**EXPLANATORY STATEMENT**

**Issued by the authority of the Assistant Minister for Social Services**

***Australian Aged Care Quality Agency Act 2013***

***Australian Aged Care Quality Agency (Other Functions) Specification 2015***

The *Australian Aged Care Quality Agency Act 2013* (Quality Agency Act) established the Australian Aged Care Quality Agency (Quality Agency) on 1 January 2014 and prescribes the functions of the Chief Executive Officer (CEO).

Paragraph 12(h) of the Quality Agency Act allows the Minister to specify other functions for the Quality Agency CEO.

The purpose of the *Australian Aged Care Quality Agency (Other Functions) Specification 2015* (the Specification) is to provide authority for the Quality Agency CEO to undertake quality reviews of both Commonwealth Home Support Programme (CHSP) and National Aboriginal and Torres Strait Islander Flexible Aged Care Programme (NATSIFACP) services.

From 1 July 2015, the CHSP will be established to consolidate four programmes, including the Commonwealth Home and Community Care (HACC) Programme, the National Respite for Carers Programme (NRCP), Day Therapy Centres (DTC) Programme and the Assistance with Care and Housing for the Aged (ACHA) Programme. Previously DTCs have not been subject to quality reviews despite their requirement to adhere to the Home Care Common Standards.

The National Aboriginal and Torres Strait Islander Flexible Aged Care Programme (NATSIFACP) will be aligning its funding agreement with the Department of Social Services ‘A New Way of Working for Grants’ from 1 July 2015. As a result the specific funding reference in the previous Specification will no longer be appropriate.

Schedule 1, Part 1 outlines the functions to commence on 1 July 2015. Part 1 prescribes the Quality Agency CEO’s functions to conduct quality reviews of NATSIFAC Programme services in accordance with the Quality Framework (as set out in the Schedule of the National Aboriginal and Torres Strait Islander Flexible Aged Care Comprehensive Grant Agreement) and to advise the Secretary of any failure to comply with the Quality Framework.

Schedule 1, Part 1 of the instrument incorporates, by reference, the Quality Framework set out in the Schedule of the NATSIFAC Comprehensive Grant Agreement, as in force at the time that Schedule 1, Part 1 comes into effect (1 July 2015).

Schedule 1, Part 1 also prescribes the Quality Agency CEO’s functions to conduct quality reviews of CHSP services in accordance with the Home Care Standards made under the *Aged Care Act 1997* and to advise the Secretary of any failure to meet the Home Care Standards.

Schedule 1, Part 2 outlines the transitional functions that are to continue from the *Australian Aged Care Quality Agency (Other Functions) Specification 2014*. Part 2 commences on 1 July 2015, and prescribes the Quality Agency CEO’s functions to conduct quality reviews of the Commonwealth HACC and the NRCP. This Part includes a sunset clause which repeals the Part on 31 October 2015. On 1 November 2015, a new funding agreement for the CHSP will take effect subsuming HACC and NRCP. This Part permits the Quality Agency CEO to retain its functions to review HACC and NRCP until the new contractual arrangements commence.

The Specification is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Consultation

As the amendments in the Specification are minor and machinery in nature, only the Quality Agency was consulted in relation to this instrument.

Regulation Impact Statement

The Office of Best Practice Regulation has advised that a Regulation Impact Statement is not required (OBPR ID 19232).

Commencement

Schedule 1 to the Specification commences on 1 July 2015.

The Specification is made to reflect administrative changes to Programme naming and contract arrangements. It is not affecting the rights of a person so as to disadvantage that person, or imposing a new liability on a person in respect of anything done or omitted to be done before the date of registration of the Specification. Commencement of the Specification will not breach section 12(2) of the *Legislative Instruments Act 2003*.

**ATTACHMENT**

**Details of the *Quality Agency (Other Functions) Specification 2015***

**Clause 1** states that the name of the Specification is the *Quality Agency (Other Functions) Specification 2015*.

**Clause 2** states that the various commencement dates of the Specification as provided in the table.

**Clause 3** repeals the Australian Aged Care Quality Agency (Other Functions) Specification 2014.

Under subsection 33 (3) of the Acts Interpretation Act 1901, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument. Accordingly, paragraph 12(h) of the Australian Aged Care Quality Agency Act 2013 not only authorises the making of this Specification, it authorises the repeal of the earlier Specification.

**Clause 4** provides that the authority for making the Specification is paragraph 12(h) of the *Australian Aged Care Quality Agency Act 2013*.

**Clause 5** provides definitions for various terms used in the Specification.

**Schedule 1 – Specifications**

**Part 1 – Additional functions commencing 1 July 2015**

**Item 1** provides that specific functions of the CEO of the Quality Agency are to:

* conduct quality reviews of NATSIFAC Programme services in accordance with the Quality Framework (as set out in the Schedule of the National Aboriginal and Torres Strait Islander Flexible Aged Care Comprehensive Grant Agreement); and
* advise the Secretary of the Department of Social Services about aged care services that do not comply with the Quality Framework.

**Item 2** provides that specific functions of the CEO of the Quality Agency are to:

* conduct quality reviews of Commonwealth Home Support Programme services in accordance with the Home Care Standards made under the *Aged Care Act 1997*; and
* advise the Secretary of the Department of Social Services about aged care services that do not meet the Home Care Standards. This assists the Secretary to determine whether approved providers are meeting their responsibilities under the *Aged Care Act 1997*.

**Part 2 – Transitional provisions**

**Item 3** provides that specific functions of the CEO of the Quality Agency are to:

* conduct quality reviews of Commonwealth Home and Community Care Programme services made under the *Aged Care Act 1997*;
* conduct quality reviews of National Respite for Carers Programme services made under the *Aged Care Act 1997*; and
* advise the Secretary of the Department of Social Services about aged care services that do not meet the Home Care Standards. This assists the Secretary to determine whether approved providers are meeting their responsibilities under the *Aged Care Act 1997*.

**Item 4** is a sunset clause which provides that Part 3 of the Specification expires on 31 October 2015 as if it had been repealed by another legislative instrument.

**Statement of Compatibility with Human Rights**

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

***Australian Aged Care Quality Agency (Other Functions) Specification 2015***

The *Australian Aged Care Quality Agency (Other Functions) Specification 2015* (the legislative instrument) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Overview of the legislative instrument**

The legislative instrument provides clear authority for the Australian Aged Care Quality Agency Chief Executive Officer to conduct quality reviews of both CHSP and NATSIFACP services, and to conduct quality reviews of HACC and NRCP until 31 October 2015.

**Human Rights Implications**

The legislative instrument is compatible with the right to an adequate standard of living and the right to the enjoyment of the highest attainable standard of physical and mental health as contained in article 11(1) and article 12(1) of the International Covenant on Economic, Social and Cultural Rights, and article 25 and article 28 of the Convention on the Rights of Persons with Disabilities. By conducting quality reviews of the specified aged care services, the Quality Agency will promote a high quality of care for the recipients of aged care services and appropriate outcomes for the recipients of the care because it will ensure that the aged care services meet the required standards.

**Conclusion**

The legislative instrument is compatible with human rights as it promotes the human right to an adequate standard of living and the highest attainable standard of physical and mental health.

**Senator the Hon Mitch Fifield**

**Assistant Minister for Social Services**