Aged Care Bill 2023

No. , 2023

(Health and Aged Care)

A Bill for an Act about aged care, and for related purposes
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A Bill for an Act about aged care, and for related purposes

The Parliament of Australia enacts:

Chapter 1—Introduction

Part 1—Preliminary

1 Short title

This Act is the *Aged Care Act* 2023.
Chapter 1  Introduction
Part 1  Preliminary

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.

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<tr>
<td>Provisions</td>
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Note: This table relates only to the provisions of this Act as originally enacted.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

(1) This Act binds the Crown in each of its capacities.

(2) This Act does not make the Crown liable to be prosecuted for an offence.

4 Extension to external Territories

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

5 Objects of this Act

The objects of this Act are to:

(a) in conjunction with other laws, give effect to Australia’s obligations under the International Covenant on Economic,
Social and Cultural Rights and the Convention on the Rights of Persons with Disabilities; and

(b) provide a forward-looking aged care system that is designed to:

(i) uphold the rights of individuals under the Statement of Rights; and

(ii) assist individuals accessing funded aged care services to live active, self-determined and meaningful lives; and

(iii) ensure equitable access to, and flexible delivery of, funded aged care services that put older people first and take into account the needs of individuals, regardless of their location, background and life experience; and

(iv) support individuals accessing funded aged care services to effectively participate in society on an equal basis with others, thereby promoting positive community attitudes to ageing; and

(v) facilitate access to integrated services in other sectors where required; and

(c) enable individuals accessing funded aged care services to exercise choice and control in the planning and delivery of those services; and

(d) ensure individuals accessing funded aged care services are free from mistreatment, neglect and harm from poor quality or unsafe care; and

(e) provide a robust and risk-based regulatory framework for the delivery of funded aged care services, including accessible complaint mechanisms for individuals accessing those services, that will promote public confidence and trust in the Commonwealth aged care system; and

(f) provide and support education and advocacy arrangements that can assist individuals accessing funded aged care services to understand their rights, make decisions and provide feedback on the delivery of their services without reprisal; and

(g) provide for sustainable funding arrangements for the delivery of funded aged care services by a diverse, trained and appropriately skilled workforce; and
Section 6

1. (h) promote innovation in the Commonwealth aged care system based on research and support continuous improvement in the Commonwealth aged care system.

6 Simplified outline of this Act

This Act provides for the delivery of funded aged care services to individuals under the Commonwealth aged care system. The services are included in the aged care service list and grouped into service types which are delivered through service groups.

The objects of the Act, the Statement of Rights and the Statement of Principles underpin the system and are aimed at ensuring quality and safe care for individuals.

Supporters and representatives may be appointed to assist individuals with navigating the system and are required to act in accordance with principles that promote supported decision making.

Eligible individuals undergo an aged care needs assessment which identifies which funded aged care services are needed. Services are delivered in an approved residential care home, or a home or community setting, and are delivered by entities known as registered providers. For certain service groups, there are mechanisms for prioritisation and allocation of limited places.

The funding for services can be in the form of a subsidy or grant payable to the registered provider. The amount of funding available depends on various factors, including the classification level of individuals, the application of means testing and whether the service is being provided under a specialist aged care program, for example, for Aboriginal or Torres Strait Islander persons.

The system is governed by the Aged Care Quality and Safety Commissioner and by the Secretary (referred to as the System Governor). There is also a Complaints Commissioner.

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EXPOSURE DRAFT
A set of key obligations apply to registered providers and apply even where registered providers subcontract the delivery of services to associated providers. Separate obligations apply to aged care workers and responsible persons of registered providers.

Protections are provided for whistleblowers and statutory duties are imposed on registered providers, responsible persons and operators of aged care digital platforms that facilitate access to services. Criminal penalties and civil penalties apply for failures to meet requirements under the Act and compensation can be sought in cases of serious failures by registered providers.

The Commissioner and System Governor have access to a suite of regulatory mechanisms to assist in the performance of their respective functions.

Arrangements for the protection of information and data obtained under this Act and the sharing of that information and data also apply.
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7 Definitions

In this Act:

ABN has the same meaning as in the A New Tax System (Australian Business Number) Act 1999.

access approval, for an individual, means an approval under subsection 47(2).

ACN has the same meaning as in the Corporations Act 2001.

adverse action warning notice: see section 276.

Advisory Council means the Aged Care Quality and Safety Advisory Council established by section 168.

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

Aged Care Code of Conduct means the rules made for the purposes of subsection 13(1).

aged care digital platform: see section 128.

Aged Care Quality Standards means the rules made for the purposes of subsection 14(1).

aged care worker: see subsections 10(4) and (5).

aged care worker screening check means an assessment, under an aged care worker screening law, of whether a person who works, or seeks to work, with individuals accessing funded aged care services poses a risk to such individuals.

aged care worker screening database means the database established under section 166.
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**aged care worker screening law** means a law of a State or Territory prescribed by the rules for the purposes of this definition.

**approved form:**

(a) in relation to a function of the System Governor—see section 400; or

(b) in relation to a function of the Commissioner—see section 401.

**approved needs assessor** means a person who:

(a) is approved by an entity of a kind prescribed by the rules; and

(b) has completed training of a kind specified by the System Governor; and

(c) meets any other training or qualification requirements prescribed by the rules.

**approved provider** means an approved provider within the meaning of the Commission Act as in force immediately before the commencement of this Act.

**approved quality auditor** means a person who:

(a) is approved by an entity of a kind prescribed by the rules; and

(b) meets any other training or qualification requirements prescribed by the rules.

**approved residential care home** means a residential care home that is approved in relation to a registered provider under paragraph 67(1)(b).

**associated provider:** see subsection 10(6).

**Australian Business Register** has the same meaning as in the *New Tax System (Australian Business Number) Act 1999.*

**authorised Commission officer** means a person appointed as an authorised Commission officer under section 313.

**authorised officer** means an authorised Commission officer or an authorised System Governor officer.
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 authorised System Governor officer means a person appointed as an authorised System Governor officer under section 314.

banning order means a banning order made under section 286 or 287.

business location means the address shown in the Australian Business Register as an entity’s address for service.

care needs means one or both of the following apply in relation to an individual:
   (a) the individual has difficulty (whether physical, mental or social) undertaking any daily living activities;
   (b) the individual requires help from another person, or the assistance of one or more aids, to maintain their physical, mental or social capacity to function independently.

carer means a person who:
   (a) provides personal care, support and assistance to another individual who needs it because that other individual is an older individual; and
   (b) does not provide the personal care, support and assistance to the individual:
      (i) as an aged care worker of a registered provider; or
      (ii) in the course of doing voluntary work for a charitable, welfare or community organisation; or
      (iii) as part of the requirements of a course of education or training.

Chair means the Chair of the Advisory Council.

civil penalty provision has the same meaning as in the Regulatory Powers Act.

Commission means the Aged Care Quality and Safety Commission established by section 137.

Commissioner means the Commissioner of the Commission.

complaints functions means the functions of the Commissioner under section 144.

compliance notice: see sections 269 and 270.

conduct means an act, an omission to perform an act or a state of affairs.

conflict of interest, in relation to an individual accessing, or seeking to access, funded aged care services and a supporter or representative of the individual, means any conflict between:
(a) the interests of the individual; and
(b) the interests of the supporter or representative;
that would affect the supporter’s or representative’s ability to carry out the supporter’s or representative’s role.

constitutional corporation means a trading or financial corporation within the meaning of paragraph 51(xx) of the Constitution.

continuous improvement plan means a plan, in writing, which sets out:
(a) how a registered provider intends to improve the quality of funded aged care services delivered by the registered provider; and
(b) if the Commissioner imposed a condition on the registration of the registered provider under subsection 89(1) which relates to the quality of funded aged care services delivered by the registered provider—how the registered provider intends to comply with that condition.


Note: The Convention is in Australian Treaty Series 2008 No. 12 ([2008] ATS 12) and could in 2023 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).
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Note: The Covenant is in Australian Treaty Series 1976 No. 5 ([1976] ATS 5) and could in 2023 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

current conditions has the same meaning as in Schedule 2 to the Corporations Act 2001.

debtor: see section 302.

deliver, a funded aged care service: see subsection 10(7).

Deputy Chair means the Deputy Chair of the Advisory Council.

engage in conduct means:
(a) do an act; or
(b) omit to perform an act.

engagement and education functions means the functions of the Commissioner under section 143.

entity means any of the following:
(a) an individual;
(b) a body corporate;
(c) a body politic;
(d) a partnership;
(e) any other unincorporated association that has a governing body.

Financial and Prudential Standards means the standards made under subsection 163(1).

financial institution means a corporation that is an ADI for the purposes of the Banking Act 1959.

funded aged care service: see subsection 8(4).

governing body of a registered provider means:
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(a) if the registered provider is a body corporate incorporated, or
    taken to be incorporated, under the Corporations Act 2001,
    that has a board of directors—the board of directors; or
(b) otherwise—the person or the group of persons responsible
    for the executive decisions of the registered provider.

government entity means:
(a) a State or Territory; or
(b) a body established for a public purpose by or under a law of a
    State or Territory (other than a local government authority).

health service has the same meaning as in Article 25 of the
Convention on the Rights of Persons with Disabilities.

home or community setting: see subsections 9(6) and (7).

identity card, in relation to an authorised officer, means an identity
card issued to the officer under section 35 or 76 of the Regulatory

ILO Convention (No. 122) concerning Employment Policy means
the ILO Convention (No. 122) concerning Employment Policy
done at Geneva on 9 July 1964.

Note: The Convention is in Australian Treaty Series 1970 No. 17 ([1970]
ATS 17) and could in 2023 be viewed in the Australian Treaties
Library on the AustLII website (http://www.austlii.edu.au).

intended service types: see paragraph 66(3)(b).

investigation authorisation means an authorisation issued under
section 221.

local government authority means a body established for the
purposes of local government by or under a law applying in a State
or Territory.

monitoring authorisation means an authorisation issued under
section 220.

National Disability Insurance Scheme has the meaning given by
the NDIS Act.
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NDIS Act means the National Disability Insurance Scheme Act 2013.

NDIS banning order means a banning order made under section 73ZN of the NDIS Act.

nursing means the provision of services by or under the supervision of a registered nurse acting within the registered nurse’s scope of practice.

official, of a Commonwealth entity, has the same meaning as in the Public Governance, Performance and Accountability Act 2013.

official of the Pricing Authority has the same meaning as in the National Health Reform Act 2011.

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

personal information has the same meaning as in the Privacy Act 1988.

Pricing Authority means the Independent Health and Aged Care Pricing Authority.

protected information: see section 322.

provider registration category: see subsection 10(3).

reasonably practicable in relation to a duty under Part 5 of Chapter 3: see subsection 120(2).

receiving Commonwealth body: see subsection 339(2).

recoverable amount: see section 302.

registered NDIS provider has the meaning given by the NDIS Act.

registered nurse has the same meaning as in the Health Insurance Act 1973.

registered provider: see subsection 10(2).
**registration of providers functions** means the functions of the Commissioner under section 145.


**reportable incident**: see section 15.

**representative**, of an individual, means a person appointed as a representative of the individual under section 376.

**required action notice**: see sections 262 and 263.

**residential care home**: see subsections 9(2) to (5).

**responsible person**: see section 11.

**restrictive practice**: see section 16.

**rules** means the rules made under section 413.

**safeguarding functions** means the functions of the Commissioner under section 142.

**serious failure**:  
(a) in relation to conduct of a registered provider—see subsection 120(4); and  
(b) in relation to conduct of a responsible person—see subsection 121(5).

**serious injury or illness** of an individual means an injury or illness requiring the individual to have:  
(a) immediate treatment as an in-patient in a hospital; or  
(b) immediate treatment for:  
(i) the amputation of any part of the individual’s body; or  
(ii) a serious head injury; or  
(iii) a serious eye injury; or  
(iv) a serious burn; or  
(v) the separation of the individual’s skin from an underlying tissue (such as degloving or scalping); or
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(vi) a spinal injury; or
(vii) the loss of a bodily function; or
(viii) serious lacerations; or
(c) medical treatment within 48 hours of exposure to a
substance;
and includes any other injury or illness prescribed by the rules but
does not include an illness or injury of a kind prescribed by the
rules.

service includes the supply of goods.

service group: see subsection 8(3).

service type: see subsection 8(2).

SES office or position means an office or position that is held or
occupied, or the duties of which are performed, by an SES
employee or acting SES employee.

setting means a residential care home or a home or community
setting.

sickness means an infirmity, illness, disease, incapacity or
impairment.

significant failure, in relation to the conduct of a registered
provider or responsible person of a registered provider: see
subsection 18(1).

specialist aged care program means a program prescribed by the
rules under which funded aged care services may be delivered.

Statement of Principles means the principles in section 22.

Statement of Rights means the rights in section 20.

suitability matter in relation to an individual: see section 12.

supporter, of an individual, means a person appointed as a
supporter of the individual under section 374.
systematic pattern of conduct, in relation to the conduct of a
registered provider or responsible person of a registered provider:
see subsection 18(2).

System Governor means the Secretary of the Department.

this Act includes:
(a) legislative instruments made under this Act; and
(b) the Regulatory Powers Act as it applies in relation to this
Act.
Division 2—Key concepts

8 Aged care service list and funded aged care services

(1) The rules must prescribe a list of services for which funding may be payable under this Act. The rules must:
   (a) list each service; and
   (b) describe each service; and
   (c) specify the service type that the service is in; and
   (d) specify each service group a service type is in; and
   (e) specify each service type as a service type that is delivered in a residential care home, or a home or community setting, or both; and
   (f) specify any specialist aged care program under which a service type can be delivered; and
   (g) specify each provider registration category under which a service type can be delivered.

(2) For the purposes of paragraph (1)(c), a service type means a service type prescribed by the rules.

(3) For the purposes of paragraph (1)(d), a service group means any of the following:
   (a) home care;
   (b) home support;
   (c) permanent residential care;
   (d) residential respite care;
   (e) short term restorative care;
   (f) transition care;
   (g) any other group prescribed by the rules.

(4) A funded aged care service means a service included on the list referred to in subsection (1) in relation to which funding is payable under this Act.
Matters that must be considered before prescribing services

(5) The Minister must ensure that for each service group for which the service types in that group are specified as delivered in a residential care home, nursing is a listed service that is in at least one service type that is in that group.

(6) The Minister must ensure that funded aged care services in a service type that is specified as a service type that is delivered in a residential care home for the purposes of paragraph (1)(e) are services of the following kind:
   (a) services for the care of persons who are experiencing sickness;
   (b) services incidental or conducive to the care of persons who are experiencing sickness.

(7) The Minister must ensure that:
   (a) for each service group (other than the transition care service group)—all service types that the Minister specifies under paragraph (1)(d) as being in the group are service types that are delivered in the same setting and not a mix of settings; and
   (b) for the permanent residential care and residential respite care service groups—the setting for the purposes of paragraph (a) is a residential care home.

(8) To avoid doubt, a service type may be included in more than one service group under paragraph (1)(d).

9 Where funded aged care services are delivered

(1) A funded aged care service can be delivered in:
   (a) an approved residential care home; or
   (b) a home or community setting.

   Residential care home

(2) A residential care home means a place that:
Section 9

(a) is the place of residence of individuals who, by reason of sickness, have a continuing need for aged care services, including nursing services; and

(b) is fitted, furnished and staffed for the purpose of providing those services.

(3) To avoid doubt, a residential care home includes any of the following places:

(a) a place within a hospital or other health service that is covered by an agreement with the Commonwealth to deliver aged care services alongside existing health services as a part of an integrated service arrangement;

(b) a place within a retirement village that has been converted to a place described by subsection (2);

(c) a place which is a complex of buildings.

(4) To avoid doubt, a residential care home does not include any of the following places:

(a) a private home;

(b) a retirement village (other than a place referred to in paragraph (3)(b));

(c) a facility for which a declaration under subsection 121-5(6) of the Private Health Insurance Act 2007 is in force (other than a place referred to in paragraph (3)(a));

(d) a hospice or facility that primarily provides palliative care;

(e) any other place prescribed by the rules.

(5) For the purposes of subsection (2), the rules may prescribe:

(a) circumstances where a place is taken to be 2 or more separate places; and

(b) circumstances where 2 or more separate places are taken to be a single place.

Home or community setting

(6) A home or community setting means a place other than a residential care home where funded aged care services are delivered.
(7) Despite subsection (6), a home or community setting does not include any of the following places:

(a) a group home funded under the National Disability Insurance Scheme;
(b) a hospital;
(c) a psychiatric facility;
(d) a prison or detention centre;
(e) a hospice or facility that primarily provides palliative care;
(f) any other place prescribed by the rules.

10 Who delivers funded aged care services

(1) Funded aged care services are delivered by registered providers (and associated providers of registered providers) and the aged care workers of registered providers.

Registered providers

(2) A registered provider means an entity registered under paragraph 67(1)(a) in one or more provider registration categories and with effect in relation to one or more service groups.

(3) A registered provider is registered in one or more provider registration categories which are:

(a) the residential care category; and
(b) any other category prescribed by the rules.

Aged care workers

(4) An aged care worker of a registered provider means:

(a) an individual employed or otherwise engaged (including as a volunteer) by the registered provider; or
(b) an individual who:
   (i) is employed or otherwise engaged (including as a volunteer) by an associated provider of the registered provider; and
   (ii) is engaging in conduct under the associated provider’s arrangement with the registered provider relating to the
registered provider’s delivery of funded aged care
services; or
(c) an individual who is a registered provider.

Note: An individual engaged by a registered provider includes an
independent contractor.

(5) Despite subsection (4), an aged care worker of a registered
provider does not include a responsible person of the provider.

Associated providers

(6) If an entity (an associated provider) engages in conduct under an
arrangement with a registered provider relating to the registered
provider’s delivery of funded aged care services, this Act applies in
relation to the registered provider as if the registered provider had
engaged in the conduct.

Note: This means that a registered provider may contravene subsection
88(3) or (4) or another provision of this Act because of conduct
engaged in by an associated provider.

(7) To avoid doubt, a registered provider delivers a funded aged care
service for the purposes of this Act even if some or all of the work
involved in delivering the service to an individual is done by one or
more associated providers of the registered provider.

11 Meaning of responsible person

(1) Each of the following is a responsible person of a registered
provider:
(a) any person who is responsible for the executive decisions of
the registered provider;
(b) any other person who has authority or responsibility for (or
significant influence over) planning, directing or controlling
the activities of the registered provider;
(c) if the registered provider delivers, or proposes to deliver, a
funded aged care service:
(i) any person who has responsibility for overall
management of the nursing services delivered by the
registered provider, or overall management of the
Section 12

12 Meaning of suitability matters in relation to an individual

(1) Each of the following matters is a suitability matter in relation to an individual:

(a) the individual’s experience in providing, at any time, funded aged care services or other similar services;

(b) whether a banning order against the individual is, or has at any time been, in force;

(c) whether an NDIS banning order against the individual is, or has at any time been, in force;

(d) whether the individual has at any time been convicted of an indictable offence;

(e) whether a civil penalty order against the individual has been made at any time;

(f) whether the individual is, or has at any time been, an insolvent under administration;

(g) whether the individual is, or has at any time been, the subject of adverse findings or enforcement action by any of the following:

(i) a Department of the Commonwealth or of a State or Territory;

(ii) the Australian Securities and Investments Commission;

(iii) the Australian Charities and Not-for-profits Commission;

(iv) the Australian Competition and Consumer Commission;

(v) the Australian Prudential Regulation Authority;

(vi) the Australian Crime Commission;
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Section 13

(vii) AUSTRAC;
(viii) the Australian Health Practitioner Regulation Agency;
(ix) another body established for a public purpose by or
under a law of the Commonwealth;
(x) a State or Territory authority (including, but not limited
to, a body that is equivalent to a body mentioned in
subparagraphs (ii) to (viii));
(xi) a local government authority;
(xii) a body responsible for maintaining standards of conduct
in a profession that is involved in the delivery of funded
aged care services;
(h) whether the individual:
   (i) is, or has at any time been, the subject of any findings or
    judgment in relation to fraud, misrepresentation or
dishonesty in any administrative, civil or criminal
proceedings; or
   (ii) is currently party to any proceedings that may result in
    the individual being the subject of such findings or
    judgment;
(i) whether the individual is, or has at any time been,
disqualified from managing corporations under Part 2D.6 of
the Corporations Act 2001;
(j) if circumstances prescribed by the rules apply in relation to
the individual—the individual has a current aged care worker
screening check;
(k) any other matter prescribed by the rules.

(2) This section does not affect the operation of Part VIIC of the
Crimes Act 1914 (which includes provisions that, in certain
circumstances, relieve persons from the requirement to disclose
spent convictions and require persons aware of such convictions to
disregard them).

13 Aged Care Code of Conduct

(1) The rules may prescribe requirements relating to the conduct of the
following:

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(a) registered providers;
(b) aged care workers of registered providers;
(c) responsible persons of registered providers.

Note: These requirements are the Aged Care Code of Conduct: see section 7.

(2) Without limiting subsection (1), the rules may provide as follows:
(a) that a provision of the Aged Care Code of Conduct applies to any or all of the following:
   (i) registered providers;
   (ii) aged care workers of registered providers;
   (iii) responsible persons of registered providers;
(b) that a provision of the Aged Care Code of Conduct applies to the following:
   (i) specified kinds of aged care workers of registered providers;
   (ii) aged care workers of specified kinds of registered providers;
   (iii) specified kinds of responsible persons of registered providers;
   (iv) responsible persons of specified kinds of registered providers.

14 Aged Care Quality Standards

(1) The rules may prescribe standards relating to the quality of funded aged care services delivered by a registered provider.

Note 1: These standards are the Aged Care Quality Standards: see section 7.
Note 2: Only registered providers in certain registration categories are required to be audited against these standards before registration: see paragraph 68(2)(e). Certain registered providers are required to comply with the standards as a condition of registration: see sections 88 and 97.

(2) Without limiting subsection (1), the rules may prescribe standards about the following matters:
Section 15

(a) how registered providers must treat, and engage with, individuals seeking to access, or accessing, funded aged care services;
(b) how registered providers must deliver funded aged care services, including governance arrangements, and arrangements for planning and delivery of palliative care;
(c) the physical environments in which funded aged care services are required to be delivered;
(d) how registered providers must deliver quality and safe clinical care to individuals, including infection prevention and control procedures and arrangements;
(e) how registered providers must deliver food and drink to meet the nutritional needs and preferences of individuals;
(f) how registered providers must support individuals accessing funded aged care services in approved residential care homes;
(g) how registered providers must manage and respond to feedback and complaints;
(h) how registered providers must monitor and drive improvements to their delivery of funded aged care services.

(3) Without limiting subsection (1), the rules may provide that a provision of the Aged Care Quality Standards applies to the following:
(a) all registered providers;
(b) registered providers in specified provider registration categories;
(c) specified kinds of registered providers.

15 Meaning of reportable incident

(1) A reportable incident is any of the following incidents that have occurred, are alleged to have occurred, or are suspected of having occurred, in connection with the delivery of funded aged care services to an individual by a registered provider:
(a) unreasonable use of force against the individual;
Section 16

(1) A restrictive practice in relation to an individual is any practice or intervention that has the effect of restricting the rights or freedom of movement of that individual.

(2) Without limiting subsection (1), the rules may provide that a practice or intervention is a restrictive practice in relation to an individual.

16 Restrictive practice in relation to an individual

17 Restrictive practice requirements

(1) The rules made for the purposes of section 106 relating to the use of restrictive practices in relation to an individual to whom a provider is delivering funded aged care services must:

(a) require that a restrictive practice in relation to the individual is used only:
(i) as a last resort to prevent harm to the individual or other persons; and
(ii) after consideration of the likely impact of the use of the practice on the individual; and
(b) require that, to the extent possible, alternative strategies are used before a restrictive practice in relation to the individual is used; and
(c) require that alternative strategies that have been considered or used in relation to the individual are documented; and
(d) require that a restrictive practice in relation to the individual is used only to the extent that it is necessary and in proportion to the risk of harm to the individual or other persons; and
(e) require that, if a restrictive practice in relation to the individual is used, it is used in the least restrictive form, and for the shortest time, necessary to prevent harm to the individual or other persons; and
(f) require that informed consent is given to the use of a restrictive practice in relation to the individual; and
(g) make provision for, or in relation to, the monitoring and review of the use of a restrictive practice in relation to the individual.

(2) The rules made for the purposes of section 106 may make provision for, or in relation to, the persons or bodies who may give informed consent to the use of a restrictive practice in relation to an individual to whom a registered provider is delivering funded aged care services if that individual lacks capacity to give that consent.

(3) The rules made for the purposes of section 106 may provide that a requirement prescribed by those rules does not apply if the use of a restrictive practice in relation to an individual to whom a registered provider is delivering funded aged care services is necessary in an emergency.

(4) Subsections (1), (2) and (3) do not limit the matters that may be prescribed by the rules made for the purposes of section 106.
18 Meaning of significant failure and systematic pattern of conduct

(1) A registered provider’s or responsible person of a registered provider’s conduct involves a significant failure if the conduct represents a significant departure from the conduct that could reasonably be expected from a registered provider or responsible person, having regard to the requirements registered providers and responsible persons are subject to under this Act.

(2) In determining whether a registered provider’s or responsible person of a registered provider’s conduct is part of a systematic pattern of conduct regard must be had to the following:

(a) the number of times (the relevant contraventions) the provider’s or responsible person’s conduct has not complied with a provision of this Act;
(b) the period over which the relevant contraventions occurred;
(c) the number of individuals affected by the relevant contraventions;
(d) the provider’s or responsible person’s response, or failure to respond, to any complaints about the relevant contraventions.

19 Meaning of high quality care

The delivery of a funded aged care service by a registered provider to an individual is high quality care if the service is delivered in a manner that:

(a) puts the individual first; and
(b) upholds the rights of the individual under the Statement of Rights; and
(c) prioritises the following:

(i) kindness, compassion and respect for the life experiences, self-determination, dignity, quality of life, mental health and wellbeing of the individual;
(ii) the timely and responsive delivery of the service to the individual;
(iii) specific tailoring of care to the personal needs, aspirations and preferences of the individual, including...
preferences regarding the time when the service is delivered;
(iv) respecting the individual’s preferences regarding privacy and time alone;
(v) supporting the improvement of the individual’s physical and cognitive capacity, where the individual chooses to, including by keeping the individual mobile and engaged if they are living in an approved residential care home;
(vi) supporting the individual to participate in meaningful and respectful activities and remain connected to the community, where the individual chooses to;
(vii) supporting the individual to remain connected to the natural environment, and animals and pets, where the individual chooses to;
(viii) implementing inclusive policies and procedures, in partnership with Aboriginal or Torres Strait Islander persons, family and community to ensure that culturally safe, culturally appropriate and accessible care is delivered to those persons at all times, which incorporates flexibility and recognises the unique experience of those persons;
(ix) adapting policy, practices and environments to ensure that services are culturally appropriate for the diverse life experiences of individuals, including by engaging workers with lived experience of diversity in the provider’s workforce and governing body;
(x) bilingual aged care workers and interpreters being made available if requested by the individual;
(xi) worker retention and training to facilitate the delivery of the service by well-skilled and empowered aged care workers who are able to develop and maintain a relationship with the individual.
Part 3—Aged care rights and principles

Division 1—Aged care rights

20 Statement of Rights

Independence, autonomy, empowerment and freedom of choice

(1) An individual has a right to:
   (a) exercise choice and make decisions that affect the individual’s life, including in relation to the following:
       (i) the funded aged care services the individual has been approved to access;
       (ii) how, when and by whom those services are delivered to the individual;
       (iii) the individual’s financial affairs and personal possessions; and
   (b) be supported (if necessary) to make those decisions, and have those decisions respected; and
   (c) take personal risks, including in pursuit of the individual’s quality of life, social participation and intimate and sexual relationships.

Equitable access

(2) An individual has a right to equitable access to:
   (a) have the individual’s need for funded aged care services assessed, or reassessed, in a manner which is:
       (i) culturally safe, culturally appropriate, trauma-aware and healing-informed; and
       (ii) accessible and suitable for individuals living with dementia or other cognitive impairment; and
   (b) palliative care and end-of-life care when required.

Quality and safe funded aged care services

(3) An individual has a right to:
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Division 1  Aged care rights

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(a) be treated with dignity and respect; and
(b) safe, fair, equitable and non-discriminatory treatment; and
(c) have the individual’s identity, culture, spirituality and
diversity valued and supported; and
(d) funded aged care services being delivered to the individual:
   (i) in a way that is culturally safe, culturally appropriate,
       trauma-aware and healing-informed; and
   (ii) in an accessible manner; and
   (iii) by aged care workers of registered providers who have
         appropriate qualifications, skills and experience.

(4) An individual has a right to:
   (a) be free from all forms of violence, degrading or inhumane
       treatment, exploitation, neglect, coercion, abuse or sexual
       misconduct; and
   (b) have quality and safe funded aged care services delivered
       consistently with the requirements imposed on registered
       providers under this Act.

Note: Division 1 of Part 4 of Chapter 3 deals with conditions on registered
providers, including requirements in relation to the use of restrictive
practices and management of incidents.

21  Respect for privacy and information

(5) An individual has a right to have the individual’s:
   (a) personal privacy respected; and
   (b) personal information protected.

(6) An individual has a right to seek, and be provided with,
    information about the individual’s rights under this section and the
    funded aged care services the individual accesses, including the
    costs of those services.

Person-centred communication and ability to raise issues without
consequences

(7) An individual has a right to:
(a) be informed, in a way the individual understands, about the funded aged care services the individual accesses; and
(b) express opinions about the funded aged care services the individual accesses and be heard.

(8) An individual has a right to communicate in the individual’s preferred language or method of communication, with access to interpreters and communication aids as required.

(9) An individual has a right to:
   (a) make complaints using an accessible mechanism, without fear of reprisal, about the delivery of funded aged care services to the individual; and
   (b) have the individual’s complaints dealt with fairly and promptly.

Advocates, significant persons and social connections

(10) An individual has a right to be supported by an advocate or a person of the individual’s choice, including when exercising the individual’s rights in this section, voicing the individual’s opinions, making decisions that affect the individual’s life and making complaints.

(11) An individual has a right to have the role of persons who are significant to the individual, including carers, be acknowledged and respected.

(12) An individual has a right to opportunities, and assistance, to stay connected (if the individual so chooses) with:
   (a) significant persons in the individual’s life and pets, including through safe visitation by family members or friends where the individual lives and visits to family members or friends; and
   (b) the individual’s community, including by participating in public life and leisure, cultural, spiritual and lifestyle activities; and
   (c) if the individual is an Aboriginal or Torres Strait Islander person—community and Country.
21 Effect of Statement of Rights

(1) An individual is entitled to the rights specified in section 20 when accessing, or seeking to access, funded aged care services.

(2) It is the intention of the Parliament that registered providers delivering funded aged care services to individuals must not act in a way that is incompatible with the rights specified in section 20, taking into account that limits on rights may be necessary to balance competing or conflicting rights and the rights and freedoms of other individuals.

(3) Nothing in this Division creates rights or duties that are enforceable by proceedings in a court or tribunal.
Division 2—Aged care principles

22 Statement of Principles

A person-centred aged care system

(1) The safety, health, wellbeing and quality of life of individuals is the primary consideration in the delivery of funded aged care services.

(2) The Commonwealth aged care system supports the delivery of funded aged care services by registered providers that:
   (a) puts older people first; and
   (b) treats older people as unique individuals; and
   (c) recognises the rights of individuals under the Statement of Rights.

(3) The Commonwealth aged care system supports individuals to:
   (a) be able to reside at the individual’s home (if the individual so chooses) or, if that is not possible, in a setting that is appropriate given the individual’s circumstances and preferences; and
   (b) exercise individual responsibility and make decisions that enable the individual to lead an active and fulfilling life, including by engaging in the community and maintaining relationships with people (if the individual so chooses); and
   (c) be active and informed in decision-making about the funded aged care services the individual accesses; and
   (d) maintain or improve the individual’s physical, mental, cognitive and communication capabilities to the extent possible, except where it is the individual’s choice to access palliative care and end-of-life care; and
   (e) be aware of, and exercise, their rights under the Statement of Rights when accessing, or seeking to access, funded aged care services.

(4) The Commonwealth aged care system offers accessible, culturally safe, culturally appropriate, trauma-aware and healing-informed
funded aged care services, if required by an individual and based on the needs of the individual, regardless of the individual’s location, background and life experiences.

Note: This may include individuals who:

(a) are Aboriginal or Torres Strait Islander persons, including those from stolen generations; or
(b) are veterans or war widows; or
(c) are from culturally, ethnically and linguistically diverse backgrounds; or
(d) are financially or socially disadvantaged; or
(e) are experiencing homelessness or at risk of experiencing homelessness; or
(f) are parents and children who are separated by forced adoption or removal; or
(g) are adult survivors of institutional child sexual abuse; or
(h) are care-leavers, including Forgotten Australians and former child migrants placed in out of home care; or
(i) are lesbian, gay, bisexual, trans/transgender or intersex or other sexual orientations or are gender diverse or bodily diverse; or
(j) are an individual with disability or mental ill-health; or
(k) are neurodivergent; or
(l) are deaf, deafblind, vision impaired or hard of hearing; or
(m) live in rural, remote or very remote areas.

(5) The Commonwealth aged care system builds the capacity of registered providers and connections with individuals in the community to support:

(a) continuity of funded aged care services; and
(b) access to integrated services, including strong linkages with the health, mental health, veterans, disability and community services sectors.

An aged care system that values workers and carers

(6) The Commonwealth aged care system:

(a) supports funded aged care services being delivered by a diverse, trained and appropriately skilled workforce who are valued and respected; and
(b) supports aged care workers of registered providers being empowered, including through access to relevant information, to:

(i) provide feedback, suggest measures and take actions that support innovation, continuous improvement and the delivery of high quality care; and

(ii) participate in governance and accountability mechanisms related to the delivery of funded aged care services; and

(c) recognises the important role of volunteers in improving individuals’ experiences of the Commonwealth aged care system.

(7) The Commonwealth aged care system recognises the valuable contribution carers make to society, consistent with the Carer Recognition Act 2010, and carers should be considered partners with registered providers who deliver funded aged care services.

A transparent and sustainable aged care system that represents value for money

(8) The Commonwealth aged care system is transparent and provides publicly available information, about funded aged care services, that is understandable, accessible and communicated through a variety of methods and languages.

(9) Funding by the Commonwealth for funded aged care services supports the delivery and regulation of those services to the individuals who have been prioritised on the basis of need for funded aged care services, taking into account the availability of resources and the needs of the individuals relative to other individuals.

(10) Individuals accessing funded aged care services are expected to meet some of the costs of those services if those individuals have the financial means to do so.

(11) The Commonwealth aged care system focusses on the needs of older people, and should not be used inappropriately to address
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service gaps in other care and support sectors preventing individuals from accessing the best available services to meet the needs, goals and preferences of those individuals.

(12) The Commonwealth aged care system is managed to ensure:
(a) it is sustainable and resilient; and
(b) the Commonwealth’s investment in the system represents value for money, including by ensuring that public resources are used in the most efficient, effective, ethical and economic manner.

An aged care system that continues to improve

(13) The regulation of the Commonwealth aged care system:
(a) promotes innovation, continuous improvement and contemporary evidence-based best practice in the Commonwealth aged care system; and
(b) is responsive and proportionate to risk, with a focus on prevention and timely action; and
(c) focusses on the safety, health, wellbeing and quality of life of individuals, and prioritises the areas of highest risk to individuals; and
(d) promotes the provision of high quality care; and
(e) strives for regulatory alignment (if appropriate) with other care and support sectors; and
(f) is undertaken in collaboration with older people.

(14) Feedback and complaints about the delivery and accessibility of funded aged care services are used to inform and promote continuous improvement in the Commonwealth aged care system.

23  Effect of Statement of Principles

(1) It is the intention of Parliament that the Minister, the System Governor, the Commissioner and any other person or body, performing functions or exercising powers under this Act, must have regard to the principles specified in section 22 when performing those functions or exercising those powers.
(2) Nothing in this Division creates rights or duties that are enforceable by proceedings in a court or tribunal.

(3) A failure to comply with this Division does not affect the validity of any decision, and is not a ground for the review or challenge of any decision.
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Part 4—Supporters and representatives

Division 1—Actions and duties of supporters and representatives

Subdivision A—Actions and duties of supporters

24 Actions of supporters

A supporter of an individual may, with the consent of the individual, do any of the following to support the individual to do a thing under, or for the purposes of, this Act:

(a) request, access or receive information or documents;

(b) communicate information, including the will, preferences and decisions of the individual;

(c) a thing prescribed by the rules.

Note 1: For example, an individual may provide standing consent for a supporter of the individual to receive particular kinds of information or documents. That standing consent may be withdrawn.

Note 2: For the provisions about how supporters and representatives are appointed: see Part 4 of Chapter 8.

25 Giving information and documents to supporters

(1) Any information or document that is required or authorised under, or for the purposes of, this Act to be given to an individual must also be given to a supporter (if any) of the individual if the individual has consented to information or a document of that kind being given to the supporter.

(2) Any information or document given to the supporter of an individual under subsection (1) must, in every respect, be in the same form, and in the same terms, as if it were being given to the individual.

26 Duties of supporters

(1) A supporter of an individual has:
(a) the duties set out in this section; and  
(b) the duty set out in section 31 (duty to inform of matters  
affecting ability or capacity to act as supporter or  
representative); and  
(c) the duty to act honestly, diligently and in good faith in  
discharging the supporter’s other duties; and  
(d) any duty prescribed by the rules.

(2) If the supporter is doing a thing under section 24 to support the  
individual to do a thing under, or for the purposes of, this Act, it is  
a duty of the supporter to:  
(a) act in a manner that promotes the will, preferences and  
personal, cultural and social wellbeing of the individual; and  
(b) act honestly, diligently and in good faith; and  
(c) support the individual only to the extent necessary for the  
individual to do the thing, applying the supporter’s best  
endeavours to maintain the ability of the individual to make  
the individual’s own decisions.

(3) It is a duty of the supporter to avoid or manage any conflict of  
interest in relation to the supporter and the individual, and to  
inform the System Governor of any such conflict as it arises.

Subdivision B—Actions and duties of representatives

27 Actions of representatives

(1) A representative of an individual may, on behalf of the individual,  
do any thing that may or must be done by the individual under, or  
for the purposes of, this Act.

Note 1: If there is more than one representative of an individual, the  
representatives may do a thing under this subsection jointly or  
severally: see paragraph 376(3)(b).

Note 2: For the provisions about how supporters and representatives are  
appointed: see Part 4 of Chapter 8.

(2) However, subsection (1) does not apply to the doing of a thing,  
including the giving of consent, in relation to a restrictive practice.
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Note: The giving of consent in relation to a restrictive practice may be dealt with by rules made for the purposes of section 106 (condition of registration in relation to restrictive practices).

(3) To avoid doubt and for the purposes of subsections (1) and (2), doing a thing includes making a decision.

(4) Any thing done by a representative of an individual under this section has effect, for the purposes of this Act (other than this Part), as if it had been done by the individual.

(5) If an individual is required under, or for the purposes of, this Act to do a thing, failure by a representative of the individual to comply with the requirement on behalf of the individual is taken, for the purposes of this Act (other than this Part), to be a failure of the individual to comply with the requirement.

28 Role of guardians etc.

(1) A person must not make a decision under, or for the purposes of, this Act on behalf of an individual unless the person is appointed as a representative of the individual under section 376.

(2) Subsection (1) applies even if the person:

(a) has guardianship of the individual under a law of the Commonwealth, a State or a Territory; or
(b) is appointed by a court, tribunal, board or panel (however described) under a law of the Commonwealth, a State or a Territory, and has power to make decisions for the individual; or
(c) holds an enduring power of attorney granted by the individual; or
(d) is a nominee of the individual (within the meaning of the National Disability Insurance Scheme Act 2013 or the Social Security (Administration) Act 1999); or
(e) is a person of a kind prescribed by the rules.
29 Giving information and documents to representatives

(1) Any information or document that is required or authorised under, or for the purposes of, this Act to be given to an individual must also be given to the representative (if any) of the individual.

(2) Any information or document given to the representative of an individual under subsection (1) must, in every respect, be in the same form, and in the same terms, as if it were being given to the individual.

30 Duties of representatives

(1) A representative of an individual has:

(a) the duties set out in this section; and
(b) the duty set out in section 31 (duty to inform of matters affecting ability or capacity to act as supporter or representative); and
(c) the duty to act honestly, diligently and in good faith in discharging the representative’s other duties; and
(d) any duty prescribed by the rules.

(2) It is a duty of the representative to:

(a) apply the representative’s best endeavours to maintain the ability of the individual to make the individual’s own decisions; and
(b) refrain from doing a thing on behalf of the individual under section 27 unless:

(i) the representative is satisfied that it is not possible for the individual to do, or to be supported to do, the thing;

(ii) it is possible for the individual to do the thing but the individual does not want to do the thing themselves.

(3) If the representative is doing a thing, or refraining from doing a thing, on behalf of the individual under section 27, it is a duty of the representative to:
(a) act in a manner that promotes the personal, cultural and social wellbeing of the individual; and
(b) act honestly, diligently and in good faith; and
(c) make reasonable efforts to ascertain the will and preferences of the individual in relation to the thing or, if the individual’s will and preferences cannot be ascertained, to ascertain the individual’s likely will and preferences based on all the information available to the representative; and
(d) take reasonable steps to consult the following:
   (i) any person referred to in subsection 28(2) (which deals with guardians and persons in other similar positions);
   (ii) any other representative of the individual;
   (iii) when appropriate, any other person who assists the individual to manage the individual’s day-to-day activities or, if there is no such person, any family members or other persons who have a close continuing relationship with the individual; and
(e) subject to subsection (4), act in accordance with the following principles:
   (i) the individual’s will and preferences must be given effect or, if they cannot be ascertained, the individual’s likely will and preferences must be given effect;
   (ii) the individual’s will and preferences, or likely will and preferences, may be overridden only if necessary to prevent serious risk to the individual’s personal, cultural and social wellbeing;
   (iii) the individual’s rights under the Statement of Rights must be promoted and upheld, and actions taken on the individual’s behalf must be the least restrictive of those rights.

(4) However, if the representative cannot act in accordance with all of the principles in paragraph (3)(e) in doing a thing or refraining from doing a thing on behalf of the individual, the representative must give precedence to those principles in the order in which they appear in that paragraph.
(5) It is a duty of the representative to avoid or manage any conflict of interest in relation to the representative and the individual, and to inform the System Governor of any such conflict as it arises.

Subdivision C—Actions and duties of supporters and representatives

31 Duty to inform of matters affecting ability or capacity to act as supporter or representative

(1) A supporter or representative of an individual has a duty to inform the System Governor if:

(a) either:

(i) an event or change of circumstances happens; or

(ii) the supporter or representative becomes aware that an event or change of circumstances is likely to happen; and

(b) the event or change of circumstances is likely to affect:

(i) the ability or capacity of the supporter or representative to act as a supporter or representative of the individual, including complying with the duties of supporters or representatives referred to in subsection 26(1) or 30(1) respectively; or

(ii) the ability of the System Governor to contact the supporter or representative for the purposes of this Act; or

(iii) the ability or capacity of the supporter or representative to comply with notices given to, and imposing requirements on, the supporter or representative by the System Governor under, or for the purposes of, this Act.

(2) The supporter or representative must inform the System Governor under subsection (1):

(a) within the period specified for this purpose in the notice of the supporter or representative’s appointment given under section 379; and
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(b) in accordance with any requirements specified in that notice as to how the supporter or representative is to inform the System Governor.

Note: A notice of appointment of a supporter or representative must include certain information, including how a supporter or representative must inform the System Governor of a matter for the purposes of subsection (1): see paragraph 380(1)(d).

(3) This section extends to:
   (a) acts, omissions, matters and things outside Australia, whether or not in a foreign country; and
   (b) all persons, irrespective of their nationality or citizenship.

32 When there is no breach of duty

(1) A supporter or representative of an individual does not breach a duty of supporters or representatives referred to in subsection 26(1) or 30(1) respectively by doing a thing if, when the thing is done, the supporter or representative reasonably believes that the supporter or representative is doing the thing to comply with the supporter’s or representative’s duties under that subsection.

(2) A supporter or representative of an individual does not breach a duty of supporters or representatives referred to in subsection 26(1) or 30(1) respectively by refraining from doing a thing if, at the relevant time, the supporter or representative reasonably believes that the supporter or representative is refraining from doing the thing to comply with the supporter’s or representative’s duties under that subsection.
Division 2—Protections relating to supporters and representatives

33 Protection of individual against liability for actions of supporter or representative

An individual accessing, or seeking to access, funded aged care services does not commit an offence, and is not liable to a civil penalty, under this Act in relation to any act or omission of another person in that person’s capacity as supporter or representative of the individual.

34 Protection of supporter or representative against liability

A supporter or representative of an individual accessing, or seeking to access, funded aged care services does not commit an offence, and is not liable to a civil penalty, under this Act in relation to:

(a) any act or omission of the individual; or

(b) anything done, in good faith, by the supporter or representative in their capacity as supporter or representative of the individual.

35 Offence for abuse of position as supporter or representative

Offence for current supporters and representatives

(1) A person commits an offence if:

(a) the person is a supporter or representative of an individual accessing, or seeking to access, funded aged care services; and

(b) the person:

(i) exercises any influence that the person has in their capacity as a supporter or representative of the individual; or

(ii) engages in any conduct when doing a thing under section 24 or 27 as a supporter or representative of the individual; or
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(iii) uses any information that the person obtained in the person’s capacity as a supporter or representative of the individual; and

(c) the person does so with the intention of:

(i) dishonestly obtaining a benefit for the person or any other person; or

(ii) dishonestly causing a detriment to another person.

Penalty: 60 penalty units.

(2) Strict liability applies to paragraph (1)(a).

Offence for former supporters and representatives

(3) A person commits an offence if:

(a) the person has ceased to be a supporter or representative of an individual accessing, or seeking to access, funded aged care services; and

(b) the person obtained information in the person’s capacity as a supporter or representative of the individual; and

(c) the person uses the information with the intention of:

(i) dishonestly obtaining a benefit for the person or any other person; or

(ii) dishonestly causing a detriment to another person.

Penalty: 60 penalty units.

(4) Strict liability applies to paragraphs (3)(a) and (b).

Dishonesty

(5) In a prosecution for an offence against subsection (1) or (3), the determination of dishonesty is a matter for the trier of fact.

Definitions

(6) In this section:

dishonest means:

(a) dishonest according to the standards of ordinary people; and
(b) known by the defendant to be dishonest according to the standards of ordinary people.
Chapter 2—Entry to the Commonwealth aged care system

Part 1—Introduction

36 Simplified outline of this Chapter

Individuals can apply to the System Governor for access to funded aged care services and are assessed against a set of eligibility criteria. An individual with care needs who is age 65 or over (or age 50 or over and an Aboriginal or Torres Strait Islander person or homeless or at risk of homelessness) is eligible to undergo an aged care needs assessment by an approved needs assessor.

A report of the results of an aged care needs assessment is given to the System Governor who decides what funded aged care services are approved for the individual.

The approval may be in relation to all services in a service group, for example, as is the case for permanent residential care where individuals generally need access to all the services in the group. For some service groups, such as home support, the approval may be limited to particular service types, or to particular services, in the service group. This reflects the wide range of different services available and varying needs of individuals accessing services in this group.

If an individual’s circumstances change significantly, an application for reassessment can be made and a new approval decision is made, either on the basis of a new aged care needs assessment or information provided to the System Governor.

For service groups other than permanent residential care, a classification assessment is undertaken at the same time as the aged care needs assessment and a classification decision is made by the System Governor in relation to any service group the individual
has been approved for. The classification decision generally affects
the level of funding available under Chapter 4 to deliver funded
aged care services to the individual.

For permanent residential care, a classification assessment occurs
after the aged care needs assessment and after a registered provider
has started delivering funded aged care services to the individual in
an approved residential care home.

For the home care or permanent residential care service groups, a
decision about the individual’s priority for that service group is
made by the System Governor. This decision may affect when the
individual can access services in that service group. Individuals (or
in certain circumstances the registered provider) must be allocated
a place to access funded aged care services in these groups. The
allocation is done on the basis of the individual’s priority category
and place in any queue for the service group.

Alternative allocation arrangements apply in relation to individuals
accessing funded aged care services under specialist aged care
programs.
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Division 1  General requirements

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Part 2—Eligibility for entry
Division 1—General requirements

37 General requirements for entry to Commonwealth aged care system

An individual can access a funded aged care service if:

(a) the individual makes an application for funded aged care services; and
(b) the System Governor makes an eligibility determination for the individual and that determination remains in effect; and
(c) the individual undergoes an aged care needs assessment; and
(d) an access approval that covers the service is in effect for the individual; and
(e) if the service is in a service group other than permanent residential care—a classification decision is in effect under subsection 59(1) for the individual for the service group; and
(f) if the service is in a service group for which the System Governor must determine the individual’s priority under section [to be drafted]—a decision under that subsection for the individual for the service group is in effect; and
(g) if the service is in a service group for which the System Governor must allocate the individual a place under Part 4—a place has been allocated to the individual under that Part.

Note 1: Depending on what the funded aged care service is and the kind of registered provider that delivers the service, the Commonwealth funding of the service may be through a subsidy or grant under this Act.

Note 2: For services in the permanent residential care service group, an application for a classification assessment is made after the individual starts accessing the services: see section 63.
Division 2—Applying for access to funded aged care services

38 Requirements for applications

An individual may apply, in an approved form, to the System Governor for access to funded aged care services if the individual does not have an eligibility determination that is in effect.

Note: The application may be withdrawn: see section 404.

39 System Governor must decide whether to make determination

(1) The System Governor must consider the application for access to funded aged care services and decide whether to make an eligibility determination for an aged care needs assessment for the individual.

(2) The decision must be made within the period prescribed by the rules.

(3) If the System Governor decides not to make a determination under subsection (1), the individual’s application for access to funded aged care services is taken to be withdrawn.

40 Eligibility determination for an aged care needs assessment

The System Governor must not make an eligibility determination for an aged care needs assessment under section 39 for an individual unless the System Governor considers that:

(a) the individual:

(i) is aged 65 or over; or

(ii) is an Aboriginal or Torres Strait Islander person and is aged at least 50; or

(iii) is homeless, or at risk of homelessness, and is aged at least 50; and

(b) information of a kind prescribed by the rules has been provided relating to the individual’s care needs; and

(c) if the individual is aged less than 65, the individual:
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1 (i) has elected, in the approved form, to be provided with funded aged care services before the individual turns 65; and

2 (ii) was informed, prior to making the election, of any other services that may be available to meet the care needs of the individual.

41 Notice of decision not to make a determination

(1) If the System Governor decides under section 39 not to make an eligibility determination for an aged care needs assessment for an individual, the System Governor must give notice of the decision to the individual within 14 days after the day the decision is made.

(2) The notice under subsection (1) must include:

(a) the reasons for the decision; and

(b) a statement that the effect of the decision is that the individual’s application for access to funded aged care services is taken to be withdrawn; and

(c) how the individual may apply for reconsideration of the decision.

42 Period of effect of determination

An eligibility determination for an aged care needs assessment made under section 39 takes effect at the time it is made and remains in effect until it is revoked under section 54 or 55.
Division 3—Aged care needs assessments and reassessments

43 Aged care needs assessments

(1) The System Governor must arrange for an assessment of an individual’s need for funded aged care services to be undertaken by an approved needs assessor if:
   (a) an eligibility determination for an aged care needs assessment is made for the individual under section 39; or
   (b) the System Governor decides that a reassessment of the individual’s need for funded aged care services needs to be undertaken by an approved needs assessor in accordance with paragraph 46(2)(a).

(2) Despite subsection (1), the aged care needs assessment must not be undertaken, and the individual’s application for funded aged care services, or application under paragraph 46(1)(b) for reassessment, is taken to be withdrawn, if:
   (a) an eligibility determination for an aged care needs assessment under section 39 is not in effect for the individual; or
   (b) the System Governor is satisfied it is not reasonably possible for an approved needs assessor to undertake the assessment.

Note: Examples of circumstances in which it may not be reasonably possible to undertake an assessment include where the individual does not provide consent to the assessment.

44 Undertaking aged care needs assessments

(1) The aged care needs assessment must be carried out by the approved needs assessor using an assessment tool prescribed by the rules and in accordance with any other requirements prescribed by the rules.

Note: An individual must have an eligibility determination for an aged care needs assessment under section 39 in effect before an aged care needs assessment can be undertaken for the individual.
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(2) The aged care needs assessment must include:
   (a) a discussion with the individual about what the assessment has identified in terms of funded aged care services the individual may require access to and may assist the individual to maintain the individual’s independence; and
   (b) a discussion with the individual about the individual’s preferences and goals, the next steps in terms of the individual’s application for funded aged care services and how the individual will be informed of the outcome of the application; and
   (c) any other thing prescribed by the rules.

45 Aged care needs assessment reports

(1) The approved needs assessor must provide a report of the assessment to the System Governor as soon as practicable after the assessment is completed.

(2) The report must include information about:
   (a) the funded aged care services the assessor considers the individual needs in order to meet the individual’s care needs; and
   (b) any service groups the assessor considers should be approved under subsection 47(2) for the individual; and
   (c) any service types the assessor considers should be approved under subparagraph 47(2)(b)(i) for the individual; and
   (d) any funded aged care services the assessor considers should be approved under subparagraph 47(2)(b)(ii) for the individual.

Note: For service groups other than permanent residential care, the classification assessment report required under section 58 may be included with the report under this section.

46 Aged care needs reassessments

(1) The System Governor must decide if a reassessment of an individual’s need for funded aged care services is required if:
(a) an eligibility determination for an aged care needs assessment under section 39 is in effect for the individual; and

(b) the individual makes an application in an approved form; and

(c) either:
   (i) the System Governor is satisfied that a significant change in circumstances prescribed by the rules applies in relation to the individual; or
   (ii) other circumstances prescribed by the rules apply in relation to the individual.

(2) If the System Governor decides under subsection (1) that a reassessment of an individual’s need for funded aged care services is required, the System Governor must:
   (a) if subparagraph (1)(c)(i) applies—arrange for a new assessment of the individual’s need for funded aged care services to be undertaken by an approved needs assessor in accordance with section 43; or
   (b) if subparagraph (1)(c)(ii) applies—make the reassessment on the basis of information of a kind prescribed by the rules being provided in relation to the individual.

Note: Where the System Governor decides a reassessment of an individual’s need for funded aged care services is required, the System Governor must make new decisions under subsections 47(1) and (2) (which deal with approving access to funded aged care services).

(3) If the System Governor decides under subsection (1) that a reassessment of an individual’s need for funded aged care services is not required, the System Governor must, within 14 days after the decision is made, give notice to the individual of the decision.

(4) A notice under subsection (3) must include:
   (a) the reasons for the decision; and
   (b) how the individual may apply for reconsideration of the decision.
Chapter 2  Entry to the Commonwealth aged care system
Part 2  Eligibility for entry
Division 4  Approval of access to funded aged care services

Section 47

Division 4—Approval of access to funded aged care services

47 Approval of access to funded aged care services

Approval decision—access to funded aged care services

(1) The System Governor must consider an assessment report for an individual provided under section 45, or information relating to an individual that is provided to the System Governor in accordance with paragraph 46(2)(b), and decide whether or not the individual requires access to funded aged care services.

Note 1: If the assessment report relates to a decision under subsection 46(1) to reassess the individual’s need for funded aged care services, a new decision is made under this section.

Note 2: Paragraph 46(2)(b) allows the System Governor to make a reassessment of an individual’s need for funded aged care services on the basis of certain kinds of information being provided to the System Governor (which results in a new decision being made under this section).

Approval decision—approval of service groups, service types and funded aged care services

(2) If the System Governor decides under subsection (1) that an individual requires access to funded aged care services, the System Governor must decide whether:

(a) to approve one or more service groups for the individual; and

(b) if the individual is not an Aboriginal or Torres Strait Islander person and subsection (3) applies to the service group:

(i) to approve one or more service types in that group for the individual; and

(ii) if the service type is prescribed by the rules for the purposes of this paragraph—to approve one or more funded aged care services in that type for the individual.

Note: There are restrictions that apply to the System Governor’s approval of services groups, service types and services under this section: see sections 48 and 49. Conditions may also be included on an approval of a service type or a service under paragraph (2)(b): see section 50.
Section 48

(3) This subsection applies to a service group if:
   (a) the service types in that group are delivered in a home or community setting; and
   (b) the service group is home support or a service group prescribed by the rules.

Timing of decisions

(4) The decisions under subsections (1) and (2) must be made within the period prescribed by the rules.

48 Restrictions on approvals of service groups

The System Governor must not approve a service group under paragraph 47(2)(a) for an individual unless the System Governor is satisfied that:
   (a) the individual meets any eligibility requirements prescribed by the rules for the service group; and
   (b) if the individual is not an Aboriginal or Torres Strait Islander person and the service types in the group are delivered in an approved residential care home—the individual has, by reason of sickness, a continuing need for funded aged care services (including nursing services) in those service types.

Note: The requirement in paragraph (b) needs to be met for the permanent residential care and residential respite care service groups to be approved for an individual.

49 Restrictions on approvals of service types or services in certain service groups

(1) The System Governor must not approve a service type, or a service, in a service group under paragraph 47(2)(b), for an individual unless the System Governor is satisfied that:
   (a) the individual has a long-term physical, mental, sensory or intellectual impairment and the impairment may hinder the individual’s participation in society on an equal basis with others as a result of the impairment’s interaction with various barriers; and
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(b) any of the following apply:

(i) access to the funded aged care services in the service type, or the funded aged care service, is necessary to support the individual to live and be included in the community, and to prevent isolation or segregation of the individual from the community;

(ii) access to the funded aged care services in the service type, or the funded aged care service, will facilitate personal mobility of the individual in the manner and at the time of the individual’s choice;

(iii) the funded aged care services in the service type each involve, or the funded aged care service involves, a mobility aid or device, or assistive technology, live assistance or intermediaries that will facilitate personal mobility of the individual;

(iv) the funded aged care services in the service type are each, or the funded aged care service is, a health service that the individual needs because of the individual’s impairment or because of the interaction of the individual’s impairment with various barriers;

(v) the funded aged care services in the service type are each, or the funded aged care service is, a habilitation or rehabilitation service;

(vi) the funded aged care services in the service type are each, or the funded aged care service is, a service that will assist the individual to access a service mentioned in subparagraph (iv) or (v);

(vii) the funded aged care services in the service type, or the funded aged care service, will minimise the prospects of the individual acquiring a further impairment or prevent the individual from acquiring a further impairment;

(viii) the funded aged care services in the service type are each, or the funded aged care service is, a medical service required by the individual because of sickness.

(2) For the purposes of paragraph (1)(a), an impairment may be long-term despite the fact it is episodic, fluctuating or varying in intensity over time.
50 Conditions on approvals of service types or services in certain service groups

(1) If a service type, or a funded aged care service, in a service group is approved under paragraph 47(2)(b) for an individual, the System Governor may include one or more conditions on the approval.

(2) Without limiting subsection (1), conditions included on an approval of a service type or a funded aged care service for an individual may include any of the following:

(a) that the individual must provide to a registered provider that will deliver funded aged care services in the service type, or the funded aged care service, information of a kind prescribed by the rules;

(b) that the individual can only access the funded aged care services in the service type, or the funded aged care service, through a registered provider of a kind prescribed by the rules;

(c) that a person of a kind prescribed by the rules has confirmed, in accordance with any requirements prescribed by the rules, that the individual requires access to the funded aged care services in the service type, or the funded aged care service.

51 Notice of decision

(1) The System Governor must give written notice of a decision under subsection 47(1) or (2) to the individual within 14 days after the decision is made.

(2) The notice under subsection (1) must include for each decision:

(a) the reasons for the decision; and

(b) how the individual may apply for reconsideration of the decision; and

(c) for a decision under subsection 47(2), all of the following:

(i) any service groups approved under subsection 47(2) for the individual;

(ii) any service types approved under subparagraph 47(2)(b)(i) for the individual;
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(iii) any funded aged care services approved under subparagraph 47(2)(b)(ii) for the individual;

(iv) any conditions included, under section 50, on an approval referred to in subparagraph (ii) or (iii) of this paragraph.

Note 1: For service groups other than permanent residential care, the notice of the classification decision under section 60 for a service group may be included with the notice of approval under this section for the service group.

Note 2: The notice of an individual’s priority for the ongoing home care or permanent residential care service group under section [to be drafted] may be included with the notice of approval under this section for the service group.

52 Period of effect of approval

An access approval takes effect on the day specified in the notice of the decision under section 51 and remains in effect until the earlier of the following:

(a) the individual’s eligibility determination for an aged care needs assessment under section 39, or the access approval, is revoked under section 54 or 55;

(b) another decision is made for the individual under subsection 47(1);

(c) the day (if any), or the day worked out in accordance with a method (if any), prescribed by the rules for that service group.

Note: Paragraph (c) is required for service groups, such as transition care and short-term restorative care, that are time limited.
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Revoking eligibility determinations and access approvals  Division 5

Section 53

Division 5—Revoking eligibility determinations and access approvals

53 Request for revocation

(1) If an eligibility determination for an aged care needs assessment under section 39 is in effect for an individual who is under age 65, the individual may request the System Governor revoke the determination.

(2) If an access approval is in effect for an individual, the individual may request the System Governor to revoke the approval.

(3) A request under this section must be in an approved form.

54 Revocation on request

(1) If a request for revocation is made under section 53, the System Governor must revoke the eligibility determination or access approval within 28 days after the day the request is made.

(2) The System Governor must, within 14 days after making the decision, give written notice of the revocation to the individual.

(3) If the System Governor revokes an eligibility determination or access approval under subsection (1), any pending application for the individual under section 38 or 46 is taken to be withdrawn.

55 Revocation on initiative of System Governor

(1) The System Governor may revoke an eligibility determination for an aged care needs assessment under section 39, or access approval, or both, for an individual if the System Governor is satisfied that:

(a) the individual gave information, or a document, in relation to the application for access to funded aged care services to which the determination or access approval relates; and

(b) either:
Chapter 2  Entry to the Commonwealth aged care system
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Division 5  Revoking eligibility determinations and access approvals

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(i) the information or document (as the case may be) was false or misleading; or
(ii) the information omitted any matter or thing without which the information is misleading.

(2) Before the System Governor makes a decision under subsection (1) for an individual, the System Governor must, by written notice, notify the individual that the System Governor is considering making that decision.

(3) The notice must:
(a) set out the reasons why the System Governor is considering making the decision; and
(b) invite the applicant to make submissions, in writing, to the System Governor in relation to the matter within 14 days after receiving the notice, or such longer period as is specified in the notice; and
(c) inform the individual that the System Governor may, after considering any submissions made by the individual, make the decision.

(4) The System Governor must consider any submissions made by an individual in accordance with a notice under subsection (3).

(5) If, after considering an individual’s submissions under subsection (4), the System Governor decides to revoke the individual’s eligibility determination, or access approval, or both, the System Governor must, within 14 days after the day the decision is made, give written notice of the following to the individual:
(a) the decision;
(b) the reasons for the decision;
(c) how the individual may apply for reconsideration of the decision.

(6) If the System Governor revokes an individual’s eligibility determination, or access approval, or both under subsection (1), any pending application for the individual under section 38 or 46 is taken to be withdrawn.
Part 3—Classification

Division 1—Classification assessments and decisions

56 Classification assessments

(1) A classification assessment for the purposes of determining an individual’s classification level for a service group must be undertaken if:

(a) for a service group other than the permanent residential care service group, either of the following apply:

(i) during an aged care needs assessment for the individual under section 43, the approved needs assessor considers the service group should be approved for the individual under subsection 47(2);

(ii) if the service group is prescribed by the rules—on the basis of information given under paragraph 46(2)(b) (which deals with reassessments), the System Governor considers the service group should be approved for the individual under subsection 47(2); or

(b) for the permanent residential care service group, all of the following apply:

(i) an access approval for the individual is in effect for the service group;

(ii) the individual is allocated a place in the service group;

(iii) a registered provider is delivering funded aged care services in the service group to the individual at an approved residential care home of the registered provider;

(iv) an application for a classification assessment for the individual is made under Division 2.

Note 1: Subparagraph (a)(i) also applies if a further aged care needs assessment is undertaken in accordance with paragraph 46(2)(a) (which deals with reassessments).

Note 2: A further classification assessment of an individual is required under paragraph (b) if a subsequent application is made for the individual.
57 Undertaking classification assessments

(1) A classification assessment for an individual for a service group must be carried out:
   (a) for a classification assessment required under subparagraph 56(1)(a)(i)—by an approved needs assessor using an assessment tool prescribed by the rules for the service group and in accordance with any other requirements prescribed by the rules; or
   (b) for a classification assessment required under subparagraph 56(1)(a)(ii)—by the System Governor in accordance with any requirements prescribed by the rules; or
   (c) for a classification assessment required under paragraph 56(1)(b):
      (i) unless subparagraph (ii) applies—by an approved needs assessor using an assessment tool prescribed by the rules for the service group and in accordance with any other requirements prescribed by the rules; or
      (ii) if circumstances prescribed by the rules apply and information of a kind prescribed by the rules is given to the System Governor—by the System Governor in accordance with any requirements prescribed by the rules.

(2) For a classification assessment to which subparagraph (1)(c)(i) applies, the approved needs assessor must have the skills and qualifications prescribed by the rules.
58 Classification assessment reports

(1) If a classification assessment is carried out for an individual in accordance with paragraph 57(1)(a) or subparagraph 57(1)(c)(i), the approved needs assessor must provide a report of the classification assessment to the System Governor as soon as practicable after the assessment is completed.

(2) The report must include the results for the individual against each relevant assessment item set out in the assessment tool referred to in paragraph 57(1)(a) or subparagraph 57(1)(c)(i).

Note: The report of the classification assessment may be included in an aged care needs assessment report for the individual under section 45 if the classification assessment is for a service group other than the permanent residential care service group.

(3) Despite subsection (1), a report of a classification assessment for an individual for a service group is not required to be provided to the System Governor if there is only one classification level prescribed for the service group by rules made for the purposes of subsection 62(1).

59 Classification decisions

(1) The System Governor must establish a classification level for an individual for a service group in accordance with any criteria, methods or procedures prescribed by the rules for the purposes of section 62, if:
   (a) the System Governor is given a report of a classification assessment for the individual for the service group under section 58; or
   (b) information is given to the System Governor as referred to in subparagraph 56(1)(a)(ii) or 57(1)(c)(ii).

(2) If subsection 58(3) applies in relation to an individual and a service group, the classification level for the individual for the service group is taken to be the classification level prescribed for the service group by rules made for the purposes of subsection 62(1).
(3) Despite subsection (1), the System Governor is not required to make a decision under that subsection in relation to a service group (other than the permanent residential care service group) if the System Governor decides not to approve, under subsection 47(2), the service group for the individual.

60 Notice of decision

(1) The System Governor must give written notice of a classification decision under section 59 for a service group to the individual within 28 days after the decision is made.

(2) The notice under subsection (1) must include:
   (a) the individual’s classification level for the service group; and
   (b) details about when the classification decision did, or will, come into effect; and
   (c) the reasons for the decision; and
   (d) how the individual may apply for reconsideration of the decision.

Note: If the classification assessment is for a service group other than the permanent residential care service group, the notice under this section may be included with the notice under section 51 of the individual’s access approval for the service group.

(3) If the decision relates to the permanent residential care service group, the System Governor must also give a copy of the notice under subsection (1) to the registered provider that is delivering funded aged care services in that service group to the individual.

61 Period of effect of decision

(1) A classification decision under section 59 for an individual for a service group takes effect on the day worked out in accordance with the method prescribed by the rules for the service group and remains in effect until the earliest of the following:
   (a) the day the individual ceases to access funded aged care services in the service group;
   (b) the day the individual’s access approval for the service group is revoked;
(c) the day worked out in accordance with any method prescribed by the rules for the service group;

(d) for a service group other than a service group to which paragraph (e) applies—another classification decision is made for the individual and the service group under section 59;

(e) for a service group prescribed by the rules—the day the individual is allocated a place for the service group after another classification decision is made for the individual for the service group under section 59.

(2) However, if an individual for whom a classification decision is not in effect because of paragraph (1)(a) starts to access funded aged care services in that service group again at a time, the classification resumes to be in effect from that time.

62 Classification levels and procedures

(1) The rules may prescribe classification levels for each service group.

(2) Without limiting subsection (1), the rules may:

(a) set out different classification levels for different service groups; and

(b) set out criteria for each classification level that are to be used in deciding an individual’s classification level for a service group.

(3) Subject to subsection (4), the rules may specify methods or procedures that the System Governor must follow in deciding an individual’s classification level for a service group.

(4) If the service group is the permanent residential care service group, rules made for the purposes of subsection (1) must:

(a) set out compounding factors (based on results against relevant assessment items mentioned in subsection 58(2)) that will be used to establish an individual’s classification level; and
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(b) prescribe the scientific population study that will be used by the System Governor to derive a method for establishing when these compounding factors, taken together, are significant because they indicate the individual has significantly higher care needs relative to the needs of other individuals.
Division 2—Applying for a classification assessment for permanent residential care

63 Requirements for applications for classification assessments

(1) An individual, or a registered provider that is delivering funded aged care services in the permanent residential care service group to an individual in an approved residential care home (other than under a specialist aged care program), may apply to the System Governor for a classification assessment of the individual’s classification level for that service group to be undertaken if:

(a) either of the following apply:
   (i) there is no classification decision in effect for the individual for that service group;
   (ii) circumstances prescribed by the rules apply; and

(b) either of the following apply:
   (i) if the rules prescribe a time period—not more than the number of applications prescribed by the rules have been made for the individual under this section in that time period;
   (ii) the System Governor considers circumstances prescribed by the rules apply to the individual.

(2) The application must:

(a) be in an approved form; and
(b) be accompanied by the application fee (if any) prescribed by the rules.

Note 1: The System Governor does not have to make a decision on an application that does not meet the requirements of this section: see section 403.

Note 2: The application may be withdrawn: see section 404.

(3) An application is taken to have been made under subsection (1) for a classification assessment of an individual’s classification level for the permanent residential care service group if:

(a) any of the following apply:
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(i) there is no classification decision in effect for the individual for that service group;

(ii) there is a classification decision in effect for the individual for that service group for the classification level prescribed by the rules;

(iii) circumstances prescribed by the rules apply; and

(b) the individual is not accessing funded aged care services under a specialist aged care program; and

(c) a commencement notification is given to the System Governor in relation to an approved residential care home.

(4) An application under subsection (1) is taken to be withdrawn if any of the following apply:

(a) an exit notification for the individual is given to the System Governor in relation to the approved residential care home;

(b) a commencement notification is given to the System Governor for another approved residential care home;

(c) the individual’s access approval for the service group is revoked;

(d) circumstances prescribed by the rules apply.
Division 3—Changing classifications

64 Changing classifications

(1) The System Governor must change a classification decision (the original decision) for an individual under Division 1 if the System Governor is satisfied that:

(a) the assessment of the care needs of the individual that was made for the purposes of the original decision (see section 57) was incorrect or inaccurate; or

(b) the original decision was, for any other reason, incorrect.

(2) The original decision cannot be changed under this section in any other circumstances.

(3) Before changing the original decision, the System Governor must review the decision, having regard to:

(a) any material on which the original decision was based that the System Governor considers relevant; and

(b) any matters prescribed by the rules as matters to which the System Governor must have regard; and

(c) any other material or information that the System Governor considers relevant (including material or information that has become available since the original decision was made).

(4) If the System Governor changes the original decision:

(a) the change takes effect on the same day that the original decision took effect (see subsection 61(1)); and

(b) the System Governor must notify the individual for whom the original decision was made, and any registered provider that is providing funded aged care services to the individual, in writing, of the change.
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Part 4—Prioritisation

[To be drafted.]
Part 5—Place allocation

[To be drafted.]
Chapter 3—Registered providers, aged care workers and aged care digital platform operators

Part 1—Introduction

65 Simplified outline of this Chapter

To deliver funded aged care services, an entity must apply and be registered as a registered provider by the Commissioner.

The Commissioner must consider whether an entity meets key eligibility requirements before deciding to register an entity. These requirements include general requirements and also registration category specific requirements.

The registered provider is registered in one or more provider registration categories, depending on the service types the provider intends to deliver. The registration has effect in relation to certain service groups depending on the kind of entity.

To be registered in certain categories, including the residential care category, entities need to have completed an audit against the Aged Care Quality Standards. Residential care homes are also required to be approved as part of the registration process for entities intending to deliver service types in the residential care category.

The registration period is generally 3 years, with providers needing to apply and be re-assessed by the Commissioner and re-registered to continue to deliver funded aged care services after the expiration of the initial registration period. Providers can also apply to vary their registration where required during a registration period.
The Commissioner maintains a register of registered providers and former registered providers which is generally required to be published.

A registered provider must comply with key obligations, including conditions on their registration, when delivering funded aged care services. Civil penalties or offences generally apply for failure to meet these obligations. Statutory duties also apply to registered providers (and responsible persons of providers) with individuals able to seek compensation in cases resulting in serious illness or injury.

The Commissioner can revoke or suspend a provider’s registration in certain circumstances, including where the entity is no longer suitable to deliver funded aged care services. The Commissioner can also vary a provider’s registration on the Commissioner’s own initiative in certain circumstances.

Separate obligations are also placed on responsible persons and aged care workers of registered providers, including to comply with the Aged Care Code of Conduct.

An aged care worker screening scheme is established which facilitates mutual recognition of worker screening across the aged care and disability sectors.
Chapter 3  Registered providers, aged care workers and aged care digital platform operators
Part 2  Provider registration process
Division 1  Applications for registration and registration decisions

Section 66

Part 2—Provider registration process

Division 1—Applications for registration and registration decisions

66 Registration of providers

(1) An entity may apply to the Commissioner to be registered as a registered provider.

(2) The application must:
   (a) be in an approved form; and
   (b) be accompanied by the application fee (if any) prescribed by the rules.

Note 1: The Commissioner is not required to make a decision on the application if this subsection is not complied with: see section 403.

Note 2: The application can be withdrawn: see section 404.

(3) Without limiting subsection (2), the application must specify:
   (a) each provider registration category that the entity is applying to be registered in; and
   (b) each service type (the intended service types) that funded aged care services are in that the entity intends to deliver; and
   (c) each service group through which the entity intends to deliver those service types; and
   (d) any specialist aged care program the entity intends to deliver those service types under; and
   (e) each residential care home (if any) that the entity is applying for approval for; and
   (f) any information prescribed by the rules for each residential care home specified in the application in accordance with paragraph (e); and
   (g) each responsible person of the entity; and
   (h) any other information prescribed by the rules.
(4) Despite subsection (1), an entity may not make an application under that subsection if, at the time of making the application, the entity is already a registered provider and the remaining registration period is more than the period prescribed by the rules.

67 Commissioner must decide whether to register the entity

(1) The Commissioner must consider an application made by an entity under section 66, and the registration requirements in Subdivision B, and decide:

(a) whether to register the entity as a registered provider and in which registration categories; and

(b) whether to approve any residential care home in relation to the entity.

Note 1: The Commissioner may decide to register an entity in some, but not all, provider registration categories that the entity specifies in the entity’s application: see subsection 68(2).

Note 2: The Commissioner may decide to approve some, but not all, residential care homes that an entity specifies in the entity’s application: see subsection 68(3).

Note 3: If the Commissioner decides to register an entity in a registration category, the registration in that category will have effect in relation to certain service groups: see section 72.

Note 4: If the Commissioner decides to register the entity as a registered provider of funded aged care services, the entity is subject to the conditions on registered providers set out in Part 3.

(2) The decision under subsection (1) must be made within the period prescribed by the rules, or the period worked out in accordance with a method prescribed by the rules.
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Division 2—Registration requirements

68 Registration requirements

General requirements

(1) The Commissioner must not register an entity as a registered provider unless the Commissioner is satisfied that:

(a) the entity has an ABN; and

(b) the entity is suitable to deliver funded aged care services having regard to the following:

(i) the entity’s compliance with any law of the Commonwealth or any law of a State or Territory in which the entity operates (including any history of non-compliance with such laws);

(ii) whether a banning order or an NDIS banning order against the entity is, or has at any time been, in force;

(iii) if the entity was previously a registered provider, an approved provider or a registered NDIS provider—that registration was not revoked (other than on request by the entity);

(iv) if the entity is a registered provider or a registered NDIS provider—the registration is not suspended;

(v) the entity’s previous experience in delivering funded aged care services in the entity’s intended service types or other similar services;

(vi) any other matter prescribed by the rules; and

(c) each responsible person of the entity is suitable to deliver funded aged care services having regard to the suitability matters; and

(d) the entity satisfies the requirements in subsection (2) for at least one of the provider registration categories specified in the entity’s application under paragraph 66(3)(a); and

(e) the entity satisfies any other requirements prescribed by the rules.
(2) For each provider registration category specified in an entity’s application under paragraph 66(3)(a), the Commissioner must be satisfied of the following before deciding to register the entity in that provider registration category under paragraph 67(1)(a):

(a) the entity’s intended service types include service types that are in the provider registration category and the entity intends to deliver those service types in the 3 year period after the application is made;

(b) the entity has an understanding of the funded aged care services in the intended service types;

(c) the entity has the commitment, capability and capacity (including through any systems the entity has, or proposes to have), to deliver funded aged care services in the intended service types;

(d) if any of the funded aged care services in the intended service types are services delivered in a residential care home—at least one residential care home specified in the entity’s application under paragraph 66(3)(e) meets the residential care home requirements in subsection (3);

(e) for a provider registration category prescribed by the rules—either:

(i) an audit conducted in accordance with rules made for the purposes of section 69 has found the entity will be able to comply with the Aged Care Quality Standards that apply to the provider registration category; or

(ii) circumstances prescribed by the rules apply in relation to the entity and the provider registration category;

(f) the entity has a record of sound financial management and has methods that the entity uses, or proposes to use, in order to ensure sound financial management in relation to the delivery of the funded aged care services in the intended service types;

(g) any other requirements prescribed by the rules.
Chapter 3 Registered providers, aged care workers and aged care digital platform operators
Part 2 Provider registration process
Division 2 Registration requirements

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Residential care home specific requirements

(3) Before deciding to approve a residential care home in relation to the entity under paragraph 67(1)(b), the Commissioner must be satisfied that:

(a) both of the following apply:

(i) the residential care home meets the definition of a residential care home in section 9;

(ii) the entity or residential care home meets any other requirements prescribed by the rules; and

(b) either of the following apply:

(i) no major concerns with the entity’s ability to comply with the Aged Care Quality Standards were found in relation to the home in any audit referred to in subparagraph (2)(e)(i);

(ii) circumstances prescribed by the rules apply in relation to the entity and the residential care home.

Rules may exempt certain providers

(4) However, the rules may prescribe that one or more of the paragraphs in subsection (1) or (2) (other than paragraph (2)(d)) do not apply in relation to an entity in a class of entities prescribed by the rules.

69 Audit requirements

(1) The rules may prescribe requirements relating to conducting an audit of an entity’s ability to comply with the Aged Care Quality Standards for a provider registration category.

(2) Without limiting subsection (1), the rules may prescribe requirements about the following:

(a) how an audit for a provider registration category must be conducted, including required audit activities;

(b) the type and scope of audits that can be conducted for a provider registration category and the circumstances in which a particular type of audit is to be conducted;
(c) fees payable by an entity for an audit for a provider registration category;
(d) audit timeframes for a provider registration category;
(e) requirements (including qualifications) that a person conducting an audit must meet.

Note: For the matters that can be dealt with in the Aged Care Quality Standards: see section 14.

(3) Without limiting subsection (1), the rules may prescribe different requirements for different kinds of registered providers.

Note: Examples of different kinds of registered providers include:
(a) providers delivering funded aged care services under a specialist aged care program; and
(b) providers delivering funded aged care services at a specified number of residential care homes; and
(c) providers that have previously been registered providers in a provider registration category; and
(d) providers that have not previously been registered providers in a provider registration category; and
(e) providers that are applying for approval of a new residential care home; and
(f) providers who are applying for approval of a residential care home that has been previously approved for the provider or another registered provider.
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Division 3  Notice of decisions and other provisions

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Division 3—Notice of decisions and other provisions

70 Notices of possible refusal

(1) The Commissioner must give a written notice under this section in relation to an application made by an entity under section 66 before the Commissioner decides any of the following:

(a) to not register the entity in all the provider registration categories specified in the entity’s application under paragraph 66(3)(a);

(b) to not approve all the residential care homes specified in the entity’s application under paragraph 66(3)(e);

(c) to not register the entity in any provider registration category.

(2) The notice must:

(a) set out the reasons why the Commissioner is considering making the decision; and

(b) invite the applicant to make submissions, in writing, to the Commissioner in relation to the matter within 14 days after receiving the notice, or such longer period as is specified in the notice; and

(c) inform the applicant that the Commissioner may, after considering any submissions made by the entity, still make the decision.

(3) The Commissioner must consider any submissions made by the entity in accordance with the notice.

71 Notice of decision to register

(1) If the Commissioner decides under paragraph 67(1)(a) to register an entity as a registered provider the Commissioner must, within 14 days after making the decision:

(a) give the entity the following:

(i) written notice of the decision;

(ii) a certificate of registration; and
(b) record the details of the entity’s registration on the Provider Register.

(2) The certificate of registration given to the entity must specify:

(a) the name of the entity; and
(b) each provider registration category that the Commissioner decided, under paragraph 67(1)(a), to register the entity in; and
(c) the registration period for the purposes of 74; and
(d) the conditions to which the registration in each provider registration category referred to in paragraph (a) is subject under section 88; and
(e) any residential care home that the Commissioner decided to approve under paragraph 67(1)(b); and
(f) any other matter prescribed by the rules.

Note: If the Commissioner decides not to register the entity in all the provider registration categories specified in the entity’s application, or decides not to approve all the residential care homes specified in the entity’s application, the Commissioner must also give a notice of refusal under section 73.

72 Effect of registration in relation to service groups

(1) If the Commissioner decides to register an entity as a registered provider under paragraph 67(1)(a), the registration has effect in relation to service groups as provided for in this section.

Constitutional corporations

(2) For a registered provider that is a constitutional corporation and registered in a provider registration category (other than the residential care category), the registration in that category only has effect in relation to the following service groups:

(a) home care;
(b) short term restorative care;
(c) home support.
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(3) For a registered provider that is a constitutional corporation and is registered in the provider registration category that is the residential care category, the registration in that category only has effect in relation to the following service groups, where the service types in those groups are delivered in an approved residential care home:

(a) permanent residential care;
(b) residential respite care.

Other entities

(4) For a registered provider that is not a constitutional corporation and is registered in a provider registration category (other than the residential care category), the registration in that category only has effect in relation to the home support service group.

(5) For a registered provider that is not a constitutional corporation and is registered in the provider registration category that is the residential care category, the registration in that category only has effect in relation to the following service groups, where the service types in those groups are delivered in an approved residential care home:

(a) permanent residential care;
(b) residential respite care.

Note 1: To deliver a funded aged care service in a service type, a registered provider must be registered in the registration category that the service type is in and the registration in that category must have effect under this section in relation to the service group the service type is being delivered through. The individual accessing the service must also have an access approval in effect to access the service through that service group.

Note 2: To deliver service types through certain service groups, or under certain specialist aged care programs, additional requirements may need to be met, such as the provider having an agreement with the Commonwealth to provide the service: see Chapter 4.
73 Notice of refusal decisions

(1) The Commissioner must give written notice to an entity of any of the following decisions:
   (a) a decision under paragraph 67(1)(a) to not register the entity in a provider registration category;
   (b) a decision under paragraph 67(1)(b) to not approve a residential care home;
   (c) a decision under paragraph 67(1)(a) to not register the entity in any provider registration category.

(2) The notice must be given within 14 days after the decision is made.

(3) The notice must include:
   (a) the decision;
   (b) the reasons for the decision;
   (c) how the entity may apply for reconsideration of the decision.

74 Registration period

(1) For the purposes of paragraph 71(2)(c), the registration period for a registered provider is the period that starts on the day the decision is made to register the provider under section 67 and ends at:
   (a) the end of the period of 3 years; or
   (b) if the Commissioner determines a shorter or longer registration period under subsection (2)—the end of that period; or
   (c) the end of the day that the entity’s registration is revoked.

(2) For the purposes of paragraph (1)(b), the Commissioner may determine a shorter or longer registration period if the Commissioner is satisfied that it is appropriate to do so having regard to all of the circumstances.
Section 75

75 Deemed registration

(1) The System Governor may determine, in writing, that an entity in a class of entities prescribed by the rules is taken to be registered as a registered provider.

(2) The determination under subsection (1) must specify in relation to the entity:

(a) the name of the entity; and

(b) the registration period, being 3 months or such longer period as is specified in the determination; and

(c) each provider registration category in which the entity is taken to be registered under paragraph 67(1)(a); and

(d) the conditions to which the deemed registration in each of those categories is taken to be subject to under Part 3; and

(e) each residential care home that is taken to have been approved under paragraph 67(1)(b); and

(f) any other matter prescribed by the rules.

(3) The System Governor must not make a determination under subsection (1) unless the System Governor is satisfied that:

(a) a situation of emergency exists that could result in, or has resulted in, another entity being unable to deliver funded aged care services; and

(b) a determination made under this section would ensure that the delivery of certain funded aged care services did not cease, or would resume.

(4) If the System Governor makes a determination under subsection (1), the System Governor must give notice of the determination and a certificate of registration to the entity and the Commissioner.
Part 3—Variations, suspensions and revocations of registration

76 Variation of registration on Commissioner’s own initiative

(1) The Commissioner may at any time, on the Commissioner’s own initiative, vary the registration of a registered provider to:

(a) vary or revoke a condition to which the registration is subject under section 89; or

(b) impose a new condition to which the registration is subject under that section; or

(c) remove the provider from being registered in a provider registration category; or

(d) reduce or extend the period for which the registration is in force; or

(e) remove a residential care home approved in relation to the provider.

(2) However, the Commissioner must only vary the registration of a registered provider under subsection (1) if the Commissioner considers it appropriate in all the circumstances to do so.

77 Variation of registration on application by registered provider

(1) The Commissioner may on application by a registered provider, vary the registration of a registered provider to:

(a) register the provider in a new provider registration category; or

(b) remove the provider from being registered in a provider registration category; or

(c) approve a new residential care home in relation to the provider; or

(d) remove a residential care home approved in relation to the provider; or
Section 78

(e) vary or revoke a condition to which the registration is subject under section 89; or

(f) impose a new condition to which the registration is subject under that section.

(2) The application must:

(a) be in the approved form; and

(b) be accompanied by the application fee (if any) prescribed by the rules.

Note: The Commissioner is not required to make a decision on the application if this subsection is not complied with (see section 403).

(3) However, the Commissioner must not vary the registration unless:

(a) the Commissioner considers it appropriate in all the circumstances to do so; and

(b) for a variation to register the provider in a new provider registration category—the Commissioner is satisfied of all the matters referred to in subsection 68(2) in relation to the provider and the category; and

(c) for a variation to approve a new residential care home—the Commissioner is satisfied of all the matters referred to in subsection 68(3) in relation to the provider and the residential care home.

78 Notice of possible variation of registration

(1) Before the Commissioner decides to vary the registration of a registered provider under subsection 76(1) in a way that may have a significant adverse impact on the provider’s delivery of funded aged care services, the Commissioner must, by written notice, notify the registered provider that the Commissioner is considering making that decision.

Note: An example of a variation that would have a significant adverse impact on the provider’s delivery of funded aged care services includes the removal of a residential care home that was approved for the provider.

(2) The notice must:
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(a) set out the reasons why the Commissioner is considering making a decision to vary the registration of the registered provider; and

(b) invite the registered provider to make submissions, in writing, to the Commissioner in relation to the matter within 14 days after receiving the notice, or such longer period as is specified in the notice; and

(c) inform the registered provider that the Commissioner may, after considering any submissions made by the registered provider, decide to vary the registration of the registered provider.

(3) The Commissioner must consider any submissions made by the registered provider in accordance with the notice.

79 Notice of possible refusal to vary registration

(1) Before the Commissioner decides not to vary the registration of a registered provider under subsection 77(1), the Commissioner must, by written notice, notify the registered provider that the Commissioner is considering making that decision.

(2) The notice must:

(a) set out the reasons why the Commissioner is considering making a decision not to vary the registration of the registered provider; and

(b) invite the registered provider to make submissions, in writing, to the Commissioner in relation to the matter within 14 days after receiving the notice, or such longer period as is specified in the notice; and

(c) inform the registered provider that the Commissioner may, after considering any submissions made by the registered provider, decide not to vary the registration of the registered provider.

(3) The Commissioner must consider any submissions made by the registered provider in accordance with the notice.
Section 80

80 Notice of decision to vary

(1) If the Commissioner decides under subsection 76(1) or 77(1) to vary the registration of a registered provider, the Commissioner must, within 14 days after making the decision:

(a) give the entity the following:
   (i) notice of the decision;
   (ii) the certificate of registration as varied; and

(b) update the details of the entity’s registration on the Provider Register.

(2) The notice under paragraph (1)(a) must include:

(a) the decision;

(b) the reasons for the decision;

(c) how the entity may apply for reconsideration of the decision.

(3) A variation of the registration of a registered provider takes effect on the day specified in the notice given under subparagraph (1)(a)(i).

81 Notice of decision not to vary

(1) If the Commissioner decides under subsection 77(1) not to vary the registration of a registered provider, the Commissioner must give notice of the decision within 14 days after the day the decision is made.

(2) The notice under subsection (1) must include:

(a) the decision; and

(b) the reasons for the decision; and

(c) how the entity may apply for reconsideration of the decision.

82 Extension of registration period—pending applications

(1) Subsection (2) applies if:

(a) the registration of an entity as a registered provider will cease to be in force on a particular day; and
(b) in the period prescribed by the rules before that day, the entity makes an application under section 66 to be registered as a registered provider.

(2) Despite paragraph 71(2)(c) (which relates to the registration period specified on the certificate of registration), the registration of the registered provider continues in force until the Commissioner makes a decision on the application under section 67.

83 Suspension of registration

Suspension on Commissioner’s own initiative

(1) The Commissioner may, in writing, suspend the registration of an entity as a registered provider for a specified period if:

(a) the Commissioner reasonably believes that the entity has contravened, is contravening, or is proposing to contravene, this Act; or

(b) the Commissioner reasonably believes that the application for registration by the entity contained information that was false or misleading in a material particular; or

(c) the entity is an insolvent under administration; or

(d) the Commissioner is satisfied that the entity is no longer suitable to deliver funded aged care services, having regard to any matters prescribed by the rules; or

(e) the Commissioner is satisfied that the responsible persons of the entity are no longer suitable to be involved in the delivery of funded aged care services, having regard to any matters prescribed by the rules; or

(f) a circumstance exists that is a circumstance prescribed by the rules.

(2) The period specified under subsection (1) must either:

(a) not be longer than 90 days; or

(b) be expressed to end upon the entity satisfying a specified condition.
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(3) To avoid doubt, subsection (2) does not prevent the Commissioner suspending the registration of an entity as a registered provider more than once.

(4) In deciding whether to suspend the registration of an entity under subsection (1), the Commissioner must have regard to the following matters:

(a) the nature, significance and persistence of any contravention, or proposed contravention, of this Act;
(b) action that can be taken to address any contravention, or proposed contravention, of this Act;
(c) the extent (if any) to which the entity is delivering funded aged care services in a way that may cause harm to, or jeopardise, public trust in the Commonwealth aged care system;
(d) the safety, health or wellbeing of individuals accessing funded aged care services delivered by the entity;
(e) any other matter the Commissioner considers relevant.

Suspension at the request of registered provider

(5) The Commissioner may, in writing, suspend the registration of an entity as a registered provider for a specified period if the entity requests the Commissioner, in writing, to suspend the registration.

(6) In deciding whether to suspend the registration of an entity under subsection (5), the Commissioner must consider whether appropriate arrangements are in place to ensure continuity of care for individuals to whom the provider is delivering funded aged care services.

84 Revocation of registration

Revocation on Commissioner’s own initiative

(1) The Commissioner may, in writing, revoke the registration of an entity as a registered provider if:
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(a) the Commissioner reasonably believes that the entity has contravened, is contravening, or is proposing to contravene, this Act; or

(b) the application for registration by the entity contained information that was false or misleading in a material particular; or

(c) the entity is an insolvent under administration; or

(d) the Commissioner is satisfied that the entity is no longer suitable to deliver funded aged care services, having regard to any matters prescribed by the rules; or

(e) the Commissioner is no longer satisfied that the responsible persons of the entity are suitable to deliver funded aged care services, having regard to any matters prescribed by the rules; or

(f) a circumstance exists that is a circumstance prescribed by the rules.

(2) In deciding whether to revoke the registration of an entity under subsection (1), the Commissioner must have regard to the following matters:

(a) the nature, significance and persistence of any contravention, or proposed contravention, of this Act;

(b) action that can be taken to address any contravention, or proposed contravention, of this Act;

(c) the extent (if any) to which the entity is conducting its affairs as a registered provider in a way that may cause harm to, or jeopardise, public trust in the Commonwealth aged care system;

(d) the safety, health or wellbeing of individuals accessing funded aged care services delivered by the entity;

(e) any other matter the Commissioner considers relevant.

Revocation at the request of registered provider

(3) The Commissioner may, in writing, revoke the registration of an entity as a registered provider if the entity requests the Commissioner, in writing, to revoke the registration.
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(4) In deciding whether to revoke the registration of an entity under subsection (3), the Commissioner must consider whether appropriate arrangements are in place to ensure continuity of care for individuals to whom the provider is delivering funded aged care services.

85 Notice of possible suspension or revocation

(1) Before deciding to suspend or revoke the registration of an entity under subsection 83(1) or 84(1), the Commissioner must notify the entity that suspension or revocation is being considered. The notice must be in writing and must:

(a) set out the reasons why the Commissioner is considering the suspension or revocation; and

(b) invite the entity to make submissions, in writing, to the Commissioner in relation to the matter within 14 days after receiving the notice, or such longer period as is specified in the notice; and

(c) inform the entity that if no submissions are made within the period specified in the notice, any suspension or revocation may take effect as early as 7 days after the end of the period specified in the notice.

(2) In deciding whether to suspend or revoke the registration under subsection 83(1) or 84(1), the Commissioner must consider any submissions given to the Commissioner in accordance with the notice.

86 Notice of decision

Commissioner initiated decisions

(1) The Commissioner must notify an entity, in writing, of a decision to suspend or revoke the registration of the entity under subsection 83(1) or 84(1).

(2) The notice under subsection (1) must include:

(a) the decision; and
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(b) the reasons for the decision; and
(c) how the entity may apply for reconsideration of the decision.

Decisions on request by registered entity

(3) The Commissioner must notify an entity, in writing, of a decision
to suspend or revoke the registration of the entity under
subsection 83(5) or 84(3).

(4) A notice under subsection (3) must include:
(a) the day the suspension or revocation takes effect (which must
not be earlier than the day the notice is given); and
(b) for a suspension—the period for which the suspension is in
force.

87 Register of registered providers

(1) The Commissioner must establish and maintain a register for the
purposes of this Act, to be known as the Provider Register.

(2) The Provider Register may be kept in any form that the
Commissioner considers appropriate.

(3) The Provider Register must include each of the following in
relation to the registration of a registered provider in a registration
category:
(a) the name of the registered provider;
(b) the ABN (if any) of the registered provider;
(c) the business location of the provider;
(d) the registration period;
(e) each registration category the provider is registered in;
(f) if the provider delivers funded aged care services in one or
more approved residential care homes—the name and
address of each of those homes;
(g) if the provider delivers funded aged care services in a home
or community setting—each local government area in which
the provider delivers those services;
(h) whether the registration is in effect or is suspended;
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(i) if the provider has given an undertaking under section 114 of the Regulatory Powers Act (as applied by section 246 of this Act)—information about the undertaking;

(j) if a compliance notice has been given to the provider under section 269 or 270—information about the compliance notice;

(k) if a banning order against the provider is in force under section 286—information about the banning order;

(l) any other matter prescribed by the rules.

(4) The Provider Register may include any of the following in relation to an entity who was a registered provider:

(a) the name of the entity;

(b) the entity’s ABN (if any);

(c) the address of the entity;

(d) if the entity was a registered provider and the entity’s registration was revoked on the Commissioner’s initiative—information about the revocation;

(e) any other matter prescribed by the rules.

(5) The Provider Register must include each of the following in relation to a responsible person, or an aged care worker, of a registered provider against whom a banning order is in force under section 287:

(a) the name of the person or worker;

(b) the person’s or worker’s ABN (if any);

(c) information about the banning order;

(d) any other matter prescribed by the rules.

(6) The Provider Register may include each of the following in relation to a responsible person, or an aged care worker, of a registered provider against whom a banning order was in force under section 287:

(a) the name of the person or worker;

(b) the person’s or worker’s ABN (if any);

(c) information about the banning order;
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(d) any other matter prescribed by the rules.

(7) The rules may make provision for and in relation to the following:

(a) the correction of entries in the Provider Register;

(b) the publication of the Provider Register in whole or part, or of specified information entered on the Provider Register;

(c) any other matter relating to the administration or operation of the Provider Register.
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Part 4  Obligations of registered providers etc and conditions on registration of registered providers

Division 1  Conditions on provider registration

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Part 4—Obligations of registered providers etc and conditions on registration of registered providers

Division 1—Conditions on provider registration

88 Conditions of registration

(1) The registration of a registered provider is subject to the following conditions:
(a) the conditions set out in this Division that apply in relation to the provider;
(b) any conditions prescribed by the rules that apply in relation to the provider;
(c) any conditions imposed on the registration by the Commissioner under section 89.

Note: The conditions set out in this Division may only apply to certain kinds of registered providers or certain provider registration categories.

(2) Without limiting paragraph (1)(b), the rules may prescribe different requirements for different kinds of registered providers.

Note: For example, the rules might prescribe different rules for registered providers in different provider registration categories or registered providers delivering funded aged care services under different specialist aged care programs.

(3) An entity contravenes this subsection if:
(a) the entity is a registered provider; and
(b) the entity engages in conduct; and
(c) the conduct breaches a condition to which the entity’s registration is subject.

Civil penalty: 250 penalty units.

(4) An entity contravenes this subsection if:
(a) the entity is a registered provider; and
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(b) the entity engages in conduct; and
(c) the conduct breaches a condition to which the entity’s registration is subject; and
(d) the conduct:
   (i) involves a significant failure; or
   (ii) is part of a systematic pattern of conduct.

Civil penalty: 500 penalty units.

89 Conditions imposed by the Commissioner

(1) The Commissioner may impose conditions on the registration of a registered provider.

(2) A condition may be imposed:
   (a) at the time of registration; or
   (b) at a later time in accordance with subsection 76(1) or 77(1).

(3) The conditions may include, but are not limited to, conditions relating to the following matters:
   (a) the quality and safety of funded aged care services delivered by a registered provider;
   (b) the rules made for the purposes of subsection 69(1) (which deals with audit requirements);
   (c) any additional reporting requirements that a registered provider must comply with;
   (d) the Financial and Prudential Standards;
   (e) the Aged Care Code of Conduct;
   (f) requirements relating to the funded aged care services that a registered provider may or may not deliver.

90 Compliance with Aged Care Code of Conduct

It is a condition of registration that a registered provider must:

(a) comply with the Aged Care Code of Conduct;
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(b) take reasonable steps to ensure that the aged care workers, and the responsible persons, of the registered provider comply with the Aged Care Code of Conduct.

91 Workforce and aged care worker requirements

It is a condition of registration that a registered provider must:

(a) comply with the worker screening requirements prescribed by the rules; and

(b) ensure that aged care workers and responsible persons of the provider comply with the worker screening requirements prescribed by the rules; and

(c) ensure that aged care workers meet any qualifications and training requirements prescribed by the rules; and

(d) ensure that aged care workers meet any other requirements prescribed by the rules.

92 Rights and principles

Rights

(1) It is a condition of registration that a registered provider that is registered in a provider registration category prescribed by the rules must:

(a) demonstrate that the provider understands the rights of individuals under the Statement of Rights; and

(b) have in place practices designed to ensure delivery of funded aged care services by the registered provider is not incompatible with the rights of individuals under the Statement of Rights.

Principles—person-centred aged care system

(2) It is a condition of registration that a registered provider that is registered in a provider registration category prescribed by the rules must demonstrate that the provider understands that the
safety, health, wellbeing and quality of life of individuals is the primary consideration in the delivery of funded aged care services.

93 Personal information and record keeping

It is a condition of registration that a registered provider must:
(a) keep, and retain, the kinds of records prescribed by the rules, in accordance with any requirements prescribed by the rules; and
(b) do so, in a manner consistent with the requirements in section 117.

94 Fees and payments

It is a condition of registration that a registered provider must comply with any requirements that are prescribed by the rules relating to fees to be paid by individuals accessing funded aged care services.

95 Incident management

It is a condition of registration that a registered provider that is registered in a provider registration category prescribed by the rules must:
(a) implement and maintain an incident management system in accordance with any requirements prescribed by the rules; and
(b) manage, and take reasonable steps to prevent, incidents in accordance with any requirements prescribed by the rules; and
(c) not victimise or discriminate against anyone for reporting an incident.

96 Complaints and whistleblowers

It is a condition of registration that a registered provider:
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(a) implement and maintain a complaints and feedback management system in accordance with any requirements prescribed by the rules; and
(b) manage complaints and feedback in accordance with that system and any other requirements prescribed by the rules; and
(c) not victimise or discriminate against anyone for making a complaint or giving feedback; and
(d) maintain a whistleblower policy in accordance with any requirements prescribed by the rules.

97 Compliance with Aged Care Quality Standards

It is a condition of registration that a registered provider that is registered in a provider registration category prescribed by the rules must comply with the Aged Care Quality Standards.

98 Compliance with Financial and Prudential Standards

(1) It is a condition of registration that a registered provider must comply with the Financial and Prudential Standards.
(2) It is a condition of registration that a registered provider that is registered in a provider registration category that is the residential care category or a category prescribed by the rules must comply with any additional prudential requirements prescribed by the rules.

99 Continuous improvement

(1) It is a condition of registration that a registered provider that is registered in a provider registration category prescribed by the rules must demonstrate the capability for, and commitment to, continuous improvement towards the delivery of high quality care.
(2) It is a condition of registration that a registered provider that is registered in a provider registration category prescribed by the rules must have a continuous improvement plan.

100 Membership of governing bodies

(1) This section applies to a registered provider that is an entity other than:

(a) a government entity; or

(b) a local government authority; or

(c) a registered provider of a kind prescribed by the rules.

(2) Subject to subsections (3), (4) and (5), it is a condition of registration that a registered provider must ensure that:

(a) a majority of the members of the governing body of the provider are independent non-executive members; and

(b) if the provider is a registered provider of a kind prescribed by the rules—at least one member of the governing body of the provider has experience in the provision of clinical care.

(3) Subsection (2) does not apply in relation to a registered provider at a particular time if both of the following apply at that time:

(a) the governing body of the provider has fewer than 5 members;

(b) the provider delivers funded aged care services to fewer than 40 individuals accessing funded aged care services.

(4) Subsection (2) does not apply in relation to a registered provider at a particular time if, at that time, the provider is a kind of body that is known as an Aboriginal Community Controlled Organisation.

(5) Paragraph (2)(a) or (b) does not apply in relation to a registered provider at a particular time if a determination under section 102 that the requirement set out in that paragraph does not apply in relation to the provider is in force at that time.
**EXPOSURE DRAFT**

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**101 Advisory body requirements**

(1) It is a condition of registration that a registered provider that is of a kind prescribed by the rules must:

(a) establish, and continue in existence, a body (the *quality care advisory body*) that:

(i) complies with the requirements about membership prescribed by the rules; and

(ii) is required, at least once every 6 months, to give the governing body of the provider a written report about the quality of the funded aged care services delivered by the provider; and

(iii) is able, at any time, to give feedback to the governing body of the provider about the quality of the funded aged care services delivered by the provider; and

(b) require the governing body of the provider:

(i) to consider such a report, or any such feedback, when making decisions in relation to the quality of the funded aged care services delivered by the provider; and

(ii) to advise, in writing, the quality care advisory body how the governing body considered such a report or any such feedback.

(2) A report given under subparagraph (1)(a)(ii) must comply with any requirements prescribed by the rules.

(3) It is a condition of registration that the registered provider must, if requested to do so by the quality care advisory body, give the body information about the quality of the funded aged care services delivered by the provider.

(4) It is a condition of registration that a registered provider that is of a kind prescribed by the rules must:

(a) offer, at least once every 12 months, individuals accessing funded aged care services and their supporters and representatives the opportunity to establish one or more bodies (the *consumer advisory bodies*) to give the governing...
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body of the provider feedback about the quality of the funded aged care services delivered by the provider; and

(b) if one or more consumer advisory bodies are established—
require the governing body of the provider:

(i) to consider any such feedback given by the body or bodies when making decisions in relation to the quality of the funded aged care services delivered by the provider; and

(ii) to advise, in writing, the body or bodies how the governing body considered any such feedback.

(5) The offer under paragraph (4)(a) must be made in writing.

102 Determination that certain conditions relating to the governing body of a registered provider do not apply

Application for determination

(1) A registered provider may apply to the Commissioner for a determination that either or both of the following conditions (the governance conditions) do not apply in relation to the provider:

(a) the condition set out in paragraph 100(2)(a);
(b) the condition set out in paragraph 100(2)(b).

(2) The application must:

(a) be made in writing; and

(b) be in an approved form; and

(c) be accompanied by the application fee (if any) prescribed by the rules.

Making of determination

(3) If a registered provider makes an application under subsection (1), the Commissioner may determine that either or both of the governance conditions do not apply in relation to the provider if the Commissioner is satisfied that it is reasonable to do so.
(4) In deciding whether to make the determination in relation to the registered provider, the Commissioner may take into account the following matters:

(a) the number of funded aged care services that the provider delivers;

(b) the number of individuals to whom the provider delivers those services;

(c) the location of those services;

(d) the annual turnover in the provider’s responsible persons;

(e) the membership of the governing body of the provider;

(f) any arrangements that the provider has made, or proposes to make, to assist:

(i) the members of the governing body of the provider to act objectively and independently in the best interests of the provider; or

(ii) the governing body of the provider to seek, when it considers it necessary to do so, advice from a person with experience in the provision of clinical care;

(g) any other requirements applying to the provider under a law of the Commonwealth or a law of a State or Territory in which the provider operates as a registered provider;

(h) any other matter prescribed by the rules.

Notice of determination etc.

(5) If the Commissioner decides to make the determination in relation to the registered provider, the Commissioner must give the provider written notice of the following:

(a) the making of the determination;

(b) the governance condition to which the determination relates;

(c) the period for which the determination is in force.

Note: The determination may remain in force for a period specified by the Commissioner or until it is revoked under section 103.
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(6) If the Commissioner decides not to make the determination in relation to the registered provider, the Commissioner must give the provider written notice of the following:

(a) the decision;
(b) the reasons for the decision;
(c) how the provider may apply for reconsideration of the decision.

103 Variation or revocation of determination on the Commissioner’s own initiative

(1) The Commissioner may, on the Commissioner’s own initiative, vary or revoke a determination made under subsection 102(3) in relation to a registered provider if the Commissioner is satisfied it is appropriate to do so.

(2) If the Commissioner decides to vary or revoke the determination in relation to the registered provider, the Commissioner must, as soon as is practicable, give the provider a written notice that:

(a) sets out the decision; and
(b) sets out the reasons for the decision; and
(c) specifies the day on which the variation or revocation takes effect; and
(d) states how the person may apply for reconsideration of the decision.

104 Constitution of registered providers that are wholly-owned subsidiary corporations

Corporations under the Corporations Act 2001

(1) If:

(a) a registered provider is a body corporate that is incorporated, or taken to be incorporated, under the Corporations Act 2001; and
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Division 1  Conditions on provider registration

Section 105

1 (b) the provider has a constitution (within the meaning of that Act); and
2 (c) the provider is a wholly-owned subsidiary (within the meaning of that Act) of another body corporate (the holding company); and
3 (d) the holding company is not a registered provider;
4 the registered provider must ensure that the constitution of the provider does not authorise a director of the provider to act in good faith in the best interests of the holding company.

Aboriginal and Torres Strait Islander corporations

(2) If:

(a) a registered provider is an Aboriginal and Torres Strait Islander corporation (within the meaning of the Corporations (Aboriginal and Torres Strait Islander) Act 2006); and
(b) the provider is a wholly-owned subsidiary (within the meaning of that Act) of another body corporate (the holding company); and
(c) the holding company is not a registered provider;
the registered provider must ensure that the constitution of the provider does not authorise a director of the provider to act in good faith in the best interests of the holding company.

105 Delivery of funded aged care services

It is a condition of registration that a registered provider that is registered in a provider registration category prescribed by the rules must:

(a) deliver funded aged care services in accordance with any applicable requirements prescribed by the rules; and
(b) provide and explain, in accordance with any requirements prescribed by the rules, information to an individual accessing funded aged care services; and
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(c) maintain and manage any residential care homes in accordance with any applicable requirements prescribed by the rules.

106 Restrictive practices

It is a condition of registration that a registered provider that is registered in a provider registration category prescribed by the rules must comply with any requirements prescribed by the rules relating to the use of restrictive practices in relation to an individual to whom the provider is delivering funded aged care services.

107 Ceasing the provision of funded aged care services

It is a condition of registration that a registered provider must comply with any requirements prescribed by the rules:

(a) relating to ceasing to deliver a funded aged care service to an individual; or

(b) relating to ceasing to deliver any funded aged care services to any individuals.
Section 108

**Division 2—Registered provider, responsible person and aged care worker obligations**

### 108 Compliance with laws

A registered provider must comply with all applicable requirements imposed by a law of the Commonwealth or a law of a State or Territory in which the provider operates as a registered provider.

### 109 Reporting

(1) A registered provider must:

   (a) if the rules prescribe that a report must be given to a person referred to in subsection (2)—give to that person the information prescribed by the rules in accordance with any requirements prescribed by the rules; and

   (b) report to the Commissioner reportable incidents in accordance with any requirements prescribed by the rules.

(2) The persons are the following:

   (a) the Commissioner;

   (b) the Complaints Commissioner;

   (c) the Inspector-General of Aged Care;

   (d) the System Governor;

   (e) the Pricing Authority.

(3) Without limiting subsection (1), the rules may prescribe requirements about reporting information relating to the following:

   (a) complaints made to a registered provider;

   (b) the workforce, and governance, of a registered provider;

   (c) compliance by a registered provider with requirements relating to nursing services;

   (d) locations at which funded aged care services are delivered by a registered provider;
Section 110

110 Change in circumstances

(1) A registered provider of a kind prescribed by the rules must give notice to the Commissioner of any change of a kind prescribed by the rules in accordance with any requirements prescribed by the rules.

(2) If circumstances prescribed by the rules apply, a notice under subsection (1) must also be given to the System Governor.

(3) Without limiting subsection (1), the rules may prescribe that a registered provider must give notice of a change in relation to the following:
   (a) a change of circumstances or an event that materially affects the provider’s suitability to be a registered provider taking into account the matters referred to in paragraph 68(1)(b) (which deals with suitability of registered providers);
   (b) a change of circumstances that relates to a suitability matter in relation to a responsible person of the provider;
   (c) a change in the responsible persons of the provider;
(d) a significant change in the organisation or governance arrangements of the provider;
(e) a significant change in the scale of the provider in relation to the funded aged care services delivered by the provider;
(f) a change in the service types delivered by the provider relative to the intended service types the provider included on the provider’s application for registration;
(g) specified changes relating to the associated providers of the provider;
(h) specified changes to an approved residential care home;
(i) specified financial and prudential matters.

(4) A notification under subsection (1) or (2) must:
(a) be given within 14 days after the registered provider becomes aware of the change in circumstances or the event occurring; and
(b) be in an approved form; and
(c) include any information prescribed by the rules in relation to a change of circumstances or event of a kind prescribed by the rules.

(5) An entity contravenes this subsection if:
(a) the entity is a registered provider; and
(b) the entity fails to comply with subsection (1) or (2).

Civil penalty: 30 penalty units.

111 Responsible persons of a registered provider must notify of change of circumstances relating to suitability

(1) If:
(a) a person is one of the responsible persons of a registered provider of a kind prescribed by the rules; and
(b) the individual becomes aware of a change of circumstances that relates to a suitability matter in relation to the person;
the person must notify the provider of the change.
Section 112

Determination relating to suitability of responsible persons of a registered provider

(1) The Commissioner may, at any time, determine that a person who is one of the responsible persons of a registered provider is not suitable to be involved in the delivery of funded aged care services.

(2) In deciding whether to make the determination under subsection (1), the Commissioner must consider the suitability matters in relation to the person.

(3) Subsection (2) does not limit the matters the Commissioner may consider in deciding whether to make the determination under subsection (1) in relation the person.

Notice of intention to make determination

(4) Before the Commissioner makes the determination in relation to a person who is one of the responsible persons of the registered provider, the Commissioner must, by written notice, notify the person and the provider that the Commissioner is considering making such a determination.
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(5) The notice must:
   (a) set out the reasons why the Commissioner is considering making the determination in relation to a person who is one of the responsible persons of the registered provider; and
   (b) invite the person and the provider to make submissions, in writing, to the Commissioner in relation to the matter within:
      (i) 14 days after receiving the notice; or
      (ii) if a shorter period is specified in the notice—that shorter period; and
   (c) inform the person and the provider that the Commissioner may, after considering any submissions made by them, decide to make the determination.

(6) The Commissioner must consider any submissions made by the person and the registered provider in accordance with the notice.

Notice of determination

(7) If the Commissioner decides to make the determination in relation to a person who is one of the responsible persons of the registered provider, the Commissioner must, within 14 days after making the decision, give the person and the provider a written notice that:
   (a) sets out the decision; and
   (b) sets out the reasons for the decision; and
   (c) states that the provider must, within a specified period, take specified action to ensure that the person ceases to be one of the responsible persons of the provider; and
   (d) sets out the effect of sections 113 and 114.

113 Offence relating to failure to take action as required by determination

An entity commits an offence if:
   (a) the entity is a registered provider; and

114 Aged Care Bill 2023
Section 114

114 Offence relating to failure to comply with responsibility to consider suitability matters relating to responsible persons

(1) A registered provider of a kind prescribed by the rules must, in relation to a person who is one of the responsible persons of the registered provider:

(a) at least once every 12 months:
   (i) consider the suitability matters in relation to the person in accordance with any requirements prescribed by the rules; and
   (ii) be reasonably satisfied that the person is suitable to be involved in the delivery of funded aged care services; and

(b) keep a record of those matters that complies with any requirements prescribed by the rules; and

(c) comply with any other requirements prescribed by the rules.

(2) An entity commits an offence if:

(a) the entity is a registered provider; and

(b) the entity fails to comply with subparagraph (1)(a)(i).

Penalty: 300 penalty units.
Section 115

115 Cooperation with other persons

(1) A registered provider must cooperate with any person who is performing functions, or exercising powers, under this Act.

Note: The expression this Act (see section 7) includes:

(a) legislative instruments made under this Act; and

(b) the Regulatory Powers Act as it applies in relation to this Act.

(2) A registered provider must cooperate with, and provide all reasonable facilities and assistance necessary to, any person who is undertaking activities mentioned in paragraph 131A(1)(c) of the National Health Reform Act 2011 for the purposes of the Pricing Authority performing the function mentioned in paragraph 131A(1)(a) of that Act.

(3) Without limiting subsection (1) or (2), cooperating with a person includes providing access to any approved residential care home of the registered provider.

116 Registered nurses

(1) A registered provider must ensure that at least one registered nurse is on site, and on duty, at all times at an approved residential care home of the registered provider.

(2) Subsection (1) does not apply if:

(a) the System Governor grants the registered provider an exemption in accordance with any rules made for the purposes of subsection (3); or

(b) the registered provider is delivering funded aged care services at the approved residential care home under a specialised aged care program that is prescribed by the rules.

(3) The rules may make provision for, or in relation to, the granting of an exemption to the requirement in subsection (1).

(4) Without limiting subsection (3), rules made for the purposes of that subsection must:
Section 117

(a) provide for the circumstances in which an exemption from
subsection (1) may be granted (on application or otherwise)
to a registered provider in relation to an approved residential
care home; and

(b) provide that before granting such an exemption, the System
Governor must be satisfied that the provider has taken
reasonable steps to ensure that the clinical care needs of the
individuals residing in the approved residential care home
will be met during the period for which the exemption is in
force; and

(c) provide that such an exemption that is granted to a registered
provider in relation to an approved residential care home
must not be in force for more than 12 months; and

(d) provide that more than one such exemption may be granted
to a registered provider in relation to an approved residential
care home; and

(e) provide for the conditions that may apply to such an
exemption that is granted to a registered provider in relation
to an approved residential care home.

(5) If an exemption from subsection (1) is granted to a registered
provider in relation to an approved residential care home, the
System Governor must make publicly available information about
the exemption, including:

(a) the name of the registered provider and the approved
residential care home; and

(b) the period for which the exemption is in force; and

(c) any conditions that apply to the exemption; and

(d) any other information of a kind prescribed by the rules.

117 Protection of personal information

(1) A registered provider must ensure the protection of personal
information, relating to an individual to whom the registered
provider delivers funded aged care services, including as follows:

(a) the personal information must not be used other than:
Chapter 3  Registered providers, aged care workers and aged care digital platform operators

Part 4  Obligations of registered providers etc and conditions on registration of registered providers

Division 2  Registered provider, responsible person and aged care worker obligations

Section 118

(i) for a purpose connected with the delivery of a funded aged care service to the individual by the registered provider; or
(ii) for a purpose for which the personal information was given by or on behalf of the individual to the registered provider;
(b) except with the written consent of the individual, the personal information must not be disclosed to any other person other than:
(i) for a purpose connected with the delivery of a funded aged care service to the individual by the registered provider; or
(ii) for a purpose connected with the delivery of a funded aged care service to the individual by an associated provider of the registered provider or another registered provider; or
(iii) for a purpose for which the personal information was given by or on behalf of the individual; or
(iv) for the purpose of complying with an obligation under this Act;
(c) the personal information must be protected by security safeguards that it is reasonable in the circumstances to take against the loss or misuse of the information.

(2) This section does not prevent personal information being given to a court, or to a tribunal, authority or person having the power to require the production of documents or the answering of questions, in accordance with a requirement of that court, tribunal, authority or person.

118  Aged care workers of registered providers must comply with Aged Care Code of Conduct

(1) An aged care worker of a registered provider must comply with the provisions of the Aged Care Code of Conduct that apply to the worker.
Section 119

(2) An aged care worker of a registered provider contravenes this subsection if the worker fails to comply with the provisions of the Aged Care Code of Conduct that apply to the worker.

Civil penalty: 250 penalty units.

119 Responsible persons of registered providers must comply with Aged Care Code of Conduct

(1) A responsible person of a registered provider must comply with the provisions of the Aged Care Code of Conduct that apply to the person.

(2) A responsible person of a registered provider contravenes this subsection if the person fails to comply with the provisions of the Aged Care Code of Conduct that apply to the person.

Civil penalty: 250 penalty units.
Part 5—Statutory duty and compensation

Division 1—Provider and responsible person duties

120 Registered provider duty

(1) A registered provider must ensure, so far as is reasonably practicable, that the conduct of the provider does not cause adverse effects to the health and safety of individuals to whom the provider is delivering funded aged care services while the provider is delivering those services.

(2) In this Act, reasonably practicable, in relation to a duty imposed under this Part, means that which is, or was at a particular time, reasonably able to be done, taking into account and weighing up all relevant matters including:

(a) the likelihood of the adverse effect concerned occurring; and
(b) the likely degree of harm from the adverse effect; and
(c) what the person concerned knows, or ought reasonably to know, about ways of preventing the adverse effect; and
(d) the availability and suitability of ways to prevent the adverse effect; and
(e) the rights of individuals under the Statement of Rights.

Note: Under the Statement of Rights, an individual has a right to exercise choice and make decisions that affect the individual’s life, including taking personal risks.

Strict liability offence—serious failures

(3) A registered provider commits an offence of strict liability if:

(a) the provider has a duty under subsection (1); and
(b) the provider engages in conduct that does not comply with the duty; and
(c) the conduct amounts to a serious failure by the provider to comply with the duty.

Penalty:
Chapter 3
Statutory duty and compensation  Part 5
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Section 120

(a) in the case of an offence committed by a registered provider that is an individual—150 penalty units; or
(b) in the case of an offence committed by a registered provider other than an individual—1000 penalty units.

(4) Conduct of a registered provider amounts to a serious failure to comply with the duty in subsection (1) if:
(a) the conduct exposes an individual to whom the duty is owed a risk of death or serious injury or illness; and
(b) the conduct:
   (i) involves a significant failure; or
   (ii) is part of a systematic pattern of conduct.

Strict liability offence—death or serious injury or illness

(5) A registered provider commits an offence of strict liability if:
(a) the provider has a duty under subsection (1); and
(b) the provider engages in conduct; and
(c) the conduct amounts to a serious failure by the provider to comply with the duty; and
(d) the conduct results in the death of, or serious injury to, or illness of, an individual to whom the duty is owed.

Penalty:
(a) in the case of an offence committed by a registered provider that is an individual—500 penalty units; or
(b) in the case of an offence committed by a registered provider other than an individual—4,800 penalty units.

Fault-based offence—death or serious injury or illness

(6) A registered provider commits an offence if:
(a) the provider has a duty under subsection (1); and
(b) the provider engages in conduct; and
(c) the conduct amounts to a serious failure by the provider to comply with the duty; and
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(d) the conduct results in the death of, or serious injury to, or illness of, an individual to whom the duty is owed.

Penalty:

(a) in the case of an offence committed by a registered provider that is an individual—1000 penalty units or 5 years imprisonment or both; or

(b) in the case of an offence committed by a registered provider other than an individual—9,500 penalty units.

General defence of reasonable excuse

(7) Subsection (3), (5) or (6) does not apply if the registered provider has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (7) (see subsection 13.3(3) of the Criminal Code).

121 Responsible person duty

(1) A responsible person of a registered provider must exercise due diligence to ensure that the provider complies with the provider’s duty under section 120.

(2) In this section, due diligence includes taking reasonable steps:

(a) to acquire and maintain knowledge of requirements applying to registered providers under this Act; and

(b) to gain an understanding of the nature of the funded aged care services the registered provider delivers and the potential adverse effects that can result to individuals when delivering those services; and

(c) to ensure that the registered provider has available for use, and uses, appropriate resources and processes to manage adverse effects to health and safety of individuals accessing funded aged care services delivered by the provider; and

(d) to ensure that the registered provider has appropriate processes for receiving and considering information regarding incidents and risks and responding in a timely way to that information; and
(e) to ensure that the registered provider has, and implements, processes for complying with any duty or requirement of the registered provider under this Act.

(3) A responsible person of a registered provider may be convicted or found guilty of an offence under this Act relating to a duty under this section whether or not the registered provider has been convicted or found guilty of an offence under section 120.

Strict liability offence—serious failures

(4) A responsible person of a registered provider commits an offence of strict liability if:

(a) the person has a duty under subsection (1); and

(b) the person engages in conduct that does not comply with the duty; and

(c) the conduct amounts to a serious failure by the responsible person to comply with the duty.

Penalty: 150 penalty units.

(5) Conduct of a responsible person of a registered provider amounts to a serious failure to comply with the duty in subsection (1) if:

(a) the conduct exposes an individual to whom the duty is owed a risk of death or serious injury or illness; and

(b) the conduct:

(i) involves a significant failure; or

(ii) is part of a systematic pattern of conduct.

Strict liability offence—death or serious injury or illness

(6) A responsible person of a registered provider commits an offence of strict liability if:

(a) the person has a duty under subsection (1); and

(b) the person engages in conduct; and

(c) the conduct amounts to a serious failure by the responsible person to comply with the duty; and
(d) the conduct results in the death of, or serious injury to, or illness of, an individual to whom the duty in section 120 is owed by the registered provider.

Penalty: 500 penalty units.

Fault-based offence—death or serious injury or illness

(7) A responsible person of a registered provider commits an offence if:

(a) the person has a duty under subsection (1); and
(b) the person engages in conduct; and
(c) the conduct amounts to a serious failure by the responsible person to comply with the duty.
(d) the conduct results in the death of, or serious injury to, or illness of, an individual to whom the duty in section 120 is owed by the registered provider.

Penalty: 1000 penalty units or 5 years imprisonment or both.

General defence of reasonable excuse

(8) Subsection (4), (6) or (7) does not apply if the responsible person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (8) (see subsection 13.3(3) of the Criminal Code).
Division 2—Other provisions that apply to duties

122 Duties not transferrable

A duty cannot be transferred to another entity.

123 Entity may have more than 1 duty

An entity can have more than 1 duty by virtue of being in more than 1 class of duty holder.

124 More than 1 entity can have a duty

(1) More than 1 entity can concurrently have the same duty.

(2) Each duty holder must comply with that duty to the standard required by this Act even if another duty holder has the same duty.

(3) If more than 1 entity has a duty for the same matter, each entity:

(a) retains responsibility for the entity’s duty in relation to the matter; and

(b) must discharge the entity’s duty to the extent to which the entity has the capacity to influence and control the matter or would have had that capacity but for an agreement or arrangement purporting to limit or remove that capacity.

125 Other duties not affected

This Part does not affect any duty imposed by, or under, any other law of the Commonwealth, or of a State or Territory, or under the common law.

126 Concurrent operation of State and Territory laws

This Part does not exclude or limit the operation of a law of a State or Territory that is capable of operating concurrently with this Part.
1 Division 3—Compensation pathway

127 Compensation orders

(1) The Federal Court or the Federal Circuit and Family Court of Australia (Division 2) may order an entity to compensate an individual for serious injury or illness if:
(a) the entity is found guilty of an offence against this Part; and
(b) the serious injury or illness resulted from the commission of the offence.

(2) The court may make the order only if:
(a) either:
(i) the Commissioner applies for an order under this section with the consent of the individual; or
(ii) the individual applies for an order under this section;
and
(b) the application is made within 6 years of the day the cause of action that relates to the commission of the offence accrued.

(3) If the court makes the order, the amount of compensation specified in the order that is to be paid to the individual may be recovered as a debt due to the individual.
Part 6—Aged care digital platform operators

128 Meaning of aged care digital platform

(1) An aged care digital platform means an online enabled application, website or system operated to facilitate the delivery of services in the aged care system (whether funded aged care services or not), where:

(a) the operator of the application, website or system acts as an intermediary for individuals seeking to access those services who interact with entities providing the services via the application, website or system; and

(b) the operator of the application, website or system requires, and processes, payments referrable to that intermediary function.

(2) An aged care digital platform also means an online enabled application, website or system that is prescribed by the rules.

(3) An aged care digital platform does not include an online application, website or system prescribed by the rules.

(4) For the purposes of subsection (2) or (3), the rules may:

(a) prescribe an online application, website or system by name or by inclusion in a specified class or specified classes; or

(b) prescribe an online application, website or system in respect of all services in the aged care system, or in respect of specified services in the aged care system.

129 Duty of operators of aged care digital platforms

(1) An operator of an aged care digital platform contravenes this subsection if:

(a) an entity represents via the platform that the entity can deliver a service in the aged care system; and

(b) the operator does not check and display on the platform:

(i) whether the entity is a registered provider or not; and
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(ii) if the entity is a registered provider—the registration categories in which the entity is registered.

(2) An operator of an aged care digital platform contravenes this subsection if:

(a) a person represents via the platform that the person can perform work involved in the delivery of a service in the aged care system; and

(b) the operator does not check and display on the platform:

(i) whether the person is an aged care worker of a registered provider or not; and

(ii) if the person is an aged care worker of a registered provider—details of the registered provider and whether the registered provider is satisfied the provider has met the requirements under section 91 in relation to the person.

(3) An entity or person is liable to a civil penalty if the entity or person contravenes subsection (1) or (2).

Civil penalty: 500 penalty units.

130 Other obligations of certain operators of aged care digital platforms

(1) An entity that is a constitutional corporation and the operator of an aged care digital platform must:

(a) notify the Commissioner, in accordance with any requirements prescribed by the rules, that the entity operates the platform; and

(b) implement a complaints management system and manage complaints in accordance with that system and any other requirements prescribed by the rules; and

(c) implement an incident management system and manage incidents in accordance with that system and any other requirements prescribed by the rules; and

(d) display on the platform a summary and explanation of the complaints management system referred to in paragraph (b)
and the incident management system referred to in
paragraph (c); and
(e) report to the Commissioner, the System Governor, the
Complaints Commissioner or the Inspector-General of Aged
Care, any information prescribed by the rules to be reported
to that person; and
(f) display on the platform, in a way that is prominent to
individuals using the platform to access funded aged care
services, the Statement of Rights.

Note: Registered providers, as a condition of their registration, have
obligations in relation to reporting, incident management and
complaints management: see sections 109, 95 and 96.

(2) An entity is liable to a civil penalty if the entity contravenes
subsection (1).

Civil penalty: 250 penalty units.
Chapter 4—Fees, payments and subsidies

Part 1—Introduction

[To be drafted.]

Part 2—Means testing

[To be drafted.]

Part 3—Subsidies

[To be drafted.]

Part 4—Payments and fee arrangements

[To be drafted.]
Chapter 5—Governance of the aged care system

Part 1—Introduction

131 Simplified outline of this Chapter

| The Commonwealth aged care system is governed by the Secretary (known as the System Governor) and the Aged Care Quality and Safety Commissioner (the Commissioner). There is also a Complaints Commissioner and an Aged Care Quality and Safety Advisory Council (the Advisory Council). |
| The System Governor has functions relating to the Commonwealth’s administration of the aged care system, including: |
| (a) facilitating equitable access to funded aged care services; and |
| (b) providing stewardship of the Commonwealth’s administration of the aged care system; and |
| (c) protecting and upholding the integrity of the Commonwealth’s administration of the aged care system and the Commonwealth’s investment in the system. |
| The Commissioner’s functions include the following: |
| (a) safeguarding functions; |
| (b) engagement and education functions; |
| (c) complaints functions; |
| (d) registration of providers functions. |
| The Commissioner may also make the Financial and Prudential Standards. |
| The Commission consists of the Commissioner and the staff of the Commission. The Commission has the function of assisting the |
Commissioner in the performance of the Commissioner’s functions. The Commissioner may also be assisted by certain other officers and employees, and may engage consultants.

The Complaints Commissioner is a member of the staff of the Commission who has the function of assisting the Commissioner in the performance of the Commissioner’s complaints functions.

The Advisory Council consists of a Chair, a Deputy Chair and at least 7, but not more than 11, other members. The members are appointed by the Minister and must have substantial experience or knowledge in a specified field.

The Advisory Council’s functions include the following:

(a) monitoring the performance of the Commissioner’s functions;
(b) providing advice to the Commissioner and the Minister about matters arising in relation to those functions;
(c) supporting the development of the strategic objectives of the Commission and identifying systemic performance issues within the Commission.
Part 2—System Governor

132 Functions of the System Governor

(1) The System Governor has the following functions:

(a) to facilitate equitable access to funded aged care services,
   including in respect of location and individuals who identify
   with a number of diversity characteristics;

(b) to support the continuity of funded aged care services when
   the delivery of services by a registered provider is disrupted;

(c) to provide stewardship of the Commonwealth’s
   administration of the aged care system and encourage the
   delivery of high quality care by:

   (i) developing policy to make ongoing improvements to the
       Commonwealth’s administration of the aged care
       system, including by consulting with individuals of
       diverse backgrounds and individuals who identify with
       a number of diversity characteristics; and

   (ii) promoting the availability of funded aged care services
         in areas of unmet demand; and

   (iii) promoting diversity of registered providers to enable
         individuals to choose between registered providers; and

   (iv) providing education to build the capacity of registered
         providers to adopt best practice in the delivery of
         funded aged care services;

(d) to protect and uphold the integrity of the Commonwealth’s
    administration of the aged care system and the
    Commonwealth’s investment in the system, by:

   (i) collecting, maintaining and providing accurate
       information about the Commonwealth’s administration
       of the aged care system, including on expenditure by
       registered providers on the delivery of funded aged care
       services; and

   (ii) providing oversight of the Commonwealth’s payments
        to registered providers, including ensuring compliance
        with this Act and other relevant requirements;
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(e) to monitor and encourage the training and development of aged care workers;
(f) to review the Commonwealth’s administration of the aged care system, or a part of that system, including undertaking research, evaluation and analysis, such as periodic review of the Aged Care Quality Standards;
(g) any other functions conferred on the System Governor by this Act or any other law of the Commonwealth;
(h) to do anything incidental or conducive to the performance of any of the above functions.

(2) The System Governor may, by notifiable instrument, make guidelines relating to the performance of any of the functions mentioned in subsection (1).

133 Executive power of the Commonwealth

This Part does not limit the executive power of the Commonwealth.

134 Register of coroner’s reports

(1) The System Governor is to maintain a register of reports that:
   (a) are received by the Department from a coroner about the death of an individual accessing funded aged care services; and
   (b) include a recommendation to the Department.

(2) The register must include, in relation to each report, the following information:
   (a) the de-identified circumstances of the death of the individual;
   (b) the recommendations made to the Department;
   (c) a summary of any actions taken by the Department in response to those recommendations;
   (d) any other information prescribed by the rules.

(3) However, the register need not include the report, or certain information referred to in subsection (2) in relation to the report, if
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1 the System Governor is satisfied that the report or information is
2 protected information.

3 (4) The register is to be maintained by electronic means.

4 (5) The register is to be made available for public inspection on the
5 internet.

6 (6) The register is not a legislative instrument.

135 Reporting on the register of coroner’s reports

7 The System Governor must, as soon as practicable after the end of
8 each financial year, prepare and give to the Inspector-General of
9 Aged Care a report on the following matters for that year:
10 (a) the matters listed in paragraphs 134(2)(b) and (c);
11 (b) an evaluation of the effectiveness of any actions of the
12 Department taken under paragraph 134(2)(c).

136 System Governor may request information or documents from
14 persons

15 (1) If the System Governor reasonably believes that a person has
16 information or documents relevant to the System Governor’s
17 functions, the System Governor may request the person to give the
18 System Governor any such information or documents (or copies of
19 any such documents).

20 (2) The person is not required to comply with the request.

21 Note: The System Governor may require a person to attend to answer
22 questions or give information or documents under Division 4 of
23 Part 10 of Chapter 6.
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Part 3  Aged Care Quality and Safety Commission
Division 1  Establishment and functions of the Aged Care Quality and Safety Commission

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Part 3—Aged Care Quality and Safety Commission

Division 1—Establishment and functions of the Aged Care Quality and Safety Commission

137  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 Commission referred to in section 158;

(iv) consultants engaged under section 159; and

(d) the purposes of the Commission include:

(i) the function of the Commission referred to in section 139; and

(ii) the functions of the Commissioner referred to in section 141.

138  Constitution of the Commission

The Commission consists of:

(a) the Commissioner; and

(b) the staff of the Commission.
139 Function of the Commission

The Commission’s function is to assist the Commissioner in the performance of the Commissioner’s functions.
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Part 3  Aged Care Quality and Safety Commission
Division 2  Establishment and functions of the Commissioner

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Division 2—Establishment and functions of the Commissioner

140  Commissioner

(1) There is to be a Commissioner of the Aged Care Quality and Safety Commission.

(2) The Commissioner is to be appointed by the Minister by written instrument.

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

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

141  Functions of the Commissioner

(1) The Commissioner has the following functions:
   (a) the safeguarding functions;
   (b) the engagement and education functions;
   (c) the complaints functions;
   (d) the registration of providers functions;
   (e) any other functions conferred on the Commissioner by this Act or any other law of the Commonwealth;
   (f) to reconsider and review decisions relating to the above functions;
   (g) to do anything incidental or conducive to the performance of the above functions.

(2) The Commissioner may, by notifiable instrument, make guidelines relating to the performance of any of the functions mentioned in subsection (1).

(3) The Commissioner has power to do all things necessary or convenient to be done for or in connection with the performance of the Commissioner’s functions.
(4) In performing the Commissioner’s functions, the Commissioner must:
   (a) take reasonable steps to provide opportunities for individuals accessing funded aged care services to engage with the Commissioner; and
   (b) take into consideration the rights under the Statement of Rights, wishes and views of individuals accessing funded aged care services.

(5) In performing functions under this section, the Commissioner may consult with the following:
   (a) the System Governor;
   (b) the Inspector-General of Aged Care;
   (c) the Pricing Authority.

142 Safeguarding functions

The safeguarding functions of the Commissioner are the following:
   (a) to uphold the rights under the Statement of Rights, and protect and enhance the safety, health, wellbeing and quality of life, of individuals accessing funded aged care services, including through encouraging the delivery of culturally safe, culturally appropriate, trauma aware and healing informed funded aged care services;
   (b) to protect continuity of care through:
      (i) monitoring the financial viability and sustainability of registered providers; and
      (ii) monitoring the compliance of registered providers with their financial and prudential obligations under section 98 and taking proactive steps to prevent non-compliance with those obligations; and
      (iii) taking proactive steps to mitigate prudential and financial risks;
   (c) to promote:
      (i) continuous improvement for registered providers and aged care workers of registered providers; and
(ii) the delivery of high quality care by registered providers; and
(iii) the confidence and trust of individuals in the delivery of funded aged care services;
(d) to ensure registered providers and operators of aged care digital platforms comply with this Act, using the regulatory mechanisms available to the Commissioner under Chapter 6;
(e) to ensure aged care workers and responsible persons of registered providers comply with their obligations under the Aged Care Code of Conduct, using the regulatory mechanisms available to the Commissioner under Chapter 6;
(f) to support registered providers to develop and implement effective incident management systems;
(g) to build the capability of registered providers to prevent and manage reportable incidents;
(h) to oversee the notification and management of reportable incidents and respond where appropriate;
(i) to collect, correlate, analyse and disseminate information relating to reportable incidents to identify trends or systemic issues;
(j) if the Commissioner considers it appropriate to do so, to seek and consider clinical advice relevant to functions of the Commissioner;
(k) if the Commissioner considers it appropriate to do so, to seek and consider any professional advice (including financial advice) relevant to functions of the Commissioner.

143 Engagement and education functions

The *engagement and education functions* of the Commissioner are the following:
(a) to engage with individuals accessing funded aged care services and their supporters, representatives or other people supporting those individuals, to learn about their experiences with aged care services;
(b) to develop, in consultation with individuals accessing funded aged care services and their supporters, representatives or
other people supporting those individuals, best practice
models for the engagement of registered providers and aged
care workers with the individuals accessing those services;
(c) to promote those best practice models to registered providers
and responsible persons and aged care workers of registered
providers;
(d) to engage and educate registered providers, responsible
persons and aged care workers of registered providers,
individuals accessing funded aged care services and their
supporters, representatives or other people supporting those
individuals, and operators of aged care digital platforms, on
the following:
   (i) the rights of individuals under the Statement of Rights;
   (ii) the functions of the Commissioner;
   (iii) the obligations that apply to registered providers under
        Part 4 of Chapter 3;
(e) to build capability of registered providers, responsible
persons and aged care workers of registered providers,
individuals accessing funded aged care services and their
supporters, representatives or other people supporting those
individuals, and operators of aged care digital platforms, to
understand and promote the objectives of this Act;
(f) to collect, correlate, analyse and disseminate information
relating to the Commissioner’s functions.

144 Complaints functions

The complaints functions of the Commissioner are the following:
(a) to uphold the rights under the Statement of Rights, and
   protect and enhance the safety, health, wellbeing and quality
   of life, of individuals accessing funded aged care services, by
   maintaining independent, transparent, accountable,
   accessible, safe and culturally safe processes for:
   (i) making complaints about the compliance with this Act
       of a registered provider or an aged care worker or
       responsible person of a registered provider; and
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(ii) making complaints about a registered provider acting in a way that is incompatible with the Statement of Rights; and

(iii) giving the Commissioner other information (feedback) about a registered provider or aged care worker;

(b) to deal with complaints and feedback received by the Commissioner; and

(c) to collect, correlate, analyse and disseminate information relating to complaints and feedback to identify trends or systemic issues;

(d) for complaints and feedback that is better dealt with by other persons or bodies—to refer the complaints and feedback to those persons or bodies;

(e) to promote a culture for registered providers and aged care workers of raising concerns, open disclosure (including of complaints and feedback) and best practice in handling complaints and feedback, including by developing educational material and promoting the use of advocates;

(f) to promote a culture for registered providers of continuous improvement including considering complaints and feedback and responding to complaints and feedback where appropriate;

(g) to build the capability of individuals to pursue complaints and give feedback;

(h) to build the capability of registered providers to develop a culture of learning and innovation to deliver quality funded aged care services and respond to complaints and feedback;

(i) to support registered providers to develop and implement effective complaints management systems;

(j) to seek and consider clinical advice, professional advice, and advice from other organisations;

(k) to provide analysis of complaints to the Department;

(l) to give the Minister written reports on complaints received by the Commissioner as prescribed by the rules.
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145 Registration of providers functions

The registration of providers functions of the Commissioner are the following:
(a) functions relating to the registration of registered providers by the Commissioner under Part 2 of Chapter 3;
(b) to monitor the delivery of funded aged care services.

146 Commissioner may request information or documents from persons

(1) If the Commissioner reasonably believes that a person has information or documents relevant to the Commissioner’s functions, the Commissioner may request the person to give the Commissioner any such information or documents (or copies of any such documents).

(2) The person is not required to comply with the request.

Note: The Commissioner may require a person to attend to answer questions or give information or documents under Division 4 of Part 10 of Chapter 6.

147 Deputy Commissioners

(1) The Commissioner may, in writing, appoint a person who is a member of the staff of the Commission as a Deputy Commissioner to assist the Commissioner in the performance of the Commissioner’s functions.

(2) The Commissioner may appoint more than one person as a Deputy Commissioner under subsection (1).

148 Appointment of Chief Clinical Advisor

The Commissioner must, in writing, appoint a person who is a member of the staff of the Commission, or a consultant engaged under section 159, as the Chief Clinical Advisor to assist the Commissioner in the performance of the Commissioner’s functions.
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149 Minister may give directions

(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 registered provider or individual accessing, or seeking to access, funded aged care services.

(3) The Commissioner must comply with a direction under subsection (1).

(4) Subsection (2) 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.
Division 3—Administration

150 Acting appointments

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.

151 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 prescribed by the rules.

(2) The Commissioner is to be paid the allowances that are prescribed by the rules.

(3) This section has effect subject to the Remuneration Tribunal Act 1973.

152 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.
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153 Other paid work

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

154 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.

155 Resignation

(1) The Commissioner may resign the Commissioner’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.

156 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 Commissioner’s 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
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(b) the Commissioner is absent, except on leave of absence, for
1 14 consecutive days or for 28 days in any 12 months; or
2 (c) the Commissioner engages, except with the Minister’s
3 approval, in paid work outside the duties of the
4 Commissioner’s office (see section 153); or
5 (d) the Commissioner fails, without reasonable excuse, to
6 comply with section 29 of the Public Governance,
7 Performance and Accountability Act 2013 (which deals with
8 the duty to disclose interests) or rules made for the purposes
9 of that section.
Division 4—Staff of the Commission

157 Staff

(1) The staff of the Commission must 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.

158 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:
   (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.

159 Consultants

The Commissioner may, on behalf of the Commonwealth, engage consultants to assist in the performance of the Commissioner’s functions.
Division 5—Reporting and planning

160 Annual report

(1) 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 (the reporting period) must include the following:

(a) an assessment of the extent to which the Commission’s operations during the reporting period have contributed to the priorities set out in the annual operational plan for the period;

(b) particulars of any variations of the annual operational plan during the reporting period;

(c) an evaluation of the Commission’s overall performance during the reporting period against the performance indicators set out in the operational plan for the reporting period;

(d) a summary of activity undertaken in the reporting period for each of the functions mentioned in subsection 141(1);

(e) the key outcomes achieved by the Commissioner in the reporting period for individuals accessing funded aged care services;

(f) information about the use by the Commissioner of regulatory mechanisms under Chapter 6 in the reporting period;

(g) analysis of complaints received by the Commissioner in the reporting period;

(h) an operational plan for the next reporting period that:

(i) complies with subsection (2); and

(ii) was prepared in accordance with subsection (3);

(i) any other matters prescribed by the rules.

(2) For the purposes of subparagraph (1)(h)(i), the operational plan must:

(a) set out particulars of the action that the Commissioner intends to take during the next reporting 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 next reporting 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 next reporting 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 next reporting period.

(3) For the purposes of subparagraph (1)(h)(ii), in preparing the operational plan, the Commissioner must consult the Minister and the Advisory Council.

161 Minister may request report on matters relating to Commissioner’s functions

(1) The Minister may, by notice in writing given to the Commissioner, request the Commissioner to inquire into and report to the Minister on a matter mentioned in section 141.

(2) When a request is made under subsection (1), the Commissioner must inquire into the matter and give the Minister a report in writing on that matter.

162 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.
Division 6—Financial and Prudential Standards

163 Commissioner may make Financial and Prudential Standards

(1) The Commissioner may, by legislative instrument, make standards in relation to financial and prudential matters.

Note 1: These standards are the Financial and Prudential Standards: see section 7.

Note 2: It is a condition of registration that a registered provider must comply with the Financial and Prudential Standards: see section 98. If a registered provider breaches a condition of registration, the provider may be liable to a civil penalty: see subsection 88(3).

(2) The standards may only deal with the following:

(a) requirements in relation to the liquidity and capital adequacy of registered providers that:

(i) are providing funded aged care services in an approved residential care home; and

(ii) are not government entities;

(b) requirements in relation to the keeping of financial records relating to the delivery of funded aged care services, including records about refundable deposits, accommodation bonds, fees and payments;

(c) requirements in relation to governance systems and strategies that registered providers must have in place to ensure that they remain:

(i) financially viable and sustainable; and

(ii) able to comply with the other applicable requirements in the standards;

(d) requirements in relation to the disclosure and reporting, by registered providers, of information that may assist the Commissioner to:

(i) monitor the financial viability and sustainability of registered providers; and

(ii) monitor the compliance of registered providers with the other applicable requirements in the standards; and
(iii) quantify prudential and financial risk relating to registered providers;
(e) requirements in relation to any other prudential matter prescribed by the rules.

(3) Without limiting subsection (1), the standards may specify different requirements for different kinds of registered providers.

Note: For example, the standards might specify different requirements for registered providers in different registration categories.

(4) Without limiting paragraph (2)(e), rules prescribing a prudential matter for the purposes of that paragraph may also prescribe that any standards made under subsection (1) dealing with that prudential matter only apply to registered providers in a specified registration category.

(5) Subsections (3) and (4) of this section do not limit subsection 33(3A) of the Acts Interpretation Act 1901.

164 Having regard to principles, and consultation, in making standards

(1) In making standards under subsection 163(1), the Commissioner must have regard to the Statement of Principles and the following principles:
(a) for a registered provider to deliver ongoing quality and safe care, the registered provider must remain financially viable and sustainable;
(b) safeguarding of the refundable deposits, accommodation bonds and entry contributions of individuals that are held by registered providers is helped by registered providers:
   (i) remaining financially viable and sustainable; and
   (ii) having responsible management.

(2) The Commissioner must consult the System Governor before making standards under subsection 163(1).
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165 Effect of Financial and Prudential Standards

Standards made under subsection 163(1) that are inconsistent with the rules have no effect to the extent of the inconsistency, but the standards are taken to be consistent with the rules to the extent that the standards are capable of operating concurrently with the rules.
Division 7—Worker screening

Subdivision A—Aged care worker screening database

166 Aged care worker screening database

(1) The Commissioner must establish, operate and maintain a database for the purposes of this Act, to be known as the aged care worker screening database.

(2) The aged care worker screening database must be kept in electronic form.

Purposes of the database

(3) The purposes of the aged care worker screening database are the following:

(a) to maintain, for the purposes of this Act, an up-to-date record of persons who, under decisions made under aged care worker screening laws, have been found, in working, or seeking to work, with individuals accessing funded aged care services not to pose a risk, or to pose a risk, to such individuals;

(b) in relation to persons covered by paragraph (a)—to maintain an up-to-date record of other decisions that relate to the decisions covered by that paragraph;

(c) to share information in the database:

(i) with registered providers that are employers or potential employers of persons; and

(ii) with persons or bodies (whether the persons or bodies are registered providers or not) for the purposes of this Act or for the purposes of those persons or bodies facilitating the employment, engagement or training of other persons to work with individuals accessing funded aged care services; and

(iii) with the Commissioner of the NDIS Quality and Safeguards Commission for the purposes of that
Commissioner performing that Commissioner’s
functions; and
(iv) with the Chief Executive Officer of the National
Disability Insurance Agency for the purposes of
performing the functions of the Agency;
(v) with persons or bodies (including employers and
potential employers) for the purposes of the National
Disability Insurance Scheme;
(d) any other purpose prescribed by the rules.

(4) Paragraphs (3)(a) to (c) do not limit paragraph (3)(d).

Information in the database

(5) The aged care worker screening database may include the
following information for the purposes of subsection (3):
(a) information relating to persons (each of whom is a screening
applicant) who have made applications (each of which is a
screening application) for an aged care worker screening
check and information relating to those applications;
(b) information relating to each screening applicant in respect of
whom a screening application is no longer being considered
and the reasons for this;
(c) information relating to each screening applicant in respect of
whom a decision (a clearance decision) (however described)
is in force, under an aged care worker screening law, to the
effect that the person, in working, or seeking to work, with
individuals accessing funded aged care services does not
pose a risk to such individuals and information relating to the
decision;
(d) information relating to any decisions made under an aged
care worker screening law, in relation to each screening
applicant, while the screening applicant’s application is
pending;
(e) information relating to each screening applicant in respect of
whom a decision (an exclusion decision) (however
described) is in force, under an aged care worker screening
law, to the effect that the person, in working, or seeking to
work, with individuals accessing funded aged care services does pose a risk to such individuals and information relating to the decision;

(f) if a clearance decision or an exclusion decision specifies the period for which the decision is in force—information setting out that period;

(g) information relating to each person in respect of whom a decision (however described), under an aged care worker screening law, suspending a clearance decision has been made and information relating to the suspension;

(h) information relating to each person in respect of whom a decision (however described), under an aged care worker screening law, revoking a clearance decision or an exclusion decision has been made and information relating to the revocation;

(i) information relating to persons or bodies (whether the persons or bodies are registered providers or not) that employ, engage or train, or propose to employ, engage or train, persons who have made screening applications;

(j) any other information prescribed by the rules.

(6) Paragraphs (5)(a) to (i) do not limit paragraph (5)(j).

(7) The aged care worker screening database may also include the following information:

(a) information relating to persons (each of whom is a screening applicant) who:

(i) have made applications (each of which is a screening application) for an NDIS worker screening check (within the meaning of the NDIS Act); and

(ii) are identified (in screening applications or otherwise) as seeking to work with individuals accessing funded aged care services;

and information relating to those applications;

(b) information relating to each screening applicant in respect of whom a screening application is no longer being considered and the reasons for this;
(c) information relating to each screening applicant in respect of whom a decision (a clearance decision) (however described) is in force, under an NDIS worker screening law (within the meaning of the NDIS Act), to the effect that the person, in working, or seeking to work, with people with disability does not pose a risk to such people and information relating to the decision;

(d) information relating to any decisions made under an NDIS worker screening law (within the meaning of the NDIS Act), in relation to each screening applicant, while the screening applicant’s application is pending;

(e) information relating to each screening applicant in respect of whom a decision (an exclusion decision) (however described) is in force, under an NDIS worker screening law (within the meaning of the NDIS Act), to the effect that the person, in working, or seeking to work, with people with disability does pose a risk to such people and information relating to the decision;

(f) if a clearance decision or an exclusion decision specifies the period for which the decision is in force—information setting out that period;

(g) information relating to each person in respect of whom a decision (however described), under an NDIS worker screening law (within the meaning of the NDIS Act), suspending a clearance decision has been made and information relating to the suspension;

(h) information relating to each person in respect of whom a decision (however described), under an NDIS worker screening law (within the meaning of the NDIS Act), revoking a clearance decision or an exclusion decision has been made and information relating to the revocation;

(i) information relating to employers or potential employers of persons who have made screening applications.

Database may include personal information

(8) The information included under paragraphs (5)(a) to (j) and (7)(a) to (i) may include personal information.
Database not a legislative instrument

(9) The aged care worker screening database is not a legislative instrument.

Subdivision B—NDIS worker screening database

167 Additional purposes of NDIS worker screening database

(1) It is also a purpose of the NDIS worker screening database under subsection 181Y(3) of the NDIS Act to share information in that database with the following:

(a) the Commissioner, for the purpose of assisting in the performance of the functions, or the exercise of the powers, of the Commissioner;

(b) the System Governor, for the purpose of assisting in the performance of the functions, or the exercise of the powers, of the System Governor under this Act.

(2) It is also a purpose of the NDIS worker screening database under subsection 181Y(3) of the NDIS Act to share information in that database about an individual:

(a) with registered providers that are employers or potential employers of the individual; or

(b) with persons or bodies facilitating the employment, engagement or training of other persons to work with individuals accessing funded aged care services.

(3) To avoid doubt, for the purposes of authorising disclosure of information in accordance with subparagraph 67A(1)(d)(i) of the NDIS Act, the purposes stated in subsections (1) and (2) of this section are taken to be purposes of that Act.
Chapter 5  Governance of the aged care system
Part 4  Aged Care Quality and Safety Advisory Council

Section 168

Part 4—Aged Care Quality and Safety Advisory Council

168 Establishment of the Aged Care Quality and Safety Advisory Council

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

169 Functions of the Advisory Council

The functions of the Advisory Council are the following:

(a) to monitor the performance of the Commissioner’s functions;
(b) on its own initiative or at the request of the Commissioner, to provide advice to the Commissioner in relation to the Commissioner’s functions, including by identifying current and emerging risks and recommending solutions;
(c) on its own initiative or 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, including by identifying current and emerging risks and recommending solutions;
(d) to support the Commission in developing its strategic objectives;
(e) to identify systemic performance issues within the Commission and to make referrals to the Minister if appropriate.

170 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 registered provider or individual accessing, or seeking to access, funded aged care services.

(3) The Advisory Council must comply with a direction under subsection (1).

171 Membership of the Advisory Council

(1) The Advisory Council consists of the following members:
   (a) a Chair;
   (b) a Deputy Chair;
   (c) at least 7, and not more than 11, other members.

(2) The members of the Advisory Council are not officials for the purposes of the Public Governance, Performance and Accountability Act 2013.

172 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 4 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) delivery of funded aged care services to individuals;
Section 173

A person is not eligible for appointment to the Advisory Council if the person is a registered provider or a responsible person of a registered provider.

173 Acting appointments

Chair

(1) The Minister may, by written instrument, 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, by written instrument, 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 172(3).

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

**Period of appointment**

(4) An appointment under this section has effect for the period specified in the instrument of appointment. The period must not exceed 12 months.

**174 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 prescribed by 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:
Section 175

(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

(3) An Advisory Council member is to be paid the allowances that are
prescribed by the rules.

(4) This section has effect subject to the Remuneration Tribunal Act

175 Leave of absence

(1) The Minister may grant leave of absence to the Chair or the Deputy
Chair on the terms and conditions that the Minister determines.

(2) The Chair may grant leave of absence to another Advisory Council
member (other than the Deputy Chair) on the terms and conditions
that the Chair determines.

176 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.

177 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.

178 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.

179 Termination of appointment

(1) The Minister may terminate the appointment of an Advisory Council member:
   (a) for misbehaviour; or
Section 180

(b) if the Advisory Council member is unable to perform the duties of the member’s 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 176 or 177 (which deal with the disclosure of interests).

180 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.

181 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 by the Minister under subsection (1):
   (a) must be of a general nature only; and
   (b) must not relate to a particular registered provider or individual accessing, or seeking to access, funded aged care services.
(3) A direction given under subsection (1) is not a legislative instrument.
Chapter 5 Governance of the aged care system
Part 5 Complaints Commissioner

Section 182

Part 5—Complaints Commissioner

182 Appointment of Complaints Commissioner

The Commissioner must, in writing, appoint a person who is an SES employee of the staff of the Commission as the Complaints Commissioner to assist the Commissioner in the performance of the Commissioner’s complaints functions.

183 Dealing with complaints

(1) The rules may make provision in relation to dealing with complaints made, or information provided, to the Commissioner about an entity’s compliance with this Act.

(2) Without limiting subsection (1), the rules may make provision in relation to the following:

(a) how complaints may be made to the Commissioner about:
   (i) a registered provider or aged care worker’s compliance with this Act; and
   (ii) a registered provider acting in a way that is incompatible with the Statement of Rights; and
(b) how complaints may be dealt with and resolved;
(c) the roles, rights and responsibilities of complainants, registered providers, aged care workers and any other relevant persons;
(d) the considerations relevant to dealing with complaints;
(e) the processes for resolving complaints, including early resolution and restorative justice processes;
(f) the actions that may be taken to address complaints, which may include requiring a registered provider or aged care worker to do something;
(g) how the Commissioner may evaluate the effectiveness of actions taken to address complaints, including by following up on a sample of complaints;
Section 183

(h) the review or reconsideration of decisions made under the scheme, including providing for procedural fairness.
Section 184

Chapter 6—Regulatory mechanisms

Part 1—Introduction

184 Simplified outline of this Chapter

This Chapter provides for a range of regulatory mechanisms that are available to the Commissioner and the System Governor in relation to their functions. These include powers under the Regulatory Powers Act and additional powers under this Chapter.

The additional powers include the following:

(a) powers for authorised Commission officers, acting under authorisation by the Commissioner, to enter and search approved residential care homes without a warrant or consent for monitoring and investigation purposes;

(b) powers for the Commissioner and the System Governor to give required action notices and compliance notices to registered providers in relation to their functions;

(c) a power for the Commissioner to give adverse action warning notices to registered providers;

(d) powers for the Commissioner to make banning orders prohibiting or restricting current and former registered providers, aged care workers and responsible persons from delivering (or being involved in delivering) funded aged care services;

(e) powers for the Commissioner and the System Governor to require persons to attend before authorised officers to answer questions or give information or documents in relation to their functions;

(f) a power for the System Governor to conduct assurance activities for the purposes of the System Governor’s functions;
Section 184

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<td>(g) powers for the System Governor recover amounts of subsidy or grants paid by the Commonwealth to entities that were not entitled to be paid those amounts.</td>
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<td>[Critical powers—to be drafted.]</td>
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<td>This Chapter also deals with the appointment, functions and powers of authorised officers and miscellaneous matters.</td>
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Section 185

Part 2—Monitoring under Part 2 of the Regulatory Powers Act

Division 1—Triggering Part 2 of the Regulatory Powers Act

185 Provisions, information subject to monitoring

Provisions subject to monitoring

(1) A provision is subject to monitoring under Part 2 of the Regulatory Powers Act if it is:

(a) a provision of this Act; or

(b) an offence provision of the Crimes Act 1914 or the Criminal Code, to the extent that it relates to this Act.

Note 1: The expression this Act (see section 7) includes:

(a) legislative instruments made under this Act; and

(b) the Regulatory Powers Act as it applies in relation to this Act.

Note 2: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether a provision has been complied with. It includes powers of entry and inspection.

Information subject to monitoring

(2) Information given in compliance or purported compliance with a provision of this Act is subject to monitoring under Part 2 of the Regulatory Powers Act.

186 Related provisions, issuing officer and relevant court

For the purposes of Part 2 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection 185(1) and the information mentioned in subsection 185(2) of this Act:

(a) there are no related provisions; and

(b) each of the following is an issuing officer:

(i) a magistrate;
(ii) a Judge of a court of a State or Territory;
(iii) a Judge of the Federal Court or the Federal Circuit and Family Court of Australia (Division 2); and

c) each of the following is a relevant court:
   (i) the Federal Court;
   (ii) the Federal Circuit and Family Court of Australia (Division 2);
   (iii) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

187 Authorised applicant, authorised person and relevant chief executive—Commissioner functions

For the purposes of Part 2 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection 185(1) and the information mentioned in subsection 185(2) of this Act that relate to a function of the Commissioner:

(a) an authorised Commission officer is an authorised applicant; and
(b) an authorised Commission officer is an authorised person; and

(c) the Commissioner is the relevant chief executive.

188 Authorised applicant, authorised person and relevant chief executive—System Governor functions

For the purposes of Part 2 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection 185(1) and the information mentioned in subsection 185(2) of this Act that relate to a function of the System Governor:

(a) an authorised System Governor officer is an authorised applicant; and
(b) an authorised System Governor officer is an authorised person; and

(c) the System Governor is the relevant chief executive.
189 Persons assisting authorised persons

An authorised person may be assisted by other persons in exercising powers or performing functions or duties under Part 2 of the Regulatory Powers Act in relation to the provisions mentioned in subsection 185(1) and the information mentioned in subsection 185(2) of this Act.
Division 2—Modifications of Part 2 of the Regulatory Powers Act

190 Application of this Division

This Division applies in relation to Part 2 of the Regulatory Powers Act as that Part applies in relation to the provisions mentioned in subsection 185(1) and the information mentioned in subsection 185(2) of this Act.

191 Use of force in executing monitoring warrants

In executing a monitoring warrant under Part 2 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection 185(1) and the information mentioned in subsection 185(2) of this Act, an authorised person:

(a) may use force against things only if all reasonable measures to execute the warrant effectively without the use of force have been exhausted; and

(b) if paragraph (a) applies—may use only such force against things as is necessary and reasonable in the circumstances.

192 Extension of Part 2 of the Regulatory Powers Act to external Territories

Part 2 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection 185(1) and the information mentioned in subsection 185(2) of this Act, extends to the external Territories other than the Territory of Ashmore and Cartier Islands.

193 Additional monitoring powers

For the purposes of determining:

(a) whether a provision mentioned in subsection 185(1) has been, or is being, complied with; or

(b) the correctness of information mentioned in subsection 185(2);
the additional powers mentioned in Part 5 of this Chapter are taken
to be included in the monitoring powers under Part 2 of the

194 Entry with consent—action before obtaining consent

Before obtaining the consent of an occupier of premises who is a
registered provider for the purposes of paragraph 18(2)(a) of the
Regulatory Powers Act, an authorised person must inform the
registered provider that the registered provider has an obligation
under section 115 of this Act to cooperate with a person who is
performing functions, or exercising powers, under Part 2 of that
Act.

Note: See section 25 of the Regulatory Powers Act for additional rules about
consent.

195 Times for securing electronic equipment etc.

Sections 21, 22 and 33 of the Regulatory Powers Act are taken to
apply as if:

(a) a reference to “24 hours” in sections 21 and 22 of that Act
were a reference to “48 hours”; and

(b) a reference to a “24-hour period” in sections 21 and 22 of
that Act were a reference to a “48-hour period”.

196 Entry with consent—asking for answers to questions or
production of documents

(1) The second reference to the occupier of premises in
subsection 24(2) of the Regulatory Powers Act is taken to include a
reference to any other person on the premises.

(2) Before requesting a person who is a registered provider to answer a
question, or produce a document, under subsection 24(2) of the
Regulatory Powers Act, an authorised person must inform the
person that the registered provider has an obligation under
section 115 of this Act to cooperate with a person who is
performing functions, or exercising powers, under Part 2 of that
Act.
Section 197

(3) If an authorised person requests a person to answer a question, or produce a document, under subsection 24(2) of the Regulatory Powers Act, the person is not required to comply with the request.

197 Exception to requirement to return identity card if authorised person continues to exercise other powers

Subsection 35(3) of the Regulatory Powers Act does not apply if a person who ceases to be an authorised person for the purposes of Part 2 of that Act, as that Part applies in relation to the provisions mentioned in subsection 185(1) and the information mentioned in subsection 185(2) of this Act, continues to be a person who exercises powers under this Act, or Part 3 of that Act as that Part applies in relation to this Act, for which the person is required to hold an identity card.

Note: A defendant bears an evidential burden in relation to the matter in this section: see subsection 13.3(3) of the Criminal Code.
Division 3—Delegations by relevant chief executives

198 Delegation by relevant chief executive—Commissioner functions

(1) The relevant chief executive under section 187 may, in writing, delegate the powers and functions mentioned in subsection (3) of this section to a member of the staff of the Commission.

(2) However, the relevant chief executive under section 187 must not delegate a function or power to a person under subsection (1) of this section unless the relevant chief executive under section 187 is satisfied that the person has suitable training or experience to properly perform the function or exercise the power.

(3) The powers and functions that may be delegated are:

(a) powers and functions under Part 2 of the Regulatory Powers Act in relation to the provisions mentioned in subsection 185(1) and the information mentioned in subsection 185(2) of this Act that relate to a function of the Commissioner; and

(b) powers and functions under the Regulatory Powers Act that are incidental to a power or function mentioned in paragraph (a).

(4) A person exercising powers or performing functions under a delegation under subsection (1) must comply with any written directions of the relevant chief executive under section 187.

199 Delegation by relevant chief executive—System Governor functions

(1) The relevant chief executive under section 188 may, in writing, delegate the powers and functions mentioned in subsection (3) of this section to an APS employee in the Department.

(2) However, the relevant chief executive under section 188 must not delegate a function or power to a person under subsection (1) of this section unless the relevant chief executive under section 188 is...
satisfied that the person has suitable training or experience to properly perform the function or exercise the power.

(3) The powers and functions that may be delegated are:

(a) powers and functions under Part 2 of the Regulatory Powers Act in relation to the provisions mentioned in subsection 185(1) and the information mentioned in subsection 185(2) of this Act that relate to a function of the System Governor; and

(b) powers and functions under the Regulatory Powers Act that are incidental to a power or function mentioned in paragraph (a).

(4) A person exercising powers or performing functions under a delegation under subsection (1) must comply with any written directions of the relevant chief executive under section 188.
Part 3—Investigating under Part 3 of the Regulatory Powers Act

Division 1—Triggering Part 3 of the Regulatory Powers Act

200 Provisions subject to investigation

A provision is subject to investigation under Part 3 of the Regulatory Powers Act if it is:

(a) an offence provision of this Act; or

(b) a civil penalty provision of this Act; or

(c) an offence provision of the Crimes Act 1914 or the Criminal Code, to the extent that it relates to this Act.

Note 1: The expression this Act (see section 7) includes:
(a) legislative instruments made under this Act; and
(b) the Regulatory Powers Act as it applies in relation to this Act.

Note 2: Part 3 of the Regulatory Powers Act creates a framework for investigating whether a provision has been contravened. It includes powers of entry, search and seizure.

201 Related provisions, issuing officer and relevant court

For the purposes of Part 3 of the Regulatory Powers Act, as that Part applies in relation to evidential material that relates to a provision mentioned in section 200 of this Act:

(a) there are no related provisions; and

(b) each of the following is an issuing officer:
(i) a magistrate;
(ii) a Judge of a court of a State or Territory;
(iii) a Judge of the Federal Court or the Federal Circuit and Family Court of Australia (Division 2); and

(c) each of the following is a relevant court:
(i) the Federal Court;
Regulatory mechanisms  Chapter 6
Investigating under Part 3 of the Regulatory Powers Act  Part 3
Triggering Part 3 of the Regulatory Powers Act  Division 1

Section 202

(ii) the Federal Circuit and Family Court of Australia (Division 2);

(iii) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

202 Authorised applicant, authorised person and relevant chief executive—Commissioner functions

For the purposes of Part 3 of the Regulatory Powers Act, as that Part applies in relation to evidential material that relates to a provision mentioned in section 200 of this Act that relates to a function of the Commissioner:

(a) an authorised Commission officer is an authorised applicant; and

(b) an authorised Commission officer is an authorised person; and

(c) the Commissioner is the relevant chief executive.

203 Authorised applicant, authorised person and relevant chief executive—System Governor functions

For the purposes of Part 3 of the Regulatory Powers Act, as that Part applies in relation to evidential material that relates to a provision mentioned in section 200 of this Act that relates to a function of the System Governor:

(a) an authorised System Governor officer is an authorised applicant; and

(b) an authorised System Governor officer is an authorised person; and

(c) the System Governor is the relevant chief executive.

204 Persons assisting authorised persons

An authorised person may be assisted by other persons in exercising powers or performing functions or duties under Part 3 of the Regulatory Powers Act in relation to evidential material that relates to a provision mentioned in section 200 of this Act.
Chapter 6  Regulatory mechanisms
Part 3  Investigating under Part 3 of the Regulatory Powers Act
Division 2  Modifications of Part 3 of the Regulatory Powers Act

Section 205

Division 2—Modifications of Part 3 of the Regulatory Powers Act

205  Application of this Division

This Division applies in relation to Part 3 of the Regulatory Powers Act as that Part applies in relation to evidential material that relates to a provision mentioned in section 200 of this Act.

206  Use of force in executing investigation warrants

In executing an investigation warrant under Part 3 of the Regulatory Powers Act, as that Part applies in relation to evidential material that relates to a provision mentioned in section 200 of this Act, an authorised person:

(a) may use force against things only if all reasonable measures to execute the warrant effectively without the use of force have been exhausted; and

(b) if paragraph (a) applies—may use only such force against things as is necessary and reasonable in the circumstances.

207  Extension of Part 3 of the Regulatory Powers Act to external Territories

Part 3 of the Regulatory Powers Act, as that Part applies in relation to a provision mentioned in section 200 of this Act, extends to the external Territories other than the Territory of Ashmore and Cartier Islands.

208  Additional investigation powers

The additional powers mentioned in Part 5 of this Chapter are taken to be included in the investigation powers under Part 3 of the Regulatory Powers Act, as Part 3 of that Act applies in relation to evidential material that relates to a provision mentioned in section 200 of this Act.
209 Entry with consent—action before obtaining consent

Before obtaining the consent of an occupier of premises who is a registered provider for the purposes of paragraph 48(2)(a) of the Regulatory Powers Act, an authorised person must inform the registered provider that the registered provider has an obligation under section 115 of this Act to cooperate with a person who is performing functions, or exercising powers, under Part 3 of the Regulatory Powers Act.

Note: See section 55 of the Regulatory Powers Act for additional rules about consent.

210 Times for securing electronic equipment etc.

Sections 51 and 74 of the Regulatory Powers Act are taken to apply as if:

(a) a reference to “24 hours” in section 51 of that Act were a reference to “48 hours”; and

(b) a reference to a “24-hour period” in section 51 of that Act were a reference to a “48-hour period”.

211 Entry with consent—asking for answers to questions or production of documents

(1) The second reference to the occupier of premises in subsection 54(2) of the Regulatory Powers Act is taken to include a reference to any other person on the premises.

(2) Before requesting a person who is a registered provider to answer a question, or produce a document, under subsection 54(2) of the Regulatory Powers Act, an authorised person must inform the person that the registered provider has an obligation under section 115 of this Act to cooperate with a person who is performing functions, or exercising powers, under Part 3 of the Regulatory Powers Act.

(3) If an authorised person requests a person to answer a question, or produce a document, under subsection 54(2) of the Regulatory Powers Act, the person is not required to comply with the request.
Section 212

212 Exception to requirement to return identity card if authorised person continues to exercise other powers

Subsection 76(3) of the Regulatory Powers Act does not apply if the person who ceases to be an authorised person for the purposes of Part 3 of that Act, as that Part applies in relation to evidential material that relates to a provision mentioned in section 200 of this Act, continues to be a person who exercises powers under this Act, or Part 2 of that Act as it applies in relation to this Act, for which the person is required to hold an identity card.

Note: A defendant bears an evidential burden in relation to the matter in this section: see subsection 13.3(3) of the Criminal Code.
Division 3—Delegations by relevant chief executives

213 Delegation by relevant chief executive—Commissioner functions

(1) The relevant chief executive under section 202 may, in writing, delegate the powers and functions mentioned in subsection (3) of this section to a member of the staff of the Commission.

(2) However, the relevant chief executive under section 202 must not delegate a function or power to a person under subsection (1) of this section unless the relevant chief executive under section 202 is satisfied that the person has suitable training or experience to properly perform the function or exercise the power.

(3) The powers and functions that may be delegated are:

(a) powers and functions under Part 3 of the Regulatory Powers Act in relation to evidential material that relates to a provision mentioned in section 200 of this Act that relates to a function of the Commissioner; and

(b) powers and functions under the Regulatory Powers Act that are incidental to a power or function mentioned in paragraph (a).

(4) A person exercising powers or performing functions under a delegation under subsection (1) must comply with any written directions of the relevant chief executive under section 202.

214 Delegation by relevant chief executive—System Governor functions

(1) The relevant chief executive under section 203 may, in writing, delegate the powers and functions mentioned in subsection (3) of this section to an APS employee in the Department.

(2) However, the relevant chief executive under section 203 must not delegate a function or power to a person under subsection (1) of this section unless the relevant chief executive under section 203 is satisfied that the person has suitable training or experience to properly perform the function or exercise the power.
(3) The powers and functions that may be delegated are:
(a) powers and functions under Part 3 of the Regulatory Powers Act in relation to evidential material that relates to a provision mentioned in section 200 of this Act that relates to a function of the System Governor; and
(b) powers and functions under the Regulatory Powers Act that are incidental to a power or function mentioned in paragraph (a).

(4) A person exercising powers or performing functions under a delegation under subsection (1) must comply with any written directions of the relevant chief executive under section 203.
Part 4—Monitoring and investigating under authorisation by Commissioner

Division 1—Powers of authorised Commission officers

215 Entering approved residential care homes under monitoring authorisations

(1) An authorised Commission officer may enter an approved residential care home for one or more of the following purposes if the entry is made under a monitoring authorisation:

(a) determining whether a provision mentioned in subsection 185(1) has been, or is being, complied with;

(b) determining whether the information mentioned in subsection 185(2) is correct;

(c) deciding whether to exercise a power under this Act.

Note: The expression this Act (see section 7) includes:

(a) legislative instruments made under this Act; and

(b) the Regulatory Powers Act as it applies in relation to this Act.

(2) Subsections (3), (4) and (5) apply if an authorised Commission officer enters an approved residential care home as mentioned in subsection (1).

(3) Subdivision A of Division 2 of Part 2 and sections 26 to 29 of the Regulatory Powers Act apply in accordance with Part 1 of this Chapter as if:

(a) entry to the approved residential care home were made under section 18 of that Act under a monitoring warrant; and

(b) the purposes for which section 18 of that Act permits the monitoring powers to be exercised included the purpose of deciding whether to exercise a power under this Act; and

(c) for the purposes of that Subdivision, relevant data included information relevant to deciding whether to exercise a power under this Act; and
Section 215

(d) a reference in that Subdivision and sections 26 to 29 of the Regulatory Powers Act to an authorised person were a reference to an authorised Commission officer; and

(e) a reference in that Subdivision and sections 26 to 29 of the Regulatory Powers Act to a monitoring warrant were a reference to a monitoring authorisation; and

(f) a reference in that Subdivision and sections 26 to 29 of the Regulatory Powers Act to executing a monitoring warrant were a reference to exercising powers under a monitoring authorisation; and

(g) a reference in that Subdivision and sections 26 to 29 of the Regulatory Powers Act to the monitoring powers included the additional powers mentioned in Part 5 of this Chapter.

Note 1: Subdivision A of Division 2 of Part 2 and sections 26 to 29 of the Regulatory Powers Act are about monitoring powers and compensation for damage to electronic equipment operated under those powers.

Note 2: Part 1 of this Chapter expands the monitoring powers under Subdivision A of Division 2 of Part 2 of the Regulatory Powers Act.

(4) The application of Subdivision A of Division 2 of Part 2 and sections 26 to 29 of the Regulatory Powers Act under subsection (3) of this section is in addition to their application under Part 1 of this Chapter.

(5) Part 5 of this Chapter applies under paragraph (3)(g) as if:

(a) a reference in Subdivision A of Division 2 of Part 2 and sections 26 to 29 of the Regulatory Powers Act to an authorised person were a reference to an authorised Commission officer; and

(b) a reference in that Subdivision and those sections to the premises were a reference to the approved residential care home; and

(c) a reference in that Subdivision and those sections to the relevant chief executive were a reference to the Commissioner.
216 Entering approved residential care homes under investigation authorisations

(1) An authorised Commission officer may enter an approved residential care home if:

(a) the officer reasonably suspects that there may be, at the approved residential care home, a particular thing:

(i) with respect to which an offence provision or a civil penalty provision mentioned in section 200 has been contravened or is suspected, on reasonable grounds, to have been contravened; or

(ii) that there are reasonable grounds for suspecting will afford evidence as to the contravention of such an offence provision or a civil penalty provision; or

(iii) that there are reasonable grounds for suspecting is intended to be used for the purpose of contravening such an offence provision or a civil penalty provision; and

(b) the entry is made under an investigation authorisation.

Note: Section 200 mentions provisions for offences against this Act, provisions for offences against the Crimes Act 1914 or the Criminal Code relating to this Act, and civil penalty provisions of this Act.

(2) Subsections (3), (4) and (5) apply if an authorised Commission officer enters an approved residential care home as mentioned in subsection (1).

(3) Divisions 2 and 5 of Part 3 and sections 56 to 59 and 61 of the Regulatory Powers Act apply in accordance with Part 2 of this Chapter as if:

(a) entry to the approved residential care home were made under section 48 of that Act under an investigation warrant; and

(b) the thing referred to in subsection (1) of this section were evidential material of a kind specified in an investigation warrant; and

(c) a reference in Divisions 2 and 5 of Part 3 and sections 56 to 59 and 61 to an authorised person were a reference to an authorised Commission officer; and
Section 216

(d) a reference in those Divisions and sections to an investigation warrant were a reference to an investigation authorisation; and

(e) a reference in those Divisions and sections to executing an investigation warrant were a reference to exercising powers under an investigation authorisation; and

(f) a reference in those Divisions and sections to the investigation powers included the additional powers mentioned in Part 5 of this Chapter.

Note 1: Divisions 2 and 5 of Part 3 and sections 56 to 59 and 61 of the Regulatory Powers Act are about investigation powers, seizure and compensation for damage to electronic equipment operated under investigation powers.

Note 2: Part 3 of this Chapter expands the investigation powers under Subdivision A of Division 2 of Part 3 of the Regulatory Powers Act.

(4) The application of Divisions 2 and 5 of Part 3 and sections 56 to 59 and 61 of the Regulatory Powers Act under subsection (3) of this section is in addition to their application under Part 2 of this Chapter.

(5) Part 5 of this Chapter applies under paragraph (3)(f) as if:

(a) a reference in Divisions 2 and 5 of Part 3 and sections 56 to 59 and 61 to an authorised person were a reference to an authorised Commission officer; and

(b) a reference in those Divisions and sections to the premises were a reference to the approved residential care home; and

(c) a reference in those Divisions and sections to the relevant chief executive were a reference to the Commissioner.
Division 2—Obligations of authorised Commission officers

217 Use of force in entering approved residential care homes

In entering an approved residential care home under a monitoring authorisation or an investigation authorisation, and while at that approved residential care home, an authorised Commission officer:

(a) may use force against things only if all reasonable measures to execute the authorisation effectively without the use of force have been exhausted; and

(b) if paragraph (a) applies—may use only such force against things as is necessary and reasonable in the circumstances.
Chapter 6  Regulatory mechanisms
Part 4  Monitoring and investigating under authorisation by Commissioner
Division 3  Occupier’s rights and responsibilities

Section 218

Division 3—Occupier’s rights and responsibilities

218  Right to observe exercise of powers

(1) The occupier of an approved residential care home entered under a monitoring authorisation or an investigation authorisation, or another person who apparently represents the occupier, is entitled to observe the exercise of powers under the authorisation if the occupier or other person is present at the approved residential care home while the powers are being exercised.

(2) The right to observe the exercise of powers ceases if the occupier or other person impedes the exercise of those powers.

(3) This section does not prevent powers being exercised in 2 or more areas of the approved residential care home at the same time.

219  Responsibility to provide facilities and assistance

(1) The occupier of an approved residential care home entered under a monitoring authorisation or an investigation authorisation, or another person who apparently represents the occupier, must provide:

(a) an authorised Commission officer exercising powers; and
(b) any person assisting the officer;
with all reasonable facilities and assistance for the effective exercise of their powers while at the approved residential care home.

(2) A person commits an offence if:

(a) the person is subject to subsection (1); and
(b) the person fails to comply with that subsection.

Penalty: 30 penalty units.
Division 4—Issue of authorisations

220 Monitoring authorisations

Application for authorisation

(1) An authorised Commission officer may apply to the Commissioner for an authorisation under this section in relation to an approved residential care home.

Issue of authorisation

(2) The Commissioner may issue the authorisation if the Commissioner is reasonably satisfied that:

(a) there is a severe risk to the safety, health or wellbeing of an individual to whom funded aged care services are being delivered; and
(b) entry to the approved residential care home without a warrant or consent is necessary in the circumstances.

Content of authorisation

(3) The authorisation must:

(a) describe the approved residential care home to which the authorisation relates; and
(b) state that the authorisation is issued under this section; and
(c) state the purpose for which the authorisation is issued; and
(d) authorise one or more authorised Commission officers (whether or not named in the authorisation) from time to time while the authorisation remains in force:

(i) to enter the approved residential care home; and
(ii) to exercise the powers set out in Part 2 of the Regulatory Powers Act in relation to the approved residential care home; and
(e) state whether entry is authorised to be made at any time of the day or during specified hours of the day; and
Section 221

(f) specify the day (not more than 3 months after the issue of the authorisation) on which the authorisation ceases to be in force.

221 Investigation authorisations

Application for authorisation

(1) An authorised Commission officer may apply to the Commissioner for an authorisation under this section in relation to an approved residential care home.

Issue of authorisation

(2) The Commissioner may issue the authorisation if the Commissioner is reasonably satisfied that:

   (a) there is a severe risk to the safety, health or wellbeing of an individual to whom funded aged care services are being delivered; and

   (b) there is, or there may be within the next 72 hours, evidential material at the approved residential care home; and

   (c) entry to the approved residential care home without a warrant or consent is necessary in the circumstances.

(3) However, the Commissioner must not issue the authorisation unless the authorised Commission officer or some other person has given to the Commissioner, either orally or in writing, such further information (if any) as the Commissioner requires concerning the grounds on which the issue of the authorisation is being sought.

Content of authorisation

(4) The authorisation must:

   (a) state each offence provision or civil penalty provision mentioned in section 200 to which the authorisation relates; and

   (b) describe the approved residential care home to which the authorisation relates; and

   (c) state that the authorisation is issued under this section; and
(d) specify the kinds of evidential material to be searched for under the authorisation; and
(e) state that evidential material of the kind specified may be seized under the authorisation; and
(f) state that the person exercising powers under the authorisation may seize any other thing found in the course of exercising the powers if the person reasonably believes that the thing is evidential material of a kind not specified in the authorisation; and
(g) name one or more authorised Commission officers; and
(h) authorise the named authorised Commission officers:
   (i) to enter the approved residential care home; and
   (ii) to exercise the powers set out in Part 3 of the Regulatory Powers Act in relation to the approved residential care home; and
   (i) state whether entry is authorised to be made at any time of the day or during specified hours of the day; and
   (j) specify the day (not more than 1 week after the issue of the authorisation) on which the authorisation ceases to be in force.
Division 5—Immunity of officers and persons assisting

222 Protection from liability for authorised Commission officers and persons assisting

(1) An authorised Commission officer is not liable to civil proceedings for loss, damage or injury of any kind suffered by another person as a result of anything done, or omitted to be done, by the officer in good faith in the exercise or purported exercise of any power under this Part or Part 2 or 3 of the Regulatory Powers Act as it applies under this Part.

(2) A person assisting an authorised Commission officer in the exercise or purported exercise of any power under this Part, or Part 2 or 3 of the Regulatory Powers Act as it applies under this Part, is not liable to civil proceedings for loss, damage or injury of any kind suffered by another person as a result of anything done, or omitted to be done, in good faith for the purpose of assisting the officer.
Part 5—Additional monitoring and investigation powers and compensation

223 Purpose of this Part

This Part:
(a) sets out additional powers for the purposes of sections 193 and 208 and paragraphs 215(3)(g) and 216(3)(f); and
(b) provides for compensation for damage to electronic equipment.

Note: Subsections 215(5) and 216(5) modify the application of this Part for the purposes of paragraphs 215(3)(g) and 216(3)(f).

224 Use of equipment to examine or process things

Equipment may be brought to premises

(1) An authorised person or a person assisting may bring to the premises any equipment reasonably necessary for the examination or processing of a thing found at the premises in order to determine whether the thing may be seized.

Thing may be moved for examination or processing

(2) A thing found at the premises may be moved to another place for examination or processing in order to determine whether the thing may be seized if:
(a) both of the following apply:
(i) it is significantly more practicable to do so having regard to the timeliness and cost of examining or processing the thing at another place and the availability of expert assistance;
(ii) the authorised person or a person assisting suspects on reasonable grounds that the thing contains or constitutes evidential material; or
(b) the occupier of the premises consents in writing.
Section 224

Notification of examination or processing and right to be present

(3) If the thing is moved to another place for the purpose of examination or processing under subsection (2), the authorised person must, if it is practicable to do so:

(a) inform the occupier of the premises of the address of the place and the time at which the examination or processing will be carried out; and

(b) allow the occupier or the occupier’s representative to be present during the examination or processing.

(4) The authorised person need not comply with paragraph (3)(a) or (b) if the authorised person believes on reasonable grounds that to do so might:

(a) endanger the safety of a person; or

(b) prejudice an investigation or prosecution.

Time limit on moving the thing

(5) The thing may be moved to another place for examination or processing for no longer than 14 days.

(6) An authorised person may apply to an issuing officer for one or more extensions of that time if the authorised person believes on reasonable grounds that the thing cannot be examined or processed within 14 days or that time as previously extended.

(7) The authorised person must give notice of the application to the occupier of the premises, and that person is entitled to be heard in relation to the application.

(8) A single extension cannot exceed 7 days.

Equipment at premises may be operated

(9) An authorised person or a person assisting may operate equipment already at the premises to carry out the examination or processing of a thing found at the premises in order to determine whether it is a thing that may be seized if the authorised person or person assisting believes on reasonable grounds that:
Section 225

(a) the equipment is suitable for the examination or processing; and

(b) the examination or processing can be carried out without damage to the equipment or the thing.

225 Use of electronic equipment at other place

(1) If electronic equipment is moved from the premises to another place under subsection 224(2), the authorised person or a person assisting may operate the equipment to access data (including data held at another place).

(2) If the authorised person or the person assisting suspects on reasonable grounds that any data accessed by operating the electronic equipment constitutes evidential material, the authorised person or the person assisting may copy any or all of the data accessed by operating the electronic equipment to a disk, tape or other associated device.

(3) If the relevant chief executive is satisfied that the data is not required (or is no longer required) for the purposes of this Act or for other judicial or administrative review proceedings, the relevant chief executive must arrange for:

(a) the removal of the data from any device in the control of the Commission or Department (as applicable); and

(b) the destruction of any other reproduction of the data in the control of the Commission or Department (as applicable).

(4) If the authorised person or the person assisting, after operating the equipment, finds that evidential material is accessible by doing so, the authorised person or the person assisting may:

(a) seize the equipment and any disk, tape or other associated device; or

(b) if the material can be put in documentary form—put the material in that form and seize the documents so produced.

(5) An authorised person or a person assisting may seize equipment under paragraph (4)(a) only if:
Section 226

(a) it is not practicable to copy the data as mentioned in subsection (2) or to put the material in documentary form as mentioned in paragraph (4)(b); or

(b) possession of the equipment by the occupier of the premises could constitute an offence.

226 Person with knowledge of a computer or a computer system to assist access etc.

(1) An authorised person may apply to an issuing officer for an order requiring a specified person to provide any information or assistance that is reasonable and necessary to allow an authorised person or person assisting to do one or more of the following:

(a) access data held in, or accessible from, a computer or data storage device that:

(i) is on the premises; or

(ii) has been moved under subsection 224(2) and is at a place for examination or processing; or

(iii) has been seized under this Act or under the Regulatory Powers Act as it applies in relation to this Act;

(b) copy data held in, or accessible from, a computer, or data storage device, described in paragraph (a) to another data storage device;

(c) convert into documentary form or another form intelligible to an authorised person or person assisting:

(i) data held in, or accessible from, a computer, or data storage device, described in paragraph (a); or

(ii) data held in a data storage device to which the data was copied as described in paragraph (b); or

(iii) data held in a data storage device removed from premises under the Regulatory Powers Act as it applies in relation to this Act.

(2) The issuing officer may grant the order if the issuing officer is satisfied that:
(a) there are reasonable grounds for suspecting that evidential material is held in, or is accessible from, the computer or data storage device; and
(b) the specified person is:
   (i) if the premises were entered under an investigation warrant—reasonably suspected of having committed the offence or contravened the civil penalty provision stated in the warrant; or
   (ii) the owner or lessee of the computer or device; or
   (iii) an employee of the owner or lessee of the computer or device; or
   (iv) a person engaged under a contract for services by the owner or lessee of the computer or device; or
   (v) a person who uses or has used the computer or device; or
   (vi) a person who is or was a system administrator for the system including the computer or device; and
(c) the specified person has relevant knowledge of:
   (i) the computer or device or a computer network of which the computer or device forms or formed a part; or
   (ii) measures applied to protect data held in, or accessible from, the computer or device.

(3) If:
   (a) the computer or data storage device that is the subject of the order is seized under this Act or under the Regulatory Powers Act as it applies in relation to this Act; and
   (b) the order was granted on the basis of an application made before the seizure;
the order does not have effect on or after the seizure.

Note: An application for another order under this section relating to the computer or data storage device may be made after the seizure.

(4) If the computer or data storage device is not on the premises, the order must:
   (a) specify the period within which the person must provide the information or assistance; and
Section 227

(5) A person commits an offence if the person fails to comply with the order.

Penalty: Imprisonment for 2 years.

227 Compensation for damage to electronic equipment

(1) This section applies if:

(a) as a result of electronic equipment being operated as mentioned in section 224 or 225:

(i) damage is caused to the equipment; or

(ii) the data recorded on the equipment is damaged; or

(iii) programs associated with the use of the equipment, or with the use of the data, are damaged or corrupted; and

(b) the damage or corruption occurs because:

(i) insufficient care was exercised in selecting the person who was to operate the equipment; or

(ii) insufficient care was exercised by the person operating the equipment.

(2) The Commonwealth must pay the owner of the equipment, or the user of the data or programs, such reasonable compensation for the damage or corruption as the Commonwealth and the owner or user agree on.

(3) However, if the owner or user and the Commonwealth fail to agree, the owner or user may institute proceedings in:

(a) the Federal Court of Australia; or

(b) the Federal Circuit and Family Court of Australia (Division 2); or

(c) a court of a State or Territory that has jurisdiction in relation to the matter;
for such reasonable amount of compensation as the court determines.

(4) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises, or the occupier’s employees or agents, if they were available at the time, provided any appropriate warning or guidance on the operation of the equipment.
Part 6—Civil penalties under Part 4 of the
Regulatory Powers Act

Division 1—Triggering Part 4 of the Regulatory Powers
Act

228 Enforceable civil penalty provisions

Each civil penalty provision of this Act is enforceable under Part 4

Note 1: The expression this Act (see section 7) includes:
   (a) legislative instruments made under this Act; and
   (b) the Regulatory Powers Act as it applies in relation to this Act.

Note 2: Part 4 of the Regulatory Powers Act allows a civil penalty provision to
be enforced by obtaining an order for a person to pay a pecuniary
penalty for the contravention of the provision.

229 Authorised applicant—Commissioner functions

For the purposes of Part 4 of the Regulatory Powers Act, the
Commissioner is an authorised applicant in relation to the civil
penalty provisions of this Act that relate to a function of the
Commissioner.

230 Authorised applicant—System Governor functions

For the purposes of Part 4 of the Regulatory Powers Act, the
System Governor is an authorised applicant in relation to the civil
penalty provisions of this Act that relate to a function of the
System Governor.

231 Relevant court

For the purposes of Part 4 of the Regulatory Powers Act, each of
the following courts is a relevant court in relation to the civil
penalty provisions of this Act:
   (a) the Federal Court;
(b) the Federal Circuit and Family Court of Australia (Division 2);
(c) a court of a State or Territory that has jurisdiction in relation to the matter.
Chapter 6 Regulatory mechanisms
Part 6 Civil penalties under Part 4 of the Regulatory Powers Act
Division 2 Modifications of Part 4 of the Regulatory Powers Act

Section 232

Division 2—Modifications of Part 4 of the Regulatory Powers Act

232 Crown not liable to pecuniary penalty

Part 4 of the Regulatory Powers Act, as that Part applies in relation to the civil penalty provisions of this Act, does not make the Crown liable to a pecuniary penalty.

233 Extension of Part 4 of the Regulatory Powers Act to external Territories

Part 4 of the Regulatory Powers Act, as that Part applies in relation to the civil penalty provisions of this Act, extends to the external Territories other than the Territory of Ashmore and Cartier Islands.
Division 3—Delegations by authorised applicants

234 Delegation by authorised applicant—Commissioner functions

(1) The authorised applicant under section 229 may, in writing, delegate the authorised applicant’s powers and functions under Part 4 of the Regulatory Powers Act in relation to the civil penalty provisions of this Act that relate to a function of the Commissioner to a member of the staff of the Commission who is an SES employee or an acting SES employee.

(2) A person exercising powers or performing functions under a delegation under subsection (1) must comply with any written directions of the authorised applicant under section 229.

235 Delegation by authorised applicant—System Governor functions

(1) The authorised applicant under section 230 may, in writing, delegate the authorised applicant’s powers and functions under Part 4 of the Regulatory Powers Act in relation to the civil penalty provisions of this Act that relate to a function of the System Governor to an SES employee, or an acting SES employee, in the Department.

(2) A person exercising powers or performing functions under a delegation under subsection (1) must comply with any written directions of the authorised applicant under section 230.
Chapter 6  Regulatory mechanisms
Part 7  Infringement notices under Part 5 of the Regulatory Powers Act
Division 1  Triggering Part 5 of the Regulatory Powers Act

Section 236

Part 7—Infringement notices under Part 5 of the Regulatory Powers Act

Division 1—Triggering Part 5 of the Regulatory Powers Act

236  Provisions subject to an infringement notice

The following provisions are subject to an infringement notice under Part 5 of the Regulatory Powers Act:

(a) a civil penalty provision of this Act;
(b) a provision of this Act the contravention of which constitutes an offence of strict liability.

Note 1: The expression this Act (see section 7) includes:
(a) legislative instruments made under this Act; and
(b) the Regulatory Powers Act as it applies in relation to this Act.


237  Infringement officer and relevant chief executive—Commissioner functions

For the purposes of Part 5 of the Regulatory Powers Act, the Commissioner:

(a) is an infringement officer; and
(b) is the relevant chief executive;

in relation to the provisions mentioned in section 236 of this Act that relate to a function of the Commissioner.

238  Infringement officer and relevant chief executive—System Governor functions

For the purposes of Part 5 of the Regulatory Powers Act, the System Governor:

(a) is an infringement officer; and
(b) is the relevant chief executive;
Section 238

1 in relation to the provisions mentioned in section 236 of this Act
2 that relate to a function of the System Governor.
Section 239

Division 2—Modifications of Part 5 of the Regulatory Powers Act

239 Crown not liable to be given infringement notice

Despite section 3, the Crown is not liable to be given an infringement notice in relation to the provisions mentioned in section 236.

240 Extension to external Territories

Part 5 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in section 236 of this Act, extends to the external Territories other than the Territory of Ashmore and Cartier Islands.

241 Single infringement notice may deal with more than one contravention

Despite subsection 103(3) of the Regulatory Powers Act, a single infringement notice may be given to a person in respect of:

(a) 2 or more alleged contraventions of a provision mentioned in section 236 of this Act; or
(b) alleged contraventions of 2 or more provisions mentioned in section 236 of this Act.

However, the notice must not require the person to pay more than one amount in respect of the same conduct.
Division 3—Delegations by infringement officers and relevant chief executives

242 Delegation by infringement officer—Commissioner functions

(1) An infringement officer under section 237 may, in writing, delegate the infringement officer’s powers and functions under Part 5 of the Regulatory Powers Act in relation to the provisions mentioned in section 236 of this Act that relate to a function of the Commissioner to a member of the staff of the Commission who is:

(a) an SES employee or acting SES employee; or

(b) an APS employee who holds, or is acting in, an Executive Level 2, or equivalent, position.

(2) A person exercising powers or performing functions under a delegation under subsection (1) must comply with any written directions of the infringement officer.

243 Delegation by relevant chief executive—Commissioner functions

(1) The relevant chief executive under section 237 may, in writing, delegate the relevant chief executive’s powers and functions under Part 5 of the Regulatory Powers Act in relation to the provisions mentioned in section 236 of this Act that relate to a function of the Commissioner to a member of the staff of the Commission who is an SES employee or an acting SES employee.

(2) A person exercising powers or performing functions under a delegation under subsection (1) must comply with any written directions of the relevant chief executive under section 237.

244 Delegation by infringement officer—System Governor functions

(1) An infringement officer under section 238 may, in writing, delegate the infringement officer’s powers and functions under Part 5 of the Regulatory Powers Act in relation to the provisions mentioned in section 236 of this Act that relate to a function of the System Governor to:
Chapter 6  Regulatory mechanisms
Part 7  Infringement notices under Part 5 of the Regulatory Powers Act
Division 3  Delegations by infringement officers and relevant chief executives

Section 245

(a) an SES employee or acting SES employee in the Department;

or

(b) an APS employee who holds, or is acting in, an Executive Level 2, or equivalent, position in the Department.

(2) A person exercising powers or performing functions under a delegation under subsection (1) must comply with any written directions of the infringement officer.

245 Delegation by relevant chief executive—System Governor functions

(1) The relevant chief executive under section 238 may, in writing, delegate the relevant chief executive’s powers and functions under Part 5 of the Regulatory Powers Act in relation to the provisions mentioned in section 236 of this Act that relate to a function of the System Governor to an SES employee, or an acting SES employee, in the Department.

(2) A person exercising powers or performing functions under a delegation under subsection (1) must comply with any written directions of the relevant chief executive under section 238.
Part 8—Enforceable undertakings under Part 6 of the Regulatory Powers Act

Division 1—Triggering Part 6 of the Regulatory Powers Act

246 Enforceable provisions

The following provisions are enforceable under Part 6 of the Regulatory Powers Act:

(a) a provision of Part 4 of Chapter 3 of this Act (obligations of registered providers);

(b) a provision of the rules made for the purposes of a provision mentioned in paragraph (a).

Note: Part 6 of the Regulatory Powers Act creates a framework for accepting and enforcing undertakings relating to compliance with provisions.

247 Authorised person—Commissioner functions

For the purposes of Part 6 of the Regulatory Powers Act, the Commissioner is an authorised person in relation to the provisions mentioned in section 246 of this Act that relate to a function of the Commissioner.

248 Authorised person—System Governor functions

For the purposes of Part 6 of the Regulatory Powers Act, the System Governor is an authorised person in relation to the provisions mentioned in section 246 of this Act that relate to a function of the System Governor.

249 Relevant court

For the purposes of Part 6 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the provisions mentioned in section 246 of this Act:
Section 249

1 (a) the Federal Court;
2 (b) the Federal Circuit and Family Court of Australia
3 (Division 2);
4 (c) a court of a State or Territory that has jurisdiction in relation
5 to matters arising under this Act.
Division 2—Modifications of Part 6 of the Regulatory Powers Act

250 Extension to external Territories

Part 6 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in section 246 of this Act, extends to the external Territories other than the Territory of Ashmore and Cartier Islands.

251 Other undertakings

(1) An authorised person may accept any of the following undertakings:

(a) a written undertaking given by a person that the person will, in order to provide compensation for loss or damage suffered as a result of a contravention or alleged contravention by the person of a provision mentioned in section 246, pay another person an amount worked out in accordance with the undertaking;

(b) a written undertaking given by a person in connection with a matter relating to a contravention or alleged contravention by the person of a provision mentioned section 246.

(2) The undertaking must be expressed to be an undertaking under this section.

(3) The power in subsection (1) is in addition to the power of an authorised person under subsection 114(1) of the Regulatory Powers Act.

(4) Part 6 of the Regulatory Powers Act, other than subsections 114(1) and (2), applies to an undertaking accepted under subsection (1) of this section as if it were an undertaking accepted under subsection 114(1) of that Act.
Chapter 6  Regulatory mechanisms
Part 8  Enforceable undertakings under Part 6 of the Regulatory Powers Act
Division 3  Delegations by authorised persons

Section 252

Division 3—Delegations by authorised persons

252 Delegation by authorised person—Commissioner functions

(1) The authorised person under section 247 may, in writing, delegate the authorised person’s powers and functions under Part 6 of the Regulatory Powers Act in relation to the provisions mentioned in section 246 of this Act that relate to a function of the Commissioner to a member of the staff of the Commission who is:

(a) an SES employee or acting SES employee; or
(b) an APS employee who holds, or is acting in, an Executive Level 2, or equivalent, position.

(2) However, the authorised person under section 247 must not delegate a function or power to a person under subsection (1) of this section unless the authorised person under section 247 is satisfied that the person has suitable training or experience to properly perform the function or exercise the power.

(3) A person exercising powers or performing functions under a delegation under subsection (1) must comply with any written directions of the authorised person under section 247.

253 Delegation by authorised person—System Governor functions

(1) The authorised person under section 248 may, in writing, delegate the authorised person’s powers and functions under Part 6 of the Regulatory Powers Act in relation to the provisions mentioned in section 246 of this Act that relate to a function of the System Governor to:

(a) an SES employee or acting SES employee in the Department; or
(b) an APS employee who holds, or is acting in, an Executive Level 2, or equivalent, position in the Department.

(2) However, the authorised person under section 248 must not delegate a function or power to a person under subsection (1) of this section unless the authorised person under section 248 is
satisfied that the person has suitable training or experience to
properly perform the function or exercise the power.

(3) A person exercising powers or performing functions under a
delegation under subsection (1) must comply with any written
directions of the authorised person under section 248.
Chapter 6  Regulatory mechanisms
Part 9  Injunctions under Part 7 of the Regulatory Powers Act
Division 1  Triggering Part 7 of the Regulatory Powers Act

Section 254

Part 9—Injunctions under Part 7 of the Regulatory Powers Act

Division 1—Triggering Part 7 of the Regulatory Powers Act

254 Enforceable provisions

The following provisions are enforceable under Part 7 of the Regulatory Powers Act:

(a) a provision of Part 4 of Chapter 3 of this Act (obligations of registered providers);
(b) a provision of the rules made for the purposes of a provision mentioned in paragraph (a).

Note: Part 7 of the Regulatory Powers Act creates a framework for using injunctions to enforce provisions.

255 Authorised person—Commissioner functions

For the purposes of Part 7 of the Regulatory Powers Act, the Commissioner is an authorised person in relation to the provisions mentioned in section 254 of this Act that relate to a function of the Commissioner.

256 Authorised person—System Governor functions

For the purposes of Part 7 of the Regulatory Powers Act, the System Governor is an authorised person in relation to the provisions mentioned in section 254 of this Act that relate to a function of the System Governor.

257 Relevant court

For the purposes of Part 7 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the provisions mentioned in section 254 of this Act:

(a) the Federal Court;
(b) the Federal Circuit and Family Court of Australia
   (Division 2);
(c) a court of a State or Territory that has jurisdiction in relation
to matters arising under this Act.
Chapter 6  Regulatory mechanisms

Part 9  Injunctions under Part 7 of the Regulatory Powers Act

Division 2  Modifications of Part 7 of the Regulatory Powers Act

Section 258

**Division 2—Modifications of Part 7 of the Regulatory Powers Act**

258  Consent injunctions

A relevant court may grant an injunction under Part 7 of the Regulatory Powers Act in relation to a provision mentioned in section 254 of this Act by consent of all the parties to proceedings brought under that Part, whether or not the court is satisfied that section 121 of that Act applies.

259  Extension to external Territories

Part 7 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in section 254 of this Act, extends to the external Territories other than the Territory of Ashmore and Cartier Islands.
Divisions 3—Delegations by authorised persons

260 Delegation by authorised person—Commissioner functions

(1) The authorised person under section 255 may, in writing, delegate the authorised person’s powers and functions under Part 7 of the Regulatory Powers Act in relation to the provisions mentioned in section 254 of this Act that relate to a function of the Commissioner to a member of the staff of the Commission who is an SES employee or an acting SES employee.

(2) A person exercising powers or performing functions under a delegation under subsection (1) must comply with any written directions of the authorised person.

261 Delegation by authorised person—System Governor functions

(1) The authorised person under section 256 may, in writing, delegate the authorised person’s powers and functions under Part 7 of the Regulatory Powers Act in relation to the provisions mentioned in section 254 of this Act that relate to a function of the System Governor to an SES employee, or an acting SES employee, in the Department.

(2) A person exercising powers or performing functions under a delegation under subsection (1) must comply with any written directions of the authorised person.
**Chapter 6 Regulatory mechanisms**

**Part 10 Notices requiring action**

**Division 1 Required action notices**

Section 262

**Part 10—Notices requiring action**

**Division 1—Required action notices**

**Subdivision A—Giving required action notices**

262 **Commissioner may give required action notices relating to Commissioner’s functions**

The Commissioner may give a registered provider a written notice (a *required action notice*) in relation to a matter that relates to the Commissioner’s functions if the Commissioner is satisfied of any of the grounds mentioned in section 264 in relation to the matter.

263 **System Governor may give required action notices relating to System Governor’s functions**

The System Governor may give a registered provider a written notice (a *required action notice*) in relation to a matter that relates to the System Governor’s functions if the System Governor is satisfied of any of the grounds mentioned in section 264 in relation to the matter.

264 **Grounds for giving required action notices**

For the purposes of sections 262 and 263, the grounds are as follows:

(a) the provider has not complied, or is not complying, with this Act;

(b) there is information that suggests that the provider may not have complied, or may not be complying, with this Act;

(c) it is likely that the provider will fail to comply with this Act and that the failure will give rise to:

(i) a risk to the safety, health or wellbeing of an individual to whom the provider is delivering funded aged care services; or

(ii) a prudential risk;
(d) the provider is, or is about to become, unable to meet its liabilities;
(e) there is, or there might be, a material risk to the security of the provider’s assets;
(f) there is, or there might be a material deterioration in the provider’s financial condition;
(g) the provider is conducting its affairs in an improper or financially unsound way;
(h) the provider is conducting its affairs in a way that may cause or promote instability in the Commonwealth aged care system;
(i) the notice would address a matter affecting the interests of an individual to whom the provider is delivering, or might in the future deliver, funded aged care services.

265 Contents of required action notices

A required action notice given to a registered provider must set out the following:
(a) the name of the provider;
(b) brief details of the matter in relation to which the notice is given;
(c) action that the provider must take, or refrain from taking, in relation to the matter;
(d) a reasonable period within which the provider must take, or refrain from taking, the action;
(e) a reasonable period within which the provider must give the Commissioner or the System Governor (as applicable) a written response in relation to the notice;
(f) that a failure to comply with the notice is subject to a civil penalty under section 268;
(g) the actions that the Commissioner or the System Governor (as applicable) may take under this Act in response to a failure to comply with the notice;
(h) any other matters prescribed by the rules.
Section 266

Subdivision B—Varying or revoking required action notices

266 Commissioner may vary or revoke required action notices

(1) The Commissioner may, by written notice given to a registered provider, vary a required action notice given to the provider by the Commissioner if, at the time of the variation, the Commissioner considers that the variation is appropriate.

(2) The Commissioner may, by written notice given to a registered provider, revoke a required action notice given to the provider by the Commissioner if, at the time of the revocation, the Commissioner considers that the notice is no longer appropriate.

(3) In deciding whether to vary or revoke a required action notice given to a registered provider, the Commissioner must consider any written response received from the provider before the end of the period set out in the notice under paragraph 265(e).

267 System Governor may vary or revoke required action notices

(1) The System Governor may, by written notice given to a registered provider, vary a required action notice given to the provider by the System Governor if, at the time of the variation, the System Governor considers that the variation is appropriate.

(2) The System Governor may, by written notice given to a registered provider, revoke a required action notice given to the provider by the System Governor if, at the time of the revocation, the System Governor considers that the notice is no longer appropriate.

(3) In deciding whether to vary or revoke a required action notice given to a registered provider, the System Governor must consider any written response received from the provider before the end of the period set out in the notice under paragraph 265(e).
Subdivision C—Penalty for contravening required action notices

268 Penalty for contravening required action notices

A registered provider contravenes this section if the provider fails to comply with a required action notice given to the provider.

Civil penalty: 60 penalty units.
Chapter 6  Regulatory mechanisms
Part 10  Notices requiring action
Division 2  Compliance notices

Section 269

Division 2—Compliance notices

Subdivision A—Giving compliance notices

269 Commissioner may give compliance notices relating to Commissioner’s functions

The Commissioner may give a registered provider a written notice (a compliance notice) if:

(a) the Commissioner:

(i) is satisfied that the provider has not complied, or is not complying, with this Act; or

(ii) is aware of information that suggests that the provider may not have complied, or may not be complying, with this Act; and

(b) the non-compliance or possible non-compliance relates to a matter that relates to the Commissioner’s functions.

270 System Governor may give compliance notices relating to System Governor’s functions

The System Governor may give a registered provider a written notice (a compliance notice) if:

(a) the System Governor:

(i) is satisfied that the provider has not complied, or is not complying, with this Act; or

(ii) is aware of information that suggests that the provider may not have complied, or may not be complying, with this Act; and

(b) the non-compliance or possible non-compliance relates to a matter that relates to the System Governor’s functions.

271 Contents of compliance notices—general

A compliance notice given to a provider must set out the following:

(a) the name of the provider;
(b) brief details of the non-compliance or possible non-compliance;
(c) action that the provider must take, or refrain from taking, to address the non-compliance or possible non-compliance;
(d) a reasonable period within which the provider must take, or refrain from taking, the action;
(e) a reasonable period within which the provider must give the Commissioner or the System Governor (as applicable) a written response in relation to the notice;
(f) that a failure to comply with the notice is subject to a civil penalty under section 275;
(g) the actions that the Commissioner or the System Governor (as applicable) may take under this Act in response to a failure to comply with the notice;
(h) any other matters prescribed by the rules.

272 Contents of compliance notices—additional content for notices given by Commissioner in relation to significant failures or systematic patterns of conduct

If the Commissioner is satisfied that non-compliance by a registered provider is conduct that:
(a) involves a significant failure; or
(b) is part of a systematic pattern of conduct;
a compliance notice given to the provider by the Commissioner in relation to the non-compliance must also set out that the Commissioner is so satisfied and brief reasons that the Commissioner is so satisfied.

Note: See the definitions of significant failure and systematic pattern of conduct in section 18. See also the registered provider and responsible person duties in sections 120 and 121.
Subdivision B—Varying or revoking compliance notices

273 Commissioner may vary or revoke compliance notices

(1) The Commissioner may, by written notice given to a registered provider, vary or revoke a compliance notice given to the provider by the Commissioner if the Commissioner considers that it is appropriate in all the circumstances to do so.

(2) In deciding whether to vary or revoke a compliance notice given to a registered provider, the Commissioner must consider any written response received from the provider before the end of the period set out in the notice under paragraph 271(e).

274 System Governor may vary or revoke compliance notices

(1) The System Governor may, by written notice given to a registered provider, vary or revoke a compliance notice given to the provider by the System Governor if the System Governor considers that it is appropriate in all the circumstances to do so.

(2) In deciding whether to vary or revoke a compliance notice given to a registered provider, the System Governor must consider any written response received from the provider before the end of the period set out in the notice under paragraph 271(e).

Subdivision C—Penalty for contravening compliance notices

275 Penalty for contravening compliance notices

A registered provider contravenes this section if the provider fails to comply with a compliance notice.

Civil penalty: 60 penalty units.
Division 3—Adverse action warning notices

276 Commissioner may give adverse action warning notice

The Commissioner may give a registered provider a written notice (an adverse action warning notice) if:

(a) the Commissioner is satisfied that the provider has not complied, or is not complying, with this Act; and

(b) the non-compliance relates to a matter that relates to the Commissioner’s functions; and

(c) any of the following apply:

(i) the Commissioner is satisfied that, as a result of the non-compliance, there is an immediate and severe risk to the safety, health or wellbeing of an individual to whom the provider is delivering funded aged care services;

(ii) the provider has failed to comply with a compliance notice given in relation to the non-compliance;

(iii) the provider has breached an undertaking given by the provider and accepted by the Commissioner as an authorised person under section 247 in relation to the non-compliance; and

(d) the Commissioner is considering doing any of the following:

(i) revoking the provider’s registration;

(ii) suspending the provider’s registration;

(iii) varying the provider’s registration to remove the provider from being registered in a provider registration category;

(iv) varying the provider’s registration to remove a residential care home approved in relation to the provider;

(v) another action, prescribed by the rules, that would have a significant and adverse impact on the provider’s delivery of funded aged care services.
Chapter 6  Regulatory mechanisms
Part 10  Notices requiring action
Division 3  Adverse action warning notices

Section 277

277 Contents of adverse action warning notice

(1) An adverse action warning notice given to a provider must set out the following:

(a) the name of the provider;
(b) brief details of the non-compliance;
(c) action that the provider must agree to take, or refrain from taking, to address the non-compliance;
(d) a reasonable period within which the provider must give the Commissioner their agreement to take, or refrain from taking, the action;
(e) a reasonable period within which the provider must take, or refrain from taking, the action;
(f) a reasonable period within which the provider must give the Commissioner a written response in relation to the notice;
(g) the action mentioned in paragraph 276(d) that the Commissioner may take in relation to the non-compliance in response to a failure to comply with the notice;
(h) any other matters prescribed by the rules.

(2) Without limiting subsection (1), the following are actions that the Commissioner may require the provider to take:

(a) to provide, at the provider’s expense, specified training for the provider’s responsible persons and aged care workers;
(b) to provide specified security for any debts owed by the provider to the Commonwealth;
(c) to appoint an adviser who meets the requirements mentioned in subsection (3) to assist the provider to comply with this Act, and to give the adviser all necessary information required by the adviser to provide that assistance;
(d) for funded aged care services that the provider is delivering—to arrange for another registered provider to deliver those services;
(e) for individuals in a residential care home approved in relation to the provider—to arrange for those individuals to be moved to another residential care home;
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Section 277

(f) to refund excess accommodation payments or accommodation contributions charged by the provider;
(g) to refund a refundable deposit in accordance with this Act;
(h) another action prescribed by the rules.

(3) For the purposes of paragraph (2)(c), the adviser must be a person who:
   (a) has appropriate qualifications, skills or experience; and
   (b) is not the Commissioner, the System Governor or an APS employee; and
   (c) is not a person prescribed by the rules.

(4) The rules may prescribe matters that the Commissioner must take into account in specifying a period for the purposes of paragraph (1)(d), (e) or (f).
Chapter 6  Regulatory mechanisms
Part 10  Notices requiring action
Division 4  Notices to attend to answer questions or give information or documents

Section 278

278 Notice to attend to answer questions etc. relevant to Commissioner’s functions

(1) This section applies if the Commissioner reasonably believes that a person has information or documents relevant to:

(a) whether a registered provider, or a former registered provider, is complying with this Act in relation to a matter that relates to the Commissioner’s functions; or

(b) whether an individual who is or was an aged care worker of a registered provider, or a former registered provider, is complying, or has complied, with a provision of this Act that applies or applied to the individual.

(2) The Commissioner may, by written notice, require the person to attend before an authorised Commission officer to do either or both of the following:

(a) to answer questions relating to the matter;

(b) to give such information or documents (or copies of documents) as are specified in the notice.

(3) The notice must:

(a) specify the authorised Commission officer before whom the person is required to attend; and

(b) specify the day on which, and the time and place at which, the person is required to attend; and

(c) if the person is a registered provider—inform the registered provider that it is a condition of the registered provider’s registration under section 115 that the registered provider must cooperate with a person who is performing functions, or exercising powers, under this Act.

(4) The day specified under paragraph (3)(b) must be at least 14 days after the notice is given.
279 Notice to attend to answer questions etc. relevant to System Governor’s functions

(1) This section applies if the System Governor reasonably believes that a person has information or documents relevant to whether a registered provider, or a former registered provider, is complying with this Act in relation to a matter that relates to the System Governor’s functions.

(2) The System Governor may, by written notice, require the person to attend before an authorised System Governor officer to do either or both of the following:
   (a) to answer questions relating to the matter;
   (b) to give such information or documents (or copies of documents) as are specified in the notice.

(3) The notice must:
   (a) specify the authorised System Governor officer before whom the person is required to attend; and
   (b) specify the day on which, and the time and place at which, the person is required to attend; and
   (c) if the person is a registered provider—inform the registered provider that it is a condition of the registered provider’s registration under section 115 that the registered provider must cooperate with a person who is performing functions, or exercising powers, under this Act.

(4) The day specified under paragraph (3)(b) must be at least 14 days after the notice is given.

280 Offence for failure to comply with notice

A person commits an offence if:
   (a) the person is given a notice under subsection 278(2) or 279(2); and
   (b) the person fails to comply with a requirement of the notice.

Penalty: 30 penalty units.
Section 281

281 Attending before authorised officer to answer questions—making oath or affirmation

(1) This section applies if:

(a) a person is given a notice under subsection 278(2) or 279(2); and

(b) the notice requires the person to attend before an authorised officer to answer questions; and

(c) the person attends before the authorised officer for that purpose.

(2) The authorised officer may question the person on oath or affirmation and may, for that purpose:

(a) require the person to take an oath or make an affirmation; and

(b) administer an oath or affirmation to the person.

(3) The oath or affirmation to be taken or made by the person for the purposes of subsection (2) is an oath or affirmation that the statements that the person will make will be true.

Offence

(4) A person commits an offence if:

(a) the person is required by an authorised officer to take an oath or make an affirmation for the purposes of answering questions; and

(b) the person refuses or fails to comply with the requirement.

Penalty: 30 penalty units.

Subdivision B—Notices to give information or produce documents

282 Notices to give information or produce documents required for Commissioner’s functions

(1) The Commissioner may, by notice in writing given to a person, require the person, within a reasonable time stated in the notice, to:
(a) give the Commissioner any information; or  
(b) produce to the Commissioner any documents (or copies of documents);  
specified in the notice that the Commissioner requires for the performance of the Commissioner’s functions.

(2) The Commissioner may, by notice in writing given to the person, extend the time within which the information must be given or documents or copies of documents must be produced in accordance with the notice under subsection (1).

283 Notices to give information or produce documents required for System Governor’s functions

(1) The System Governor may, by notice in writing given to a person, require the person, within a reasonable time stated in the notice, to:  
(a) give the System Governor any information; or  
(b) produce to the System Governor any documents (or copies of documents);  
specified in the notice that the System Governor requires for the performance of the System Governor’s functions.

(2) The System Governor may, by notice in writing given to the person, extend the time within which the information must be given or documents or copies of documents must be produced in accordance with the notice under subsection (1).

284 Strict liability offence for failure to comply with notice

A person commits an offence of strict liability if:  
(a) the person is required to give information, or produce documents or copies of documents, in accordance with a notice given to the person under subsection 282(1) or 283(1); and  
(b) the person fails to comply with the requirement.

Penalty: 30 penalty units.
Subdivision C—Privilege against self-incrimination

285 Privilege against self-incrimination not abrogated

(1) Nothing in this Division affects the right of a person to refuse to answer a question, give information or give a document on the ground that answering the question, giving the information or giving the document might tend to incriminate the person.

(2) The fact that this section is included in this Division does not imply that the privilege against self-incrimination is abrogated in any other Act.
Part 11—Critical failures powers

[To be drafted.]
Part 12—Banning orders

Division 1—Making banning orders

286 Banning orders on current and former registered providers

(1) The Commissioner may, by written notice, make an order (the banning order) prohibiting or restricting either of the following by an entity that is or was a registered provider:
   (a) delivery of funded aged care services generally;
   (b) delivery of funded aged care services in a specified service type.

Note: Before making the banning order, the Commissioner needs to give the entity notice of the intention to make the order and allow the entity to comment, except in certain circumstances: see section 288.

(2) However, the banning order cannot prohibit or restrict delivery of funded aged care services in a specified service type if the entity is registered as a registered provider in a provider registration category because the entity intended to deliver funded aged care services in that service type.

Grounds for banning order

(3) The Commissioner may make an order under subsection (1) only if:
   (a) the Commissioner has revoked the registration of the entity as a registered provider; or
   (b) the Commissioner reasonably believes that the entity has contravened, is contravening, or is likely to contravene this Act; or
   (c) the Commissioner reasonably believes that the entity has been involved in, or is likely to become involved in, a contravention of this Act by another entity; or
   (d) if the order is to prohibit or restrict the delivery of funded aged care services generally by the entity—the Commissioner reasonably believes that the entity is unsuitable to deliver funded aged care services generally; or
(e) if the order is to prohibit or restrict the delivery of funded aged care services in a specified service type—the Commissioner reasonably believes that the entity is unsuitable to deliver funded aged care services in that service type; or
(f) if the entity is a registered provider—there is a severe risk to the safety, health or wellbeing of an individual accessing funded aged care services if the entity continues to be a registered provider; or
(g) the entity is convicted of an offence involving fraud or dishonesty; or
(h) the entity becomes an insolvent under administration.

Matters affecting entity’s suitability

(4) In considering whether an entity is unsuitable as described in paragraph (3)(d) or (e), the Commissioner must have regard to the matters referred to in paragraph 68(1)(b). This does not limit the matters to which the Commissioner may have regard in that consideration.

287 Banning orders on individuals as aged care workers and responsible persons

(1) The Commissioner may make an order (the banning order) prohibiting or restricting the involvement of an individual, as either an aged care worker, or a responsible person, of a registered provider, in:
   (a) delivery of funded aged care services generally; or
   (b) delivery of funded aged care services in a specified service type; or
   (c) a specified activity of a registered provider.

Note: Before making the banning order, the Commissioner needs to give the individual notice of the intention to make the order and allow the individual to comment, except in certain circumstances: see section 288.
Chapter 6  Regulatory mechanisms
Part 12  Banning orders
Division 1  Making banning orders

Section 287

Grounds for banning order

(2) The Commissioner may make an order under subsection (1) affecting an individual (the *affected individual*) only if:

(a) if the order is to prohibit or restrict the involvement of the affected individual in the delivery of funded aged care services generally—the Commissioner reasonably believes that the individual is unsuitable to be involved in the delivery of funded aged care services generally; or

(b) if the order is to prohibit or restrict the involvement of the affected individual in the delivery of funded aged care services in a specified service type—the Commissioner reasonably believes that the individual is unsuitable to be involved in the delivery of funded aged care services in that type; or

(c) if the order is to prohibit or restrict the involvement of the affected individual in a specified activity of a registered provider—the Commissioner reasonably believes that the individual is unsuitable to be involved in the activity; or

(d) the affected individual is or was an aged care worker, or a responsible person, of a registered provider and any of the following applies:

(i) the Commissioner reasonably believes that the affected individual did not comply, is not complying or is not likely to comply with a provision of the Aged Care Code of Conduct that applies or applied to the individual;

(ii) the Commissioner reasonably believes there is a severe risk to the safety, health or wellbeing of one or more individuals accessing funded aged care services if the affected individual is involved, or continues to be involved, in a matter to which the order is to relate;

(iii) the individual has at any time been convicted of an indictable offence involving fraud or dishonesty;

(iv) the individual is an insolvent under administration.
Matters affecting individual’s suitability

(3) In considering whether an individual is unsuitable as described in paragraph (2)(a), (b) or (c), the Commissioner must have regard to the suitability matters. This does not limit the matters to which the Commissioner may have regard in that consideration.

288 Notice of intention to make a banning order

(1) Before the Commissioner makes a banning order against an entity (whether an individual or not), the Commissioner must, by written notice, notify the entity that the Commissioner is considering making the order.

(2) Subsection (1) does not apply if:

(a) the Commissioner reasonably believes that there is an immediate and severe risk to the safety, health or wellbeing of one or more individuals accessing funded aged care services if the banning order is not made against the entity; or

(b) the Commissioner has revoked the registration of the entity as a registered provider.

(3) The notice must:

(a) set out the reasons why the Commissioner is considering making the banning order against the entity; and

(b) invite the entity to make submissions, in writing, to the Commissioner in relation to the matter within 14 days after receiving the notice; and

(c) inform the entity that the Commissioner may make the order against the entity after the end of that period and considering any submissions made by the entity within that period.

(4) The Commissioner must consider any submissions made by the entity in accordance with the notice.

289 Contraventions of banning orders

(1) An entity contravenes this subsection if:

(a) a banning order against the entity is in force; and
Section 290

(b) the entity engages in conduct; and
(c) the conduct breaches the order or a condition to which the
order is subject.

Civil penalty: 1,000 penalty units.

(2) An entity contravenes this subsection if:
(a) the entity is a registered provider; and
(b) an individual is an aged care worker, or a responsible person,
of the registered provider; and
(c) a banning order against the individual is in force; and
(d) the entity fails to take reasonable steps to ensure that the
individual does not engage in conduct that breaches the order
or a condition to which the order is subject.

Civil penalty: 1,000 penalty units.

290 Scope of banning orders

A banning order may:
(a) apply generally or be of limited application; and
(b) be permanent or for a specified period; and
(c) be made subject to specified conditions.

291 Notice of decision about banning order

(1) As soon as is practicable after deciding whether to make a banning
order against an entity, the Commissioner must give the entity a
written notice that:
(a) sets out the decision; and
(b) sets out the reasons for the decision; and
(c) if the decision is to make the order:
   (i) specifies whether the order applies generally or the
       order is of limited application; and
   (ii) if the order is of limited application—specifies that
        limited application; and
   (iii) specifies the day on which the order takes effect; and
Section 292

(iv) if the order is to cease to have effect on a particular day—specifies that day; and
(v) specifies any conditions to which the order is subject; and
(vi) states how the entity may apply for reconsideration of the decision.

(2) If the Commissioner gives a notice under subsection (1) of a decision to make a banning order against an aged care worker, or responsible person, of a registered provider, the Commissioner must give the provider a copy of the notice as soon as is practicable.

292 Banning orders are not legislative instruments

A banning order is not a legislative instrument.
Chapter 6  Regulatory mechanisms
Part 12  Banning orders
Division 2  Varying or revoking banning orders

Section 293

Division 2—Varying or revoking banning orders

293 Varying or revoking banning order on Commissioner’s own initiative

(1) The Commissioner may, on the Commissioner’s own initiative, vary or revoke a banning order made against an entity if the Commissioner considers that it is appropriate in all the circumstances to do so.

(2) Without limiting subsection (1), the Commissioner may in varying a banning order do either or both of the following:

(a) vary, or revoke, a condition to which the order is subject;

(b) specify one or more new conditions to which the order is to be subject.

(3) If the Commissioner decides to vary or revoke a banning order made against an entity, the Commissioner must, as soon as is practicable, give the entity a written notice that:

(a) sets out the decision; and

(b) sets out the reasons for the decision; and

(c) specifies the day on which the variation or revocation takes effect; and

(d) if a condition to which the order is subject is varied—sets out the condition as varied; and

(e) specifies any conditions to which the order was subject that have been revoked; and

(f) specifies any new conditions to which the order is subject; and

(g) states how the entity may apply for reconsideration of the decision.

(4) If the Commissioner gives a notice under subsection (3) to an aged care worker, or responsible person, of a registered provider, the Commissioner must give the provider a copy of the notice as soon as is practicable.
Section 294

Varying or revoking banning order on application

Application for variation or revocation

(1) An entity against which a banning order has been made may apply to the Commissioner for variation or revocation of either the order or a condition to which the order is subject.

(2) The application must:
   (a) be made in writing; and
   (b) be in a form approved by the Commissioner; and
   (c) be accompanied by any documents or information specified by the Commissioner.

Variation or revocation

(3) After receiving the application, the Commissioner may vary or revoke the banning order or condition, or specify one or more new conditions to which the order is subject, if the Commissioner considers that it is appropriate in all the circumstances to do so.

Notice of intention not to vary or revoke as requested

(4) If the Commissioner proposes not to vary or revoke the banning order or condition, or proposes to specify one or more new conditions to which the order is to be subject, the Commissioner must give the entity a written notice that:
   (a) sets out the reasons for the Commissioner’s proposal; and
   (b) invites the entity to make written submissions on the proposal to the Commissioner within:
      (i) 14 days after receiving the notice; or
      (ii) if a shorter period is specified in the notice—that shorter period; and
   (c) informs the entity that the Commissioner may decide not to proceed with the proposal after the end of that period and considering any submissions made by the entity in accordance with the invitation.
Section 295

(5) The Commissioner must consider any submissions made by the entity in accordance with the invitation.

Notice of decision

(6) As soon as practicable after deciding whether to vary or revoke the banning order or a condition to which the order is subject, the Commissioner must give the entity a written notice that:

(a) sets out the decision; and
(b) sets out the reasons for the decision; and
(c) if the order is varied or revoked—specifies the day on which the variation or revocation takes effect; and
(d) if a condition to which the order is subject is varied—sets out the condition as varied and specifies the day on which the variation takes effect; and
(e) if a condition to which the order is subject is revoked—specifies the day on which the revocation takes effect; and
(f) if the order is subject to new conditions—specifies them and when they take effect; and
(g) states how the entity may apply for reconsideration of the decision.

295 Variations and revocations of banning orders are not legislative instruments

A variation or revocation of a banning order is not a legislative instrument.
Division 3—Register of banning orders

Section 296

296 Register of banning orders

(1) The Commissioner must establish and maintain a register that includes the following information in relation to each entity against which a banning order has been made at any time:

(a) the name of the entity;
(b) the entity’s ABN (if any);
(c) the details of the banning order made against the entity (including any conditions to which the order is subject);
(d) if an application has been made under subsection 294(1) for the revocation of the banning order, and the application has not been finally determined—a statement to that effect;
(e) if a request has been made under [to be drafted] for the reconsideration of a decision to make the banning order or not to revoke the banning order, and a reconsideration decision has not yet been made—a statement to that effect;
(f) if a decision has been made under [to be drafted] to reconsider a decision to make the banning order or not to revoke the banning order, and a reconsideration decision has not yet been made—a statement to that effect;
(g) if an application has been made to the Administrative Appeals Tribunal for review of a reconsideration decision that relates to a decision to make the banning order or not to revoke the banning order, and the application has not been finally determined—a statement to that effect;
(h) any other information prescribed by the rules.

Note: Other information about entities that are or were registered providers is published in the Provider Register: see section 87. Information about banning orders against those entities may also be included in that register.

(2) Subsection (1) applies in relation to a banning order even if the banning order is no longer in force, unless it is no longer in force because:

(a) the banning order has been revoked under section 294; or
Section 296

(b) the decision to make the banning order has been set aside on reconsideration under [to be drafted] or on review.

(3) The Commissioner must ensure that the register is kept up to date.

(4) The register may be kept in any form that the Commissioner considers appropriate.

(5) The rules must make provision for, or in relation to, the correction of information that is included in the register, including how an entity may access information about the entity that is included in the register and seek the correction of such information.

(6) The rules may make provision for, or in relation to, the following matters:
   (a) making the register, in whole or in part, publicly available;
   (b) making specified information that is included in the register publicly available;
   (c) any other matter relating to the administration or operation of the register.
Part 13—System Governor functions assurance activities

297 System Governor may conduct assurance activities

(1) The System Governor may conduct activities (assurance activities) for the purposes of the System Governor’s functions.

(2) Without limiting subsection (1), matters that assurance activities could relate to include the following:
   (a) how registered providers are using subsidy or grants and charging for funded aged care services, including justifications for amounts charged to individuals;
   (b) how registered providers are structuring their financial accounting for delivering funded aged care services;
   (c) how registered providers are delivering funded aged care services;
   (d) the nature and type of dealings that registered providers have with individuals to whom they are delivering funded aged care services;
   (e) the procedures and documentation of registered providers in relation to matters mentioned in any of the above paragraphs.

Note: Assurance activities may be conducted before or after, or in conjunction with, other actions that the System Governor may take under this Chapter, and may inform those other actions. Any findings, conclusions or recommendations made as a result of assurance activities may provide a basis for the System Governor to exercise other powers under this Chapter.

298 Terms of reference for assurance activities

The System Governor may, in writing, specify terms of reference for an assurance activity, including:
   (a) the registered provider or providers, or class or classes of registered providers, that the activity relates to; and
   (b) the matter or matters that the activity relates to.
Section 299

299 Reports by System Governor on assurance activities

Reports for publication

(1) The System Governor may prepare and publish reports on assurance activities, dealing with any findings, conclusions or recommendations made as a result of the activities.

(2) A report under subsection (1) must not include personal information.

Other reports

(3) The System Governor may prepare a report on any particular assurance activity, dealing with any findings, conclusions or recommendations made as a result of the activity.

(4) If the System Governor prepares a report under subsection (3), the System Governor may give a copy of the report to any registered provider to which the activity relates.

300 Assistance to System Governor in conducting and reporting on assurance activities

(1) The System Governor may be assisted in the conduct of assurance activities and the preparation of any reports on the activities by:

(a) APS employees in the Department; or

(b) persons engaged under contract by the System Governor to provide that assistance and any of their employees who are providing that assistance.

(2) However, the power to give a registered provider a notice under 279 or 283 may not be exercised by a person assisting the System Governor under subsection (1) of this section unless the power has been delegated to the person under subsection 363(1).
301 Registered providers must provide facilities and assistance for assurance activities

A registered provider to which an assurance activity relates must provide the person conducting the activity, and any individuals assisting that person, with all reasonable facilities and assistance necessary for the effective exercise of the person’s duties in relation to the activity.

Civil penalty: 30 penalty units.
Part 14—Recoverable amounts

Division 1—Recoverable amounts

302 Recoverable amounts and debtors

(1) If:

(a) the Commonwealth pays an amount to an entity by way of:
   (i) subsidy; or
   (ii) a grant under Part 6 of Chapter 8; and
(b) the entity was not entitled for any reason to the payment of
   the amount;
then:
(c) the amount is a recoverable amount; and
(d) the entity is a debtor in relation to the recoverable amount.

(2) Without limiting paragraph (1)(b), an entity is taken not to have
been entitled to the payment of an amount if the payment should
not have been made for one or more of the following reasons:

(a) the payment was made as a result of:
   (i) a computer error or an administrative error; or
   (ii) a contravention of this Act; or
   (iii) a false or misleading statement or a misrepresentation;
   or
   (iv) incorrect information being provided in purported
       compliance with this Act;
(b) if the amount was paid by way of subsidy—incorrect
    information being provided in relation to the claim for the
    payment;
(c) if the amount was paid by way of a grant—a condition to
    which the grant is subject is not met.

303 Recoverable amounts are debts due to the Commonwealth

A recoverable amount is a debt due to the Commonwealth.
Divison 2—Recovery of recoverable amounts

304 Legal proceedings

(1) A recoverable amount may be recovered by the Commonwealth in a court of competent jurisdiction.

(2) Subject to subsections (3), (4) and (5), legal proceedings for the recovery of a recoverable amount are not to be commenced after the end of the period (the recovery period) of 6 years starting on the first day any of the following becomes aware, or could reasonably be expected to have become aware, of the circumstances that gave rise to the recoverable amount:

(a) the System Governor;
(b) an APS employee in any of the following:
   (i) the Department;
   (ii) Services Australia;
   (iii) the Department administered by the Minister who administers the Data-matching Program (Assistance and Tax) Act 1990.

(3) If, within the recovery period, part of the recoverable amount is paid, legal proceedings for the recovery of the balance of the recoverable amount may be commenced within the period of 6 years starting on the day of payment.

(4) If, within the recovery period, a debtor in relation to the recoverable amount acknowledges that the debtor owes the recoverable amount, legal proceedings for the recovery of the recoverable amount may be commenced within the period of 6 years starting on the day of acknowledgement.

(5) If, within the recovery period, either of the following occurs:
   (a) a review of a file relating to action for the recovery of the recoverable amount;
   (b) other internal Departmental activity relating to action for the recovery of the recoverable amount;
action under this section for the recovery of the recoverable amount may be commenced within the period of 6 years after the end of the activity.

305 Arrangements between System Governor and debtors

(1) The System Governor may, on behalf of the Commonwealth, enter into an arrangement in writing with a debtor in relation to a recoverable amount under which the debtor is to pay the recoverable amount, or the outstanding amount of the recoverable amount, in a way set out in the arrangement (including payment in instalments).

(2) An arrangement entered into under subsection (1) has effect, or is taken to have had effect, on and after the day specified in the arrangement as the day the arrangement commences (whether that day is before, on or after the day the arrangement is entered into).

(3) If an arrangement entered into under subsection (1) does not specify a day as mentioned in subsection (2), it has effect on and after the day on which it is entered into.

(4) The System Governor may, on behalf of the Commonwealth, in writing, terminate or alter an arrangement entered into under subsection (1):

(a) at the debtor’s request; or
(b) after giving 28 days’ notice, in writing, to the debtor of the proposed termination or alteration; or
(c) without notice, if the System Governor is satisfied that the debtor has failed to disclose material information about the debtor’s true capacity to pay the recoverable amount, or the outstanding amount of the recoverable amount.

306 Recovery of amounts from financial institutions

Notice about payment made to wrong account

(1) If:
Section 306

(a) a recoverable amount is paid to a financial institution for the credit of an account kept with the institution; and
(b) the System Governor is satisfied that the payment was intended to be made to someone who was not the person or one of the persons in whose name or names the account was kept;

the System Governor may give a written notice to the institution setting out the matters mentioned in paragraphs (a) and (b) and requiring the institution to pay to the Commonwealth, within a reasonable period stated in the notice, the lesser of the following amounts:

(c) an amount specified in the notice that is equal to the recoverable amount;

(d) the amount standing to the credit of the account when the notice is received by the institution.

Notice about payment made to account of deceased person after their death

(2) If:

(a) the payment of a recoverable amount that is intended to be made to or in respect of a person (the first person) is made to a financial institution for the credit of an account that was kept with the institution by the first person or by the first person and one or more other persons; and

(b) the first person died before the payment or payments were made;

the System Governor may give a written notice to the institution setting out the matters mentioned in paragraphs (a) and (b) and requiring the institution to pay to the Commonwealth, within a reasonable period stated in the notice, the lesser of the following amounts:

(c) an amount specified in the notice that is equal to the recoverable amount;

(d) the amount standing to the credit of the account when the notice is received by the institution.
Chapter 6 Regulatory mechanisms  
Part 14 Recoverable amounts  
Division 2 Recovery of recoverable amounts

Section 307

Informing deceased estate

(3) As soon as possible after issuing a notice under subsection (2), the System Governor must inform the deceased estate in writing of:
(a) the amount sought to be recovered from the deceased person’s account; and
(b) the reasons for the recovery action.

Offence

(4) A financial institution must comply with a notice given to it under subsection (1) or (2).
Penalty: 300 penalty units.

Defence

(5) It is a defence to a prosecution of a financial institution for failing to comply with a notice given to it under subsection (1) or (2) if the financial institution proves that it was incapable of complying with the notice.

Note: A defendant bears a legal burden in relation to the matter in subsection (5): see section 13.4 of the Criminal Code.

Reduction of recoverable amount by amount recovered

(6) If a financial institution pays an amount to the Commonwealth in compliance with a notice given to it under subsection (1) or (2) in respect of a recoverable amount, the recoverable amount is reduced by the amount paid to the Commonwealth by the institution.

307 Recovery by deductions from amounts payable to debtor

If a person is a debtor in relation to a recoverable amount, the amount (or part of it) may be deducted from one or more other amounts payable to the person under this Act.
Section 308

Division 4—Non-recovery of recoverable amounts

308 Write-off of recoverable amounts

(1) Subject to subsections (2) and (3), the System Governor may, on behalf of the Commonwealth, decide to write off a recoverable amount or class of recoverable amounts, for a stated period or otherwise.

(2) The System Governor may decide to write off a recoverable amount under subsection (1) if, and only if:

(a) the recoverable amount is irrecoverable at law under subsection (4); or
(b) a debtor in relation to the recoverable amount has no capacity to repay the recoverable amount; or
(c) the whereabouts of a debtor in relation to the recoverable amount are unknown after all reasonable efforts have been made to locate the debtor; or
(d) it is not cost effective for the Commonwealth to take action to recover the recoverable amount.

(3) The System Governor may decide to write off a class of recoverable amounts under subsection (1) if, and only if, a paragraph of subsection (2) applies to each recoverable amount in the class.

(4) For the purposes of paragraph (2)(a), a recoverable amount is irrecoverable at law if, and only if:

(a) both:
   (i) the recoverable amount cannot be recovered by means of legal proceedings because the relevant 6 year period mentioned in section 304 has elapsed; and
   (ii) the recoverable amount cannot be recovered by means of deductions under section 307; or
(b) there is no proof of the recoverable amount capable of sustaining legal proceedings for its recovery; or
(c) all of the following apply:
Chapter 6 Regulatory mechanisms
Part 14 Recoverable amounts
Division 4 Non-recovery of recoverable amounts

Section 309

(i) a debtor in relation to the recoverable amount is
   discharged from bankruptcy;
(ii) the recoverable amount was incurred before the debtor
   became bankrupt;
(iii) the recoverable amount was not incurred by fraud; or
(d) a debtor in relation to the recoverable amount has died,
   leaving:
   (i) no estate; or
   (ii) insufficient funds in the debtor's estate to repay the
       recoverable amount.

(5) A decision made under subsection (1) takes effect:
   (a) if no day is specified in the decision—on the day the decision
       is made; or
   (b) if a day is specified in the decision—on the day so specified
       (whether that day is before, on or after the day the decision
       is made).

(6) Nothing in this section prevents anything being done at any time to
    recover a recoverable amount that has been written off under this
    section.

309 Waiver of right to recover recoverable amount

(1) Subject to subsections (2) and (3), the System Governor may, on
    behalf of the Commonwealth, waive the right of the
    Commonwealth to recover:
    (a) the whole or a part of a recoverable amount; or
    (b) a class of recoverable amounts.

(2) The System Governor may, on behalf of the Commonwealth,
    waive the right of the Commonwealth to recover the whole or a
    part of a recoverable amount only in the circumstances described in
    section 310, 311 or 312.

(3) The System Governor may, on behalf of the Commonwealth,
    waive the right of the Commonwealth to recover a class of
    recoverable amounts only if circumstances described in
section 310, 311 or 312 apply to each recoverable amount in the class.

(4) A waiver takes effect:
   (a) on the day specified in the waiver (whether that day is before, on or after the day the decision to waive is made); or
   (b) if the waiver does not specify when it takes effect—on the day the decision to waive is made.

Note: If the System Governor waives the Commonwealth’s right to recover all or part of a recoverable amount, this is a permanent bar to recovery of the recoverable amount or part of the recoverable amount and the recoverable amount or part of the recoverable amount effectively ceases to exist.

310 Circumstances for waiver—small amounts

The System Governor may waive the right to recover a recoverable amount if:
   (a) the recoverable amount is, or is likely to be, less than $200; and
   (b) it is not cost effective for the Commonwealth to take action to recover the recoverable amount.

311 Circumstances for waiver—settlements between Commonwealth and debtors

Civil actions

(1) If the Commonwealth has agreed to settle a civil action against a debtor in relation to a recoverable amount for recovery of an amount that is less than the full amount of the recoverable amount, the System Governor must waive the right to recover the difference between the recoverable amount and the amount that is the subject of the settlement.

Proceedings before the Administrative Appeals Tribunal

(2) If the System Governor has agreed to settle proceedings before the Administrative Appeals Tribunal relating to recovery of a

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recoverable amount on the basis that a debtor in relation to the
recoverable amount will pay less than the full amount of the
recoverable amount, the System Governor must waive the right to
recover the difference between the recoverable amount and the
amount that is the subject of the settlement.

Agreement after recovery of at least 80% of recoverable amount

(3) If:

(a) the Commonwealth has recovered at least 80% of the original
value of a recoverable amount from a debtor in relation to the
recoverable amount; and

(b) the Commonwealth and the debtor agree that the recovery is
in full satisfaction for the whole of the recoverable amount;
and

(c) the debtor cannot repay a greater proportion of the
recoverable amount;

the System Governor must waive the remaining 20% or less of the
value of the original recoverable amount.

Agreement for payment of present value of unpaid amount

(4) If the System Governor and a debtor in relation to a recoverable
amount agree that the recoverable amount will be fully satisfied if
the debtor pays the Commonwealth an amount (the agreed
amount) that is less than the amount of the recoverable amount
outstanding at the time of the agreement (the unpaid amount), the
System Governor must waive the right to recover the difference
between the unpaid amount and the agreed amount.

(5) The System Governor must not make an agreement described in
subsection (4) unless the System Governor is satisfied that the
agreed amount is at least the present value of the unpaid amount if
it is repaid in instalments of amounts, and at times, determined by
the System Governor.

(6) For the purposes of subsection (5), the present value of the unpaid
amount is the amount worked out in accordance with the method
prescribed by the rules.
312 Circumstances for waiver—special circumstances

The System Governor may waive the right to recover a recoverable amount if:

(a) the recoverable amount did not arise in whole or part as a result of:
   (i) a contravention of this Act; or
   (ii) a false or misleading statement or a misrepresentation; and

(b) there are special circumstances (other than financial hardship) that the System Governor is satisfied make waiver appropriate; and

(c) the System Governor is satisfied that waiver is more appropriate than writing off the recoverable amount.
Part 15—Authorised Commission officers and authorised System Governor officers

Division 1—Appointment

313 Appointment of authorised Commission officers

(1) The Commissioner may, in writing, appoint a person as an authorised Commission officer for the purposes of this Act if:
   (a) the person is:
      (i) a member of the staff of the Commission; or
      (ii) another person who the Commissioner considers it necessary to appoint as an authorised Commission officer; and
   (b) the person satisfies the training and qualification requirements for authorised Commission officers determined under subsection (4).

(2) An appointment may specify the period during which it has effect.

(3) The Commissioner may, in writing, vary or revoke an appointment at any time.

(4) The Commissioner must determine, in writing, training and qualification requirements for authorised Commission officers.

(5) A determination made under subsection (4) is not a legislative instrument.

314 Appointment of authorised System Governor officers

(1) The System Governor may, in writing, appoint a person as an authorised System Governor officer for the purposes of this Act if:
   (a) the person is:
      (i) a member of the staff of the Department; or
      (ii) another person who the System Governor considers it necessary to appoint as an authorised System Governor officer; and
(b) the person satisfies the training and qualification requirements for authorised System Governor officers determined under subsection (4).

(2) An appointment may specify the period during which it has effect.

(3) The System Governor may, in writing, vary or revoke an appointment at any time.

(4) The System Governor must determine, in writing, training and qualification requirements for authorised System Governor officers.

(5) A determination made under subsection (4) is not a legislative instrument.
Division 2—Functions and powers

315 Functions and powers of authorised Commission officers

(1) An authorised Commission officer has the functions and powers conferred on an authorised Commission officer by this Act.

(2) Subsection (1) has effect subject to any restrictions specified in the authorised Commission officer’s instrument of appointment.

(3) In performing functions or exercising powers under this Act, an authorised Commission officer must comply with any written directions of the Commissioner.

(4) If a direction is given under subsection (3) in writing, the direction is not a legislative instrument.

316 Functions and powers of authorised System Governor officers

(1) An authorised System Governor officer has the functions and powers conferred on an authorised System Governor officer by this Act.

(2) Subsection (1) has effect subject to any restrictions specified in the authorised System Governor officer’s instrument of appointment.

(3) In performing functions or exercising powers under this Act, an authorised System Governor officer must comply with any written directions of the System Governor.

(4) If a direction is given under subsection (3) in writing, the direction is not a legislative instrument.
Part 16—Miscellaneous

Division 1—Civil penalty provisions for false or misleading information or documents

317 Civil penalty provision for false or misleading information

(1) A person is liable to a civil penalty if:

(a) the person gives information in compliance or purported compliance with this Act; and

(b) the person does so knowing that the information:

(i) is false or misleading; or

(ii) omits any matter or thing without which the information is misleading.

Civil penalty: 60 penalty units.

(2) Subsection (1) does not apply as a result of subparagraph (1)(b)(i) if the information is not false or misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in this subsection: see section 96 of the Regulatory Powers Act.

(3) Subsection (1) does not apply as a result of subparagraph (1)(b)(ii) if the information did not omit any matter or thing without which the information is misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in this subsection: see section 96 of the Regulatory Powers Act.

(4) Subsection (1) does not apply if, before the information was given by a person to another person (the official) in compliance or purported compliance with this Act, the official did not take reasonable steps to inform the person that the person may be liable to a civil penalty for contravening subsection (1).

Note: A defendant bears an evidential burden in relation to the matter in this subsection: see section 96 of the Regulatory Powers Act.

(5) For the purposes of subsection (4), it is sufficient if the following form of words is used:
Chapter 6  Regulatory mechanisms
Part 16  Miscellaneous
Division 1  Civil penalty provisions for false or misleading information or documents

Section 318

“You may be liable to a civil penalty for giving false or misleading information”.

318  Civil penalty provision for false or misleading documents

(1) A person is liable to a civil penalty if:
   (a) the person produces a document to another person; and
   (b) the person does so knowing that the document is false or misleading; and
   (c) the document is produced in compliance or purported compliance with this Act.

Civil penalty: 60 penalty units.

(2) Subsection (1) does not apply if the document is not false or misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in this subsection: see section 96 of the Regulatory Powers Act.

(3) Subsection (1) does not apply to a person who produces a document if the document is accompanied by a written statement signed by the person or, in the case of a body corporate, by a competent officer of the body corporate:
   (a) stating that the document is, to the knowledge of the person or officer, false or misleading in a material particular; and
   (b) setting out, or referring to, the material particular in which the document is, to the knowledge of the person or officer, false or misleading.

Note: A defendant bears an evidential burden in relation to the matter in this subsection: see section 96 of the Regulatory Powers Act.
Division 2—General rules about offences and civil penalty provisions

319 Physical elements of offences

(1) This section applies if a provision of this Act provides that a person contravening another provision of this Act (the conduct rule provision) commits an offence.

(2) For the purposes of applying Chapter 2 of the Criminal Code to the offence, the physical elements of the offence are set out in the conduct rule provision.

Note: Chapter 2 of the Criminal Code sets out general principles of criminal responsibility.

320 Contravening offence and civil penalty provisions

(1) This section applies if a provision of this Act provides that a person contravening another provision of this Act (the conduct provision) commits an offence or is liable to a civil penalty.

(2) For the purposes of this Act, a reference to a contravention of an offence provision or a civil penalty provision includes a reference to a contravention of the conduct provision.

Note: This also affects references in the Regulatory Powers Act to a contravention of an offence provision or a civil penalty provision: see the definition of this Act in section 7.
Chapter 7—Information management

Part 1—Introduction

321  Simplified outline of this Chapter

Certain information obtained or generated for the purposes of this Act, or derived from such information, is protected by limiting the recording, use and disclosure of the information. However, this Chapter authorises the recording, use and disclosure of that information in certain circumstances.

Persons making certain disclosures of information indicating suspected contraventions of this Act are protected from having their identities revealed and from victimisation.
Part 2—Confidentiality of information

Division 1—Introduction

322 Definition of protected information

(1) Information is protected information if it is covered by subsections (2) and (3).

(2) This subsection covers the following:
   (a) personal information;
   (b) information that:
      (i) is information whose disclosure could reasonably be expected to prejudice the financial interests of an entity; and
      (ii) is not public; and
      (iii) is not readily discoverable.

Note: Under the Privacy Act 1988, personal information includes sensitive information (within the meaning of that Act). Information is not personal information if it is only about a person who has died.

(3) This subsection covers information that:
   (a) is obtained or generated for the purposes of this Act; or
   (b) is derived from information obtained or generated for the purposes of this Act.
Division 2—Limits on recording, use and disclosure of protected information

323 Basic limits on recording, use and disclosure of protected information

(1) A person commits an offence if:
   (a) the person records, uses or discloses information; and
   (b) the information is protected information; and
   (c) the person is or was any of the following:
      (i) the Minister;
      (ii) the System Governor;
      (iii) an APS employee in the Department;
      (iv) an official of the Commission under paragraph 137(2)(c);
      (v) any other person employed or engaged by the Commonwealth to provide services to the Department or the Commission;
      (vi) a delegate of the System Governor or the Commissioner;
      (vii) an official of the Pricing Authority;
      (viii) any other person in a class of persons prescribed by the rules and employed or engaged by the Commonwealth or a body corporate established by a law of the Commonwealth; and
   (d) the person obtained or generated the information:
      (i) in the course of performing a function or duty, or exercising a power, under or in connection with this Act; or
      (ii) in connection with facilitating another person to perform a function or duty, or exercise a power, under or in connection with this Act.

Penalty: Imprisonment for 2 years.
(2) A person commits an offence if:
   (a) the person records, uses or discloses information; and
   (b) the information is protected information; and
   (c) the information was disclosed to the person; and
   (d) the disclosure of the information to the person was authorised
       by or under this Act or another Act.

Penalty: Imprisonment for 2 years.

(3) Paragraphs (1)(a) and (2)(a) do not apply to conduct authorised by
     or under this Act or another Act.

Note 1: A defendant bears an evidential burden in relation to the matter in
        subsection (3): see subsection 13.3(3) of the Criminal Code.

Note 2: Division 3 authorises recording, use and disclosure of protected
        information in various circumstances. As well as having effect for the
        purposes of subsection (3), these authorisations have effect for the
        purposes of the Privacy Act 1988.

(4) Paragraphs (1)(a) and (2)(a) do not apply to:
   (a) conduct of registered providers; or
   (b) conduct of aged care workers or responsible persons of
       registered providers in the course of performing their duties
       as aged care workers or responsible persons.

Note: A defendant bears an evidential burden in relation to the matter in
       subsection (4): see subsection 13.3(3) of the Criminal Code.
Section 324

Div 3—Authorisation of recording, use or disclosure of protected information

Subdiv A—Authorisation of persons generally

324 Recording, use or disclosure connected with function, duty or power under this Act

A person may record, use or disclose protected information:

(a) in the course of performing a function or duty, or exercising a power, under or in connection with this Act; or

(b) in connection with facilitating another person to perform a function or duty, or exercise a power, under or in connection with this Act.

325 Recording, use or disclosure for purpose for which information was disclosed

If protected information is disclosed to a person, the person may record, use or disclose the information for the purpose for which it was disclosed to the person.

326 Recording, use or disclosure with consent of person to whom information relates

A person may record, use or disclose protected information relating to another person if the other person consents to the recording, use or disclosure (whether the consent is express or implied).

327 Disclosure to entity to which information relates

A person may disclose protected information relating to another entity to:

(a) that entity; or

(b) if that entity is not a person—a person acting for that entity.
Section 328

328 Disclosure to provider of information

A person may disclose protected information to a person from whom the information was obtained for the purposes of this Act (so that the information became protected information).

Note: This section authorises a person (the authorised discloser) to disclose protected information whether or not the authorised discloser obtained it directly from the person from whom it was obtained for the purposes of this Act and whether or not the information is about the person from whom it was obtained.

329 Disclosure to Minister

(1) A person may disclose protected information to the Minister for the purposes of the Minister’s performance of the Minister’s functions.

(2) Subsection (1) does not authorise disclosure of personal information if the purposes mentioned in that subsection can be achieved by the disclosure of information that has been de-identified (within the meaning of the Privacy Act 1988).

330 Disclosure for obtaining legal advice or service

A person may disclose protected information for the purposes of obtaining legal advice or another legal service.

331 Disclosure to court etc.

A person may disclose protected information to a court, or any other body or person that has power to require the production of documents or the answering of questions, for the purpose of complying with such a requirement.

Note: Section 354 limits the circumstances in which the court, body or person with such power may make such a requirement.

Example: A Royal Commission under the Royal Commissions Act 1902 is an example of a body or person that has power to require the production of documents or the answering of questions.
Chapter 7  Information management
Part 2  Confidentiality of information
Division 3  Authorisation of recording, use or disclosure of protected information

Section 332

332 Disclosure for worker screening

A person may disclose protected information for the purpose of facilitating the performance of a function or duty, or the exercise of a power, under an aged care worker screening law or an NDIS worker screening law (within the meaning of the NDIS Act).

333 Recording, use or disclosure to avert or report serious threat to individual seeking or accessing funded aged care

A person may record, use or disclose protected information if the person reasonably believes that the recording, use or disclosure is necessary to lessen, prevent or report a serious threat to the life, health or safety of an individual seeking to access, or accessing, funded aged care services.

334 Recording, use or disclosure for provision of services to an individual

A person may record, use or disclose for any of the following purposes protected information relating to an individual seeking to access, or accessing, funded aged care services:

(a) delivery of funded aged care services or other community, health or social services to the individual;
(b) assessing the individual’s needs for funded aged care services or other community, health or social services;
(c) if the individual is accessing funded aged care services—assessing the level of care the individual needs, relative to the needs of other individuals accessing such services;
(d) reporting on (without publishing personal information), and conducting research into, the level of need for, and access to, funded aged care services or other community, health or social services;
(e) monitoring, reporting on (without publishing personal information), and conducting research into, the quality or safety of funded aged care services.
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335 Recording, use or disclosure of publicly available information

A person may record, use or disclose protected information that has already been lawfully made available to the public.

Subdivision B—Authorisation of System Governor and Commissioner

336 Disclosure relating to payment of subsidy

The System Governor or Commissioner may disclose protected information to the Chief Executive Centrelink or the Chief Executive Medicare for a purpose relating to the payment of subsidy.

337 Disclosure for law enforcement and revenue protection

If the System Governor or Commissioner reasonably believes that disclosure of protected information is necessary for:

(a) enforcement of the criminal law; or
(b) enforcement of a law imposing a pecuniary penalty; or
(c) protection of the public revenue;

the System Governor or Commissioner may disclose the information to an agency whose functions include that enforcement or protection.

338 Disclosure for maintenance of professional standards

If the System Governor or Commissioner reasonably believes that:

(a) a person’s conduct breaches, or may breach, the standards of professional conduct of a profession of which the person is a member; and
(b) the person should be reported to a body responsible for standards of conduct in the profession;

the System Governor or Commissioner may disclose protected information to that body for the purposes of maintaining standards of professional conduct in the profession.
Section 339

339 Disclosure to receiving Commonwealth body for its functions, duties or powers

(1) The System Governor or Commissioner may disclose protected information to a receiving Commonwealth body for the purpose of facilitating the performance of the functions or duties, or the exercise of the powers, of the body or a member of the body.

(2) Each of the following is a receiving Commonwealth body:

(a) the Office of the Inspector-General of Aged Care;
(b) the Department administered by the Minister administering
   the Veterans’ Entitlements Act 1986;
(c) the Repatriation Commission;
(d) the Military Rehabilitation and Compensation Commission;
(e) the Department administered by the Minister administering
   the Disability Services Act 1986;
(f) the National Disability Insurance Agency;
(g) the NDIS Quality and Safeguards Commission;
(h) the Department administered by the Minister administering
   the Social Security Act 1991;
(i) Services Australia;
(j) Safe Work Australia;
(k) the Fair Work Commission;
(l) the Office of the Fair Work Ombudsman;
(m) the Office of the Commonwealth Ombudsman described in section 4A of the Ombudsman Act 1976;
(n) the Office of the Australian Information Commissioner;
(o) the Australian Commission on Safety and Quality in Health Care;
(p) the Australian Institute of Health and Welfare;
(q) a Department of State, or other authority, of the Commonwealth that is prescribed by the rules and:
   (i) has regulatory, compliance or enforcement functions relating to the provision of care, support, treatment or other related services or assistance (including care,
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340 Disclosure to representative of individual accessing, or seeking to access, funded aged care services

The System Governor or Commissioner may disclose protected information about an individual accessing, or seeking access, to funded aged care services to a representative of the individual, if the information is relevant to anything the representative is required or permitted to do as a representative of the individual.

341 Disclosure for continuation of funded aged care services

The System Governor or Commissioner may disclose protected information to a person who has temporarily taken over the delivery of funded aged care services, for the purposes of enabling the person to deliver those services properly.

342 Disclosure for research or policy development

The System Governor or Commissioner may disclose protected information to a person carrying out research into, or development of policy about, funded aged care services, if the System Governor or Commissioner reasonably believes the information is necessary for the research or development.

Note: Disclosure of protected information that is personal information is not necessary for the research or development if the research or development could be carried out with de-identified information.

343 Disclosure for State or Territory complaints process

The Commissioner may disclose, to a person or body that has under a law of a State or Territory a function of dealing with complaints or information about the provision of health or
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Chapter 7  Information management
Part 2  Confidentiality of information
Division 3  Authorisation of recording, use or disclosure of protected information

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1. community services, protected information for the purpose of facilitating the performance of the function.

344 Disclosure prescribed by rules

The System Governor or Commissioner may disclose protected information for a purpose prescribed by the rules to a person prescribed by the rules.

Subdivision C—Authorisation of System Governor

345 Disclosures in public interest identified by System Governor

(1) If satisfied that it is necessary in the public interest to do so, the System Governor may disclose, for a purpose determined by the System Governor, protected information to a person determined by the System Governor.

(2) Subsection (1) has effect subject to the rules (if any).

(3) The System Governor may make a written determination that specifies a particular purpose for which, and a particular person to whom, a particular disclosure may be made under subsection (1).

(4) A determination made under subsection (3) is not a legislative instrument.

(5) The System Governor may, by legislative instrument, make a determination that specifies purposes for which, or persons to whom, disclosures may be made under subsection (1).

Note: For specification by class, see subsection 33(3A) of the Acts Interpretation Act 1901.

346 Disclosure to Chief Executive Centrelink or Chief Executive Medicare for certain programs

The System Governor may disclose protected information:

(a) to the Chief Executive Centrelink for the purposes of a centrelink program; or

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(b) to the Chief Executive Medicare for the purposes of a medicare program or the Health and Other Services (Compensation) Care Charges Act 1995.

Note 1: For centrelink program, see section 40 of the Human Services (Centrelink) Act 1997.

Note 2: For medicare program, see section 41G of the Human Services (Medicare) Act 1973.

347 Disclosure for grants program

The System Governor may disclose, to a person or body to which a grant has been made under section 392, protected information for a purpose for which the grant was made.

348 Disclosure for star ratings

The System Governor may record, use or disclose protected information for the purpose of working out or publishing a star rating for a funded aged care service.

349 Disclosure to Pricing Authority

The System Governor may disclose protected information to an official of the Pricing Authority for the purpose of facilitating the performance of the functions that the Pricing Authority has under section 131A of the National Health Reform Act 2011 (which relates to aged care).

Subdivision D—Authorisation of Commissioner

350 Disclosures in public interest identified by Commissioner

(1) If satisfied that it is necessary in the public interest to do so, the Commissioner may disclose, for a purpose determined by the Commissioner, protected information to a person determined by the Commissioner.

(2) Subsection (1) has effect subject to the rules (if any).
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(3) The Commissioner may make a determination that specifies a particular purpose for which, and a particular person to whom, a particular disclosure may be made under subsection (1).

(4) A determination made under subsection (3) is not a legislative instrument.

(5) The Commissioner may, by legislative instrument, make a determination that specifies purposes for which, or persons to whom, disclosures may be made under subsection (1).

Note: For specification by class, see subsection 33(3A) of the Acts Interpretation Act 1901.

351 Disclosure to Pricing Authority

The Commissioner may disclose protected information to an official of the Pricing Authority for the purpose of facilitating the performance of the functions that the Pricing Authority has under paragraph 131A(1)(e) of the National Health Reform Act 2011 (which relates to aged care).

352 Disclosure to coroner etc.

The Commissioner may disclose protected information for the purpose of assisting a coronial inquiry, coronial investigation or coronial inquest under a law of the Commonwealth, a State or a Territory.

Subdivision E—Authorisation of Pricing Authority

353 Disclosure to System Governor or Commissioner

An official of the Pricing Authority may disclose protected information obtained in the performance of a function that the Pricing Authority has under paragraph 131A(1)(e) of the National Health Reform Act 2011 (which relates to aged care) to the System Governor or Commissioner.
Division 4—Limit on powers to require disclosure of
protected information

354 Limit on requirements to produce documents or answer
questions

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 to disclose protected information only if one of the
following applies:

(a) the disclosure is required for the purposes of this Act;
(b) the information was originally disclosed to the person under
Division 3 and the disclosure is required for the purpose for
which the information was disclosed under that Division;
(c) the person to whom the information relates has consented, in
writing, to the disclosure.
Part 5—Whistleblower protections

355 Disclosures qualifying for protection

A disclosure of information by an individual (the discloser) qualifies for protection under this section if:

(a) the disclosure is made to one of the following:
   (i) the Commissioner or a member of the staff of the Commission;
   (ii) the System Governor, or an official of the Department;
   (iii) a registered provider;
   (iv) a responsible person of the registered provider;
   (v) an aged care worker of a registered provider;
   (vi) a police officer; and

(b) the disclosure is made orally or in writing (and whether made anonymously or not); and

(c) the discloser has reasonable grounds to suspect that the information indicates that an entity may have contravened a provision of this Act.

356 Protections

(1) If an individual makes a disclosure that qualifies for protection under section 355:
   (a) the individual is not subject to any civil, criminal or administrative liability (including disciplinary action) for making the disclosure; and
   (b) no contractual or other remedy may be enforced, and no contractual or other right may be exercised, against the individual on the basis of the disclosure.

Note: The individual is still subject to any civil or criminal liability for conduct of the individual that may be revealed by the disclosure.

(2) Without limiting subsection (1), a contract to which the individual is a party may not be terminated on the basis that the disclosure constitutes a breach of the contract.
357 Confidentiality of identity of disclosers

(1) An entity contravenes this subsection if:

(a) an individual (the discloser) makes a disclosure of information (the qualifying disclosure) that qualifies for protection under section 355; and

(b) the entity discloses any of the following (the confidential information):

(i) information that identifies, or that could be used to identify, the discloser;

(ii) any other information that is likely to lead to the identification of the discloser; and

(c) the confidential information is information that the entity obtained directly or indirectly because of the qualifying disclosure; and

(d) the disclosure referred to in paragraph (b) is not authorised under subsection (2).

(2) A disclosure referred to in paragraph (1)(b) is authorised under this subsection if:

(a) the disclosure is made to the Commissioner or a member of the staff of the Commission; or

(b) the disclosure is made to the System Governor, or an official of the Department; or

(c) the disclosure is made to the Inspector-General of Aged Care; or

(d) the disclosure is made to any of the following:

(i) a member or special member of the Australian Federal Police;

(ii) a member of the police force or police service of a State or a Territory; or

(e) the disclosure is made to a legal practitioner for the purpose of obtaining legal advice or legal representation in relation to the operation of this Part; or

(f) the disclosure is made with the consent of the discloser; or
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(g) the disclosure is necessary to lessen or prevent a serious threat to the safety, health or wellbeing of one or more individuals; or

(h) the disclosure is made to a court, tribunal or a Royal Commission (within the meaning of the Royal Commissions Act 1902).

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 30 penalty units.

358 Victimisation prohibited

Actually causing detriment

(1) An entity is liable to a civil penalty if:

(a) the entity engages in conduct; and

(b) the entity’s conduct causes any detriment to an individual (the first individual) or to another individual or to another entity that employs or is otherwise associated with the first individual; and

(c) the entity engages in the conduct because the entity believes or suspects that the first individual or another individual has, may have, or intends to make, a disclosure that qualifies for protection under section 355.

Civil penalty: 500 penalty units.

(2) In proceedings for a civil penalty order against an entity for a contravention of subsection (1), it is not necessary to prove that the first individual or other individual has done, may have done or intends to do a thing mentioned in paragraph (1)(c).

Threatening to cause detriment

(3) An entity is liable to a civil penalty if:

(a) the entity makes to an individual (the first individual) a threat to cause any detriment to the first individual or to
another individual or to another entity that employs or is
otherwise associated with the first individual; and
(b) the entity:
   (i) intends the first individual to fear that the threat will be
carried out; or
   (ii) is reckless as to causing the first individual to fear that
the threat will be carried out; and
(c) the entity engages in the conduct because the entity believes
or suspects that the first individual or another individual has,
may have, or intends to make, a disclosure that qualifies for
protection under section 355.

Civil penalty: 500 penalty units.

Threats

(4) For the purpose of subsection (3), a threat may be:
   (a) express or implied; or
   (b) conditional or unconditional.

(5) In proceedings for a civil penalty order against an entity for a
contravention of subsection (3), it is not necessary to prove:
   (a) that the first individual actually feared that the threat would
be carried out; or
   (b) that an individual has done, may have done or intends to do a
thing mentioned in paragraph (3)(c).

Exception—reasonable administrative action

(6) Subsections (1) and (3) do not apply if the conduct engaged in by
the entity is administrative action that is reasonable to protect the
first individual from detriment.

Note: A defendant bears an evidential burden in relation to the matter in this
subsection (see section 96 of the Regulatory Powers Act).
Section 359

359 Court orders

A court may make any order the court considers appropriate if the court is satisfied that an entity has contravened, or proposes to contravene, subsection 358(1) or (3), including any of the following orders:

(a) an order granting an injunction, or interim injunction, to prevent, stop or remedy the effects of a contravention;
(b) an order awarding compensation for loss, damage or injury that an entity has suffered because of the contravention;
(c) an order for reinstatement of an individual;
(d) an order for exemplary damages.

360 Registered providers’ obligations in relation to disclosers

Ensuring aged care worker disclosers are not victimised

(1) A registered provider must ensure, as far as reasonably practicable, compliance with subsection 357(1) and subsections 358(1) and (3) in relation to an individual who:

(a) is an aged care worker of the registered provider; and
(b) makes a disclosure that qualifies for protection under section 355.

Note: The obligation under subsection (1) covers not only compliance by the registered provider with those provisions but extends to the registered provider ensuring as far as reasonably practicable that there is also compliance by others, such as the provider’s other aged care workers and associated providers.

Protecting discloser identities

(2) If an individual makes a disclosure to a registered provider that qualifies for protection under section 355, the provider must take reasonable measures to ensure that the fact that the individual was the maker of the disclosure is not disclosed, except to one or more of the following:

(a) the Commissioner;
(b) a person, authority or court to which the registered provider is required by a law of the Commonwealth or a State or Territory to disclose the fact;
(c) a responsible person of the registered provider;
(d) a police officer.

(3) If an individual makes a disclosure that qualifies for protection under section 355 to someone (the recipient) who is:
(a) a responsible person of the registered provider; or
(b) another person authorised by the registered provider to receive disclosures that qualify for protection under that section;
the provider must take reasonable measures to ensure that the recipient does not disclose the fact that the individual was the maker of the disclosure, except to the provider or a person described in paragraph (2)(a), (b), (c) or (d).

361 Concurrent operation of State and Territory laws

This Part does not exclude or limit the operation of a law of a State or Territory that is capable of operating concurrently with this Part.
Chapter 8—Miscellaneous

Part 1—Introduction

362  Simplified outline of this Chapter

This Part deals with the following matters:
(a) review of decisions;
(b) delegation of the functions and powers of the System Governor and the Commissioner under this Act;
(c) the appointment of supporters and representatives of individuals, and the suspension and cancellation of such appointments;
(d) the application of this Act to partnerships and unincorporated associations;
(e) grant arrangements that the System Governor may enter into;
(f) the use of computer programs for making decisions on the classification of individuals;
(g) processes for applications and requests made to the System Governor and Commissioner;
(h) fees for applications and for services provided by the System Governor and Commissioner;
(i) annual reporting on the performance of the System Governor’s functions during each financial year;
(j) the making of rules.
Part 2—Review of decisions

[To be drafted.]
Part 3—Delegation provisions

Division 1—Delegation by System Governor

363 Delegation by System Governor—general

(1) The System Governor may, in writing, delegate all or any of the System Governor’s functions or powers under this Act, other than Chapter 6, to a person engaged (whether as an employee or otherwise) by a Commonwealth entity within the meaning of the Public Governance, Performance and Accountability Act 2013.

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

Delegation to holders of specified non-SES offices or positions

(2) Before delegating a function or power under subsection (1) to an APS employee holding, occupying, or performing the duties of a specified office or position that is not an SES office or position, the System Governor must have regard to whether the office or position is sufficiently senior for the employee to perform the function or exercise the power.

Delegation to persons who are not APS employees

(3) Before delegating a function or power under subsection (1) to a person who is not an APS employee, the System Governor must have regard to whether the person has appropriate qualifications or expertise to perform the function or duty or exercise the power.

364 Delegation to Pricing Authority

(1) The System Governor may, in writing, delegate to the Pricing Authority the powers and functions of the System Governor under this Act that the System Governor considers necessary for the Pricing Authority to perform the Pricing Authority’s functions under this Act.
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Subdelegation

(2) If, under subsection (1), the System Governor delegates a power or function to the Pricing Authority, the Pricing Authority may, in writing, subdelegate the power or function to a person covered by paragraph 161(1)(c) or subsection 161(2) of the National Health Reform Act 2011.

365 Delegation to Chief Executive Centrelink

(1) The System Governor may, in writing, delegate to the Chief Executive Centrelink, the System Governor’s powers and functions under [to be drafted].

Subdelegation

(2) If, under subsection (1), the System Governor delegates a power or function to the Chief Executive Centrelink, the Chief Executive Centrelink may, in writing, subdelegate the power or function to a Departmental employee (within the meaning of the Human Services (Centrelink) Act 1997) who is an APS employee.

366 Delegation to Chief Executive Medicare

(1) The System Governor may, in writing, delegate to the Chief Executive Medicare, the System Governor’s powers and functions under [to be drafted].

Subdelegation

(2) If, under subsection (1), the System Governor delegates a power or function to the Chief Executive Medicare, the Chief Executive Medicare may, in writing, subdelegate the power or function to a Departmental employee (within the meaning of the Human Services (Medicare) Act 1973) who is an SES employee or acting SES employee.

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Chapter 8 Miscellaneous
Part 3 Delegation provisions
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367 Delegation to Veterans’ Affairs Secretary

(1) The System Governor may, in writing, delegate to the Secretary of the Department administered by the Minister who administers the Veterans’ Entitlements Act 1986, the System Governor’s powers and functions under [to be drafted].

Subdelegation

(2) If, under subsection (1), the System Governor delegates a power or function to the Secretary of the Department administered by the Minister who administers the Veterans’ Entitlements Act 1986, the Secretary of that Department may, in writing, subdelegate the power or function to an SES employee or acting SES employee in that Department.

368 Delegation to Repatriation Commission

(1) The System Governor may, in writing, delegate to the Repatriation Commission, the System Governor’s powers and functions under [to be drafted].

Subdelegation

(2) If, under subsection (1), the System Governor delegates a power or function to the Repatriation Commission, the Repatriation Commission may, in writing, subdelegate the power or function to a person to whom it may delegate powers under the Veterans’ Entitlements Act 1986 under section 213 of that Act:

(a) who is an SES employee or acting SES employee; or

(b) who holds, occupies, or performs the duties of an office or position that is equivalent to an SES office or position.

369 Delegation to Social Services Secretary

(1) The System Governor may, in writing, delegate to the Secretary of the Department administered by the Minister who administers the Data-matching Program (Assistance and Tax) Act 1990, the System Governor’s powers and functions under [to be drafted].
Subdelegation

(2) If, under subsection (1), the System Governor delegates a power or function to the Secretary of the Department administered by the Minister who administers the Data-matching Program (Assistance and Tax) Act 1990, the Secretary of that Department may, in writing, subdelegate the power or function to an APS employee in that Department.
Division 2—Delegation by Commissioner

370 Delegation by Commissioner

Functions and powers—other than regulatory mechanisms

(1) The Commissioner may, in writing, delegate all or any of the Commissioner’s functions or powers under this Act, other than Chapter 6, to:
   (a) a member of the staff of the Commission; or
   (b) a consultant engaged under section 159.

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

Functions and powers—regulatory mechanisms

(2) The Commissioner may, in writing, delegate to the following all or any of the Commissioner’s functions or powers under Chapter 6:
   (a) a member of the staff of the Commission;
   (b) an APS employee in the Department.

Delegation to holders of specified non-SES offices or positions

(3) Before delegating a function or power under subsection (1) or (2) to an APS employee holding, occupying, or performing the duties of a specified office or position that is not an SES office or position, the Commissioner must have regard to whether the office or position is sufficiently senior for the employee to perform the function or exercise the power.

Delegation to persons who are not APS employees

(4) Before delegating a function or power under subsection (1) or (2) to a person who is not an APS employee, the Commissioner must have regard to whether the person has appropriate qualifications or expertise to perform the function or duty or exercise the power.
Division 3—General

371 Delegations in relation to specified kinds of matters

Without limiting this Part or subsection 33(3A) of the Acts Interpretation Act 1901, a power or function may be delegated or subdelegated generally or only in relation to specified kinds of matters.

372 Subdelegation

Sections 34AA, 34AB and 34A of the Acts Interpretation Act 1901 apply in relation to a subdelegation in the same way to the way in which they apply to a delegation.

373 Complying with directions

In exercising powers or performing functions delegated or subdelegated by a person under this Part, the delegate or subdelegate must comply with any directions of the person.
Chapter 8  Miscellaneous
Part 4  Appointment of supporters and representatives
Division 1  Appointment process

Section 374

Part 4—Appointment of supporters and representatives

Division 1—Appointment process

374  Appointment of supporters

(1) The System Governor may decide whether to appoint a person, for the purposes of this Act, to be a supporter of an individual accessing, or seeking to access, funded aged care services.

(2) The appointment may be made on the request of a person (including the individual) or body.

(3) The System Governor may appoint more than one person as a supporter of the individual under subsection (1).

(4) The System Governor must not appoint a person under subsection (1) unless:
   (a) the System Governor is satisfied that the person is able to comply with the duties of supporters referred to in subsection 26(1); and
   (b) both the person and the individual have given consent to the appointment; and
   (c) the System Governor has taken into consideration any other matters prescribed by the rules.

(5) The System Governor must not appoint a person to be a supporter of an individual if an appointment of a representative of the individual is in effect.

Note: If the System Governor intends to appoint a person as a supporter but there is already a representative of the individual, the System Governor must cancel the appointment of the representative: see subsection 388(3).

(6) An appointment under subsection (1) may be made verbally or in writing.

Note: Written notice of the appointment must be given under section 379 as soon as practicable after the appointment is made.
375 Notice of decision not to appoint a person as a supporter

(1) If the System Governor decides not to appoint a person under subsection 374(1) to be a supporter of an individual, the System Governor must give notice of the decision to:
   (a) any person who, or body which, made a request to the System Governor to appoint the person; and
   (b) the individual.

(2) The notice under subsection (1) must:
   (a) be given as soon as practicable after the decision is made; and
   (b) include the reasons for the decision and how a person may apply for reconsideration of the decision.

376 Appointment of representatives

(1) The System Governor may decide whether to appoint a person, for the purposes of this Act, to be a representative of an individual accessing, or seeking to access, funded aged care services.

(2) The appointment may be made:
   (a) on the request of a person (including the individual) or body; or
   (b) on the initiative of the System Governor.

(3) The System Governor may, under subsection (1):
   (a) appoint one person to be the representative of the individual; or
   (b) appoint 2 or more individuals, jointly and severally, as representatives of the individual.

(4) If:
   (a) there is a person referred to in subsection 28(2) (which deals with guardians and persons in other similar positions) in relation to the individual; and
   (b) the person makes a request to be appointed as a representative of the individual;
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the System Governor must, subject to subsections (6) and (7),
appoint the person under subsection (1).

Note: Guardians and persons in other similar positions must not make a
decision under, or for the purposes of, this Act on behalf of an
individual unless the person is appointed as a representative of the
individual: see section 28.

(5) When considering whether to appoint a person under
subsection (1) who is not a person referred to in paragraph (4)(a),
the System Governor must have regard to whether there is any
person referred to in that paragraph in relation to the individual.

(6) The System Governor must not appoint a person under
subsection (1) to be a representative of an individual unless:

(a) the System Governor is satisfied that the person is able to
comply with the duties of representatives referred to in
subsection 30(1); and

(b) the person has given consent to the appointment; and

(c) the System Governor has taken into consideration the wishes
(if any) of the individual regarding the making of the
appointment; and

(d) the System Governor has taken into consideration any other
matters prescribed by the rules.

Note: The consent of the individual is not required for the appointment of a
person as a representative of the individual.

(7) The System Governor must not appoint a person to be a
representative of an individual if an appointment of a supporter of
the individual is in effect.

Note: If the System Governor intends to appoint a person as a representative
but there is already a supporter of the individual, the System Governor
must cancel the appointment of the supporter: see subsection 388(2).

(8) An appointment under subsection (1) may be made verbally or in
writing.

Note: Written notice of the appointment must be given under section 379 as
soon as practicable after the appointment is made.
Section 377

377 Effect of appointment as a representative

The appointment of a person as a representative of an individual does not prevent the individual from doing a thing that the individual may otherwise do under, or for the purposes of, this Act.

378 Notice of decision not to appoint a person as a representative

(1) If the System Governor decides not to appoint a person under subsection 376(1) to be a representative of an individual, the System Governor must give notice of the decision to:
   (a) any person who, or body which, made a request to the System Governor to appoint the person; and
   (b) the individual.

(2) The notice under subsection (1) must:
   (a) be given as soon as practicable after the decision is made;
   and
   (b) include the reasons for the decision and how a person may apply for reconsideration of the decision.

379 Notification of appointment of supporter or representative

Initial obligation to give notice of appointment

(1) The System Governor must give written notice of the appointment of a supporter or representative of an individual to the following:
   (a) the supporter or representative;
   (b) the individual;
   (c) each registered provider that delivers funded aged care services to the individual;
   (d) for an appointment of a representative—each other representative (if any) of the individual.

(2) The notice under subsection (1) must:
   (a) if the notice is to be given to a person referred to in paragraph (1)(a) or (b)—include the information specified in section 380; and
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Part 4  Appointment of supporters and representatives

Division 1  Appointment process

Section 380

(b) if the notice is to be given to a registered provider referred to in paragraph (1)(c) or another representative referred to in paragraph (1)(d)—include the information specified in paragraph 380(1)(a); and

c) be given as soon as practicable after the System Governor appoints the supporter or representative.

Ongoing obligation to give notice of appointment

(3) The System Governor must, while the appointment remains in effect, also give written notice of the appointment to any registered provider that subsequently starts to deliver funded aged care services to the individual.

(4) The notice under subsection (3) must:

(a) include the information specified in paragraph 380(1)(a); and

(b) be given as soon as practicable after the registered provider starts to deliver funded aged care services to the individual.

380  Content of notice of appointment

(1) For the purposes of section 379, the information to be included in a notice given under that section is as follows:

(a) the contact details of the supporter or representative appointed in relation to an individual;

(b) the reasons for the decision to appoint the supporter or representative;

(c) how a person may apply for reconsideration of that decision;

(d) the period within which the supporter or representative must inform the System Governor of a matter under subsection 31(1), and how the supporter or representative is to inform the System Governor of the matter.

(2) The notice may specify the following:

(a) that the appointment takes effect on a specified day;

(b) that the appointment remains in effect until a specified day.

Note: A specified day could be the day a specified event occurs.
Section 381

(3) The period specified under paragraph (1)(d) must not be shorter than 14 days after:

(a) if the supporter or representative is informing the System Governor under subparagraph 31(1)(a)(i)—the day on which the event or change of circumstances happens; or

(b) if the supporter or representative is informing the System Governor under subparagraph 31(1)(a)(ii)—the day on which the supporter or representative becomes aware that the event or change of circumstances is likely to happen.

381 Period of effect of appointment

(1) An appointment of a supporter or representative of an individual takes effect:

(a) at the time specified by the System Governor in relation to the appointment; or

(b) if the System Governor does not specify a time for the purposes of paragraph (a)—at the time the appointment is made under section 374 or 376.

Note: An appointment may be made verbally or in writing under section 374 or 376.

(2) Subject to subsection 382(6) (which provides that appointments have no effect while suspended), the appointment remains in effect until the earliest of the following:

(a) the appointment is cancelled under Division 2;

(b) the individual dies;

(c) the supporter or representative dies;

(d) if the notice of appointment given to the supporter or representative under section 379 specifies that the appointment remains in effect until a specified day—that day.
382 Suspension of appointment

When an appointment may be suspended

(1) The System Governor may suspend the appointment of a person as a supporter or representative of an individual if a circumstance set out in this section applies.

(2) A circumstance is that the System Governor reasonably believes that the supporter or representative has caused, or is likely to cause, physical, sexual, financial, psychological or emotional abuse or neglect to the individual.

(3) A circumstance is that the System Governor reasonably believes that the supporter or representative has not complied with, or is not able to comply with, a duty of supporters or representatives referred to in subsection 26(1) or 30(1) respectively.

(4) A circumstance is that:
   (a) the supporter or representative informs the System Governor under section 31 that:
      (i) an event or change of circumstance has happened or is likely to happen; and
      (ii) the event or change of circumstances is likely to have an effect as described in paragraph 31(1)(b); and
   (b) the System Governor reasonably believes that the event or change of circumstances is likely to affect:
      (i) the ability or capacity of the supporter or representative to act as a supporter or representative of the individual, including complying with the duties of supporters or representatives referred to in subsection 26(1) or 30(1) respectively; or
      (ii) the ability of the System Governor to contact the supporter or representative for the purposes of this Act; or

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Part 4 Appointment of supporters and representatives
Division 2 Suspensions and cancellations of appointment

Section 382
Appointment of supporters and representatives

Part 4

Suspensions and cancellations of appointment

Division 2

Section 383

(iii) the ability or capacity of the supporter or representative to comply with notices given to, and imposing requirements on, the supporter or representative by the System Governor under, or for the purposes of, this Act.

(5) A circumstance is that there is a change in relation to a person referred to in subsection 28(2) (which deals with guardians and persons in other similar positions) in relation to the individual.

Note: Examples of changes include a change as to whether there is such a person in relation to the individual, or a change to who the person is.

Effect of suspension of appointment

(6) While a person’s appointment as a supporter or representative of an individual is suspended, the appointment has no effect for the purposes of this Act.

383 Notice and decisions following suspension of appointment

(1) If the System Governor suspends the appointment of a person (the suspended person) as supporter or representative of an individual, the System Governor must give written notice of the suspension to the following:

(a) the suspended person;
(b) the individual;
(c) for the suspension of appointment of a representative—each other representative (if any) of the individual;
(d) each registered provider that delivers funded aged care services to the individual.

(2) The notice under subsection (1) must be given as soon as practicable after the System Governor suspends the appointment.

(3) The notice given to the suspended person and the individual under subsection (1) must:

(a) include the reasons for the decision to suspend the appointment; and
(b) provide that the suspended person and individual may give the System Governor, within 28 days after the day the notice
is given, a statement setting out the reasons why the person’s appointment should not be cancelled.

(4) The notice given to a person (other than the suspended person or individual) under subsection (1) must not include the matters set out in paragraphs (3)(a) and (b).

384 Cancellation of appointment following suspension, or revoking suspension

(1) If the suspended person or individual (or both) gives the System Governor the statement referred to in paragraph 383(3)(b) within the 28-day period, the System Governor must, as soon as practicable after receiving the statement, consider the statement and decide whether to cancel the suspended person’s appointment.

Note: For notification requirements relating to cancellation of an appointment, see section 389.

(2) If neither the suspended person nor the individual gives the System Governor the statement within the 28-day period, the System Governor must cancel the person’s appointment as soon as practicable after that period ends.

Note: For notification requirements relating to cancellation of an appointment, see section 389.

(3) If the System Governor decides not to cancel the appointment under subsection (1):

(a) the System Governor must:

(i) revoke the suspension of the person’s appointment; and

(ii) give written notice of the System Governor’s decision not to cancel the appointment to each person and registered provider to whom notice was given under subsection 383(1); and

(b) if:

(i) while the appointment was suspended, the System Governor made an appointment of another person (the other appointment) as a supporter or representative of the individual; and
Section 385

385 Cancellation of appointment of supporter on request by supporter or individual

The System Governor must cancel the appointment of a person as a supporter of an individual as soon as practicable if:

(a) the supporter makes a written request to the System Governor to cancel the appointment; or

(b) the individual makes a written or verbal request to the System Governor to cancel the appointment.

Note: For notification requirements relating to cancellation of an appointment, see section 389.

386 Cancellation of appointment of representative on request by representative

The System Governor must cancel the appointment of a person as a representative of an individual as soon as practicable if the representative makes a written request to the System Governor to cancel the appointment.

Note: For notification requirements relating to cancellation of an appointment, see section 389.
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Part 4  Appointment of supporters and representatives
Division 2  Suspensions and cancellations of appointment

Section 387

387  Cancellation of appointment of representative on request by individual

(1) If an individual makes a written or verbal request to the System Governor to cancel the appointment of a person as a representative of the individual, the System Governor must consider the request and decide whether to cancel the appointment.

(2) The System Governor must make the decision within:
   (a) if the System Governor requests further information or a document under subsection (3) in relation to the request—14 days after receiving the further information or document; or
   (b) otherwise—28 days after receiving the request.

(3) The System Governor may request further information or a document from any entity in relation to a request under subsection (1) if the System Governor has reason to believe that the entity has information or a document that is relevant to the consideration of that request.

(4) If the System Governor decides not to cancel the appointment, the System Governor must give written notice of the System Governor’s decision to the individual and the representative.

Note: For notification requirements relating to cancellation of an appointment, see section 389.

388  Cancellation of appointment in other circumstances

(1) The System Governor must cancel the appointment of a person as a supporter or representative of an individual if a circumstance set out in this section applies.

Note: For notification requirements relating to cancellation of an appointment, see section 389.

(2) A circumstance is that the System Governor intends to appoint a person as a representative of the individual but there is an appointment in effect of a person as a supporter of the individual.
(3) A circumstance is that the System Governor intends to appoint a
person as a supporter of the individual but there is an appointment
in effect of a person as a representative of the individual.

Note 1: An individual cannot have both a supporter and a representative at the
same time: see subsections 374(5) and 376(6).

Note 2: A person’s appointment as a supporter of an individual can be
cancelled and the same person appointed as a representative of the
individual, and vice versa.

389 Notification of cancellation of appointment

(1) If the System Governor cancels the appointment of a person as a
supporter or representative of an individual under this Division, the
System Governor must give written notice of the cancellation to
the following:
(a) the person whose appointment has been cancelled;
(b) the individual;
(c) if the person was a representative—each other representative
(if any) of the individual;
(d) each registered provider that delivers funded aged care
services to the individual.

(2) The notice under subsection (1) must:
(a) be given as soon as practicable after the appointment is
cancelled; and
(b) include:
    (i) the reasons for the cancellation; and
    (ii) if the appointment was cancelled under subsection
384(1) or section 387—how a person may apply for
reconsideration of the decision to cancel the
appointment.

(3) The notice under subsection (1) given to a person (other than the
person whose appointment has been cancelled or the individual)
must not include the matters set out in paragraph (2)(b).
Chapter 8  Miscellaneous
Part 5  Application of this Act to certain entities

Section 390

Part 5—Application of this Act to certain entities

390 Partnerships

(1) This Act applies to a partnership as if it were a person, but with the changes set out in this section.

(2) An obligation that would otherwise be imposed on the partnership by this Act is imposed on each partner instead, but may be discharged by any of the partners.

(3) A civil penalty provision of this Act that would otherwise have been contravened by the partnership is taken to have been contravened by each partner in the partnership, at the time the provision was contravened, who:

(a) did the relevant act or made the relevant omission; or
(b) aided, abetted, counselled or procured the relevant act or omission; or
(c) was in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the partner).

(4) For the purposes of this Act, a change in the composition of a partnership does not affect the continuity of the partnership.

391 Unincorporated associations

(1) This Act applies to an unincorporated association as if it were a person, but with the changes set out in this section.

(2) An obligation that would otherwise be imposed on the association by this Act is imposed on each member of the association’s committee of management instead, but may be discharged by any of the members.

(3) A civil penalty provision of this Act that would otherwise have been contravened by the unincorporated association is taken to have been contravened by each member of the committee of
management of the association at the time the provision was
contravened, who:

(a) did the relevant act or made the relevant omission; or

(b) aided, abetted, counselled or procured the relevant act or
 omission; or

(c) was in any way knowingly concerned in, or party to, the
 relevant act or omission (whether directly or indirectly and
 whether by any act or omission of the member).
Section 392

Part 6—Grants

392 Power to enter into arrangements

(1) The System Governor may, on behalf of the Commonwealth, make, vary or administer a grant of financial assistance to any person or body in relation to the carrying out of activities by the person or body for a purpose referred to in subsection (2).

(2) The purposes are the following:

(a) to initiate, sustain, support or increase the delivery of services to individuals in the aged care system, including during times of emergency;

(b) to strengthen the capability of, and raise awareness among, registered providers and aged care workers and responsible persons of registered providers about the specialised complex needs of individuals accessing funded aged care services;

(c) to provide additional support to address such specialised complex needs of individuals accessing those services;

(d) to support and uphold the rights and entitlements of individuals accessing services in the aged care system;

(e) to address aged care worker shortages and retention issues, including addressing capability and qualification gaps in relation to the delivery of funded aged care services;

(f) any other purpose prescribed by the rules.

393 Terms and conditions relating to funding arrangements

(1) The terms and conditions on which financial assistance is granted under section 392 must be set out in a written agreement between the Commonwealth and the grant recipient.

Note: See also section 395 (constitutional limits).

(2) The grant recipient must comply with the terms and conditions.
Section 394

(3) Without limiting subsection (1), the terms and conditions must provide for the circumstances in which the grant recipient must repay amounts to the Commonwealth.

Note: An amount repayable to the Commonwealth would be a debt due to the Commonwealth.

(4) An agreement under subsection (1) is to be entered into by the System Governor on behalf of the Commonwealth.

394 System Governor has powers etc. of the Commonwealth

(1) The System Governor, on behalf of the Commonwealth, has all the rights, responsibilities, duties and powers of the Commonwealth in relation to the Commonwealth’s capacity as the grantor of a grant made under section 392.

(2) Without limiting subsection (1):

(a) a grant made under section 392 is to be paid by the System Governor on behalf of the Commonwealth; and

(b) an amount payable to the Commonwealth by way of the repayment of the whole or a part of a grant made under section 392 is to be paid to the System Governor on behalf of the Commonwealth; and

(c) the System Governor may institute an action or proceeding on behalf of the Commonwealth in relation to a matter that concerns a grant made under section 392.

395 Constitutional limits

The System Governor may exercise a power conferred on the System Governor by section 392 only:

(a) with respect to the executive power of the Commonwealth; or

(b) with respect to the provision of unemployment, pharmaceutical, sickness and hospital benefits, medical and dental services and family allowances within the meaning of paragraph 51(xxiiiA) of the Constitution; or
Section 396

(c) with respect to the people of any race for whom it is deemed necessary to make special laws; or
(d) with respect to aliens within the meaning of paragraph 51(xix) of the Constitution; or
(e) with respect to the use of a postal, telegraphic, telephonic or other like service within the meaning of paragraph 51(v) of the Constitution; or
(f) with respect to the granting of financial assistance to a State or Territory; or
(g) with respect to implementing any of Australia’s international obligations under any of the following:
   (i) Articles 2, 6 and 12(2) of the Covenant on Economic, Social and Cultural Rights;
   (ii) Articles 4, 9, 19, 20, 25, 26 and 27 of the Convention on the Rights of Persons with Disabilities;
   (iii) Articles 1 and 2 of the ILO Convention (No. 122) concerning Employment Policy; or
(h) with respect to the granting of financial assistance to a constitutional corporation for the purposes of carrying out the corporation’s activities; or
(i) with respect to matters incidental to the execution of any of the legislative powers of the Parliament or the executive power of the Commonwealth.

396 Relationship of this Part with Financial Framework (Supplementary Powers) Act 1997

To avoid doubt, the power of the Commonwealth to make, vary or administer a grant under this Part must be disregarded for the purpose of paragraph 32B(1)(a) of the Financial Framework (Supplementary Powers) Act 1997.

Note: The effect of this section is to make clear that this Part does not effectively limit the operation of section 32B of the Financial Framework (Supplementary Powers) Act 1997. The Commonwealth has the power to make, vary or administer an arrangement or grant under that section whether the Commonwealth also has the power to do so under this Part.
Section 397

397  Executive power of the Commonwealth

This Part does not, by implication, limit the executive power of the Commonwealth.
Part 7—Use of computer programs to make decisions

398 System Governor

(1) The System Governor may arrange for the use, under the System Governor’s control, of computer programs for making the following decisions:
   (a) decisions on the classification of individuals under section 59;
   (b) decisions on the priority of individuals under section [to be drafted].

(2) A decision made by the operation of a computer program under such an arrangement is taken to be a decision made by the System Governor.

(3) The System Governor may, under section 59 or [to be drafted], substitute a decision for a decision the System Governor is taken to have made under subsection (2) of this section if the System Governor is satisfied that the decision made by the operation of the computer program is incorrect.

(4) Subsection (3) does not limit any other provision of this Act that provides for the review or reconsideration of a decision.

399 Commissioner

(1) The Commissioner may arrange for the use, under the Commissioner’s control, of computer programs for making the following decisions [to be drafted].

(2) A decision made by the operation of a computer program under such an arrangement is taken to be a decision made by the Commissioner.

(3) The Commissioner may, under section [to be drafted], substitute a decision for a decision the Commissioner is taken to have made...
under subsection (2) of this section if the Commissioner is satisfied
that the decision made by the operation of the computer program is
incorrect.

(4) Subsection (3) does not limit any other provision of this Act that
provides for the review or reconsideration of a decision.
Part 8—Applications, requests and notifications

400 Approved forms—System Governor functions

(1) An application or a request under this Act that relates to a function of the System Governor is in the approved form if:

(a) it is in a form approved in writing by the System Governor for that kind of application or request; and

(b) it contains the information that the form requires, and any further information or document as the System Governor requires, whether in the form or otherwise; and

(c) for an application or request that is required to be given to the System Governor—it is given in the manner that the System Governor requires (which may include electronically).

(2) The System Governor may combine in the same approved form more than one application or request.

(3) The System Governor may approve:

(a) more than one approved form for an application or request;

(b) a different approved form for different circumstances.

(4) If the System Governor approves a form under subsection (1), the System Governor must publish the form on the Department’s website.

401 Approved forms—Commissioner functions

(1) An application or a request under this Act that relates to a function of the Commissioner is in the approved form if:

(a) it is in a form approved in writing by the Commissioner for that kind of application or request; and

(b) it contains the information that the form requires, and any further information or document as the Commissioner requires, whether in the form or otherwise; and
Section 402

(c) for an application or request that is required to be given to the Commissioner—it is given in the manner that the Commissioner requires (which may include electronically).

(2) The Commissioner may combine in the same approved form more than one application or request.

(3) The Commissioner may approve:
   (a) more than one approved form for an application or request;
   (b) a different approved form for different circumstances.

(4) If the Commissioner approves a form under subsection (1), the Commissioner must publish the form on the Commission’s website.

402 Requests for further information by System Governor or Commissioner

(1) If the System Governor or the Commissioner (the decision-maker) needs further information or a document to make a decision on an application or request made by an entity under this Act, the decision-maker may, by written notice, request the entity to give the further information or document to the decision-maker within a reasonable period specified in the notice.

(2) The specified period must not be shorter than:
   (a) if paragraph (b) does not apply—28 days after the notice is given; or
   (b) if circumstances prescribed by the rules apply in relation to the application or request—14 days after the notice is given.

(3) The decision-maker may, at the entity’s request, extend the specified period.

(4) If the entity does not give the requested further information or document within:
   (a) if the specified period has been extended under subsection (3)—the period as so extended; or
   (b) otherwise—the specified period;
Chapter 8 Miscellaneous
Part 8 Applications, requests and notifications

Section 403

the application or request is taken to be withdrawn at the end of the period.

(5) A notice given under subsection (1) must set out the effect of subsection (4).

403 When System Governor or Commissioner not required to make a decision or do a thing

Application or request not in approved form

(1) If this Act requires an application or a request made to the System Governor or the Commissioner (the decision-maker) to be in the approved form, the decision-maker is not required to make a decision on the application or request if it is not in that form.

Information or documents not provided

(2) If this Act permits the System Governor or the Commissioner (the decision-maker) to request or require information or documents for the purposes of, or for purposes relating to, making a decision or doing a thing, the decision-maker is not required to make the decision or do the thing until the information or documents are provided.

Application fee not paid

(3) If this Act requires a fee to be paid in relation to an application or request made by an entity to the System Governor or the Commissioner (the decision-maker), the decision-maker is not required to make a decision on the application or request if:
   (a) the fee has not been paid; and
   (b) the entity is not exempt from paying the fee; and
   (c) the decision-maker has not waived the fee.

404 Withdrawal of applications and requests

An entity who has made an application or request to the System Governor or the Commissioner (the decision-maker) under this
Section 405

An entity contravenes this section if the entity:

(a) provides information or a document in, or in connection with, an application or request made under this Act; and
(b) the entity knows the information or document is false or misleading in a material particular.

Civil penalty: 60 penalty units.

Note: Part 7.4 of the Criminal Code provides offences in relation to false or misleading statements, information and documents.

406 Method of notification by System Governor or Commissioner

If this Act requires or permits the System Governor or the Commissioner (the notifier) to notify an entity, the notifier may notify the entity:

(a) by sending the notice by prepaid post addressed to the entity at the entity’s postal address last known to the notifier; or
(b) if the entity is an individual—by giving the notice to the entity personally; or
(c) in any other way the notifier considers appropriate (including electronically).
Chapter 8  Miscellaneous
Part 9  Application fees and fees for services provided by the System Governor and Commissioner

Section 407

Part 9—Application fees and fees for services provided by the System Governor and Commissioner

407 Fees for services provided by the System Governor

(1) The System Governor may, on behalf of the Commonwealth, charge fees prescribed by the rules for services prescribed by the rules that are provided by the System Governor in performing the System Governor’s functions.

(2) However, the System Governor must not charge an individual accessing, or seeking to access, funded aged care services, a supporter or representative of the individual or another person supporting the individual, a fee for a service provided by the System Governor in performing [to be drafted].

(3) A fee charged under subsection (1):

(a) is a debt due to the System Governor, on behalf of the Commonwealth; and

(b) is recoverable by the System Governor, on behalf of the Commonwealth, in a court of competent jurisdiction.

408 Fees for services provided by the Commissioner

(1) The Commissioner may, on behalf of the Commonwealth, charge fees prescribed by the rules for services prescribed by the rules that are provided by the Commissioner in performing the Commissioner’s functions.

(2) However, the Commissioner must not charge:

(a) an individual accessing, or seeking to access, funded aged care services, a supporter or representative of the individual or another person supporting the individual, a fee for a service provided by the Commissioner in performing the engagement and education functions; or
Section 409

(b) a complainant fees for services provided by the Commissioner in performing the complaints functions.

(3) A fee charged under subsection (1):
   (a) is a debt due to the Commissioner, on behalf of the Commonwealth; and
   (b) is recoverable by the Commissioner, on behalf of the Commonwealth, in a court of competent jurisdiction.

409 Fees must not amount to taxation

(1) This section applies to:
   (a) a fee that, under this Act, must accompany an application or request made to the System Governor or the Commissioner; and
   (b) a fee that may be charged under section 407 or 408.

(2) The amount of the fee must not be such as to amount to taxation.

410 Exemptions from, and waivers and refunds of, fees

The rules may make provision in relation to the following:
   (a) for a fee mentioned in section 407, or an application fee for an application made to the System Governor—the circumstances in which the System Governor may waive the fee;
   (b) for a fee mentioned in section 408, or an application fee for an application made to the Commissioner—the circumstances in which the Commissioner may waive the fee;
   (c) for a fee that, under this Act, must accompany an application or request made to the System Governor or the Commissioner:
      (i) the circumstances in which an entity is exempt from paying the fee; and
      (ii) the circumstances in which the fee may be refunded, in whole or in part.
Chapter 8  Miscellaneous
Part 10  Reports on and review of this Act

Section 411

Part 10—Reports on and review of this Act

411 Annual report on the operation of the Act

(1) The System Governor must give the Minister, for presentation to each House of the Parliament, a report on the performance of the System Governor’s functions during each financial year.

(2) Without limiting subsection (1), the report must include information about the following matters:

(a) the extent of unmet demand for funded aged care services;
(b) the duration of waiting periods for funded aged care services;
(c) the number of registered providers entering and exiting the market for the delivery of funded aged care services;
(d) the financial viability of registered providers in that market;
(e) usage of the bond guarantee scheme;
(f) the amounts of contributions paid;
(g) the amounts of those contributions paid as refundable deposits;
(h) the amounts of accommodation bonds and accommodation charges charged;
(i) the extent of building, upgrading and refurbishment of residential care homes.

Note: For reporting and planning by the Commissioner, see Division 5 of Part 3 of Chapter 5.

412 Review of operation of this Act

(1) The Minister must cause an independent review of the operation of this Act to be conducted within 6 months after the fifth anniversary of the commencement of this Act.

(2) The persons who conduct the review must give the Minister a written report of the review.
Section 412

(3) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the report is given to the Minister.
Chapter 8  Miscellaneous
Part 11  Rules

Section 413

Part 11—Rules

413 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) Without limiting subsection (1), the rules may:
   (a) make different provision in relation to different classes of registered providers, including by providing for certain matters to apply only to registered providers of a certain class;
   (b) provide for the making of applications and requests in relation to matters dealt with by the rules and require the payment of fees prescribed by the rules for making such request.

(4) Subsection (3) of this section does not limit subsection 33(3A) of the Acts Interpretation Act 1901.

(5) 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.

Prerequisites for rules specifying aged care worker screening laws

(6) Before the Minister makes rules specifying a law of a State or
Territory for the purposes of the definition of aged care worker
screening law in section 7, the Minister must be satisfied that:
(a) the law establishes a scheme for the screening of workers for
purposes including the purposes of this Act; and
(b) the State or Territory agrees to the law being specified.

Amounts and methods for working out amounts

(7) The rules may prescribe an amount by:
(a) specifying the amount; or
(b) specifying a method for working out the amount.