



Inspector-General of Aged Care Act 2023

No. 55, 2023

**An Act to provide for the appointment of an
Inspector-General of Aged Care, and for related
purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

Contents

Part 1—Preliminary	2
1 Short title	2
2 Commencement	2
3 Objects	3
4 Simplified outline of this Act	3
5 Definitions	4
6 Act binds the Crown	9
7 Application of this Act	9
Part 2—Establishment and functions and powers of the Inspector-General of Aged Care	10
Division 1—Introduction	10
8 Simplified outline of this Part	10
Division 2—Inspector-General of Aged Care	11
Subdivision A—Inspector-General of Aged Care	11
9 Inspector-General of Aged Care	11
10 Functions of the Inspector-General	11
11 Independence of Inspector-General	12
Subdivision B—Office of the Inspector-General of Aged Care	12
12 Establishment of the Office of the Inspector-General of Aged Care	12
13 Constitution of the Office	13
14 Functions of the Office	13
Division 3—Reviews by the Inspector-General	14
Subdivision A—Annual work plans	14
15 Inspector-General must prepare annual work plan	14
16 Variation of annual work plan	14
Subdivision B—Process for conducting reviews	15
17 Reviews by the Inspector-General	15
18 Notice of review	16
19 Inspector-General may invite submissions	17
20 Submissions may be made publicly available	18
Subdivision C—Review reports	19
21 Draft review report	19
22 Opportunity to respond must be given before including certain information in draft review report	20

23	Unauthorised disclosure of draft review reports etc.	21
24	Final review report	21
25	Tabling and publication of final review report	23
26	Certain information not to be included in review reports	23
Subdivision D—Reporting misconduct by Commonwealth officials		24
27	Reporting misconduct by Commonwealth officials.....	24
Division 4—Other functions and powers		25
28	Reviews of implementation of Aged Care Royal Commission recommendations.....	25
29	Extra reports to Parliament	26
Part 3—Administrative provisions		28
Division 1—Introduction		28
30	Simplified outline of this Part.....	28
Division 2—Appointment of the Inspector-General		29
31	Appointment.....	29
32	Term of office.....	29
33	Acting appointments.....	29
34	Remuneration and allowances	30
35	Leave of absence for Inspector-General	30
36	Other paid work.....	30
37	Other terms and conditions.....	30
38	Resignation.....	31
39	Termination of appointment	31
Division 3—Staff and consultants etc.		32
40	Staff.....	32
41	Persons assisting the Inspector-General.....	32
42	Consultants	33
Part 4—Information management		34
Division 1—Introduction		34
43	Simplified outline of this Part.....	34
Division 2—Information-gathering powers		35
44	Power of Inspector-General to obtain information	35
45	Information that must be given in private.....	36
46	False or misleading information	36
47	False or misleading documents.....	37
48	Inspector-General may retain documents and things	38

49	When documents and things must be returned	38
50	Access to premises etc.	39
51	Privilege against self-incrimination and penalty privilege.....	41
52	Legal professional privilege	42
53	Secrecy provisions.....	43
Division 3—Protections relating to disclosing information		45
Subdivision A—Protecting identity of disclosers in certain circumstances		45
54	Disclosures qualifying for protection	45
55	Confidentiality of identity of disclosers.....	45
Subdivision B—Protection from victimisation		47
56	Victimisation prohibited	47
Subdivision C—Immunity from liability for certain disclosures		49
57	Disclosures qualifying for protection	49
58	Disclosure that qualifies for protection not actionable etc.	49
59	Liability for false or misleading disclosures unaffected	50
60	Person’s liability for own conduct not affected	50
61	Claims for protection	50
62	Protection has effect despite other Commonwealth laws.....	51
Division 4—Secrecy of information		52
63	Unauthorised use or disclosure of protected information	52
64	Authorisations to use or disclose information.....	52
Part 5—Compliance and enforcement		55
65	Simplified outline of this Part.....	55
66	Civil penalty provisions.....	55
67	Physical elements of offences.....	56
68	Contravening an offence provision or a civil penalty provision.....	56
Part 6—Miscellaneous		57
69	Simplified outline of this Part.....	57
70	Protection from liability.....	57
71	Annual report.....	57
72	Delegation by the Inspector-General	58
73	Regulations.....	59



Inspector-General of Aged Care Act 2023

No. 55, 2023

**An Act to provide for the appointment of an
Inspector-General of Aged Care, and for related
purposes**

[Assented to 17 August 2023]

The Parliament of Australia enacts:

Section 1

Part 1—Preliminary

1 Short title

This Act is the *Inspector-General of Aged Care Act 2023*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	As follows: (a) if this Act receives the Royal Assent before 1 July 2023—1 July 2023; (b) if this Act receives the Royal Assent on or after 1 July 2023—a single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	16 October 2023 (paragraph (b) applies) (F2023N00357)
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 Objects

The objects of this Act are to drive greater accountability and transparency of the Commonwealth's administration of the aged care system, and facilitate positive change for older Australians, by:

- (a) establishing an independent Inspector-General of Aged Care to monitor, investigate and report on the Commonwealth's administration of the aged care system, including by identifying systemic issues through independent reviews, and making recommendations for improvement; and
- (b) providing oversight of the Commonwealth's administration of complaints management processes across the aged care system; and
- (c) establishing a framework for the Inspector-General of Aged Care to report publicly to the Minister and Parliament on the Commonwealth's administration of the aged care system.

4 Simplified outline of this Act

This Act provides for the appointment of the Inspector-General of Aged Care, and establishes the Office of the Inspector-General of Aged Care.

The Inspector-General is independent from other entities within the aged care system, to support the Inspector-General's effective, impartial and transparent oversight of the system.

The Inspector-General's functions include oversight of the Commonwealth's administration, governance and regulation of aged care. This includes conducting reviews into systemic issues and reporting to the Minister and Parliament on these matters. The reviews will not relate to individual complaints and actions.

The Inspector-General has the power to compel a government entity to respond to the recommendations of a review and to publish that response in conjunction with the final report of the review.

Section 5

The Inspector-General's functions also include monitoring and reporting on the Commonwealth's implementation of the recommendations of the Aged Care Royal Commission.

The Inspector-General will set out priorities and topics of review for the coming year through publishing an annual work plan.

The Inspector-General has coercive information-gathering powers, which allow the Inspector-General to gather information relevant to the Inspector-General's functions from Commonwealth entities or any other person or body.

Persons who provide information to, or assist, the Inspector-General are afforded protections against victimisation, or are able to request their identity be kept confidential, to allow full and frank disclosures to be made.

A regime of offences and penalties apply to breaches of the protections afforded and to unauthorised use or disclosure of information obtained under this Act.

5 Definitions

In this Act:

accountable authority has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

aged care funding agreement means:

- (a) an agreement entered into under subsection 73-1(3), 81-1(1), 82-1(1) or 83-1(1) of the *Aged Care Act 1997*; or
- (b) an agreement providing for an arrangement under which money is payable by the Commonwealth, or for a grant of financial assistance by the Commonwealth, and the arrangement or grant is for the purposes of a program specified in:
 - (i) an item of the table in Part 4 of Schedule 1AA to the *Financial Framework (Supplementary Powers)*

Regulations 1997, to the extent that the program relates to aged care; or

- (ii) an item of the table in Part 4 of Schedule 1AB to those regulations, to the extent that the program relates to aged care; or

- (c) an agreement of a kind specified in the regulations.

aged care law means any of the following:

- (a) a provision of the *Aged Care Act 1997*;
- (b) a provision of the *Aged Care Quality and Safety Commission Act 2018*;
- (c) a provision of the *Aged Care (Transitional Provisions) Act 1997*;
- (d) a provision of a legislative instrument made under an Act referred to in paragraph (a), (b) or (c);
- (e) section 131A of the *National Health Reform Act 2011*, or regulations made for the purposes of that section;
- (f) a provision of any other law of the Commonwealth specified in the regulations.

Aged Care Royal Commission means the Royal Commission into Aged Care Quality and Safety issued by the Governor-General by Letters Patent on 6 December 2018 (and including any later amendments of those Letters Patent).

Australian law means a law of the Commonwealth, or of a State or Territory.

authorised official: see subsection 50(7).

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

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

draft review report, in relation to a review under section 17: see subsection 21(1).

enforcement body has the same meaning as in the *Privacy Act 1988*.

Section 5

enforcement related activity has the same meaning as in the *Privacy Act 1988*.

entrusted person means any of the following:

- (a) the Inspector-General;
- (b) a member of the staff of the Office;
- (c) a person assisting the Inspector-General under section 41;
- (d) a consultant engaged by the Inspector-General under section 42.

final review report, in relation to a review under section 17: see subsection 24(1).

government entity means:

- (a) a Commonwealth entity; or
- (b) a body (other than a Commonwealth entity) established by or under a law of the Commonwealth; or
- (c) a body established, otherwise than by or under a law of the Commonwealth, by the Governor-General; or
- (d) an incorporated company in which the Commonwealth has a controlling interest; or
- (e) a person (other than an individual) to whom a function, duty or power has been delegated or subdelegated under an aged care law; or
- (f) a person (other than an individual) who is engaged as a consultant, contractor or subcontractor to perform a function or duty, or exercise a power, under an aged care law; or
- (g) a person (other than an individual) who is registered or appointed to perform a function or duty, or exercise a power, under an aged care law; or
- (h) a person (other than an individual) specified in the regulations.

government official means:

- (a) a Minister; or
- (b) an official of a Commonwealth entity; or

- (c) an individual who holds an appointment made, otherwise than by or under a law of the Commonwealth, by the Governor-General; or
- (d) an individual to whom a function, duty or power has been delegated or subdelegated under an aged care law; or
- (e) an individual who is engaged as a consultant, contractor or subcontractor to perform a function or duty, or exercise a power, under an aged care law; or
- (f) an individual who is registered or appointed to perform a function or duty, or exercise a power, under an aged care law; or
- (g) an individual who is engaged as a consultant or contractor by the Department to provide services to the Department in connection with the Commonwealth's administration of an aged care funding agreement or aged care law; or
- (h) an individual specified in the regulations.

identifying information about an individual means information that identifies, or that could be used to identify, the individual.

Inspector-General means the Inspector-General of Aged Care referred to in section 9.

Office means the Office of the Inspector-General of Aged Care established under section 12.

official has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

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

premises includes any land or place.

protected information means any of the following:

- (a) personal information within the meaning of the *Privacy Act 1988*;
- (b) information that relates to the affairs of:
 - (i) an approved provider (within the meaning of the *Aged Care Quality and Safety Commission Act 2018*); or

Section 5

- (ii) a party to an aged care funding agreement (other than the Commonwealth);
- (c) information the disclosure of which would or could reasonably be expected to prejudice the effective working of a Commonwealth entity in the exercise of the entity's powers or performance of the entity's functions or duties under an aged care law.

Regulatory Powers Act means the *Regulatory Powers (Standard Provisions) Act 2014*.

Secretary means the Secretary of the Department.

sensitive information is information the disclosure of which would be contrary to the public interest:

- (a) because it would prejudice the security, defence or international relations of the Commonwealth; or
- (b) because it would involve disclosing:
 - (i) deliberations or decisions of the Cabinet, or of any committee of the Cabinet, of the Commonwealth or of a State; or
 - (ii) deliberations or advice of the Federal Executive Council or the Executive Council of a State or the Northern Territory; or
 - (iii) deliberations or decisions of the Australian Capital Territory Executive or of a committee of that Executive; or
- (c) because it would prejudice relations between the Commonwealth and a State or Territory; or
- (d) because it would involve disclosing any information that was communicated in confidence by the Commonwealth to a State or Territory, or by a State or Territory to the Commonwealth; or
- (e) because it would reasonably be expected to prejudice the commercial interests of any person or body; or
- (f) for any other reason that could form the basis for a claim in a judicial proceeding that the information should not be disclosed.

Section 6

staff of the Office means the staff of the Office referred to in section 40.

use, in relation to information, includes make a record of.

6 Act binds the Crown

This Act binds the Crown in each of its capacities.

7 Application of this Act

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

Part 2—Establishment and functions and powers of the Inspector-General of Aged Care

Division 1—Introduction

8 Simplified outline of this Part

This Part provides for the appointment of the Inspector-General of Aged Care, sets out the Inspector-General's functions and powers, and establishes the Office of the Inspector-General of Aged Care.

The Inspector-General may conduct reviews for the purposes of performing certain functions. The Inspector-General must publish a work plan for each financial year that sets out the reviews to be conducted during each financial year.

The Inspector-General must conduct 2 reviews of the Commonwealth's implementation of the recommendations of the Aged Care Royal Commission. Before conducting those reviews, the Inspector-General must publish 2 reports on the progress made by the Commonwealth towards implementing those recommendations.

The Inspector-General must publish a report on each review. The Inspector-General may also publish reports on any other matter relating to the Inspector-General's functions.

Division 2—Inspector-General of Aged Care

Subdivision A—Inspector-General of Aged Care

9 Inspector-General of Aged Care

There is to be an Inspector-General of Aged Care.

10 Functions of the Inspector-General

- (1) The Inspector-General has the following functions:
 - (a) to monitor, investigate and report to the Minister and Parliament on:
 - (i) the exercise of powers, and the performance of functions and duties, under an aged care law; or
 - (ii) the Commonwealth's administration of an aged care law or aged care funding agreement; or
 - (iii) the operation of an aged care law; or
 - (iv) the performance of obligations and the exercise of rights by the Commonwealth under an aged care funding agreement;
 - (b) to monitor, investigate and report to the Minister and Parliament on systemic issues relating to a matter referred to in subparagraph (a)(i), (ii), (iii) or (iv);
 - (c) to monitor, investigate and report to the Minister and Parliament on any systems established by the Commonwealth to administer an aged care law or aged care funding agreement;
 - (d) to monitor, investigate and report to the Minister and Parliament on the implementation by the Commonwealth of the recommendations of the Aged Care Royal Commission;
 - (e) any other functions conferred on the Inspector-General by this Act or the regulations;
 - (f) to do anything incidental to, or conducive to, the performance of the above functions.

Section 11

- (2) Paragraphs (1)(a) and (b) do not permit the Inspector-General to monitor and investigate only a single exercise of a power, or a single performance of a function or duty, under an aged care law.
- (3) The Inspector-General has power to do all things necessary or convenient to be done for, or in connection with, the performance of the Inspector-General's functions.

11 Independence of Inspector-General

- (1) Subject to this Act and to other laws of the Commonwealth, the Inspector-General:
 - (a) has complete discretion in the performance of the Inspector-General's functions and the exercise of the Inspector-General's powers; and
 - (b) is not subject to direction by any person in relation to the performance or exercise of those functions or powers.

Note: The Minister may direct the Inspector-General to conduct a review into a particular matter: see subsection 17(2).

- (2) In particular, the Inspector-General is not subject to direction in relation to:
 - (a) whether or not a particular outcome or priority is to be included in a work plan for a financial year; or
 - (b) the conduct of a review, including:
 - (i) the terms of reference for a review; and
 - (ii) how a review is to be conducted; and
 - (iii) the timing of a review; and
 - (iv) the priority to be given to a review; or
 - (c) the content of a report.

Subdivision B—Office of the Inspector-General of Aged Care

12 Establishment of the Office of the Inspector-General of Aged Care

- (1) The Office of the Inspector-General of Aged Care 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 Office is a listed entity; and
 - (b) the Inspector-General is the accountable authority of the listed entity; and
 - (c) the following persons are officials of the Office:
 - (i) the Inspector-General;
 - (ii) the staff of the Office;
 - (iii) persons assisting the Inspector-General referred to in section 41;
 - (iv) consultants engaged under section 42; and
 - (d) the purposes of the Office include the functions of the Inspector-General referred to in section 10.

13 Constitution of the Office

The Office consists of:

- (a) the Inspector-General; and
- (b) the staff of the Office.

14 Functions of the Office

The Office's function is to assist the Inspector-General in the performance of the Inspector-General's functions.

Division 3—Reviews by the Inspector-General

Subdivision A—Annual work plans

15 Inspector-General must prepare annual work plan

- (1) The Inspector-General must prepare a work plan, in writing, for each financial year.
- (2) The work plan for a financial year must set out the key outcomes and priorities for the Inspector-General for the financial year, including:
 - (a) the reviews that the Inspector-General intends to conduct under section 17 during the financial year; and
 - (b) details of each review, including when each review will be conducted.
- (3) The Inspector-General must consult the Minister in preparing a work plan for a financial year. The Inspector-General may also consult any other person the Inspector-General considers appropriate.
- (4) The Inspector-General must publish the work plan for a financial year on the Inspector-General's website as soon as practicable after it has been finalised.
- (5) A work plan prepared under subsection (1) is not a legislative instrument.

16 Variation of annual work plan

- (1) The Inspector-General may vary a work plan for a financial year if the Inspector-General is satisfied that it is reasonable and appropriate to do so.
- (2) The Inspector-General must publish the work plan, as varied, on the Inspector-General's website as soon as practicable after the work plan has been varied.
- (3) A varied work plan is not a legislative instrument.

Subdivision B—Process for conducting reviews

17 Reviews by the Inspector-General

Inspector-General may conduct review on own initiative

- (1) The Inspector-General may, on the Inspector-General's own initiative, conduct a review for the purpose of performing a function referred to in paragraphs 10(1)(a) to (d).

Minister may direct Inspector-General to conduct review

- (2) The Minister may, in writing, direct the Inspector-General to conduct a review (a **directed review**) into a particular matter related to a function referred to in paragraphs 10(1)(a) to (d).
 - (3) In considering whether to give a direction under subsection (2) to conduct a directed review, the Minister must have regard to:
 - (a) the objects of this Act; and
 - (b) the functions of the Inspector-General; and
 - (c) the work plan for the financial year in which the directed review is to be conducted; and
 - (d) whether the Inspector-General has sufficient resources to conduct the directed review.
 - (4) The Inspector-General must comply with a direction given under subsection (2).
 - (5) The Inspector-General must consult the Minister in determining:
 - (a) the terms of reference for a directed review; and
 - (b) the priority to be given to a directed review.
- Note: The Inspector-General is not subject to direction by the Minister in relation to these matters: see section 11.
- (6) A direction given under subsection (2) is not a legislative instrument.

Section 18

Inspector-General may conduct review on request

- (7) The Inspector-General may conduct a review into a particular matter related to a function referred to in paragraphs 10(1)(a) to (d) if requested in writing to do so by:
 - (a) the Secretary; or
 - (b) a Minister administering an aged care law.
- (8) The Inspector-General is not required to comply with a request under subsection (7).

18 Notice of review

- (1) The Inspector-General starts a review under section 17 by giving notice in accordance with subsection (2).
- (2) A notice under subsection (1) must:
 - (a) be in writing; and
 - (b) specify the day on which the review starts (which must be the day on which the notice is given); and
 - (c) specify the terms of reference for the review; and
 - (d) be given to:
 - (i) the Minister; and
 - (ii) if the review relates to the exercise of powers, or the performance of functions or duties, by an official of a Commonwealth entity—the head (however described) of the entity; and
 - (iii) if the review relates to the exercise of powers, or the performance of functions or duties, under a provision of the *Aged Care Quality and Safety Commission Act 2018*—the Commissioner of the Aged Care Quality and Safety Commission; and
 - (iv) if the review relates to the exercise of powers, or the performance of functions or duties, under an aged care law other than a provision of the *Aged Care Quality and Safety Commission Act 2018*—the Secretary of the Department.

- (2A) The Inspector-General must, as soon as practicable after giving the notice, cause the notice to be published on the Inspector-General's website unless the Inspector-General is satisfied that doing so would adversely affect:
 - (a) the proper conduct of the review or any other review under section 17; or
 - (b) the preparation of a draft review report or final review report.
- (3) The Inspector-General may, if the Inspector-General considers it appropriate to do so:
 - (a) give the notice to any other person or body; or
 - (b) cause the notice to be published in any other manner that the Inspector-General thinks fit.

19 Inspector-General may invite submissions

Inviting submissions

- (1) The Inspector-General may invite members of the public generally, or a particular person or body, to make submissions on a matter relating to a review under section 17.
- (2) The Inspector-General has discretion in deciding matters connected with the process for inviting or making submissions, including:
 - (a) how to communicate an invitation; and
 - (b) who may make a submission; and
 - (c) how submissions may be made.

Note: For example, the Inspector-General may:

- (a) advertise in the press or other media seeking written submissions from the public; or
- (b) contact particular persons or bodies inviting them to attend a meeting at which they may make oral submissions.

Requests for confidentiality

- (3) If a person or body makes a submission, the person or body may request the Inspector-General:
 - (a) not to make the submission, or a part of the submission, available under section 20; or

Section 20

- (b) not to include the submission, or a part of the submission, in the draft review report or the final review report.
- (4) The Inspector-General may agree to the request if the Inspector-General is satisfied that:
 - (a) the request is reasonable in the circumstances; and
 - (b) agreeing to the request would not unduly impede the conduct of the review; and
 - (c) the person or body has made the submission in good faith.
- (5) However, a request under subsection (3) in relation to a submission made in relation to a review does not prevent the Inspector-General from having regard to the submission in conducting the review.
- (6) If a person or body makes a request under subsection (3) in relation to a submission, or a part of a submission, and the Inspector-General refuses the request:
 - (a) the person or body may withdraw the submission or the part of the submission; and
 - (b) if the submission is a written submission—the person or body may require the submission, or the part of the submission, to be returned to the person or body.

20 Submissions may be made publicly available

- (1) Subject to subsections (2), (3) and (4), the Inspector-General may make available to the public generally, or to particular persons or bodies, a submission or a part of a submission (including a written record of an oral submission) made in response to an invitation under subsection 19(1).
- (2) The Inspector-General must not make available under subsection (1) a submission, or a part of a submission, to the extent that:
 - (a) it names, or otherwise makes reasonably identifiable, an individual other than:
 - (i) a Minister of the Commonwealth, a State or a Territory; or

- (ii) an individual who holds an office or appointment under a law of the Commonwealth, a State or a Territory; or
 - (iii) an SES employee or acting SES employee; or
 - (iv) an individual who made the submission, unless the submission is a disclosure that qualifies for protection under section 54 (confidentiality of identity); or
 - (b) it contains information that the Inspector-General is satisfied is sensitive information.
- (3) The Inspector-General must not make available under subsection (1) a submission, or part of a submission, made by a person or body if:
- (a) the person or body requested the Inspector-General not to make the submission or the part of the submission available, and the Inspector-General agreed to the request; or
 - (b) the submission, or the part of a submission, was withdrawn by, or returned to, the person or body under subsection 19(6).
- (4) The Inspector-General must not make available under subsection (1) a written record of an oral submission made by a person unless the person has verified the content of the record.

Subdivision C—Review reports

21 Draft review report

- (1) The Inspector-General must prepare a draft report (a ***draft review report***) on a review under section 17.

Contents of report

- (2) The draft review report must set out:
- (a) the preliminary findings of the review; and
 - (b) a summary of the evidence and other material on which those preliminary findings are based; and
 - (c) any proposed recommendations resulting from the review.

Note: See also section 22, which requires the Inspector-General to give certain persons an opportunity to respond before including certain

Section 22

information in a draft review report, and section 26, which provides that certain material must not be included in a draft review report.

Reasonable opportunity to comment

- (3) If the review relates to the exercise of powers, or the performance of functions or duties, under an aged care law, the Inspector-General must give:
 - (a) the draft review report; and
 - (b) a reasonable opportunity to comment on the report;to the following:
 - (c) if the aged care law is a provision of the *Aged Care Quality and Safety Commission Act 2018*—the Commissioner of the Aged Care Quality and Safety Commission;
 - (d) otherwise—the Secretary of the Department.
- (4) The Inspector-General may also give the draft review report, or a part of the draft review report, to any other person or body if the Inspector-General considers it appropriate to give the person or body an opportunity to comment on the report.
- (5) A comment on a draft review report must be made in writing.

22 Opportunity to respond must be given before including certain information in draft review report

- (1) Before including in a draft review report a preliminary finding or proposed recommendation that is critical (either expressly or impliedly) of a government entity, a government official or any other person, the Inspector-General must give the head (however described) of the entity, the official or the other person concerned:
 - (a) a statement setting out the finding or recommendation; and
 - (b) a reasonable opportunity to respond to the finding or recommendation.
- (2) The response must be given in the manner and form specified by the Inspector-General.

23 Unauthorised disclosure of draft review reports etc.

- (1) A person commits an offence if:
- (a) the person receives any of the following:
 - (i) a draft review report;
 - (ii) a document relating to a preliminary finding or a proposed recommendation included in a draft review report;
 - (iii) an extract from a report or document referred to in this paragraph; and
 - (b) the person discloses any information in the report, document or extract.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- (2) Subsection (1) does not apply if the information is disclosed:
- (a) in a comment made in accordance with subsection 21(3); or
 - (b) in a response given in accordance with subsection 22(1); or
 - (c) to a lawyer for the purpose of obtaining legal advice in connection with making such a comment or giving such a response; or
 - (d) to the Commonwealth Ombudsman, or another officer within the meaning of subsection 35(1) of the *Ombudsman Act 1976*; or
 - (e) with the consent of the Inspector-General.

Note: A defendant bears an evidential burden in relation to a matter in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

24 Final review report

- (1) After completing a review under section 17, the Inspector-General must prepare a final report (a ***final review report***) on the review.
- (2) In preparing the final review report, the Inspector-General must consider any comments made, or responses given, to the Inspector-General on the draft review report.

Section 24

Responding to recommendations

- (3) If the final review report includes a recommendation that a government entity, a government official or any other person take certain action, the Inspector-General may, by written notice, require the entity, official or other person concerned to respond to the recommendation within the period specified in the notice (which must not be less than 28 days after the notice is given).
- (4) The response:
 - (a) must be given in writing; and
 - (b) must set out:
 - (i) whether the entity, official or person concerned accepts the recommendation (in whole or in part); and
 - (ii) if the entity, official or person accepts the recommendation (in whole or in part)—details of any action that the entity, official or person proposes to take to give effect to the recommendation (in whole or in part); and
 - (iii) if the entity, official or person does not accept the recommendation (in whole or in part)—the reasons for not accepting the recommendation (in whole or in part).

Contents of final report

- (5) The final review report must set out:
 - (a) the findings of the review; and
 - (b) a summary of the evidence and other material on which those findings are based; and
 - (c) any recommendations resulting from the review; and
 - (d) if the Inspector-General has given a notice under subsection (3) in relation to a recommendation:
 - (i) if a response to the recommendation has been given within the period specified in the notice—a copy of the response; or
 - (ii) if a response to the recommendation has not been given within the period specified in the notice—a statement to that effect.

Note: See also section 26, which provides that certain material must not be included in a final review report.

25 Tabling and publication of final review report

- (1) As soon as practicable after preparing a final review report, the Inspector-General must give the report to:
 - (a) the Minister; and
 - (b) if the report includes a recommendation that a government entity, a government official or any other person take certain action—the entity, official or other person concerned; and
 - (c) any other person to whom the Inspector-General gave a copy of the draft review report.

Tabling

- (2) The Minister must table the final review report in each House of the Parliament within 15 sitting days of that House after receiving the report.

Publication

- (3) The Inspector-General must publish the final review report on the Inspector-General's website after the report is given to the Minister.

26 Certain information not to be included in review reports

A draft review report or a final review report must not:

- (a) include information that the Inspector-General is satisfied is sensitive information; or
- (b) name, or otherwise make reasonably identifiable, an individual other than:
 - (i) a Minister of the Commonwealth, a State or a Territory; or
 - (ii) an individual who holds an office or appointment under a law of the Commonwealth, a State or a Territory; or
 - (iii) an SES employee or acting SES employee; or

Section 27

- (c) include information (including information contained in a submission) given to the Inspector-General for the purposes of the review if:
 - (i) the person or body that gave the information to the Inspector-General requested that the information not be included in the report, and the Inspector-General agreed to the request; or
 - (ii) the information was contained in a submission, or a part of a submission, made by a person or body that was withdrawn by, or returned to, the person or body before the report was prepared.

Subdivision D—Reporting misconduct by Commonwealth officials

27 Reporting misconduct by Commonwealth officials

If the Inspector-General forms the opinion either before, during or after conducting a review:

- (a) that a person who is or was an official of a Commonwealth entity has engaged in misconduct; and
- (b) that the evidence is of sufficient weight to justify the Inspector-General doing so;

the Inspector-General must report the evidence to:

- (c) if the person is or was the accountable authority of the Commonwealth entity—the responsible Minister for the entity; or
- (d) otherwise—the accountable authority of the Commonwealth entity.

Division 4—Other functions and powers

28 Reviews of implementation of Aged Care Royal Commission recommendations

- (1) The Inspector-General must conduct 2 reviews to evaluate the implementation by the Commonwealth of the recommendations of the Aged Care Royal Commission.
- (2) A review under subsection (1) must consider, in relation to each recommendation of the Aged Care Royal Commission:
 - (a) the measures and actions taken by the Commonwealth in response to the recommendation; and
 - (b) the effectiveness of those measures and actions in implementing the recommendation.

Report

- (3) The Inspector-General must:
 - (a) give the Minister a written report of the review; and
 - (b) publish the report on the Inspector-General's website.
- (4) The Minister must table a report under subsection (3) in each House of the Parliament within 15 sitting days of that House after the review is completed.

First review

- (5) The first review under subsection (1) must be completed on or before 1 March 2026.

Second review

- (6) The second review under subsection (1) must be completed on or before 1 March 2031.

Section 29

When review is completed

- (7) For the purposes of subsections (4), (5) and (6), a review is completed when the report of the review is given to the Minister under subsection (3).

29 Extra reports to Parliament

- (1) The Inspector-General must prepare 2 reports on the progress made by the Commonwealth towards implementing the recommendations of the Aged Care Royal Commission, which must set out the measures and actions in response to each recommendation taken by the Commonwealth before:
- (a) for the first report—1 January 2024; and
 - (b) for the second report—1 January 2025.
- (2) The Inspector-General may also prepare a report on any other matter relating to the Inspector-General's functions.
- (2A) A report under this section:
- (a) must be published on the Inspector-General's website; and
 - (b) must be given to the Minister:
 - (i) for the first report under subsection (1)—on or before 1 June 2024; and
 - (ii) for the second report under subsection (1)—on or before 1 June 2025; and
 - (iii) for a report under subsection (2)—as soon as practicable; and
 - (c) may be given to any other person who, in the Inspector-General's opinion, has a special interest in a matter to which the report relates.
- (3) The Minister must table the report in each House of the Parliament within 15 sitting days of that House after receiving the report.

Certain information not to be included

- (4) A report under this section must not:
- (a) include information that the Inspector-General is satisfied is sensitive information; or
-

- (b) name, or otherwise make reasonably identifiable, an individual other than:
 - (i) a Minister of the Commonwealth, a State or a Territory; or
 - (ii) an individual who holds an office or appointment under a law of the Commonwealth, a State or a Territory; or
 - (iii) an SES employee or acting SES employee.

Part 3 Administrative provisions

Division 1 Introduction

Section 30

Part 3—Administrative provisions

Division 1—Introduction

30 Simplified outline of this Part

This Part deals with administrative matters relating to the office of the Inspector-General, including the appointment of the Inspector-General, the terms and conditions on which the Inspector-General holds office and the staff of the Office of the Inspector-General of Aged Care.

Division 2—Appointment of the Inspector-General

31 Appointment

- (1) The Inspector-General is to be appointed by the Governor-General by written instrument.

Note: Subject to subsection 32(2), the Inspector-General may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

- (2) The Inspector-General may be appointed on a full-time or part-time basis.

32 Term of office

- (1) The Inspector-General holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.
- (2) The Inspector-General must not hold office for a total of more than 10 years.

33 Acting appointments

The Minister may, by written instrument, appoint a person to act as the Inspector-General:

- (a) during a vacancy in the office of Inspector-General (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the Inspector-General:
 - (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*.

Section 34

34 Remuneration and allowances

- (1) The Inspector-General 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 Inspector-General is to be paid the remuneration that is prescribed by the regulations.
- (2) An Inspector-General is to be paid the allowances that are prescribed by the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

35 Leave of absence for Inspector-General

- (1) If the Inspector-General is appointed on a full-time basis, the Inspector-General has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) If the Inspector-General is appointed on a full-time basis, the Minister may grant the Inspector-General leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.
- (3) If the Inspector-General is appointed on a part-time basis, the Minister may grant leave of absence to the Inspector-General on the terms and conditions that the Minister determines.

36 Other paid work

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

37 Other terms and conditions

The Inspector-General holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Governor-General.

38 Resignation

- (1) The Inspector-General may resign the Inspector-General's appointment by giving the Governor-General a written resignation.
- (2) The resignation takes effect on the day it is received by Governor-General or, if a later day is specified in the resignation, on that later day.

39 Termination of appointment

- (1) The Governor-General may terminate the appointment of the Inspector-General:
 - (a) for misbehaviour; or
 - (b) if the Inspector-General is unable to perform the duties of the Inspector-General's office because of physical or mental incapacity.
- (2) The Governor-General may terminate the appointment of the Inspector-General if:
 - (a) the Inspector-General:
 - (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 Inspector-General's creditors; or
 - (iv) makes an assignment of the Inspector-General's remuneration for the benefit of the Inspector-General's creditors; or
 - (b) the Inspector-General is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
 - (c) the Inspector-General engages, except with the Minister's approval, in paid work outside the duties of the Inspector-General's office (see section 36); or
 - (d) the Inspector-General fails, without reasonable excuse, to comply with section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) or rules made for the purposes of that section.

Division 3—Staff and consultants etc.

40 Staff

- (1) The staff of the Office are to be:
 - (a) persons engaged under the *Public Service Act 1999*; and
 - (b) such other persons (if any) as the Inspector-General considers necessary to employ to assist the Inspector-General in the performance of the Inspector-General's functions.
- (2) For the purposes of the *Public Service Act 1999*:
 - (a) the Inspector-General and the APS employees assisting the Inspector-General together constitute a Statutory Agency; and
 - (b) the Inspector-General is the Head of that Statutory Agency.

41 Persons assisting the Inspector-General

- (1) The Inspector-General may 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 Inspector-General in connection with the performance of any of the Inspector-General's functions; and
 - (b) persons whose services are made available under arrangements made under subsection (2).
- (2) The Inspector-General 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 Inspector-General to perform services in connection with the performance of any of the Inspector-General'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 to whom the arrangement relates.
- (4) When performing services for the Inspector-General under this section, a person is subject to the directions of the Inspector-General.

42 Consultants

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

Part 4—Information management

Division 1—Introduction

43 Simplified outline of this Part

This Part sets out the Inspector-General’s information-gathering powers, the protections that may be available to persons who make disclosures to the Inspector-General, and the circumstances in which information obtained under this Act may be used or disclosed.

Division 2—Information-gathering powers

44 Power of Inspector-General to obtain information

- (1) The Inspector-General may give a notice to a person under subsection (2) if the Inspector-General has reason to believe that the person has information or a document or thing that is relevant to the performance of any of the Inspector-General's functions referred to in paragraphs 10(1)(a) to (d).
- (2) The Inspector-General may, by written notice given to the person, require the person:
 - (a) to give any such information to an official of the Office; or
 - (b) to produce any such document or thing to an official of the Office; or
 - (c) to appear before an official of the Office to answer questions.
- (3) The notice must:
 - (a) if paragraph (2)(a) or (b) applies—specify:
 - (i) the period (which must be at least 14 days after the notice is given to the person) within which the person is required to comply with the notice; and
 - (ii) the manner in which the person is required to comply with the notice; and
 - (b) if paragraph (2)(c) applies—specify:
 - (i) a time and place at which the person is to appear; and
 - (ii) the nature of the matter to which the questions will relate; and
 - (c) in any case—state the effect of subsections (7) and (8) and sections 137.1 and 137.2 of the *Criminal Code* (false or misleading information or documents).
- (4) The Inspector-General may require answers provided under paragraph (2)(c) to be verified by, or given on, oath or affirmation, and provided either orally or in writing.
- (5) The official to whom information or answers are verified or given may administer the oath or affirmation.

Section 45

- (6) A person contravenes this subsection if:
- (a) the person is given a notice under subsection (2); and
 - (b) the person fails to comply with the notice.

Fault-based offence

- (7) A person commits an offence if the person contravenes subsection (6).

Penalty: 30 penalty units or imprisonment for 6 months, or both.

Civil penalty

- (8) A person is liable to a civil penalty if the person contravenes subsection (6).

Civil penalty: 100 penalty units.

45 Information that must be given in private

An answer under paragraph 44(2)(c) must be provided in private if providing the answer would:

- (a) disclose a communication of a kind mentioned in subsection 52(1) (legal professional privilege); or
- (b) breach a provision mentioned in subsection 53(2) (secrecy provisions); or
- (c) disclose information that the Inspector-General is satisfied is sensitive information.

46 False or misleading information

- (1) A person is liable to a civil penalty if:
- (a) the person gives information to an official of the Office; and
 - (b) the person does so knowing that the information:
 - (i) is false or misleading in a material particular; or
 - (ii) omits any matter or thing without which the information is misleading in a material particular; and
 - (c) the information is given in compliance or purported compliance with a notice under subsection 44(2).

Civil penalty: 100 penalty units.

- (2) Subsection (1) does not apply if, before the information was given by the person to the official, 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).

- (3) For the purposes of subsection (2), it is sufficient if the following form of words is used:

“You may be liable to a civil penalty for giving false or misleading information”.

47 False or misleading documents

- (1) A person is liable to a civil penalty if:
- (a) the person produces a document to an official of the Office; and
 - (b) the person does so knowing that the document:
 - (i) is false or misleading in a material particular; or
 - (ii) omits any matter or thing without which the information or document is misleading in a material particular; and
 - (c) the document is produced in compliance or purported compliance with a notice under subsection 44(2).

Civil penalty: 100 penalty units.

- (2) Subsection (1) does not apply 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 first-mentioned person, 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 first-mentioned person, 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).

Section 48

48 Inspector-General may retain documents and things

- (1) This section applies if a document or thing is produced to the Inspector-General under subsection 44(2).
- (2) The Inspector-General:
 - (a) may make copies of the document or thing, or take extracts from the document; and
 - (b) may retain possession of the document or thing for such period as is necessary for the purposes of the performance of any of the Inspector-General's functions referred to in paragraphs 10(1)(a) to (d).
- (3) While the Inspector-General retains the document or thing, the Inspector-General must allow a person who would otherwise be entitled to inspect the document or view the thing:
 - (a) to do so at all reasonable times; and
 - (b) to copy the document or thing.
- (4) Subsection (3) does not apply if:
 - (a) possession of the document or thing by the person could constitute an offence; or
 - (b) inspecting or copying the document or thing (as the case requires) would compromise or damage the document or thing; or
 - (c) the Inspector-General is satisfied that allowing the person to inspect the document or view the thing would prejudice the performance of any of the Inspector-General's functions referred to in paragraphs 10(1)(a) to (d).

49 When documents and things must be returned

- (1) This section applies if the Inspector-General is satisfied that a document or thing produced to the Inspector-General under subsection 44(2) is not required (or is no longer required) for the purposes of the performance of any of the Inspector-General's functions referred to in paragraphs 10(1)(a) to (d).

- (2) The Inspector-General must take reasonable steps to return the document or thing to the person from whom it was received, or to the owner if that person is not entitled to possess it.
- (3) However, the Inspector-General does not have to take those steps if:
 - (a) possession of the document or thing by a person could constitute an offence; or
 - (b) the document or thing may otherwise be retained, destroyed or disposed of under a law, or an order of a court or tribunal, of the Commonwealth or of a State or a Territory; or
 - (c) the document or thing is forfeited or forfeitable to the Commonwealth or is the subject of a dispute as to ownership.

50 Access to premises etc.

- (1) For the purposes of the performance of any of the Inspector-General's functions referred to in paragraphs 10(1)(a) to (d), an authorised official may enter and remain on premises:
 - (a) if the premises are occupied by a person or body covered by subsection (2)—at all reasonable times; and
 - (b) otherwise—at all reasonable times, if:
 - (i) the Inspector-General has certified, in writing, that the Inspector-General is satisfied that it is reasonably necessary for the authorised official to have access to the premises for the purposes of the performance of those functions; and
 - (ii) the certificate is in force.
- (2) For the purposes of paragraph (1)(a), this subsection covers the following:
 - (a) a Commonwealth entity;
 - (b) a body (other than a Commonwealth entity) established by or under a law of the Commonwealth;
 - (c) a body established, otherwise than by or under a law of the Commonwealth, by the Governor-General;
 - (d) an incorporated company in which the Commonwealth has a controlling interest.

Section 50

- (3) Before entering the premises, the authorised official must provide notice to:
 - (a) a member of the group of persons who is responsible for the executive decisions of the person or body occupying the premises; or
 - (b) any other person who has authority or responsibility for, or significant influence over, planning, directing or controlling the activities of the person or body occupying the premises.
- (4) While remaining on the premises, the authorised official:
 - (a) is entitled to full and free access at all reasonable times to any documents or other property; and
 - (b) may examine, make copies of or take extracts from any document; and
 - (c) for the purpose of making a copy of, or taking an extract from, a document, remove the document from the premises.
- (5) The authorised official is not entitled to enter or remain on the premises if:
 - (a) the occupier of the premises asks the authorised official to produce proof of the authorised official's authority to enter and remain on the premises; and
 - (b) the authorised official fails to:
 - (i) if the authorised official is the Inspector-General—identify themselves as the Inspector-General; or
 - (ii) if the authorised official is not the Inspector-General—produce a written authority signed by the Inspector-General that states that the official is authorised to exercise powers or perform functions under this section; and
 - (c) if paragraph (1)(b) applies—the authorised official fails to produce a certificate issued by the Inspector-General under subparagraph (1)(b)(i) in relation to the premises.
- (6) The occupier of the premises must provide the authorised official with all reasonable facilities and assistance for the effective exercise of powers under this section.

Meaning of authorised official

- (7) An individual is an **authorised official** if the individual is:
- (a) the Inspector-General; or
 - (b) an official of the Office (other than the Inspector-General) who is authorised by the Inspector-General, in writing, to exercise powers or perform functions under this section.

Fault-based offence

- (8) A person commits an offence if the person contravenes subsection (6).

Penalty: 30 penalty units or imprisonment for 6 months, or both.

Note: Section 149.1 of the *Criminal Code* deals with obstruction of Commonwealth public officials.

Civil penalty

- (9) A person is liable to a civil penalty if the person contravenes subsection (6).

Civil penalty: 100 penalty units.

51 Privilege against self-incrimination and penalty privilege

- (1) An individual is not excused from giving information, producing a document or thing or answering a question under subsection 44(2) on the ground that giving the information, producing the document or thing or answering the question might tend to incriminate the individual in relation to an offence.

Note: A body corporate is not entitled to claim the privilege against self-incrimination.

- (2) However:

- (a) the information given, document or thing produced or answer given; and
- (b) the giving of the information, the production of the document or thing or the answering of the question; and

Section 52

- (c) any information, document or thing obtained as a direct or indirect consequence of the giving of the information, the production of the document or thing or the answering of the question;

are not admissible in evidence against the individual in criminal proceedings other than proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* (false or misleading information or documents) that relates to section 44.

- (3) If, at general law, an individual would otherwise be able to claim the privilege against self-exposure to a penalty (other than a penalty for an offence) in relation to giving information, producing a document or thing or answering a question under subsection 44(2), the individual is not excused from giving the information, producing the document or thing or answering the question under that provision on that ground.

Note: A body corporate is not entitled to claim the privilege against self-exposure to a penalty.

52 Legal professional privilege

- (1) A person is not excused from giving information, producing a document or thing or answering a question under subsection 44(2) on the ground that doing so would disclose a communication protected against disclosure by legal professional privilege, if the communication is:
 - (a) legal advice given to a Minister or a Commonwealth entity; or
 - (b) a communication between an official of a Commonwealth entity and another person or body.
- (2) However:
 - (a) the information given, document or thing produced or answer given; and
 - (b) the giving of the information, the production of the document or thing or the answering of the question; and
 - (c) any information, document or thing obtained as a direct or indirect consequence of the giving of the information, the

production of the document or thing or the answering of the question;

are not admissible in evidence against the person in any civil or criminal proceedings.

- (3) The fact that a person is not excused from giving information, producing a document or thing or answering a question under subsection 44(2) on the ground mentioned in subsection (1) does not otherwise affect a claim of legal professional privilege that anyone may make in relation to that information, document, thing or answer.

53 Secrecy provisions

- (1) A person is not excused from giving information, producing a document or thing or answering a question under subsection 44(2) on the ground that doing so would breach a provision mentioned in subsection (2).
- (2) Subject to subsection (3), the provisions for the purposes of subsection (1) are:
- (a) a provision of a law of the Commonwealth that purports to prohibit; or
 - (b) anything done, under a provision of a law of the Commonwealth, to prohibit;
- any of the following:
- (c) the use of information, or a document or thing;
 - (d) dealing with information, or a document or thing;
 - (e) making a record of information, or a copy of a document or thing;
 - (f) the disclosure or publication of information;
 - (g) the production of, or the publication of the contents of, a document;
 - (h) the production of a thing;
 - (i) access to information, a document or a thing;
- regardless of whether the provision of the law of the Commonwealth:
- (j) commenced before the commencement of this section; or

Section 53

- (k) is expressed to apply despite any other law.
- (3) Subsection (2) does not apply to any of the following:
 - (a) a secrecy provision under the *My Health Records Act 2012*;
 - (b) a secrecy provision that is a provision of a taxation law within the meaning of the *Taxation Administration Act 1953*;
 - (c) a secrecy provision in the *Ombudsman Act 1976*;
 - (d) a secrecy provision that is expressed by another law of the Commonwealth to have effect despite this Act;
 - (e) anything done under a provision referred to in paragraphs (a) to (d).

Division 3—Protections relating to disclosing information

Subdivision A—Protecting identity of disclosers in certain circumstances

54 Disclosures qualifying for protection

- (1) A disclosure of information by an individual (the *discloser*) qualifies for protection under this section if:
 - (a) before the disclosure is made:
 - (i) the discloser requests that identifying information about the discloser be protected as confidential; and
 - (ii) the Inspector-General agrees, in writing, to the request; and
 - (b) the disclosure is made to an official of the Office.
- (2) The request must:
 - (a) be made in writing; and
 - (b) be given to the Inspector-General; and
 - (c) specify the nature of the information to be disclosed; and
 - (d) be accompanied by any other documents or information specified in the regulations.
- (3) In deciding whether to agree to the request, the Inspector-General must have regard to:
 - (a) the nature of the information to be disclosed; and
 - (b) whether disclosing, or enabling a person to ascertain, identifying information about the discloser is likely to result in significant and direct detriment to the discloser; and
 - (c) any other matter the Inspector-General considers relevant.

55 Confidentiality of identity of disclosers

- (1) A person contravenes this subsection if:
 - (a) an individual (the *discloser*) makes a disclosure of information (the *qualifying disclosure*) that qualifies for protection under section 54; and

Section 55

- (b) the person discloses any of the following (the *confidential information*):
 - (i) identifying information about 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 person 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 a member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*); or
 - (b) 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 Subdivision; or
 - (c) the disclosure is made with the consent of the discloser; or
 - (d) the disclosure is made to a person or body prescribed by the regulations; or
 - (e) both of the following apply:
 - (i) the confidential information is in the public domain before the disclosure is made;
 - (ii) the original disclosure of the confidential information into the public domain (before the disclosure is made) was not in contravention of subsection (1).

Fault-based offence

- (3) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 6 months or 30 penalty units, or both.

Civil penalty

- (4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 100 penalty units.

Subdivision B—Protection from victimisation

56 Victimisation prohibited

Actually causing detriment to another person

- (1) A person (the **first person**) is liable to a civil penalty if:
- (a) the first person engages in conduct; and
 - (b) the first person's conduct causes any detriment to another person (the **second person**); and
 - (c) the first person engages in the conduct because the first person believes or suspects that the second person or a third person has done, may have done or intends to do any of the following things:
 - (i) give information to a person exercising or performing any power or function under this Act;
 - (ii) produce a document to a person exercising or performing any power or function under this Act;
 - (iii) any other thing for the purpose of assisting in the performance of the functions, or the exercise of the powers, of the Inspector-General.

Civil penalty: 500 penalty units.

- (2) In proceedings for a civil penalty order against a person for a contravention of subsection (1), it is not necessary to prove that the second person or a third person has done, may have done or intends to do a thing mentioned in paragraph (1)(c).

Threatening to cause detriment to another person

- (3) A person (the **first person**) is liable to a civil penalty if:

Section 56

- (a) the first person makes to another person (the *second person*) a threat to cause any detriment to the second person or to a third person; and
- (b) the first person:
 - (i) intends the second person to fear that the threat will be carried out; or
 - (ii) is reckless as to causing the second person to fear that the threat will be carried out; and
- (c) the first person makes the threat because the first person believes or suspects that a person has done, may have done or intends to do any of the following things:
 - (i) give information to a person exercising or performing any power or function under this Act;
 - (ii) produce a document to a person exercising or performing any power or function under this Act;
 - (iii) any other thing for the purpose of assisting in the performance of the functions, or the exercise of the powers, of the Inspector-General.

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 a person for a contravention of subsection (3), it is not necessary to prove:
 - (a) that the person threatened actually feared that the threat would be carried out; or
 - (b) that a person 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 first person is administrative action that is reasonable to protect the second person 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).

Subdivision C—Immunity from liability for certain disclosures

57 Disclosures qualifying for protection

A disclosure of information by an individual qualifies for protection under this section if:

- (a) the disclosure is made to an official of the Office; and
- (b) the disclosure is made in compliance with:
 - (i) a request made by the Inspector-General; or
 - (ii) a notice given under subsection 44(2).

58 Disclosure that qualifies for protection not actionable etc.

- (1) If a person makes a disclosure that qualifies for protection under section 57:
 - (a) the person 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 person on the basis of the disclosure.
 - (2) Without limiting subsection (1):
 - (a) if the disclosure is made in compliance with a request made by the Inspector-General—the person:
 - (i) has qualified privilege in proceedings for defamation in respect of the disclosure; and
 - (ii) is not, in the absence of malice on the person's part, liable to an action for defamation at the suit of a person in respect of the disclosure; and
 - (b) if the disclosure is made in compliance with a notice given under subsection 44(2)—the person has absolute privilege in proceedings for defamation in respect of the disclosure; and
 - (c) a contract to which the person is a party must not be terminated on the basis that the disclosure constitutes a breach of the contract.
-

Section 59

- (3) For the purpose of subparagraph (2)(a)(ii), *malice* includes ill will to the person concerned or any other improper motive.
- (4) This section does not limit or affect any right, privilege or immunity that a person has, apart from this section, as a defendant in proceedings, or an action, for defamation.

59 Liability for false or misleading disclosures unaffected

- (1) Section 58 does not apply to civil, criminal or administrative liability (including disciplinary action) for knowingly making a disclosure that is false or misleading.
- (2) Without limiting subsection (1), section 58 does not apply to liability for an offence against section 137.1 or 137.2 of the *Criminal Code* (false or misleading information or documents) that relates to the disclosure.

60 Person's liability for own conduct not affected

To avoid doubt, whether a person's disclosure of their own conduct is a disclosure that qualifies for protection under section 57 does not affect the person's liability for the conduct.

61 Claims for protection

- (1) If, in civil or criminal proceedings (the *primary proceedings*) instituted against a person in a court, the person makes a claim (relevant to the proceedings) that, because of section 58, the person is not subject to any civil, criminal or administrative liability for making a particular disclosure:
 - (a) the person bears the onus of adducing or pointing to evidence that suggests a reasonable possibility that the claim is made out; and
 - (b) if the person discharges that onus—the party instituting the primary proceedings against the person bears the onus of proving that the claim is not made out; and
 - (c) the court must deal with the claim in separate proceedings; and

- (d) the court must adjourn the primary proceedings until the claim has been dealt with; and
 - (e) none of the following:
 - (i) any admission made by the person in the separate proceedings;
 - (ii) any information given by the person in the separate proceedings;
 - (iii) any other evidence adduced by the person in the separate proceedings;is admissible in evidence against the person except in proceedings in respect of the falsity of the admission, information or evidence; and
 - (f) if the person or another person gives evidence in the separate proceedings in support of the claim—giving that evidence does not amount to a waiver of privilege for the purposes of the primary proceedings or any other proceedings.
- (2) To avoid doubt, a right under section 126K of the *Evidence Act 1995* not to be compelled to give evidence is a privilege for the purposes of paragraph (1)(f) of this section.

62 Protection has effect despite other Commonwealth laws

Section 58 has effect despite any other provision of a law of the Commonwealth, unless:

- (a) the provision is enacted after the commencement of this section; and
- (b) the provision is expressed to have effect despite this Subdivision or that section.

Division 4—Secrecy of information

63 Unauthorised use or disclosure of protected information

- (1) A person commits an offence if:
- (a) the person is, or has been, an entrusted person; and
 - (b) the person has obtained information in the person's capacity as an entrusted person; and
 - (c) the information is protected information; and
 - (d) the person uses or discloses the information.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- (2) Subsection (1) does not apply if the use or disclosure is authorised by a provision of section 64.

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

64 Authorisations to use or disclose information

Use or disclosure in performing functions or exercising powers under this Act

- (1) An entrusted person may use or disclose protected information in performing functions or duties or exercising powers under this Act.

Note 1: A provision of this section constitutes an authorisation for the purposes of the *Privacy Act 1988* and other laws (including the common law).

Note 2: Use, in relation to information, includes make a record of (see the definition of **use** in section 5).

Use or disclosure for purposes of proceedings

- (2) An entrusted person may disclose protected information to a court or tribunal, or in accordance with an order of a court or tribunal, for the purposes of proceedings.

Use or disclosure for purposes of enforcement related activity

- (3) An entrusted person may use protected information, or disclose protected information to an enforcement body, if the person reasonably believes that the use or disclosure is reasonably necessary for, or directly related to, one or more enforcement related activities being conducted by, or on behalf of, that enforcement body.
- (4) An enforcement body to which protected information is disclosed under subsection (1) may use or disclose the information for the purposes of one or more enforcement related activities being conducted by, or on behalf of, that enforcement body.

Use or disclosure required or authorised by another Australian law

- (5) An entrusted person may use or disclose protected information if the use or disclosure is required or authorised under an Australian law other than this Act.

Disclosure to person to whom information relates

- (6) An entrusted person may disclose protected information to the person to whom the information relates.

Use or disclosure with consent

- (7) An entrusted person (the **first person**) may use or disclose protected information for a purpose if the person to whom the information relates has expressly consented to the first person using or disclosing the information for that purpose.

Disclosure to person who provided information

- (8) An entrusted person may disclose protected information to the person who provided the information.

Section 64

Use or disclosure of information that is already public

- (9) An entrusted person may use protected information, or disclose protected information to another person, if the information has already been lawfully made available to the public.

Disclosure to integrity agency

- (10) An entrusted person may disclose protected information to any of the following persons for the purposes of that person exercising the person's powers, or performing the person's functions or duties:
- (a) the Commonwealth Ombudsman, or another officer within the meaning of subsection 35(1) of the *Ombudsman Act 1976*;
 - (b) the Australian Information Commissioner, a member of the staff of the Office of the Australian Information Commissioner, or a consultant engaged under the *Australian Information Commissioner Act 2010*.

Use or disclosure for certified purposes

- (11) An entrusted person may use or disclose protected information for the purpose of achieving one or more objects of this Act if the Inspector-General certifies, in writing, that it is necessary in the public interest for the person to use or disclose the information for that purpose.

Disclosure for purposes of preventing serious threat to safety, health or well-being

- (12) An entrusted person may disclose:
- (a) protected information; and
 - (b) any other information obtained by the person in the person's capacity as an entrusted person;
- if the disclosure is necessary to lessen or prevent a serious threat to the safety, health or well-being of an aged care consumer (within the meaning of the *Aged Care Quality and Safety Commission Act 2018*).

Part 5—Compliance and enforcement

65 Simplified outline of this Part

Civil penalty orders may be sought under Part 4 of the Regulatory Powers Act from a relevant court in relation to contraventions of civil penalty provisions of this Act.

This Part also contains machinery provisions dealing with provisions of this Act where both civil and criminal consequences attach to a breach of the provision.

66 Civil penalty provisions

Enforceable civil penalty provisions

- (1) Each civil penalty provision of this Act is enforceable under Part 4 of the Regulatory Powers Act.

Note: 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.

Authorised applicant

- (2) For the purposes of Part 4 of the Regulatory Powers Act, the Inspector-General is an authorised applicant in relation to the civil penalty provisions of this Act.

Relevant court

- (3) 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 of Australia;
 - (b) the Federal Circuit and Family Court of Australia (Division 2);

Section 67

- (c) a court of a State or Territory that has jurisdiction in relation to the matter.

67 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.

68 Contravening an offence provision or a civil penalty provision

- (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, and the Regulatory Powers Act to the extent that it relates to 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.

Part 6—Miscellaneous

69 Simplified outline of this Part

This Part contains miscellaneous provisions, including provisions about protecting certain persons from civil liability, reporting requirements, and delegation of the Inspector-General's powers.

This Part also contains the general regulation-making power.

70 Protection from liability

- (1) This section applies to the following persons (*protected persons*):
 - (a) an official of the Office;
 - (b) a delegate of the Inspector-General;
 - (c) a person who is authorised to perform a function or exercise a power of, or on behalf of, the Inspector-General;
 - (d) a person assisting a person referred to in paragraph (a), (b) or (c) in performing the Inspector-General's functions or exercising the Inspector-General's powers.
- (2) A protected person 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 protected person in good faith in the performance or purported performance of a function or duty conferred by this Act, or the exercise or purported exercise of a power conferred by this Act.

71 Annual report

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

Section 72

- (a) information about the performance of the Inspector-General's functions, including the number of reviews under Division 3 of Part 2:
 - (i) started during the period; and
 - (ii) completed during the period; and
 - (b) information and statistics about the exercise of the Inspector-General's powers during the period, including:
 - (i) the number of notices given by the Inspector-General under section 44, and the circumstances in which each notice was given; and
 - (ii) the number of times an authorised official has entered premises under section 50, and the circumstances in which each entry occurred; and
 - (c) any other matter prescribed by the regulations.
- (2) However, the report must not include information that the Inspector-General is satisfied is sensitive information.

72 Delegation by the Inspector-General

- (1) The Inspector-General may, in writing and subject to subsections (2) and (3), delegate any of the Inspector-General's functions, powers or duties under this Act or the regulations, or under Part 4 of the Regulatory Powers Act (as that Part applies in relation to this Act), to an official of the Office:
- (a) who is an SES employee or acting SES employee; or
 - (b) who holds, or is acting in, an Executive Level 2, or equivalent, position.

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

- (2) The Inspector-General must not delegate any of the Inspector-General's functions, powers or duties under the following provisions:
- (a) section 15 (preparing an annual work plan);
 - (b) section 16 (varying an annual work plan);
 - (c) section 17 (conducting a review);
 - (d) subsection 24(1) (preparing a final report);

Section 73

- (e) subsection 24(3) (requiring a response to a recommendation);
 - (f) subsections 25(1) and (3) (publishing a final review report);
 - (g) subsection 28(3) (publishing a report into implementation of Aged Care Royal Commission recommendations);
 - (h) subsection 29(2A) (publishing an extra report to Parliament);
 - (i) subparagraph 50(1)(b)(i) (certifying that it is reasonably necessary to enter non-Commonwealth premises);
 - (j) section 71 (preparing an annual report).
- (3) The Inspector-General may delegate any of the Inspector-General's functions, powers or duties under the following provisions only to an SES employee or acting SES employee:
- (a) section 18 (notice of review);
 - (b) paragraph 50(7)(b) (authorised officials).
- (4) In performing a delegated function or exercising a delegated power, the delegate must comply with any written directions of the Inspector-General.

73 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed by the regulations; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

*[Minister's second reading speech made in—
House of Representatives on 22 March 2023
Senate on 10 May 2023]*

(32/23)
