised complaints officer entered the premises in accordance with section 65—information that is relevant to the purposes for which the premises were so entered; or
 - (b) if a regulatory official entered premises in accordance with section 68—information that is relevant to the purposes for which the premises were so entered.
- (4) The powers are as follows:
 - (a) the power to operate electronic equipment on the premises to put the relevant data in documentary form and remove the documents so produced from the premises;
 - (b) the power to operate electronic equipment on the premises to transfer the relevant data to a disk, tape or other storage device that:
 - (i) is brought to the premises for the exercise of the power; or
 - (ii) is on the premises and the use of which for that purpose has been agreed in writing by the occupier of the premises;and remove the disk, tape or other storage device from the premises.
- (5) An authorised complaints officer or regulatory official may operate electronic equipment as mentioned in subsection (1) or (4) only if the officer or official (as the case may be) believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.

Division 5—Appointment of authorised complaints officers etc.

73 Appointment of authorised complaints officers

- (1) The Commissioner may, in writing, appoint a person who is a member of the staff of the Commission as an authorised complaints officer for either or both of the following purposes:
 - (a) the purposes of Divisions 2 and 4 of this Part;
 - (b) the purposes of the rules.
- (2) The Commissioner must not appoint a person as an authorised complaints officer under subsection (1) unless the Commissioner is satisfied that the person has suitable training or experience to properly perform the functions, or exercise the powers, of an authorised complaints officer.
- (3) An authorised complaints officer must, in performing the officer's functions or exercising the officer's powers, comply with any directions of the Commissioner.
- (4) If a direction is given under subsection (3) in writing, the direction is not a legislative instrument.

74 Identity cards

- (1) The Commissioner must cause an identity card to be issued to a person who is:
 - (a) an authorised complaints officer; or
 - (b) a quality assessor.

Form of identity card

- (2) The identity card must:
 - (a) be in the form prescribed by the rules; and
 - (b) include a photograph of the person that is no more than 5 years old.

Offence

- (3) A person commits an offence if:
- (a) the person has been issued with an identity card; and
 - (b) the person ceases to be an authorised complaints officer; and
 - (c) the person does not return the identity card to the Commissioner within 14 days after ceasing to be an authorised complaints officer.

Penalty: 1 penalty unit.

- (4) A person commits an offence if:
- (a) the person has been issued with an identity card; and
 - (b) the person ceases to be a quality assessor; and
 - (c) the person does not return the identity card to the Commissioner within 14 days after ceasing to be a quality assessor.

Penalty: 1 penalty unit.

- (5) An offence against subsection (3) or (4) is an offence of strict liability.
- (6) Subsections (3) and (4) do not apply if the identity card was lost or destroyed.

Note: A defendant bears an evidential burden in relation to the matter in this subsection: see subsection 13.3(3) of the *Criminal Code*.

Requirement to carry identity card

- (7) An authorised complaints officer must carry the officer's identity card at all times when performing functions, or exercising powers, as an authorised complaints officer.
- (8) A quality assessor must carry the assessor's identity card at all times when performing functions, or exercising powers, as a quality assessor.

Part 9—Miscellaneous

75 Simplified outline of this Part

This Part deals with miscellaneous matters such as delegations and the making of rules.

76 Delegation by the Commissioner

- (1) The Commissioner may, in writing, delegate to a member of the staff of the Commission all or any of the Commissioner's functions or powers under this Act or the rules.

Note: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain provisions relating to delegations.

- (2) In performing a delegated function or exercising a delegated power, the delegate must comply with any written directions of the Commissioner.

77 Rules

- (1) The Minister may, by legislative instrument, make rules prescribing matters:
 - (a) required or permitted by this Act to be prescribed by the rules; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) To avoid doubt, the rules may not do the following:
 - (a) create an offence or civil penalty;
 - (b) provide powers of:
 - (i) arrest or detention; or
 - (ii) entry, search or seizure;
 - (c) impose a tax;
 - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;

- (e) directly amend the text of this Act.
- (3) Despite subsection 14(2) of the *Legislation Act 2003*, the rules may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in any other instrument or other writing as in force or existing from time to time.