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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**AGED CARE QUALITY AND SAFETY COMMISSION (CONSEQUENTIAL
AMENDMENTS AND TRANSITIONAL PROVISIONS) BILL 2018**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Senior Australians and Aged Care and the
Minister for Indigenous Health, the Hon Ken Wyatt AM, MP)

AGED CARE QUALITY AND SAFETY COMMISSION (CONSEQUENTIAL AMENDMENTS AND TRANSITIONAL PROVISIONS) BILL 2018

OUTLINE

The purpose of the Aged Care Quality and Safety (Consequential Amendments and Transitional Provisions) Bill 2018 (the Bill) is to deal with consequential and transitional matters that arise from the enactment of the *Aged Care Quality and Safety Commission Act 2018*.

This Bill will repeal the *Australian Aged Care Quality Agency Act 2013* and the *Australian Aged Care Quality Agency (Transitional Provisions) Act 2013*. In addition it will make consequential amendments to the *Aged Care Act 1997* and Associated Principles to replace references to:

- the CEO of the Aged Care Quality Agency;
- the Aged Care Quality Agency; and
- the Aged Care Complaints Commissioner;

with the Aged Care Quality and Safety Commissioner.

Most importantly this Bill provides for the administrative matters required to transfer the functions and operations of the Australian Aged Care Quality Agency and Aged Care Complaints Commissioner into the new Aged Care Quality and Safety Commission. Importantly, this Bill provides for the continuation of the appointments of the members of the existing Aged Care Quality Advisory Council, as members of the new Aged Care Quality and Safety Advisory Council. This will enable the new Advisory Council to commence operations immediately, and will provide stability and experience in the advice being provided to the Commissioner and to the Government.

Financial Impact Statement

The Aged Care Quality and Safety Commission (Consequential Amendments and Transitional Provisions) Bill 2018 (the Bill) is a companion Bill to the Aged Care Quality and Safety Commission Act 2018. This Bill is necessary to give effect to the Government's reforms to the regulation of aged care.

The Aged Care Quality and Safety Commission will be partially budget funded and partially funded through the Commission charging fees for services. This is consistent with the current funding arrangements for the Australian Aged Care Quality Agency. Accordingly this Bill will have no financial impact.

Statement of Compatibility with Human Rights

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

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The Bill 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 Bill

The purpose of the Aged Care Quality and Safety Commission (Consequential Amendments and Transitional Provisions) Bill 2018 (the Bill) is to address consequential and transitional matters that arise from the enactment of the *Aged Care Quality and Safety Commission Act 2018*.

This Bill will repeal the *Australian Aged Care Quality Agency Act 2013* and the *Australian Aged Care Quality Agency (Transitional Provisions) Act 2013*. In addition it will make consequential amendments to the *Aged Care Act 1997* and Associated Principles to replace references to:

- the CEO of the Aged Care Quality Agency;
- the Aged Care Quality Agency; and
- the Aged Care Complaints Commissioner;

with the Aged Care Quality and Safety Commissioner.

Most importantly this Bill provides for the administrative matters required to transfer the functions and operations of the Australian Aged Care Quality Agency and Aged Care Complaints Commissioner into the new Aged Care Quality and Safety Commission. Importantly, this Bill provides for the continuation of the appointments of the members of the existing Aged Care Quality Advisory Council, as members of the new Aged Care Quality and Safety Advisory Council. This will enable the new Advisory Council to commence operations immediately, and will provide stability and experience in the advice being provided to the Commissioner and to the Government.

Human rights implications

The Aged Care Quality and Safety Commission (Consequential Amendments and Transitional Provisions) Bill 2018 (the Bill) is a companion Bill to the Aged Care Quality and Safety Commission Act 2018. This Bill is necessary to give effect to the Government's reforms to the regulation of aged care.

The Bill is compatible with the right to an adequate standard of living and the right to health as contained in article 11(1) and article 12(1) of the *International Convention on Economic, Social and Cultural Rights*, and articles 25 and 28 of the *Convention of the Rights of Persons with Disabilities*.

While this Bill does not explicitly engage the right of a person's protection from exploitation, violence and abuse as contained in article 20(2) of the *International Covenant on Civil and Political Rights* and article 16 of the *Convention of the Rights of Persons with Disabilities*, this Bill provides transitional arrangements for the commencement of the Aged Care Quality and Safety Commission. The *Aged Care Quality and Safety Commission Act 2018* focuses on the operation of a regulatory framework that will protect and enhance the safety, health well-being and quality of life of aged care consumers.

This Bill assists in achieving this objective by transitioning responsibility for the accreditation, assessment and monitoring of, and complaints handling of aged care services and Commonwealth-funded aged care services to the Aged Care Quality and Safety Commission.

The Bill engages the right to not be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence, nor to unlawful attacks on their honour and reputation contained in article 17 of the *International Covenant on Civil and Political Rights*.

Conclusion

The Aged Care Quality and Safety Commission (Consequential Amendments and Transitional Provisions) Bill 2018 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*. This Bill is compatible with human rights because it promotes the human right to the enjoyment of the highest attainable standard of health and, to the extent that it limits the human right to protection against arbitrary interference with privacy, those limitations are reasonable, necessary and proportionate.

**The Hon Ken Wyatt AM, MP, Minister for Senior Australian and Aged Care
and the Minister for Indigenous Health**

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NOTES ON CLAUSES

Clause 1 - Short title

This is a formal provision which provides that the Bill, once enacted, may be referred to as the *Aged Care Quality and Safety Commission (Consequential Amendments and Transitional Provisions) Act 2018*.

Clause 2 - Commencement

This clause provides that sections 1, 2 and 3 of the Act commence on the day the Bill receives the Royal Assent. Schedule 2 commenced the day after the commencement of this Act or the Aged Care Quality and Safety Commission Bill 2018, whichever is the later. However, if the Aged Care Quality and Safety Commission Bill 2018 does not commence, Parts 1 and 2 of Schedule 1 and Schedule 2 also will not commence. Part 3 of Schedule 1 commences immediately after the commencement of the *Aged Care (Single Quality Framework) Reform Act 2018*. However, the provisions do not commence at all if that Act does not commence.

Clause 3 – Schedules

This clause provides that legislation that is specified in a Schedule to this Bill is amended or repealed as set out in the Schedule. Any other item in the Schedule has effect according to its terms.

Schedule 1 – Repeals and amendments

Part 1 – Repeals

Items 1 and 2

These items repeal the *Australian Aged Care Quality Agency Act 2013* and the *Australian Aged Care Quality Agency (Transitional Provisions) Act 2013*. These Acts contain provisions relating to the functions and powers of the Australian Aged Care Quality Agency; the Aged Care Quality Advisory Council; reporting requirements and operational matters in assessing, reviewing and monitoring providers of aged care services. These provisions will cease to have effect on the same date that the *Aged Care Quality and Safety Commission Act 2018* commences.

Part 2 – Consequential amendments

Aged Care Act 1997

Item 3 to 22

These items amend references in the *Aged Care Act 1997* to either the CEO of the Aged Care Quality Agency, the Aged Care Complaints Commissioner or references to staff of either agency, and omit them if no longer relevant or replace them with a reference to the Aged Care Quality and Safety Commission.

Aged Care (Transitional Provisions) Act 1997

Item 23

This item repeals the definition of the CEO of the Quality Agency from the *Aged Care (Transitional Provisions) Act 1997* due to the fact that the defined term is not used elsewhere in this Act.

Part 3 – Contingent amendments

Aged Care Act 1997

Item 24

This item substitutes the *Aged Care Quality and Safety Commission Act 2018* in place of the *Australian Aged Care Quality Agency Act 2013*.

Freedom of Information Act 1982

Item 25

This item substitutes the *Aged Care Quality and Safety Commission Act 2018*, subsection 60(1) and section 62 in place of the *Australian Aged Care Quality Agency Act 2013*, subsection 48(1) and section 50.

Schedule 2 – Application and transitional provisions

Overview

Schedule 2 manages the transition of functions from the Australian Aged Care Quality Agency and Aged Care Complaints Commissioner (the two agencies) to the new Aged Care Quality and Safety Commission (the Commission).

The primary focus of this Schedule is on ensuring that the introduction of the Commission is managed in a way that is not administratively or operationally burdensome. It seeks to ensure that decisions made and application processes made by the two agencies prior to the establishment of the Commission continue to have effect and fall within the responsibility of the Commission. Most decisions or powers exercised by the two agencies will be transitioned as though they were made or exercised under specific provisions of the *Aged Care Quality and Safety Commission Act 2018*.

For example, authorised complaints officers appointed under the *Aged Care Act 1997* will transition to the Commission. This ensures the Commission can undertake its complaints functions and protect and enhance the safety, health, well-being and quality of life of aged care consumers.

Where providers of aged care services are involved in an assessment process with the Australian Aged Care Quality Agency over the transition period, this schedule provides a pathway for the completion of the process with the Commission.

Item 1 - Definitions

This item sets out definitions of terms that are relied on throughout the provisions.

Item 2 – Things done by, or in relation to, the CEO or Complaints Commissioner

This item provides for the transition to the Commission of all current and past decisions, actions, undertakings or other things that have been done by or in relation to the CEO of the Quality Agency under the *Australian Aged Care Quality Agency Act 2013* and the *Aged Care Act 1997*. It also provides for the transition to the Commission all current and past decisions, actions, undertakings or other things that have been done by or in relation to the Aged Care Complaints Commissioner under the *Aged Care Act 1997*. For clarity, this includes complaints and other matters that remain open on transition of the Aged Care Complaints Commissioner's functions to the Commission.

Item 3 – Advisory Council members

This item provides that members of the current Quality Agency Advisor Council will transfer to the Commission Advisory Council on commencement of the *Aged Care Quality and Safety Commission Act 2018*. The member's appointment term and conditions will transfer with them. This does not preclude them from reappointment to the Commission Advisory Council at the end of their current term.

Item 4 – Consultants

This item provides for the transition of contractors who have been employed by the two agencies to continue to be engaged and with the same terms and conditions under the Commission.

Item 5 – Authorised complaints officers

This item provides for persons who were appointed as authorised complaints officers immediately before the transition time to be taken to be appointed as authorised complaints officers after the Commission commences. This includes the provision of an identity card.

Item 6 – Transfer of records

This item provides that all records and documents that are Commonwealth records for the purposes of the *Archives Act 1983*, in the possession of the two agencies, are transferred to the Aged Care Quality and Safety Commissioner.

Item 7 – Protected information

This item provides that all protected information in relation to the two agencies immediately before the transition time continues to be protected information once transitioned to the Commission.

Item 8 – References to the CEO etc. in instruments

This item provides that a reference in an instrument in force just before the transition time to the CEO of the Australian Aged Care Quality Agency or the Aged Care Complaints Commissioner will be taken, after the transition time, to be a reference to the Aged Care Quality and Safety Commissioner. A reference to the Australian Aged Care Quality Agency will be taken to be a reference to the Commission.

Item 9 – Legal proceedings

This item provides for any legal proceeding that the two agencies may be a party to in any court or tribunal immediately prior to the transition time. The Aged Care Quality and Safety Commissioner is to be substituted from that time as a party to the proceedings.

Item 10 – Rules

This item enables the Minister to make rules prescribing matters required or permitted to be prescribed by this Bill or necessary or convenient to be prescribed for carrying out or giving effect to this Bill.

Subclause (3) limits the scope of the Minister’s power to make rules so as to prevent rules being able to create an offence or civil penalty, making powers of arrest or detention, entry, search or seizure or imposing a tax. The rules may also not deal with appropriations from the government budget or amend anything contained within this Act.