



# **Aged Care Amendment Act 2000**

**No. 158, 2000**



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**An Act to amend the *Aged Care Act 1997*, and for  
other purposes**

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# **An Act to amend the *Aged Care Act 1997*, and for other purposes**

[Assented to 21 December 2000]

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Aged Care Amendment Act 2000*.

## **2 Commencement**

- (1) Subject to this section, this Act commences on the day after the day on which it receives the Royal Assent.
- (2) Schedule 2 commences on the 28th day after the day on which this Act receives the Royal Assent.

## **3 Schedule(s)**

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Amendments relating to sanctions**

### *Aged Care Act 1997*

#### **1 Subsection 42-2(1)**

After “this Part (other than section 42-3)”, insert “and for the purposes of section 67A-5”.

#### **2 Section 66-1**

Omit “in writing”, substitute “under section 67-5”.

#### **3 Paragraph 66-1(a)**

Omit “approval under Part 2.1” (last occurring).

#### **4 Paragraph 66-1(b)**

Omit “time the sanction is imposed”, substitute “the \*section 67-5 notice time”.

#### **5 Paragraph 66-1(c)**

Omit “time the sanction is imposed” (wherever occurring), substitute “the \*section 67-5 notice time”.

#### **5A Subparagraph 66-2(1)(a)(iii)**

After “, in accordance with the Sanctions Principles,”, insert “and in accordance with section 66A-2,”.

#### **5B Subparagraph 66-2(1)(a)(iv)**

After “, in accordance with the Sanctions Principles,”, insert “and in accordance with section 66A-3”.

#### **5C After Division 66**

Insert:

## **Division 66A—Establishment of administrator panel and adviser panel**

### **66A-1 Establishment of administrator panel and adviser panel**

- (1) There is to be a panel of:
  - (a) administrators (the *administrator panel*); and
  - (b) advisers (the *adviser panel*).
- (2) The Secretary may appoint a person to a panel mentioned in subsection (1) if:
  - (a) the Secretary is satisfied that the person:
    - (i) has at least 3 years' experience in senior positions in managing, or providing professional advice and support to, an aged care service or a similar undertaking; and
    - (ii) is not a \*disqualified individual; and
  - (b) the Secretary is also satisfied that, if the person were appointed to the panel, there would not be a conflict of interest between the person's duties as a member and any other interests or duties of the person; and
  - (c) the person is not a Commonwealth officer or employee.
- (2A) Each panel is to include at least one registered medical practitioner.
- (3) A person is appointed to a panel for the term stated in the instrument of appointment.
- (4) The Secretary may terminate a person's appointment to a panel by writing signed by the Secretary and given to the person.
- (4A) A notice under subsection (4) must include a statement of reasons for the termination of the person's appointment.
- (5) A person may resign an appointment by writing signed by him or her and given to the Secretary.

### **66A-2 Appointment of advisers**

- (1) A person is eligible to be appointed as an adviser only if the person:
  - (a) is a member of the adviser panel; and

- (b) has not been one of the \*key personnel of an approved provider whose approval under Part 2.1 has been revoked; and
  - (c) has not been one of the relevant personnel of a body whose application for approval as a provider of aged care services has been refused.
- (2) If the approved provider agrees to appoint an adviser, the approved provider must, within 5 working days after the \*section 67-5 notice time:
- (a) nominate, in writing, a proposed adviser to the Secretary; and
  - (b) give the Secretary written information about the proposed adviser to allow the Secretary to decide whether the proposed adviser is suitable.
- (3) If the Secretary approves the proposed appointment, the appointment must be made within one working day after the approved provider is informed of the Secretary's approval.

### **66A-3 Appointment of administrators**

- (1) A person is eligible to be appointed as an administrator only if the person:
- (a) is a member of the administrator panel; and
  - (b) has not been one of the \*key personnel of an approved provider whose approval under Part 2.1 has been revoked; and
  - (c) has not been one of the relevant personnel of a body whose application for approval as a provider of aged care services has been refused.
- (2) If the approved provider agrees to appoint an administrator, the approved provider must, within 5 working days after the \*section 67-5 notice time:
- (a) nominate, in writing, a proposed administrator to the Secretary; and
  - (b) give the Secretary written information about the proposed administrator to allow the Secretary to decide whether the proposed administrator is suitable.

- (3) If the Secretary approves the proposed appointment, the appointment must be made within one working day after the approved provider is informed of the Secretary's approval.

#### **66A-4 Powers of administrators and advisers**

- (1) The Secretary must provide to a person appointed under section 66A-2 or 66A-3 a report on the relevant aged care service which includes the following information:
  - (a) all relevant accreditation, certification and review audit reports on the service;
  - (b) the current classification of all residents;
  - (c) the Commonwealth subsidies paid to the service;
  - (d) any debts owed by the service to the Commonwealth;
  - (e) a summary of any relevant complaints about the service, indicating the issues raised and action taken by the service, without identifying any parties involved; and
  - (f) any other matters that the Secretary determines are relevant.
- (2) The approved provider must provide to a person appointed under section 66A-3 all relevant information required by the person to administer the service.
- (3) The approved provider must allow a person appointed under section 66A-3 to manage the service to ensure that all resident care standards are met and maintained.
- (4) If a person appointed under section 66A-3 is a registered medical practitioner, the approved provider must allow the person to provide medical services to ensure that all resident care standards are met.

#### **66A-5 Interpretation**

In this Division:

*relevant personnel*, in relation to a body, means any of the following:

- (a) if the body is not a State or Territory—a member of the group of people who are responsible for the executive decisions of the body;

- (b) if the body is not a State or Territory—anyone else who is concerned in, or takes part in, the management of the body;
- (c) in any case—anyone who is responsible for the overall nursing care provided by an aged care service conducted by the body;
- (d) in any case—anyone who is responsible for the day-to-day operations of an aged care service conducted by the body, whether or not the person is employed by the body.

### **5D Commencement of items 5A, 5B and 5C**

Despite section 2, items 5A, 5B and 5C commence on the 28th day after the day on which this Act receives the Royal Assent.

### **6 After paragraph 67-5(2)(c)**

Insert:

- (ca) if the sanction consists of revoking or suspending the allocation of some or all of the \*places allocated to the approved provider under Part 2.2—the number of allocated places subject to the sanction; and
- (cb) an explanation of when the sanction takes effect (see Division 67A); and

### **7 After Division 67 of Part 4.4**

Insert:

## **Division 67A—When do sanctions take effect?**

### **67A-1 When this Division applies**

This Division applies if the Secretary gives a notice under section 67-5 imposing a sanction on an approved provider.

### **67A-2 Basic rule—sanction takes effect at the section 67-5 notice time**

The basic rule is that the sanction takes effect at the \*section 67-5 notice time.

### 67A-3 Exceptions to the basic rule

However, there are 2 exceptions to the basic rule:

- (a) deferral to a later time (see section 67A-4);
- (b) progressive revocation or suspension of the allocation of some or all of the \*places allocated to the approved provider under Part 2.2 (see section 67A-5).

### 67A-4 Deferral to a later time

- (1) If:
  - (a) the Secretary decides that the sanction should take effect at a time that is later than the \*section 67-5 notice time; and
  - (b) that decision is set out in the section 67-5 notice;the sanction takes effect at that later time.
- (2) In making a decision under subsection (1), the Secretary must have regard to the following:
  - (a) the desirability of allowing sufficient time for the taking of reasonable steps to inform:
    - (i) each care recipient who is likely to be affected by the imposition of the sanction; and
    - (ii) a next of kin of such a care recipient, or an individual who, in the opinion of the Secretary, is concerned for the safety, health and well-being of such a care recipient;about:
    - (iii) the imposition of the sanction; and
    - (iv) the consequences under this Act of the imposition of the sanction;
  - (b) any risk to the safety, health or well-being of care recipients to whom the approved provider is providing care;
  - (c) any other matters specified in the Sanctions Principles.
- (3) If:
  - (a) the sanction consists of revoking the approved provider's approval under Part 2.1 as a provider of \*aged care services; and

- (b) the sanction is the only sanction imposed on the approved provider in relation to non-compliance with one or more of its responsibilities under Part 4.1, 4.2 or 4.3; and
  - (c) paragraph 66-2(1)(a) does not apply to the sanction;
- then, in making a decision under subsection (1), the Secretary must ensure that the sanction takes effect within 14 days after the \*section 67-5 notice time.

### **67A-5 Progressive revocation or suspension of allocation of places**

- (1) This section applies to the sanction if:
  - (a) the sanction consists of revoking or suspending the allocation of some or all of the \*places allocated to the approved provider under Part 2.2; and
  - (b) the Secretary decides that the sanction should take effect on a progressive basis; and
  - (c) that decision is set out in the section 67-5 notice.

#### *Vacant places*

- (2) If, immediately before the \*section 67-5 notice time, the approved provider was not providing \*aged care to a care recipient in respect of an allocated \*place:
  - (a) the place is taken to be a *vacant place* for the purposes of this section; and
  - (b) the sanction takes effect, in relation to the vacant place, at the section 67-5 notice time.

#### *Occupied places*

- (3) If, immediately before the \*section 67-5 notice time, the approved provider was providing \*aged care to a care recipient in respect of an allocated \*place:
  - (a) the place is taken to be an *occupied place* for the purposes of this section; and
  - (b) the sanction takes effect, in relation to the occupied place, when the approved provider subsequently ceases to provide aged care to the care recipient in respect of the occupied place.

- (4) For the purposes of paragraph (3)(b), disregard an occupied place if, at the time of the cessation, the sanction has already taken effect in relation to the number of allocated \*places subject to the sanction.

*Ancillary provisions*

- (5) This section does not apply unless the number of allocated \*places subject to the sanction exceeds the number of vacant places.
- (6) In making a decision under subsection (1), the Secretary must have regard to matters specified in the Sanctions Principles.

Note: See also subsection 42-2(1), which is about the provision of residential care when a care recipient is on leave under section 42-2.

**67A-6 This Division has effect subject to section 66-2**

This Division has effect subject to section 66-2.

Note: Section 66-2 provides for sanctions not to take effect in certain cases.

**8 After subsection 68-2(1)**

Insert:

- (1A) The sanction period must be expressed to begin at the time the sanction takes effect.

**9 Clause 1 of Schedule 1**

Insert:

*section 67-5 notice time*, in relation to a sanction imposed on an approved provider by a notice under section 67-5, means the time when the notice is given to the approved provider.

**10 Application of amendments—Part 4.4 of the *Aged Care Act 1997***

The amendments of Part 4.4 of the *Aged Care Act 1997* made by this Schedule apply to a sanction if a notice imposing the sanction is given under section 67-5 of the *Aged Care Act 1997* after the commencement of this item.

## **Schedule 2—Amendments relating to key personnel**

### ***Aged Care Act 1997***

#### **1 Paragraph 3-4(c)**

After “provided”, insert “, and the basic suitability of their \*key personnel”.

#### **2 At the end of subsection 8-1(1) (before the notes)**

Add:

; and (d) the Secretary is satisfied that none of the applicant’s \*key personnel is a \*disqualified individual.

#### **3 Paragraph 8-3(1)(a)**

Omit “key personnel”, substitute “\*key personnel”.

#### **4 Subsection 8-3(2)**

Omit “key personnel”, substitute “\*key personnel”.

#### **5 Subsection 8-3(3)**

Omit “paragraph (1)(a) and subsection (2)”, substitute “this Act”.

#### **6 At the end of section 8-3**

Add:

(7) Paragraph 8-1(1)(d) and sections 10A-2, 10A-3 and 63-1A do not limit this section.

#### **7 Paragraph 9-1(1)(b)**

Omit “key personnel”, substitute “\*key personnel”.

#### **8 Subsection 9-1(2)**

Omit “paragraph (1)(b)”, substitute “this Act”.

#### **9 After subsection 9-1(3)**

Insert:

(3A) For the purposes of this section, if:

- (a) there is a change of any of an approved provider's \*key personnel; and
- (b) the change is wholly or partly attributable to the fact that a particular person is, or is about to become, a \*disqualified individual;

the approved provider is taken not to notify the change unless the provider's notification includes the reason why the person is, or is about to become, a disqualified individual.

## 10 At the end of Part 2.1

Add:

### Division 10A—Disqualified individuals

#### 10A-1 Meaning of *disqualified individual*

(1) For the purposes of this Act, an individual is a *disqualified individual* if:

- (a) the individual has been convicted of an indictable offence; or
- (b) the individual is an insolvent under administration; or
- (c) the individual is of unsound mind.

(2) In this section:

*indictable offence* means:

- (a) an indictable offence against a law of the Commonwealth or of a State or Territory; or
- (b) an offence that:
  - (i) is an offence against a law of a foreign country or of a part of a foreign country; and
  - (ii) when committed, corresponds to an indictable offence against a law of the Commonwealth or of a State or Territory.

*insolvent under administration* has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

(3) Paragraph (1)(a) applies to a conviction, whether occurring before, at or after the commencement of this section.

- (4) For the purposes of this section, an individual who is one of the \*key personnel of an applicant under section 8-2 is taken to be of ***unsound mind*** if, and only if, a registered medical practitioner has certified that he or she is mentally incapable of performing his or her duties as one of those key personnel.
- (5) For the purposes of this section, an individual who is one of the \*key personnel of an approved provider is taken to be of ***unsound mind*** if, and only if, a registered medical practitioner has certified that he or she is mentally incapable of performing his or her duties as one of those key personnel.
- (6) 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).

**10A-2 Disqualified individual must not be one of the key personnel of an approved provider**

*Offence committed by approved providers*

- (1) A \*corporation is guilty of an offence if:
  - (a) the corporation is an approved provider; and
  - (b) a \*disqualified individual is one of the corporation's \*key personnel, and the corporation is reckless as to that fact.

Penalty: 300 penalty units.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (2) A \*corporation that contravenes subsection (1) is guilty of a separate offence in respect of each day (including a day of a conviction for the offence or any later day) during which the contravention continues.

*Offence committed by individuals*

- (3) An individual is guilty of an offence if:
  - (a) the individual is one of the \*key personnel of an approved provider; and

- (b) the approved provider is a \*corporation; and
- (c) the individual is a \*disqualified individual, and the individual is reckless as to that fact.

Penalty: Imprisonment for 2 years.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

*Validity of acts of disqualified individuals and corporations*

- (4) An act of a \*disqualified individual or a \*corporation is not invalidated by the fact that this section is contravened.

### 10A-3 Remedial orders

*Unacceptable key personnel situation*

- (1) For the purposes of this section, an ***unacceptable key personnel situation*** exists if:
  - (a) an individual is one of the \*key personnel of an approved provider; and
  - (b) the approved provider is a \*corporation; and
  - (c) the individual is a \*disqualified individual.

*Grant of orders*

- (2) If an unacceptable key personnel situation exists, the Federal Court may, on application by the Secretary, make such orders as the court considers appropriate for the purpose of ensuring that that situation ceases to exist.
- (3) In addition to the Federal Court's power under subsection (2), the court:
  - (a) has power, for the purpose of securing compliance with any other order made under this section, to make an order directing any person to do or refrain from doing a specified act; and
  - (b) has power to make an order containing such ancillary or consequential provisions as the court thinks just.

*Grant of interim orders*

- (4) If an application is made to the Federal Court for an order under this section, the court may, before considering the application, grant an interim order directing any person to do or refrain from doing a specified act.

*Notice of applications*

- (5) The Federal Court may, before making an order under this section, direct that notice of the application be given to such persons as it thinks fit or be published in such manner as it thinks fit, or both.

*Discharge etc. of orders*

- (6) The Federal Court may, by order, rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

*Definition*

- (7) In this section:

*Federal Court* means the Federal Court of Australia.

**11 Section 53-1**

Before “(see Part 4.3)”, insert “, and the basic suitability of their \*key personnel”.

**12 Part 4.3 (heading)**

Repeal the heading, substitute:

**Part 4.3—Accountability etc.**

**13 Division 63 of Part 4.3 (heading)**

Repeal the heading, substitute:

**Division 63—Accountability etc.**

**14 After section 63-1**

Insert:

**63-1A Responsibility relating to the basic suitability of key personnel**

- (1) The responsibility of an approved provider in relation to the basic suitability of its \*key personnel is to comply with regulations made for the purpose of subsection (2).
- (2) An approved provider must take all reasonable steps specified in the Sanctions Principles to ensure that none of its \*key personnel is a \*disqualified individual.

**15 Clause 1 of Schedule 1**

Insert:

*disqualified individual* has the meaning given by section 10A-1.

**16 Clause 1 of Schedule 1**

Insert:

*key personnel*:

- (a) in relation to an applicant under section 8-2—has the meaning given by subsection 8-3(3); and
  - (b) in relation to an approved provider—has the meaning given by subsection 9-1(2).
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[*Minister's second reading speech made in—  
House of Representatives on 7 September 2000  
Senate on 12 October 2000*]

(156/00)

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