

2019

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

**AGED CARE LEGISLATION AMENDMENT
(NEW COMMISSIONER FUNCTIONS) BILL 2019**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Aged Care and Senior Australians,
Senator the Hon Richard Colbeck)

AGED CARE LEGISLATION AMENDMENT (NEW COMMISSIONER FUNCTIONS) BILL 2019

OUTLINE

The purpose of the Aged Care Legislation Amendment (New Commissioner Functions) Bill 2019 (the Bill) is to transfer additional aged care regulatory functions of the Secretary of the Department of Health to the Aged Care Quality and Safety Commissioner (Commissioner). This reform completes the two-year agenda to strengthen and enhance aged care regulation to protect and assure the quality of care provided to consumers of Australian Government funded aged care. It delivers on the intention as set out in the objects of the *Aged Care Quality and Safety Commission Act 2018* (Quality and Safety Commission Act).

The Aged Care Quality and Safety Commission (Commission) will be the primary point of contact for providers and consumers in relation to quality of care and regulation. The provisions of this Bill will provide the Commission with the range of regulatory functions and powers required to oversee the provision of care by approved providers, from their entry to their exit (if required) from the regulatory system. Centralising these regulatory functions and powers within a single regulator will address the fragmentation and silos identified in the Review of National Aged Care Quality Regulatory Processes.

The Commission will approve providers for the delivery of residential aged care services, home care services and flexible care services. The Commission will be able to undertake compliance and enforcement actions, including monitoring the compliance of approved providers and imposing sanctions where approved providers do not meet their aged care responsibilities. Amendments in the Bill streamline the process for the Commissioner to impose sanctions on an approved provider that is not compliant with its responsibilities. The Commission will administer the responsibility of approved providers to make compulsory reports of assaults.

These additional functions build on the Commission's existing functions and powers relating to complaints resolution and the accreditation, quality review and monitoring of aged care services under the Quality and Safety Commission Act and the Aged Care Quality and Safety Commission Rules. This ensures that the Commission can fulfil the object of the Quality and Safety Commission Act to protect and enhance the safety, health, well-being and quality of life of aged care consumers; promote confidence and trust in the provision of aged care; and promote engagement with aged care consumers about the quality of care and services.

Financial Impact Statement

This Bill has no financial impact.

Statement of Compatibility with Human Rights

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

AGED CARE LEGISLATION AMENDMENT (NEW COMMISSIONER FUNCTIONS) BILL 2019

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Bill

The purpose of the Aged Care Legislation Amendment (New Commissioner Functions) Bill 2019 (the Bill) is to transfer additional aged care regulatory functions to the Aged Care Quality and Safety Commissioner. These new functions include approving providers of aged care, and monitoring and enforcing their compliance with their aged care responsibilities.

The conferral of additional functions on the Commission will enable it to fulfil its role to protect and enhance the safety, health, well-being and quality of life of aged care consumers; promote confidence and trust in the provision of aged care; and promote engagement with aged care consumers about the quality of care and services.

Human rights implications

The Bill engages the following human rights:

- The right to an adequate standard of living and the right to health;
- The protection against arbitrary interference with privacy; and
- The right to a fair trial.

The right to standard of living and health

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

The right to privacy and reputation

Article 17 of the *International Covenant on Civil and Political Rights* (ICCPR) prohibits arbitrary or unlawful interference with an individual's privacy, family, home or correspondence, and protects a person's honour and reputation from unlawful attacks. This right may be subject to permissible limitations where those limitations are provided by law and are non-arbitrary. In order for limitations not to be arbitrary, they must be aimed at a legitimate objective and be reasonable, necessary and proportionate to that objective.

The Bill places obligations on participants in the regulatory scheme set up by the Bill that relates to monitoring and investigation powers (including entry, search and seizure) by triggering Parts 2 and 3 of the *Regulatory Powers (Standard Provisions) Act 2014* (Regulatory Powers Act).

By triggering the Regulatory Powers Act, the Bill protects against arbitrary abuses of power as the entry, monitoring, search, seizure and information gathering powers provided in it are conditional upon consent being given by the occupier of the premises or prior judicial authorisation. Where entry is based on the consent of the occupier, consent must be informed and voluntary and the occupier of the premises can restrict entry by authorised persons to a particular period. Additional safeguards are provided through provisions requiring authorised persons and any persons assisting them to leave the premises if the occupier withdraws their consent.

Further, by triggering the Regulatory Powers Act, the Bill specifies that an issuing officer of a warrant to enter premises for the purpose of monitoring or investigation must be a judicial officer. The Bill also provides limits on the issuing of a monitoring or investigation warrant. In the case of an investigation warrant, for example, an issuing officer may issue an investigation warrant only when satisfied, by oath or affirmation, that there are reasonable grounds for suspecting that there is, or may be within 72 hours, evidential material on the premises. An issuing officer must not issue a warrant unless the issuing officer has been provided, either orally or by affidavit, with such further information as they require concerning the grounds on which the issue of the warrant is being sought. Such constraints on this power ensure adequate safeguards against arbitrary limitations on the right to privacy in the issuing of warrants.

An authorised person cannot enter premises unless their identity card is shown to the occupier of the premises. If entry is authorised by warrant, the authorised person must also provide a copy of the warrant to the occupier of the premises. This provides for the transparent utilisation of the Bill's powers and mitigates arbitrariness and risk of abuse.

These powers are reasonable, necessary and proportionate to achieve a legitimate objective. Adequate safeguards and limitations on the use of regulatory powers in the Bill ensures that such lawful interferences are not arbitrary or at risk of abuse.

The right to a fair and public hearing

Article 14 of the ICCPR ensures that everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

By triggering the Regulatory Powers Act, the Bill provides questioning powers to authorised officers in certain situations. These powers are expressed in sections 24 and 54 of the Regulatory Powers Act, which make it an offence to fail to answer questions of an authorised officer. While these powers are expressed to be subject only to very limited defences and exceptions, the Bill relies on the common law presumption against abrogation of core rights to preserve the privilege against self-incrimination and legal professional privilege. Sections 17 and 47 of the Regulatory Powers Act are intended to make certain that the privilege against self-incrimination and legal professional privilege have not been abrogated by this Bill. These protections guarantee the fair trial rights protected in articles 14(3)(d) and (g) of the ICCPR by limiting the operation of the questioning powers provided by the Bill.

Sections 35 and 76 of the Regulatory Powers Act also provide for a reverse onus of proof with regard to proving an exception to an offence of strict liability. It is

appropriate that the prosecution does not need to prove fault for the elements of this offence, on the basis that the state of mind of the defendant is not relevant, the elements of the offence are objective, and the offence is minor and deterrent in nature. It is reasonable that the defendant bears an evidential burden given the context of the exception and the minor nature of the offence.

Conclusion

The Bill promotes human rights to the highest attainable standard of physical and mental health and is compatible with the human rights and freedoms recognized and declared in the international instruments listed in section 3 of *the Human Rights (Parliamentary Scrutiny) Act 2011*.

**Senator the Hon Richard Colbeck, Minister for Aged Care
and Senior Australians**

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NOTES ON CLAUSES

Clause 1 – Short Title

Clause 1 provides for the short title of the Act to be the *Aged Care Legislation Amendment (New Commissioner Functions) Act 2019*.

Clause 2 – Commencement

This clause sets out when the Bill commences. Sections 1 to 3 commence on the day this Act receives Royal Assent. However, Schedules 1 to 4 commence on a day to be fixed by proclamation, or 6 months after Royal Assent, whichever is earlier.

Clause 3 – Schedules

This clause provides that each Act specified in a Schedule to this Bill is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item has effect according to its terms. This is a technical provision which gives operational effect to the amendments contained in the Schedules.

Schedule 1 amends the *Aged Care Act 1997* (Aged Care Act), the *Aged Care (Transitional Provisions) Act 1997* (Transition Act) and the *Aged Care Quality and Safety Commission Act 2018* (Quality and Safety Commission Act) in relation to the approval of providers of aged care. Schedule 2 amends the Aged Care Act and the Quality and Safety Commission Act in relation to the responsibilities of approved providers. Schedule 3 amends the Aged Care Act and the Quality and Safety Commission Act in relation to the reconsideration and review of certain decisions. Schedule 4 provides transitional arrangements. Consequential amendments to other Acts are also made within each schedule.

Schedule 1 — Approval of providers of aged care

Schedule 1 makes amendments to the Aged Care Act, Transition Act and the Quality and Safety Commission Act so that the Aged Care Quality and Safety Commissioner (Commissioner) will approve persons (including entities taken to be persons) to be approved providers of aged care and revoke their approval under the Quality and Safety Commission Act. These functions are performed by the Secretary of the Department under Divisions 8 and 10 of the Aged Care Act.

Schedule 1 also makes consequential amendments to a number of other Acts which use the definition in the Aged Care Act of an ‘approved provider’. The amendments in Schedule 1 move the definition of an approved provider to the Quality and Safety Commission Act. Accordingly, these other Acts which adopt the definition of an approved provider will also be amended by Schedule 1 to refer to the definition which will be provided under the Quality and Safety Commission Act.

Aged Care (Accommodation Payment Security) Act 2006

Item 1 – subsection 6(1)

This item amends the definition of approved provider under subsection 6(1) of the *Aged Care (Accommodation Payment Security) Act 2006*, so that it refers to the definition in the Quality and Safety Commission Act.

Aged Care (Accommodation Payment Security) Levy Act 2006

Item 2 – section 5 (definition of approved provider)

This item amends the definition of approved provider under section 5 of the *Aged Care (Accommodation Payment Security) Levy Act 2006*, so that it refers to the definition in the Quality and Safety Commission Act.

Aged Care Act 1997

Items 3, 4 and 5 – section 3-2

Section 3-2 of the Aged Care Act sets out that the approvals required before the Commonwealth can pay a subsidy to an approved provider are established under Chapter 2 of the Aged Care Act.

Items 3 and 4 amend this section to reflect the transfer of the function of approving providers under Division 8 of the Aged Care Act to Part 7A of the Quality and Safety Commission Act. Item 5 adds a note that directs the reader to Part 7A of the Quality and Safety Commission Act for the approval of providers.

Item 6 – section 3-4

Section 3-4 sets out that the responsibilities of approved providers are established under Chapter 4 of the Aged Care Act. These relate to quality of care, the rights of care recipients, accountability for the care being provided and suitability of key personnel. The section indicates that if an approved provider fails to meet these responsibilities sanctions can be applied which may affect the status of approvals under Chapter 2, and may therefore affect matters including the approved provider's ability to receive a subsidy.

This item replaces cross references to the function of imposing sanctions on approved providers under Part 4.4 in section 3-4 with references to Part 7B of the Quality and Safety Commission Act as a consequence of this function transferring from the Secretary to the Commissioner.

Items 7, 8, 9 and 10 – section 5-1

Section 5-1 provides an overview of the approvals and other decisions which may need to be granted or made under Chapter 2 of the Aged Care Act before a provider of aged care can be paid a subsidy for providing care under the Aged Care Act. This includes the approval of providers.

These items amend this section to reflect the transfer of the function of approving providers under Division 8 of the Aged Care Act to Part 7A of the Quality and Safety Commission Act. Item 10 adds a note that directs the reader to Part 7A of the Quality and Safety Commission Act for approval of providers.

Items 11 and 12 – section 5-2

Section 5-2 sets out the approvals that must be in place in order for an approved provider to receive a subsidy under the Aged Care Act.

Items 11 and 12 amend this section to reflect the transfer of the function of approving providers under Division 8 of the Aged Care Act to Part 7A of the Quality and Safety Commission Act. Item 12 adds a note that directs the reader to Part 7A of the Quality and Safety Commission Act for approval of providers.

Item 13 – Part 2.1 (heading)

Item 13 replaces the heading ‘Approval of providers’ of Part 2.1 of the Aged Care Act, with ‘Approved providers’, as a consequence of transferring the Secretary’s function of approving providers under Division 8 of the Aged Care Act to the Commissioner under Part 7A of the Quality and Safety Commission Act. The provisions of Part 2.1 will deal with specific matters arising in relation to ‘approved providers’.

Part 2.1 – Approved Providers

Item 14 – sections 6-1 and 6-2

This item replaces the description of the matters which will be provided for under Part 2.1 of the Act.

Items 15, 16 and 17 – section 7-1

Section 7-1 sets out the pre-conditions that apply to an approved provider before it can receive payment of a subsidy under Chapter 3 of the Aged Care Act.

These items amend section 7-1 to reflect the transfer of the Secretary’s function of approving providers under Division 8 of the Aged Care Act to the Commissioner under Part 7A of the Quality and Safety Commission. Item 17 adds a note that directs the reader to Part 7A of the Quality and Safety Commission Act for approval of providers.

Item 18 – Division 8

Division 8 sets out the process for a person to become an approved provider for the purposes of the Aged Care Act. This includes a state or territory, a state or territory authority, or a local government authority, which are entities taken to be a corporate person for the purposes of approval as a provider of aged care under Division 8.

Item 18 will repeal Division 8 of the Aged Care Act to abolish the Secretary’s function of approving providers of aged care, as part of transferring this function to the Commissioner under Part 7A of the Quality and Safety Commission Act. Part 7A will be inserted by item 64 of Schedule 1 to confer on the Commissioner the additional functions of approving providers of aged care.

Items 19, 20, 21, 22 and 23 – subsections 9-1(1), (2), (3A) and (4)

These items amend section 9-1 of the Aged Care Act to establish that reports of changes in circumstances materially affecting an approved provider’s suitability to provide aged care must be made to the Commissioner rather than the Secretary, and to omit references to Division 8 (which is repealed by Item 18). These changes are consequential to transferring the Secretary’s function of approving providers under Division 8 of the Aged Care Act to the Commissioner under Part 7A of the Quality and Safety Commission Act. This will include deciding whether an approved provider is suitable to provide aged care for the purposes of determining whether to revoke the person’s approval under subsection 63J(3) of the Quality and Safety Commission Act.

Item 22 inserts a new subsection 9-1(3B) into the Aged Care Act which will provide that the Approved Provider Principles may specify changes in circumstances taken to materially affect an approved provider’s suitability. Subsections 9-1(1) and (4) impose

obligations (administrative and criminal) on approved providers to more generally notify the Secretary of any changes which materially affect their suitability. This will include any specified changes taken to materially affect an approved provider's suitability under subsection 9-1(3B), in addition to any other changes not specified under subsection 9-1(3B) which actually have this affect.

Without limiting its scope, subsection 9-1(3B) is intended to be used to specify the kinds of changes which are likely to, but will not necessarily in all circumstances, affect an approved provider's suitability in a material respect, such as changes which are *indicative* of risks to care recipients. With these notifications, the Commissioner will be able to monitor changes in an approved provider's circumstances which may put at risk their suitability, before it is compromised in a material respect. In this way, specifying changes under subsection 9-1(3B) may also be used to help guide approved providers with meeting their general obligations to notify under s 9-2.

The Approved Provider Principles are a legislative instrument, which may be made or amended by the Minister under section 96-1 of the Aged Care Act.

Items 24, 25 and 26 – subsection 9-2(1)

Section 9-2 provides that the Secretary may request an approved provider to give information relevant to the provider's continuing status as an approved provider. The provision creates an offence for an approved provider that fails to comply with the request.

Items 24, 25 and 26 amend section 9-2 so that the Commissioner may request and receive information from approved providers. This is consequential to transferring the Secretary's function of approving providers under the Aged Care Act to the Commissioner under Part 7A of the Quality and Safety Commission Act. Requesting information under section 9-2 will be relevant to matters such as assessing an approved provider's suitability to provide aged care, such as when deciding whether to revoke the approval of providers of aged care.

Items 27, 28, 29, 30, 31, 32, 33 and 34 – sections 9-3A and 9-3B

Sections 9-3A and 9-3B provide that the Secretary may, in certain circumstances, request information from approved providers regarding their refundable deposits, accommodation bonds and entry contributions (9-3A), and their ability to refund balances (9-3B). Approved providers have an aged care responsibility to comply with requests by the Secretary. There are also offences for approved providers who fail to comply with a request to give information under sections 9-3A and 9-3B.

Items 27 to 34 will amend these sections so that both the Secretary and the Commissioner will have the ability to request information from approved providers. The Secretary will be able to request this information to continue to perform functions under the Aged Care Act, including Parts 2.4, Chapter 3 and Division 95, and to administer the *Aged Care (Accommodation Payment Security) Act 2006* and the *Aged Care (Accommodation Payment Security) Levy Act 2006*. The Commissioner will also be able to request information under sections 9-3A and 9-3B, as a consequence of transferring the Secretary's functions of approving providers of aged care under Division 8 and 10, and monitoring and enforcement (including monitoring and enforcement of the aged care responsibilities relating to permitted uses of

accommodation deposits and the Prudential Standards, and investigating related offences) under Parts 4.1 and 6.4 of the Aged Care Act to the Commissioner. Accordingly, both office holders will exercise these powers.

Item 35 – section 9-4

Section 9-4 makes clear a person who is approved under section 8-1 continues to be required to comply with the obligations of an approved provider imposed under Division 9 even when their approval as a provider has been suspended.

This item replaces cross references to the approval of a provider under section 8-1 and the suspension of this approval under Part 4.4 in section 9-4 of the Aged Care Act with Parts 7A and 7B of the Quality and Safety Commission Act respectively. These amendments are made as a consequence of transferring these powers from the Secretary to the Commissioner. This will avoid uncertainty regarding the ability of the Secretary and Commissioner to request and be given information under Division 9 while a provider is subject to this kind of sanction.

Items 36 and 37– Division 10 and section 10A-1

Division 10 and section 10A-1 of the Aged Care Act provide for the revocation of the approval of a provider and a definition of disqualified individuals, respectively.

Item 36 will repeal Division 10 of the Aged Care Act to abolish the Secretary’s function of revoking the approval of providers of aged care, as part of transferring this function to the Commissioner under Part 7A of the Quality and Safety Commission Act. Part 7A will be inserted by item 64 of Schedule 1 to confer on the Commissioner the additional functions of approving providers of aged care.

Item 37 will also repeal section 10A-1 since the term ‘disqualified individual’ will be defined under section 8A of the Quality and Safety Commission Act for the purposes of performing functions under Part 7A, and exercising monitoring powers under Part 8A of the Quality and Safety Commission Act to determine whether an approved provider is complying with its responsibility to take all reasonable steps specified in the Accountability Principles to ensure none of its key personnel is a disqualified individual under section 63-1A of the Aged Care Act.

Item 38 – subsection 10A-3(7)

Subsection 10A-3(7) defines the Federal Court for the purposes of seeking remedial orders in relation to an unacceptable key personnel situation under section 10A-3. This subsection will be repealed since the same definition will be inserted into the dictionary under Schedule 1 of the Aged Care Act for the purposes of triggering the Regulatory Powers Act, by item 35 of Schedule 2 of this Bill.

Item 39 – subsection 14-1(2)

Section 14-1 of the Aged Care Act provides for how aged care places are allocated to an approved provider. This item will remove reference to section 8-1 of the Aged Care Act since this will be repealed.

Items 40 and 41 – paragraphs 16-2(4)(a) and (b)

Subsection 16-2 provides for the transfer of allocated places from an approved provider to another person. These items will remove reference to the approval of

providers under section 8-1 of the Aged Care Act since this provision will be repealed.

Items 42 and 43 – paragraphs 16-13(4)(a) and (b)

Section 16-13 provides for transfer notices in relation to provisionally allocated places. These items remove references to the approval of providers under section 8-1 of the Aged Care Act since this provision will be repealed.

Item 44 – paragraph 33-3(1)(c)

Section 33-3 of the Aged Care Act sets out the circumstances in which the extra service status for an aged care service lapses. Paragraph (1)(c) provides the cessation of an approval under Division 10 of the Aged Care Act as one of those circumstances. This item replaces the reference to Division 10 of the Aged Care Act with section 63G of the Quality and Safety Commission Act, as a consequence of transferring the Secretary's function of revoking approval under Division 10 of the Aged Care Act to the Commissioner under Part 7A of the Quality and Safety Commission Act.

Item 45 – paragraph 46-1(1)(a)

Section 46-1 of the Aged Care Act establishes when an approved provider is eligible to receive a subsidy for providing home care under the Aged Care Act, including the requirement, set out in paragraph (1)(a), to be approved under Part 2.1 as a provider of home care. This item removes the cross reference to the function of approving providers under Part 2.1 of the Aged Care Act since Division 8 of this Part will be repealed.

Items 46 and 47 – subsections 63-1C(1) and 63-1C(2)

Section 63-1C of the Aged Care Act imposes a responsibility on approved providers to do all things reasonably practicable to ensure that there is no change to the circumstances materially affecting an approved provider's suitability, specified in a notice under subsection 8-5(3) without complying with the steps set out in that notice. For example, such steps may include getting the approval of the Secretary before a circumstance specified by the Secretary is permitted to change. This item updates references to a notice given under subsection 8-5(3) of the Aged Care Act as a consequence of transferring the Secretary's function of approving providers under Division 8 to the Commissioner under Part 7A of the Quality and Safety Commission Act.

Item 48 – paragraph 72-1(4)(a)

Section 72-1 of the Aged Care Act provides for the Secretary to allocate aged care grants to residential aged care providers for the cost of capital works. This item removes a cross reference to an 'approval under Part 2.1' as the relevant approval since Division 8 will be repealed.

Item 49 – subparagraph 86-1(b)(iii)

Subparagraph 86-1(b)(iii) provides that information relating to the affairs of an applicant for approved provider status is to be protected information under the Aged Care Act. Division 86 of the Aged Care Act provides offences for the unauthorised use or disclosure of protected information.

This item repeals this subparagraph since this kind of information will be protected under section 60 of the Quality and Safety Commission Act (by amendment under item 63 of the Schedule), as a consequence of transferring the Secretary's function of approving providers under Division 8 of the Aged Care Act to the Commissioner under Part 7A of the Quality and Safety Commission Act.

Items 50, 51, 52, 53 and 54 – Clause 1 of Schedule 1

These items repeal the definitions of 'approved provider', 'authority of a State or Territory', 'disqualified individual', 'key personnel', 'local government authority' in Schedule 1 - Dictionary of the Aged Care Act as these definitions are now contained within the Quality and Safety Commission Act.

Aged Care Quality and Safety Commission Act 2018

Items 55 and 56 – subsections 5(1) and (2)

Section 5 states the object of the Quality and Safety Commission Act, including to establish a regulatory framework that will protect and enhance the safety, health, well-being and quality of life of aged care consumers.

The object also sets out Parliament's intention to confer additional functions on the Commission through future amendments. As this Bill confers these additional functions, this part of the object is repealed.

Item 57 – section 6

Section 6 of the Quality and Safety Commission Act provides a simplified outline of the matters that are dealt with under this Act. This item will amend section 6 to outline the additional function of approving providers of aged care, which will be conferred under the Quality and Safety Commission Act by amendments set out under this Schedule.

Items 58 and 59 – section 7 (definitions)

These items will add definitions in the Aged Care Act to the Quality and Safety Commission Act, for the purposes of the function of approving providers of aged care which will be conferred on the Commissioner under Part 7A of the Quality and Safety Commission Act.

Item 60 – Sections 8A and 8B – Meaning of *disqualified individual* and *key personnel*

This item inserts a new section 8A into the Quality and Safety Commission Act to include a definition of a disqualified individual into the Act and establishes that a disqualified individual is unable to hold a position of key personnel. This provision provides that a person who has been convicted of an indictable offence, is an 'insolvent under administration' (as defined in the *Acts Interpretation Act 1901*), or has been determined by a registered medical practitioner as being unable to perform their duties, due to mental incapacity, in a key management or clinical position for an approved provider or an aged care service the person operates.

This item also inserts a new section 8B into the Quality and Safety Commission Act to include a definition of which persons are considered to be the 'key personnel' of an approved provider. This provision enables other provisions, which either disqualify

individuals from being key personnel, or allow the suitability of key personnel to be assessed as part of a provider's suitability, to operate.

Key personnel is defined to incorporate a person who has responsibilities associated with the management of the operations of an approved provider or one of its aged care services, and a person who is responsible for the nursing services provided by an aged care service. Key personnel is not limited to employees of an approved provider, so would include any subcontractors that hold such positions and, where that subcontractor is a corporation, the executive decision makers of that corporation.

Item 61 – section 14

Section 14 of the Quality and Safety Commission Act provides a simplified outline of Part 3 of this Act. Part 3 deals with matters relating to the Commissioner, including the Commissioner's functions and appointment. This item will amend section 14 to outline the additional function of approving providers of aged care, to be set out under subsection 16(1).

Item 62 – paragraph 16(1)(a)

Subsection 16(1) of the Quality and Safety Commission Act sets out the functions of the Commissioner, that include (among others) the consumer engagement functions, the complaints functions, the regulatory functions and the education functions.

This item will include, under subsection 16(1), the additional functions of approving providers of aged care and revoking approval of providers conferred by Part 7A of the Quality and Safety Commission Act, which will be inserted under item 64 of Schedule 1.

Item 63 – subsection 60(2)

Section 60 of the Quality and Safety Commission Act sets out protections for information that the Commission receives in the course of performing its functions, where that information relates to the affairs of an approved provider or personal information of an aged care consumer.

The definition of protected information under subsection 60(2) will be extended to include information relating to the affairs of an applicant for approval under section 63B of the Quality and Safety Commission Act.

This information is protected information under the Aged Care Act for the purposes of the function of approving providers under Division 8 of that Act. This change is consequential to the amendments which transfer the Secretary's function of approving providers to the Commissioner under Part 7B of the Quality and Safety Commission Act.

Item 64 – After Part 7

This item will insert Part 7A into the Quality and Safety Commission Act to confer on the Commissioner the additional functions of approving providers of aged care and revoking their approval, as part of transferring these functions of the Secretary under Divisions 8 and 10 of the Aged Care Act. Part 7A of the Quality and Safety Commission Act reflect the intent of the provisions of these divisions of the Aged Care Act.

Part 7A – Approval of providers of aged care etc

Division 1 – Introduction

Section 63A - Simplified outline of this Part

Section 63A provides a simplified outline of Part 7A.

Division 2 – Approval of providers of aged care

Section 63B - Application for approval as provider of aged care

Section 63B sets out how an entity must apply for approval to be an aged care provider, requiring that an application must be made in writing to the Commissioner, using any form provided by the Commissioner and including any additional documents or information that the Commissioner requires.

The application must also be accompanied by any fees specified by the Commissioner. The Commissioner has the power to charge fees for their services under section 23 of the Quality and Safety Commission Act.

Section 63C – Request for further information

Section 63C enables the Commissioner to seek further information from an applicant to assist the Commissioner to make a decision on its application. The provision requires the Commissioner to give the applicant at least 28 days to provide the information, however this period may be shortened if circumstances specified in the Rules apply.

Where an applicant fails to provide the information requested within the requested timeframe, their application is taken to have been withdrawn. However, the applicant would be free to reapply for approval, and include the requested information as part of that additional application.

Section 63D – Commissioner must decide whether to approve a person as provider of aged care

Section 63D requires the Commissioner to decide whether to approve an application within 90 days of receiving the application, or the additional information requested under section 63C.

The Commissioner must not approve the applicant unless they are satisfied that the applicant is a corporation, is suitable to provide aged care, and that none of the key personnel are disqualified individuals.

In considering the suitability of the applicant, the Commissioner must consider the applicant's experience, understanding and systems for providing care and complying with the responsibilities of aged care providers, and the person's past record of financial management and aged care performance and compliance.

In determining whether the applicant is suitable, the Commissioner may also consider the suitability of the key personnel of the applicant, including any subcontractors that will be managing, operating or providing nursing services at an aged care service.

Importantly, these provisions do not limit the matters the Commissioner can take into account.

Section 63E – Notification of decision relating to approval of person as provider of aged care

This provision sets out that the Commissioner must notify an applicant of the Commissioner's decision within 14 days of making the decision to approve the person as a provider of aged care. This notice must set out the decision, the day approval comes into effect, the types of aged care the person is approved to provide, that the approval is in respect of the services for the type of care the provider is approved to provide, and any circumstances to be notified to the Commissioner, and agreed to, before the provider can make any changes to these circumstances. The notice must also inform providers of certain obligations arising from becoming an approved provider, including the requirement to respond to notices to provide information and the circumstances under which they may be sanctioned.

Where the approval is denied, the notice must set out the decision, reasons for the decision and how the person may apply for the reconsideration of the decision.

The Commissioner must provide a copy of such notices to the Secretary, to assist with the administration of payments and other matters under the Aged Care Act.

Division 3 – Deemed approval of States, Territories and local government etc. Section 63F - States, Territories and local government etc. taken to be approved providers etc.

Section 63F preserves the operation of section 8-6 of the Aged Care Act, which provides for certain State and Territory organisations to be taken to be an approved provider without making an application.

Section 63F establishes that these entities will be taken to be approved providers by giving the Commissioner a notice of their intention to provide aged care services.

These approved providers will be subject to the same aged care responsibilities as other approved providers. Were a State or Territory approved provider to have their deemed approval revoked, they would not be able to provide a further notice under this provision and would be subject to the application process.

Division 4 – Cessation and revocation of approval Section 63G - When approval as provider of aged care ceases to have effect

This section provides that the approval of an approved provider will cease to have effect during any period of a suspension or if it is revoked.

Where approved providers fail to meet their responsibilities under the Aged Care Act, they may be sanctioned under the provisions of Part 7B of the Quality and Safety Commission Act (inserted by this Bill), including having their approval revoked or suspended.

In addition, where an approved provider is found to no longer be suitable to provide aged care, the Commissioner can revoke their approval.

Section 63H - Revocation of approval on request of approved provider

Section 63H allows an aged care provider to request the Commissioner revoke their approval.

Where the Commissioner is satisfied that appropriate care arrangements have been made for the provider's care recipients in accordance with paragraph 63H(3)(b) of the Quality and Safety Commission Act for an approved provider of home care service, the Commissioner will revoke the providers approval and provide a written notice.

If the provider provides a residential care or flexible care service, the Commissioner must be satisfied that the allocation of places made in respect of these services has ceased under 63H(3)(a) of the Quality and Safety Commission Act, before revoking an approved provider's approval. As a prerequisite for the cessation of the allocation of places made in respect of a residential care service or a flexible care service, the Secretary must be satisfied that appropriate care arrangements have been made for the provider's care recipients under section 18-3 of the Aged Care Act.

If the Commissioner denies the request, the Commissioner must give notice of the reasons for that decision and how the provider can request a reconsideration of that decision.

Revocation of approval will mean the person will no longer be required to comply with any of the aged care responsibilities of an approved provider.

However, there are some offences which impose criminal responsibilities on former approved providers, such as offences related to the record keeping obligations under Part 6.3 or the refund of deposits under Division 52P of the Aged Care Act, and other offences which continue to apply to persons independently of any approval.

Section 63J - Revocation of approval of approved provider if Commissioner is satisfied of certain matters

Section 63J will require the Commissioner to revoke the approval of a provider where the Commissioner is satisfied that they are no longer suitable to provide aged care. The test of suitability is the same as under section 63D.

For providers taken not to be approved under section 63F, the Commissioner must also revoke their approval if their application was false and misleading or where they cease to be a corporation.

Section 63K - Notice of intention to revoke approval as provider of aged care

This section provides the Commissioner must, before revoking an approved provider's approval, give them a notice of intention to revoke their approval, and to provide them with an opportunity to make submissions before the decision whether to revoke their approval is made.

The Commissioner must give notice of their reasons for considering to revoke the approval and provide 28 days for submissions to be made. The Commissioner is required to make a decision within a further 28 days after the period for making submissions has closed.

Section 63L - Notice of revocation of approval as provider of aged care etc.

Section 63L sets out the requirements for the Commissioner to give an approved provider notice when their approval has been revoked. The notice must set out why

the Commissioner has decided to revoke the provider's approval and how they may apply to have that decision reconsidered.

Subsections (2) to (5) allow the Commissioner to provide additional notices, which have the effect that revocation may occur by limiting the approval on a progressive basis. This is intended to avoid revocation taking effect before the Commissioner is satisfied that appropriate care arrangements are in place to ensure care recipients continue to be provided with care after revocation takes effect.

Under subsection (2), the Commissioner can give notice to the provider of the day revocation will take effect. Prior to this, under subsection (5), the Commissioner can also give one or more notices limiting the provider's approval to certain types of aged care or particular aged care services. Once the Commissioner is satisfied appropriate arrangements are in place, the Commissioner can then provide for the revocation decision to take effect by giving notice under subsection (2).

Aged Care (Transitional Provisions) Act 1997

Items 65, 66, 67, 68, 69, 70 and 71 – sections 3-2 and 3-4, paragraph 46-1(1)(a) and Schedule 1

The *Aged Care (Transitional Provisions) Act 1997* provides certain arrangements for care recipients who were in receipt of aged care prior to 2014 amendments to the Aged Care Act. It contains a number of references to the provisions of Division 8 and Part 4.4 of the Aged Care Act, which will be repealed by this Bill.

These items make consequential amendments to update these references to the new provisions of the Quality and Safety Commission Act.

A New Tax System (Goods and Services Tax) Act 1999

Item 72 – section 195-1

Section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* defines an approved provider for the purposes of the definition of a retirement village in that Act. This item updates the definition of an approved provider, to refer to the definition now in the Quality and Safety Commission Act.

Healthcare Identifiers Act 2010

Item 73 – section 5

Section 5 of the *Healthcare Identifiers Act 2010* refers to the definition of an approved provider. This item updates this definition, to refer to the definition now in the Quality and Safety Commission Act.

Social Security Act 1991

Items 74 and 75 – subsections 23(4CA) and (4CB)

Section 23 of the *Social Security Act 1991* refers to the definition of an approved provider. This item updates these provisions, to refer to the definition now in the Quality and Safety Commission Act.

Veterans' Entitlements Act 1986

Items 76, 77, 78 and 79 – sections 5H, 5N and 5NC

Sections 5H and 5N of the *Veterans' Entitlements Act 1986* refer to the definition of an approved provider. This item updates these provisions, to refer to the definition now in the Quality and Safety Commission Act.

Schedule 2 – Responsibilities of approved providers etc

Aged Care Act 1997

Item 1 – section 7-2

This item repeals section 7-2 of the Aged Care Act which currently sets out the effect of imposing sanctions which restrict the approval of a provider of aged care to certain aged care services or certain care recipients, or the payment of subsidies to an approved provider. The section 7-2 inserted under this item reflects changes to the provisions relating to sanctions and the approval of providers.

Item 2 – subsections 9-1A(1), 9-1(1), 9-2(2), 9-3(2), 9-3A(2) and 9-3B(4)

This item updates multiple references to the new Part 7B of the Quality and Safety Commission Act under which sanctions may be imposed, in the notes under Division 9 of the Aged Care Act. These notes identify the requirements which constitute an aged care responsibility, as they relate to obligations to notify and provide requested information.

Item 3 – subsection 14-1(2A)

This item repeals and replaces subsection 14-1(2A) with a new subsection to reflect changes to the provisions under which sanctions to prohibit further allocation of places may be imposed on a person.

Item 4 – subsection 14-4(2)

This item removes the reference to Part 4.4 under subsection 14-4(2), and replaces this with a reference to the notice by which sanctions are imposed under 63P of the Quality and Safety Commission Act, for the purposes of describing the effects of particular sanctions on the waiver of certain requirements relating to allocations.

Item 5 – subsections 14-5(1), 14-6(3) and 16-11(2)

This item updates multiple references to the new Part 7B of the Quality and Safety Commission Act under which sanctions may be imposed, in the notes under Division 14 and 16 of the Aged Care Act. These notes identify the requirements which constitute an aged care responsibility, as they relate to the conditions of allocations.

Items 6 and 7 – paragraph 18-1(1)(b) and subsection 18-1(3)

These items amend section 18-1 to update references to Part 4.4, with new provisions to impose particular sanctions under section 63P of the Quality and Safety Commission Act, for the purposes of describing effects on the cessation of allocations.

Item 8 – subsections 18-2(4) and 18-4(1)

This item updates multiple references to Part 7B of the Quality and Safety Commission Act under which sanctions may be imposed, in the notes under Division 18 of the Aged Care Act. These notes identify the requirements which

constitute an aged care responsibility, as they relate to the relinquishment of allocated places.

Item 9 – paragraphs 25-4(1)(a) and (b)

This item repeals and inserts new paragraphs 25-4(1)(a) and (b) which extend the grounds on which the Secretary may suspend an approved provider from making appraisals under section 25-3 and reappraisals under section 27-4, to include where the Secretary is satisfied the approved provider, or a person acting on the approved provider's behalf, has not conducted an appraisal or reappraisal in a proper manner. This additional ground for suspending an approved provider or a person acting on the approved provider's behalf is intended to complement the existing aged care responsibilities under 63-1(1)(a) and (h).

Items 10, 11, 12 and 13 – subsections 32-8(6) and 33-4(1), paragraph 33-1(c) and section 36-4

These items make various amendments which update references to Part 4.4 with the relevant provision (section 63P or Part 7B) of the Quality and Safety Commission Act under which sanctions are imposed. These references relate to the sanctions which may be imposed in relation to an extra service status or the sanctions which may be imposed for failing to comply with the conditions to which an extra service status is granted.

Item 14 – subsection 42-2(1)

This item amends subsection 42-2(1) to update references to section 67A-5 with the provisions under 63R of the Quality and Safety Commission Act, in relation to the days on which the care recipient is taken to be provided with residential care.

Items 15 and 16 – paragraph 52G-2(d) and 52G-6(d)

These items repeal and replace paragraphs 52G-2(d) and 52G-6(d) to update references to the particular sanctions which may be imposed to prohibit the charging of an accommodation payment or accommodation contribution for the service.

Items 17, 18 and 19 – sections 53-1 and 55-1 and subsection 53-2(1)

These items make various amendments which update references to Part 7B of the Quality and Safety Commission Act under which sanctions may be imposed for failing to comply with the responsibilities described under sections 53-1 and 55-1, and the Quality and Safety Commission Act under subsection 53-2(1) being one of the laws under which a failure to comply has consequences.

Item 20 – paragraphs 63-1(1)(b) and (ba)

This item repeals paragraphs 63-1(1)(b) and (ba) and replaces these with a single responsibility under paragraph (b) to consolidate the current responsibility under 63-1(1)(ba) to cooperate with persons exercising powers under Part 8 of the Quality and Safety Commission Act or performing related functions, and the responsibility under paragraph 63-1(1)(b) to cooperate with persons exercising powers under Part 6.4 of the Aged Care Act or performing related functions, with a responsibility to also cooperate with persons exercising powers under Parts 2 and 3 of the Regulatory Powers Act or performing related functions. This single responsibility will operate across the applicable functions and powers of the Commissioner and the Secretary.

Item 21 – paragraph 63-1(1)(k)

This item repeals and replaces paragraph 63-1(1)(k) to update references to the new provisions under which an undertaking may be given by an approved provider under 63T or 63U, in relation to which an approved provider has a responsibility to comply.

Item 22– paragraphs 63-1AA(2)(b), (4)(b), (5)(e) and (7)(b)

These items will replace references to the Secretary with the Commissioner under section 63-1AA of the Aged Care Act, as part of transferring the Secretary’s functions relating to a reportable assault within the meaning of subsection 63-1AA(9) to the Commissioner.

Item 23 – subsection 63-1A(2)

Item 23 amends the responsibility of approved providers under subsection 63-1A(2) to take all reasonable steps specified in the Sanctions Principles to ensure that none of its key personnel is a disqualified individual, to instead provide for these steps to be specified in the Accountability Principles. This item will ensure reasonable steps may continue to be specified for the purposes of subsection 63-1A(2) despite the repeal of the Sanctions Principles.

Items 24 and 25 – paragraphs 63-2(2)(f) and (2)(g)

These items amend requirements for the annual report on the operation of the Aged Care Act which remove redundant provisions, as a consequence of transferring the Secretary’s function of imposing sanctions on approved providers under Part 4.4 of the Aged Care Act to the Commissioner under Part 7B of the Quality and Safety Commission Act. Corresponding annual reporting requirements will be inserted into the Quality and Safety Commission Act under item 48 of Schedule 2.

Item 26 – Part 4.4

This item will repeal Part 4.4 of the Aged Care Act to abolish the Secretary’s function of dealing with the consequences of non-compliance by approved providers with their responsibilities under Parts 4.1, 4.2 and 4.3 – which includes imposing sanctions on, and lifting sanctions from, approved providers – as part of transferring this function to the Commissioner under Part 7B of the Quality and Safety Commission Act. Part 7B will be inserted by item 52 of Schedule 2.

Item 27 – section 84-1

This item omits and replaces the reference to Part 6.4 and its description, as a consequence of item 29.

Item 28 – subsections 88-1(1) and (2), 88-2(1) and 88-3(1)

This item updates multiple references to the new Part 7B of the Quality and Safety Commission Act under which sanctions may be imposed, in the notes under Division 88 of the Aged Care Act. These notes identify the requirements which constitute an aged care responsibility, as they relate to record keeping.

Item 29 – Part 6.4

This item will repeal and replace Part 6.4 with a new part to effectively abolish the existing powers conferred on the Secretary and authorised officers of the Department, as these relate to the exercise of monitoring powers to assess compliance by approved providers with their responsibilities under Parts 4.1, 4.2 and 4.3 of the Aged Care Act,

the exercise of powers to investigate under warrant contraventions of related offences, and the performance of functions related to the exercise of these powers under Part 6.4. These powers will be removed from Part 6.4 of the Aged Care Act as part of transferring the same kinds of power to the Commissioner and authorised officers of the Commission.

In addition, item 29 makes consequential amendments to Part 6.4 which will reproduce all other powers and related functions currently conferred on the Secretary and authorised officers of the Department for the purposes of the functions which will continue to be performed by the Department under the Aged Care Act - in broad terms these relate to the funding of approved providers. These powers will be largely reproduced under the new Part 6.4 inserted by this item.

The powers which will be reproduced under new Part 6.4 of the Aged Care Act or transferred to Parts 8 and 8A of the Quality and Safety Commission Act include monitoring and investigation powers, and powers to issue notices to obtain relevant information or documents from any person.

Part 6.4 – Compliance and enforcement powers

Repeal of Part 6.4 - Powers of officers

Division 91, Part 6.4 of the Aged Care Act confers on authorised officers powers to enter premises with consent, and exercise monitoring powers, for the purposes of:

- determining applications (excluding applications for approval) made under the Aged Care Act and Transition Act assessing whether the conditions of grants made under Chapter 5 have been complied with;
- assessing whether appraisals or reappraisals of the level of care required by care recipients, and verifying whether claims for payment of a subsidy have been properly made; and
- assessing compliance with the responsibilities of approved providers under Chapter 4, and the record keeping obligations under Part 6.3 of the Aged Care Act.

In addition, Division 92 confers powers on authorised officers to enter premises under warrant, to exercise monitoring powers for the purposes of:

- assessing whether appraisals or reappraisals of the level of care required by care recipients, and verifying whether claims for payment of a subsidy have been properly made; and
- assessing compliance with the responsibilities of approved providers under Chapter 4, and the record keeping obligations under Part 6.3 of the Aged Care Act.

Division 92 also provides powers to authorised officers to enter premises under warrant to exercise investigation powers in relation to the commission of an offence under the Aged Care Act.

Division 93 confers on the Secretary the power to require persons to attend before an authorised person to answer questions, or provide information or documents by notice, for the same purposes for which monitoring powers are conferred under Division 91.

Substitute Part 6.4

Item 29 will confer the same kinds of regulatory powers available under Part 6.4 of the Aged Care Act, but with a reduced scope that reflects the functions of the Secretary after the amendments set out in this Bill.

Part 6.4, Division 92 will trigger the Regulatory Powers Act with modifications to largely reproduce the existing standard powers for monitoring provisions relating to appraisals and reappraisals and payments of subsidies or supplements. Further, Divisions 91 and 93 together reproduce the other powers which are not available under the Regulatory Powers Act, for the additional purposes of deciding applications (other than for approval as a provider of aged) and determining compliance with the conditions of grants under Chapter 5.

In addition, Division 92 will confer new investigation powers for the purposes of the civil penalty provision under Division 29A of the Aged Care Act. These powers will complement existing regulatory powers to ensure the necessary powers are available to enable the Department to effectively promote compliance with these provisions.

Part 6.4 will not provide regulatory powers for purpose of determining the approval of providers under Division 8 of the Aged Care Act, and assessing the compliance of approved providers with their aged care responsibilities, including responsibilities to keep proper records in accordance with Part 6.3 of the Aged Care Act enforced under Part 4.4.

In addition, Part 6.4 will not contain regulatory powers for monitoring and investigating the commission of any offences against the Aged Care Act, including offences for failing to keep records in accordance with Part 6.3 of the Aged Care Act. These kinds of powers will be conferred on the Commission, to be exercised in the performance of functions under Part 7A and 7B of the Quality and Safety Commission Act.

A table showing how existing powers will be reproduced under the Aged Care Act (referred to as ACA) or transferred to the Quality and Safety Commission Act (referred to as ACQSCA) is below (pages 22-24). Relevant provisions of the Regulatory Powers Act (referred to as RPA) and the *Aged Care (Transitional Provisions) Act 1997* (referred to as TA) are also referenced.

Regulatory powers	Provisions subject to regulatory powers	Part 6.4 ACA	The Bill	
		Current provisions	Effect of amendments	Corresponding provisions
Entry and search powers, with consent	applications for approval of provider under the ACA	Div 91 ACA	Transferred to ACQSCA	Part 8 ACQSCA
	other applications made under the ACA or TA	Div 91 ACA	Reproduced under ACA	Div 91 ACA
	conditions of a grant under Chapter 5 of the ACA			
Monitoring powers, with consent	aged care responsibilities under Chapter 4 of the ACA	Div 91 ACA	Transferred to ACQSCA	Part 2 RPA triggered: 74B & 74C ACQSCA
	records kept under Part 6.3 of the ACA			
	claims for payments under Chapter 3 of the ACA or TA	Div 91 ACA	Reproduced under ACA	Part 2 RPA triggered: 92-1 & 92-2 ACA
	appraisals/reappraisals under Part 2.4 of the ACA			
	civil penalty provision under Div 29A of the ACA	n/a	New power conferred under ACA	Parts 2 & 3 RPA triggered: 92-1 & 92-2 ACA
Monitoring powers, under warrant	aged care responsibilities under Chapter 4 of the ACA	Div 92 ACA	Transferred to ACQSCA	Part 2 RPA triggered: 74B & 74C ACQSCA
	records kept under Part 6.3 of the ACA			

Regulatory powers	Provisions subject to regulatory powers	Part 6.4 ACA	The Bill	
		Current provisions	Effect of amendments	Corresponding provisions
Monitoring powers, under warrant, cont'd	claims for payments under Chapter 3 of the ACA or TA appraisals/reappraisals under Part 2.4 of the ACA	Div 92 ACA	Reproduced under ACA	Part 2 RPA triggered: 92-1 & 92-2 ACA
Investigation powers, with consent	civil penalty provision under Div 29A of the ACA	n/a (with Div 92 powers re appraisals and reappraisals)	New power conferred under ACA	Parts 2 & 3 RPA triggered: 92-1(3), 92-2(3), 92-3 & 92-4 ACA
	offences under the ACA	Div 92 ACA	Transferred to ACQSCA	Part 3 RPA triggered: 74B & 74C ACQSCA
Investigation powers, under warrant	civil penalty provision under Div 29A of the ACA	n/a	New power conferred under ACA	Part 3 RPA triggered: 92-3 & 92-4 ACA
	offences under the ACA	Div 92 ACA	Transferred to ACQSCA	Part 3 RPA triggered: 74D & 74E ACQSCA
Notice powers	aged care responsibilities under Chapter 4 of the ACA	Div 93 ACA	Transferred to ACQSCA	Conferred under Part 8A ACQSCA
	records kept under Part 6.3 of the ACA			

Regulatory powers	Provisions subject to regulatory powers	Part 6.4 ACA	The Bill	
		Current provisions	Effect of amendments	Corresponding provisions
Notice powers, cont'd	applications for approval of provider under the ACA	Div 93 ACA	Not transferred or reproduced	n/a
	other applications made under the ACA or TA claims for payments under Chapter 3 of the ACA or TA appraisals/reappraisals under Part 2.4 of the ACA conditions of a grant under Chapter 5 of the ACA	Div 93 ACA	Reproduced under ACA	Div 93 ACA

Division 90 – Introduction

Section 90-1 – Simplified outline of this Part

Section 90-1 provides a simplified outline of Part 6.4.

Division 91 - Entry and search powers relating to certain applications and grants

Section 91-1 Power to enter premises and exercise search powers in relation to certain applications and grants

Section 91-1 confers entry and search powers on authorised officers for the purposes listed under subsection 91-1(1), including making decisions on applications under the Aged Care Act, and determining whether the conditions to which a grant under Chapter 5 of the Aged Care Act has been complied with. Subsection 91-1(3) limits the power to enter premises to exercise monitoring powers under Part 2, to where entry is authorised by the consent of the occupier.

The Regulatory Powers Act is not triggered for these purposes since Division 91 is intended only to confer non-coercive entry and search powers. Triggering Part 2 of the Regulatory Powers Act confers both coercive (under warrant) and non-coercive entry and search powers. For the purposes listed under subsection 91-1(1), conferring coercive monitoring powers would not be appropriate given these powers deal with certain voluntary processes, where the onus is on the applicant to provide the required information

Section 91-2 Consent

Entry into premises to exercise monitoring powers under Part 2 may be exercised with the consent of the occupier. Section 91-2 sets out the parameters for valid consent, providing that consent must be informed and voluntary, and the occupier remains free to withdraw consent at any time or to consent to entry only during a certain time period.

An authorised officer should present their identity card to the occupier before entering the premises. If the authorised person has not done so, subsection 91-2(6) provides that the authorised person must present their identity card upon entry, or as soon as is reasonably practical after entering the premises.

Section 91-2 mirrors section 25 of the Regulatory Powers Act, except in relation to paragraph 91-2(1)(b) which requires an authorised officer to inform the occupier that the occupier has a responsibility under paragraph 63-1(1)(b) to cooperate with a person who is performing functions or exercising powers under Part 6.4.

If the occupier of the premises is an approved provider, in refusing consent, or withholding consent to enter and search premises, the approved provider may fail to comply with their responsibility to cooperate under paragraph 63-1(1)(b) of the Aged Care Act. This may result in a sanction being imposed on the approved provider under Part 7B of the Quality and Safety Commission Act. Whether a refusal provide to consent amounts to a failure to comply with an approved provider's responsibility to cooperate, and results in sanctions being imposed, will depend on the circumstances and the reasonableness of a refusal.

Section 91-3 Search powers

Section 91-3 sets out the search powers which may be exercised by an authorised officer on premises entered with consent. Subsection 91-3(2), (3) and (4) also sets out the exercise of these powers in relation to the operation of electronic equipment and obtaining information relevant to the purposes of those listed under subsection 91-1(1). This section is consistent with the corresponding standard provision under sections 19 and 20 of the Regulatory Powers Act, as these relate to the exercise of monitoring powers at premises entered with the consent of the occupier.

Section 91-4 Asking questions and seeking production of documents

Section 91-4 empowers authorised officers to ask any person at the premises to answer questions or produce documents. Subsection (2) requires an authorised officer to inform an approved provider to whom a request is made that it has a responsibility under paragraph 63-1(1)(b) of the Aged Care Act to cooperate with a person who is performing functions or exercising powers under Part 6.4. This section reproduces the effect of the section 91-2 of the Aged Care Act.

Division 92 – Regulatory powers

Section 92-1 Monitoring powers

Section 92-1 triggers Part 2 of the Regulatory Powers Act to provide authorised officers with standard monitoring powers, including to enter and search premises with the consent of the occupier or under warrant. Sections 92-1 and 92-2 enable the same kinds of monitoring powers currently available to authorised officers under sections 91-1, 91-2, 91-3, 92-2, 92-5, 92-7 and 92-8, as they relate to the purposes listed under para 91-1(2)(b) and (c) and 92-2(2)(b) and (c).

Monitoring powers for the other purposes listed under subsections 91-1(2) and 92-2(2) are not reproduced under new Division 92 because these either relate to powers which are reproduced under new Division 91, or relate to functions which transfer to the Commission under other amendments in this Bill.

Provisions subject to monitoring

Subsection (1) makes the provisions to deal with the appraisal or reappraisal of the level of care needed by care recipients under Part 2.4 of the Aged Care Act, subject to monitoring under Part 2 of the Regulatory Powers Act.

Information subject to monitoring

Subsection (2) makes the information given in purported compliance with a provision under Chapter 3 of the Aged Care Act or the Transition Act also subject to monitoring under Part 2 of the Regulatory Powers Act.

Related provisions

In addition, subsection (3) makes the civil penalty provisions under Division 29A of the Aged Care Act related provisions, for the purposes of the monitored provisions under subsection (1). Division 29A sets out provisions which impose civil penalties on approved providers in relation to incorrect classifications of the level of care needed by a care recipient.

As related provisions, if an authorised officer finds possible evidence of a contravention of any of these provisions, in the course of exercising monitoring powers to determine compliance with the requirements or appraisal or reappraisal under section 25-3, 27-3 or 27-5, the authorised officer may secure the thing. This power complements the investigation powers which are triggered under section 92-3 for the purposes of the civil penalty provisions under Division 29A.

The powers conferred by making the provisions under Division 29A of the Aged Care Act related provisions are new powers not currently available under the Aged Care Act. Given contraventions of the civil penalty provisions can arise from the same conduct that contravenes a monitored provision, this monitoring power is necessary to the effective administration of the civil penalty provisions under Division 29A of the Aged Care Act.

Authorised applicant, authorised person, issuing officer, relevant chief executive and relevant court

For the purposes of triggering Part 2 of the Regulatory Powers Act, subsection (4) specifies authorised officers under the Aged Care Act as authorised applicants and authorised persons under the Regulatory Powers Act; a magistrate under the Aged Care Act as the issuing officer under the Regulatory Powers Act; the Secretary under the Aged Care Act as the chief executive under the Regulatory Powers Act; and the Federal Court, Federal Circuit Court and relevant court of a State or Territory with jurisdiction in relation to matters arising under the Aged Care Act or the Transition Act as the relevant courts under the Regulatory Powers Act.

Persons assisting

In addition, subsection (5) provides that an authorised officer may be assisted by other persons exercising powers or performing functions under Part 2 of the Regulatory Powers Act in relation to the monitored provisions. This provision empowers an authorised officer to be assisted by other persons for the purposes of section 23 of the Regulatory Powers Act. Paragraph 23(1)(a) of the Regulatory Powers Act provides that a person exercising monitoring powers may only be assisted by another person if that assistance is necessary and reasonable.

Authorised officers may require the assistance of persons who are not Australian Public Service (APS) employees of the Department to monitor the conduct appraisals or reappraisals of the level of care needed or verify the accuracy of information given to determine payment of a subsidy or supplements, to perform functions or an authorised officer under Part 6.4 from time to time. Given authorised officers may require expertise from a wide range of disciplines, to monitor the conduct appraisals or reappraisals of the level of care needed or verify the accuracy of information given to determine payment of a subsidy or supplements, external engagement of these persons may be an appropriate means of sourcing expertise that remains current.

Use of force in executing a warrant

Subsection (6) empowers authorised officers and persons assisting authorised officers to use such force against things as is necessary and reasonable in the circumstances. This reproduces the current powers available under the Aged Care Act which allows the use of reasonable and necessary force in executing a monitoring warrant under section 92-2.

The ability to use force to enter premises under a warrant in order to exercise monitoring powers will be necessary where entry has been demanded but refused, or where an approved provider is not present at the premises or where there is evidence of non-compliance with a monitored provision being concealed. In these circumstances, it may be reasonably necessary for an authorised person executing a warrant to open locked doors, cabinets, drawers and other similar objects for the purposes of determining whether a monitored provision under the Aged Care Act is being complied with.

Extension to external Territories

Subsection (7) extends the same monitoring powers which apply in relation to the monitored provisions under subsection (1) to external Territories. Subsection (1) triggers Part 2 of the Regulatory Powers Act and section 92-2 modifies its application to the monitored provisions specified under subsection (1).

Section 92-2 - Modifications of Part 2 of the Regulatory Powers Act

While section 91 triggers the monitoring powers under Part 2 of the Regulatory Powers Act, section 92 modifies its application to the monitored provisions listed under subsections 91-1(1) and (2).

Consent to entry

Subsection 92-2(2) requires an authorised officer to inform the occupier that the occupier has a responsibility under paragraph 63-1(1)(b) to cooperate with a person who is performing functions or exercising powers under Part 6.4, before consent is obtained to enter premises for the purposes of monitoring compliance with a provision under 91-1(1) or verifying whether information given in purported compliance with a provision under 91-1(2) is correct.

If the occupier of the premises is an approved provider, in refusing consent, or withholding consent to enter and search premises, the approved provider may fail to comply with their responsibility to cooperate under paragraph 63-1(1)(b) of the Aged Care Act. This may result in a sanction being imposed on the approved provider under Part 7B of the Quality and Safety Commission Act. Whether a refusal to provide consent amounts to a failure to comply with an approved provider's responsibility to cooperate, and results in sanctions being imposed, will depend on the circumstances and the reasonableness of a refusal. For example, in some circumstances it may be reasonable to refuse consent to entry when an aged care service is experiencing an infectious disease outbreak or where entry would be inappropriate for cultural reasons such as the recent death of a resident.

As recipients of Commonwealth subsidies for the provision of aged care, approved providers must accept a standard of accountability that is commensurate with the risks of harm to the health, safety and well-being of aged care consumers. Approved providers are therefore required to accept a statutory responsibility to cooperate when they are approved as providers, choosing to receive a government subsidy for the care that they propose to provide, in order to facilitate the monitoring of the quality of care they provide to consumers.

Securing electronic equipment and other things

Subsection (3) increases the maximum period for which an authorised officer may secure electronic equipment under section 21, secure things under section 22 or seek extensions to this period under section 33 of the Regulatory Powers Act, from 24 to 48 hours. Section 21 allows authorised officers to secure electronic equipment where there are reasonable grounds to believe it may contain data relevant to a monitored provision and assistance is required to operate the equipment to access the data, and that the data will be altered, concealed or destroyed if action is not taken under this section. Section 22 allows authorised officers to secure things where there are reasonable grounds to believe it affords evidence of the contravention of a related provision, and that the evidence will be altered, concealed or destroyed if action is not taken under this section.

The extended period for securing electronic equipment or things allows additional time for an authorised officer to obtain a warrant, particularly in remote locations where it may not be operationally possible to obtain a warrant within 24 hours.

Asking questions and seeking production of documents

Subsection (4) extends the power of authorised officers under subsection 24(2) of the Regulatory Powers Act, to ask the occupier of the premises to answer any questions, and produce any documents when the premises are entered with consent, including to ask any other person on the premises. This reproduces the existing power under section 91-2(1) of the Aged Care Act.

This is necessary given persons other than the occupier may possess information relevant to determining compliance or verifying information given in purported compliance with a monitored provision is being complied with or is correct. For example, it may be relevant for an authorised officer to talk to care recipients who reside at the premises of a residential care service, to assist in determining compliance with provisions dealing with the appraisal or reappraisal of the level of care needed by those care recipients.

Before asking a question or seeking the production of a document under subsection 24(2) of the Regulatory Powers Act, subsection (5) requires an authorised officer to inform an approved provider of the responsibility under paragraph 63-1(1)(b) to cooperate with a person who is performing functions or exercising powers under Part 6.4 of the Aged Care Act.

Subsection (6) provides that a person is not required to comply with a request made under section 24(2) of the Regulatory Powers Act by an authorised officer or a person assisting. However, if the person to whom the request is made is an approved provider, it has a responsibility under paragraph 63-1(1)(b) of the Aged Care Act to cooperate. If an approved provider, refuses to answer a question or produce a requested document, the approved provider may fail to comply with their responsibility to cooperate under paragraph 63-1(1)(b) of the Aged Care Act. This may result in a sanction being imposed on the approved provider under Part 7B of the Quality and Safety Commission Act. Whether a refusal to provide consent amounts to a failure to comply with an approved provider's responsibility to cooperate, and results in sanctions being imposed, will depend on the circumstances and the reasonableness of a refusal.

This responsibility is valuable not only in gaining access to aged care facilities but also in terms of being provided with assistance in searching computers and documents, and facilitating access to ask care recipients and their representatives questions. The Regulatory Powers Act does not impose any similar obligations, except in relation to the exercise of monitoring powers under a warrant where occupiers have an obligation under section 31 to provide an authorised officer or persons assisting with reasonable facilities and assistance for the effective exercise of their powers.

Section 92-3 - Investigation powers

Provisions subject to investigation

Section 92-3 will confer powers of investigation on authorised officers by triggering Part 3 of the Regulatory Powers Act. While similar kinds of powers are available under Division 92 of the Aged Care Act, these powers are limited to investigating contraventions of offences under the Aged Care Act at premises entered under warrant only, and do not extend to contraventions of the civil penalty provisions under Division 29A. Division 29A imposes a civil penalty on approved providers in relation to the provision of false or misleading information in connection with an appraisal or reappraisal of care recipient needs or in relation to the provision of an incorrect or inaccurate appraisal, after having received a warning from the Secretary for having previously submitted incorrect or inaccurate appraisals for the appraisal or reappraisal of the level of care needed by care recipients, in the circumstances specified under those provisions.

Authorised applicant, authorised person, issuing officer, relevant chief executive and relevant court

For the purposes of triggering Part 3 of the Regulatory Powers Act, subsection (2) specifies authorised officers under the Aged Care Act as authorised applicants and authorised persons under the Regulatory Powers Act; a magistrate to be the issuing officer under the Regulatory Powers Act; the Secretary under the Aged Care Act as the chief executive under the Regulatory Powers Act; and the Federal Court, Federal Circuit Court and relevant court of a State or Territory with jurisdiction in relation to matters arising under the Aged Care Act or the Transition Act as the relevant courts under the Regulatory Powers Act.

Persons assisting

Subsection (3) provides that an authorised officer may be assisted by other persons exercising powers or performing functions under Part 3 of the Regulatory Powers Act. This provision empowers an authorised officer to be assisted by other persons for the purposes of section 53 of the Regulatory Powers Act. Paragraph 53(1)(a) of the Regulatory Powers Act provides that a person exercising monitoring powers may only be assisted by another person if that assistance is necessary and reasonable.

Authorised officers may require the expertise of persons who are not APS employees of the Department to assist in determining compliance with evidential material and related matters, such as persons with specialist clinical expertise and knowledge to assist in determining compliance by approved providers with the civil penalty provision relating to the provision of false or misleading information in connection with an appraisal or reappraisal of care recipient needs or relating to the provision of an incorrect or inaccurate appraisal. Given the wide range of expertise which may be

required from time to time, the external engagement of these persons may be an appropriate means by which to engage these persons.

Use of force in executing warrant

Subsection (4) empowers authorised officers and persons assisting authorised officers to use such force against things as is necessary and reasonable in the circumstances. This reproduces the current powers available under the Aged Care Act which allows the use of reasonable and necessary force in executing an offence related (investigation) warrant under section 92-3.

The ability to use force to enter premises under a warrant in order to exercise investigation powers will be necessary where entry has been demanded but refused, or where an approved provider has abandoned the premises, or where depending on the circumstances, there is a reasonable belief there is evidence of a contravention of the civil penalty provision under Division 29A at the premises, but is being concealed. In these circumstances, it may be reasonably necessary for an authorised person executing a warrant to open locked doors, cabinets, drawers and other similar objects for the purposes of seizing things which an authorised person reasonably suspects contains evidential material of the contravention of the civil penalty provision under the Aged Care Act.

Extension to external Territories

Subsection (4) extends the same powers of investigation which apply in relation to the specified provisions under subsection (1) to external Territories. Subsection (1) triggers Part 3 of the Regulatory Powers Act and section 92-4 modifies its application to provisions specified under subsection (1).

Section 92-4 - modifications of Part 3 of the Regulatory Powers Act

While section 92-3 triggers the investigation powers under Part 3 of the Regulatory Powers Act, section 92-4 modifies its application to the civil penalty provision under Division 29A of the Aged Care Act.

Securing electronic equipment and other things

Subsection (2) increases the maximum period for which an authorised officer may secure electronic equipment under section 51 of the Regulatory Powers Act or seek an extension under section 74 of the Regulatory Powers Act. Section 51 of the Regulatory Powers Act allows authorised officers to secure electronic equipment where the authorised officer suspects on reasonable grounds the equipment may contain evidential material of a kind specified in an investigation warrant, and assistance is required to operate the equipment to access the material and that the evidential material may be altered, destroyed or modified if action is not taken under section 51.

The extended period for securing electronic equipment or things allows additional time for an authorised officer to obtain a warrant, particularly in remote locations where it may not be operationally possible to obtain a warrant within 24 hours.

Asking questions and seeking production of documents

Subsection (4) extends the power of authorised officers under subsection 54(2) of the Regulatory Powers Act, to ask the occupier of the premises to answer any questions,

and produce any documents when the premises are entered with consent, to also include asking any other person on the premises. This is necessary given persons other than the occupier may possess information relevant to determining compliance or verifying information given in purported compliance with the civil penalty provision is correct. For example, it may be relevant for an authorised officer to talk to care recipients who reside at the premises of a residential care service, to assist in determining compliance with provisions dealing with the appraisal or reappraisal of the level of care needed by those care recipients.

Before asking a question or seeking the production of a document under subsection 54(2) of the Regulatory Powers Act, subsection (4) requires an authorised officer to inform an approved provider of the responsibility under paragraph 63-1(1)(b) to cooperate with a person who is performing functions or exercising powers under Part 6.4 of the Aged Care Act.

This responsibility is valuable in terms of ensuring authorised officers are provided with the assistance required to efficiently search computers and documents, and facilitate access to ask consumers and their representatives questions etc, without the delays which would result from obtaining a warrant.

However, if the person to whom the request is made is an approved provider, it has a responsibility under paragraph 63-1(1)(b) of the Aged Care Act to cooperate. If an approved provider refuses to answer a question or produce a requested document, the approved provider may fail to comply with their responsibility to cooperate under paragraph 63-1(1)(b) of the Aged Care Act. This may result in a sanction being imposed on the approved provider under Part 7B of the Quality and Safety Commission Act. Whether a refusal to provide consent amounts to a failure to comply with an approved provider's responsibility to cooperate, and results in sanctions being imposed, will depend on the circumstances and the reasonableness of a refusal.

Division 93 – Notice to attend to answer questions etc

Division 93 will provide powers to issue notices to require persons to attend to answer questions or produce information of documents. Given there are no standard provisions under the Regulatory Powers Act for this kind of power, Division 93 will confer the same kind of notice powers available under Division 93 of the Aged Care Act. Some minor changes will be made to modernise the drafting of these provisions and ensure consistency with *A Guide to Framing Commonwealth Offences, Infringement notices and Enforcement Powers*, including separating provisions for notices to produce from notices to attend to improve the clarity of these provisions.

Section 93-1 Notice to attend to answer questions etc. relevant to certain matters

Subsection 93-1(1) provides that a notice to produce or attend must only be issued where there are reasonable grounds to believe the person required to produce documents or information or answer questions has custody or control of documents, information or knowledge relevant to the listed matters. Subsection (1) limits the use of notices to produce or attend to information or documents relevant to appraisals and reappraisals of the level of care needed by a care recipient under sections 25-3, 27-3 and 27-5 of the Aged Care Act, claims made by an approved provider for payment of a subsidy under Chapter 3 of the Aged Care Act or Transition Act, applications (other than for approval as a provider of aged care) made under the Aged Care Act or

Transition Act, and compliance with the conditions of a grant made under Chapter 5 of the Aged Care Act. These reflect the matters which will continue to be dealt with under the Aged Care Act from 1 January 2020.

Subsection 93-1(2) confers the powers to issue notices to attend before an authorised officer to answer questions, and produce information or documents. Unlike the existing notice powers under subsection 93-1(1) of the Aged Care Act which deal with notices to attend and produce together, under subsection (2) the Secretary may issue notices requiring a person to either attend or produce, or both. Subsection (3) sets out what must be contained in a notice, and subsection (4) imposes a new requirement for a notice to provide at least 14 days within which a person must comply. Subsection (5) provides that a person is not required to comply with a notice given under subsection (2) if the requirement does not relate to the affairs of an approved provider as a corporation.

Subsection (6) provides that a person that fails to comply with a notice commits an offence. A maximum fine of 30 penalty units may be imposed for this offence.

Subsection (7) entitles a person to reasonable compensation for producing copies of information or documents specified in a notice given under subsection (2).

Section 93-2 Attending before authorised officer to answer questions

Section 93-2 provides additional arrangements to govern the questioning of persons under oath or affirmation. Unlike the existing notice powers under section 93-4 of the Aged Care Act which deals with notices to attend and produce together, subsection (1) limits the application of this section to only where a person is given a notice to attend before an authorised officer to answer questions under subsection 93-1(2). Subsection (2) allows an authorised officer to question a person under an oath or affirmation, and to administer the oath or affirmation. Subsection (3) provides that an oath or affirmation taken or made by a person is that the statements made by the person will be true.

Subsection (4) provides that a person is not required to comply with a requirement under subsection (2) if the requirement does not relate to the affairs of an approved provider as a corporation.

Subsection (5) provides that a person who does not answer questions under oath or affirmation relating to the affairs of an approved provider as a corporation, when required by an authorised officer commits an offence. A maximum fine of 30 penalty units may be imposed for this offence.

Division 94 – Appointment of authorised officers

Division 94 provides for the appointment of authorised officers for the purposes of exercising powers or performing functions across both the Regulatory Powers Act and the Aged Care Act and the issuing of identity cards which effectively avoids the need for an officer to carry more than one card while exercising powers for either of these purposes.

Section 94-1 Authorised officers must carry identity card

Section 94-1 requires authorised officers to carry their identity cards with them at all times when performing functions or exercising powers to monitor the provisions which do not trigger the Regulatory Powers Act – i.e. the provisions subject to Division 91. The requirements under section 94-1 are intended to complement similar requirements for carrying identity cards under subsections 35(6) and 76(6) of the Regulatory Powers Act which apply in relation to the provisions that trigger the Regulatory Powers Act under Division 92. Taken together, this means that authorised officers will be required to carry their identity cards when exercising entry and search powers under Division 91 or monitoring or investigation powers under Parts 2 or 3 of the Regulatory Powers Act.

94-2 Appointment of authorised officers

Section 94-2 deals with the appointment of authorised officers. Subsection 94-2(1) provides that the Secretary may appoint a person as an authorised officer, for the purposes of Part 6.4. Under Part 6.4, Division 91 confers powers on authorised officers to administer provisions which do not trigger the Regulatory Powers Act, and Division 92 confers powers on authorised officers for the enforcement provisions which trigger the Regulatory Powers Act.

Further, subsection 94-2(1) limits the persons who may be appointed as an authorised officer to an APS employee of the Department. An APS employee of the Department is intended to apply to the same category of persons who may be appointed by the Secretary as an authorised officer as described under section 90-3 of the Aged Care Act. It is consistent with Australian Government policy to limit the appointment of authorised officers who exercise coercive powers to Commonwealth employees given these officers are subject to a range of accountability mechanisms by virtue of their employment.

Subsection 94-2(2) prevents the Secretary from appointing persons as authorised officers, unless the Secretary is satisfied that the person has suitable training or experience to properly perform the functions, or exercise the powers, of an authorised officer. While no such requirement currently exists under the Aged Care Act, this is consistent with Australian Government policy and appropriate given authorised officers will exercise coercive powers.

Subsection 94-2(3) provides that an authorised officer must comply with the directions of the Secretary in relation to an authorised officer's exercise of powers or the performance of functions. Subsection 94-2(4) is included to assist readers understand the status of a direction given by the Secretary is not a legislative instrument within the meaning of subsection 8(1) of the *Legislation Act 2003*, and is not intended as an exemption from that Act.

Item 30 - paragraph 95C-1(3)(a)

This item repeals and substitutes the reference to the Federal Court of Australia with the Federal Court, which will be defined in Schedule 1, by amendment under item 35 of this Schedule.

Item 31 - section 96-1 (table item 22)

This item repeals item 22, to remove the Sanctions Principles as one of the legislative instruments which the Minister may make under section 96-1.

Item 32 and 33 - subparagraph 96-8(1)(b)(ii) and subsection 96-8(6) (note)

These items omit and substitute references to the Secretary, with the Quality and Safety Commissioner for the purposes of the administration of the reporting of reportable assaults.

Items 34, 35, 36, 37 and 38 – Clause 1 of Schedule 1

These items amend or insert various definitions in the dictionary under Schedule 1 of the Aged Care Act, for the purposes of exercising powers under Part 6.4 of the Aged Care Act.

In addition, item 38 repeals the definition of section 67-5 notice time, which relates to the function under Part 4.4 which will be repealed under item 26 of Schedule 2.

Aged Care Quality and Safety Commission Act 2018

Items 39 and 40 – section 6

Section 6 of the Quality and Safety Commission Act provides a simplified outline of the matters that are dealt with under this Act.

Item 39 will amend section 6 to outline the additional functions of imposing sanctions on approved providers and lifting sanctions and ensuring compliance with the aged care responsibilities of approved providers and related provisions, which will be conferred under the Quality and Safety Commission Act by amendments set out under this Schedule.

Item 40 will make a consequential amendment to the last paragraph of section 6, to remove the part of that paragraph which will be made redundant, by the amendment under item 39.

Items 41, 42, 43, 44, 45 – section 7

These items insert, amend or repeal a number of definitions related to the exercise of powers under Parts 7B, 8 and 8A.

Items 46 – section 14

Section 14 of the Quality and Safety Commission Act provides a simplified outline of the Part 3 of this Act. Part 3 deals with matters relating to the Commissioner, including the Commissioner's functions and appointment.

This item will amend section 14 to outline the additional functions of imposing sanctions and lifting sanctions conferred by Part 7B, and ensuring compliance with the aged care responsibilities and related provisions, such as those conferred by Part 8A of the Quality and Safety Commission Act. These additional functions will be set out under subsection 16(1).

Item 47 – paragraph 16(1)(b)

Subsection 16(1) of the Quality and Safety Commission Act sets out the functions of the Commissioner, that include (among others) the consumer engagement functions,

the complaints functions, the regulatory functions and the education functions. This item will include under subsection 16(1), the additional functions of imposing sanctions and lifting sanctions conferred by Part 7B, and ensuring compliance with the aged care responsibilities and related provisions, such as those conferred by Part 8A of the Quality and Safety Commission Act. (Part 7B will be inserted by item 22 of Schedule 2 and Part 8A will be inserted by item 29 of Schedule 2 of this Bill).

Item 48 – section 52

This item inserts a paragraph to section 52 to specify additional requirements for annual reporting by the Commissioner as a consequence of transferring the Secretary’s function of imposing sanctions on and lifting sanctions from approved providers under Part 4.4 of the Aged Care Act to the Commissioner under Part 7B of the Quality and Safety Commission Act. Similar reporting requirements apply in relation to requirements for reporting about the imposition of sanctions under Part 4.4 under paragraph 63-2(g) of the Aged Care Act, which will be repealed.

Items 49 and 51 - paragraphs 61(1)(a) to (g), (h) and (i)

These items correct a typographical error by substituting ‘and’ with ‘or’ in relation to the listed grounds of permitted disclosures of protected information under subsection 61(1).

Item 50 - After paragraph 61(1)(g)

This item inserts an additional ground of permitted disclosure of protected information under subsection 61(1) to enable disclosures to be made to eligible advisors appointed in accordance with a notice given under section 63U, for the purposes of assisting an approved provider to comply with aged care responsibilities.

Personal information about the care and services provided by an approved provider to its individual care recipients may be acquired in the course of exercising regulatory powers under the Act to determine whether an approved provider is complying with its aged care responsibilities. Disclosure of this information to an eligible advisor is reasonably necessary to protecting care recipients by assisting an approved provider to address failures in its provision of quality of care and services. For example, this information will inform how an eligible advisor may best guide and assist an approved provider in the day to day delivery and management of nursing services to individual care recipients.

The disclosure of personal information under paragraph 61(1)(g) is also proportionate given that a notice requiring an approved provider to appoint an eligible advisor under section 63U is reserved for serious cases of non-compliance where the Commissioner is considering revocation of approval.

Item 52 – Before Part 8

This item will insert Part 7B into the Quality and Safety Commission Act to confer on the Commissioner the additional functions of imposing sanctions on, and lifting sanctions from, approved providers as part of transferring these functions from the Secretary under Part 4.4 of the Aged Care Act.

Part 7B of the Quality and Safety Commission Act will also make some minor modifications to the functions under Part 4.4 of the Aged Care Act which will enhance the Commissioner's ability to deal with non-compliance, before sanctions may be imposed. In particular, Division 3 of Part 7B will streamline the procedures under sections 67-2 and 67-3 of the Aged Care Act which must be followed before sanctions may be imposed, while providing the Commissioner with greater flexibility to pursue remedial actions of the kind under sections 67-4 or 66-2 to address non-compliance.

Part 7B – Sanctions for non-compliance with aged care responsibilities of approved providers

Part 7B provides for the performance of the Commissioner's function of imposing sanctions on an approved provider for non-compliance with aged care responsibilities under the Aged Care Act, and exercising powers related to this function. These include requiring an approved provider to give an undertaking about remedying non-compliance or to agree to take certain actions if revocation is being considered as a sanction.

Division 1 – Introduction

Section 63M - Simplified outline of this Part

Section 63M provides a simplified outline of Part 7B.

Division 2 – Imposition of sanctions by the Commissioner

Section 63N – Commissioner may impose sanctions for non-compliance with aged care responsibilities

This section sets out the matters the Commissioner needs to be satisfied of when making a decision to impose sanctions on an approved provider. In the first instance, these considerations are whether the approved provider is not complying, or has not complied; with their aged care responsibilities and that sanctions are appropriate.

Subsection 63N(2) provides that in making the decision to impose sanctions the Commissioner must also give consideration to any related information provided by the Secretary in relation to the approved provider's responsibilities under the Aged Care Act relating to an approved provider's responsibilities to undertake appraisals and reappraisals under Part 2.4 in a proper manner, and to maintain related records.

Subsection 63N(3) provides that the Commissioner must give consideration to a number of factors in relation to the non-compliance when deciding if sanctions are the appropriate course of action. The most important of these is if the non-compliance has or would threaten the health, welfare of interests of care recipients the approved provider is currently or may in the future provide care to. The Commissioner needs to also consider the seriousness of the non-compliance and the approved provider's previous history of non-compliance and the approved provider's commitment to remedy the non-compliance.

Subsection 63N(5) provides the details the Commissioner must include in a notice of a decision if a sanction is to be imposed. The Commissioner must provide a written notice containing the decision and reasons the decision was made, stating the details of the provider's non-compliance. The notice must contain each of the sanctions and the effect they will have on the approved provider.

If the sanction is to revoke or suspend the approved provider's allocation of places under Part 2.2 of the Aged Care Act the Commissioner must specify the number of places the sanction involves. The date the sanction comes into effect must be included and if the sanction is to cease this date is to also be included as well as the details of the lifting of the sanction.

Section 63P – Period within which the revocation of approval of approved provider must take effect in certain circumstances

This section sets out the provisions in relation to the sanction notice for the revocation of the approved provider's approval to provide aged care services. While other types of sanctions can come into effect on a day determined by the Commissioner, this discretion is limited for a sanction notice to revoke approval that does not contain any other sanctions. This type of sanction must come into effect within 14 days from the date it is issued to the approved provider.

Section 63Q – When the revocation or suspension of allocation of places is to take effect

This section sets out the provisions in relation to when a sanction notice is to revoke or suspend a particular number of affected places allocated to the approved provider takes effect. The affected places may be vacant or occupied at the time the sanction notice is provided to the approved provider. The notice must set out the requirements for the affected places clearly in relation to the date the sanction takes effect. The date of effect will be different for vacant and occupied places. For a vacant place, the date of effect will be the date the sanction takes effect. For an occupied place, this provision means it will take effect on the day after the place becomes vacant.

Section 63R – Kinds of sanctions that can be imposed on approved providers

This section describes the types of sanctions available to the Commissioner allowing a proportionate response to provider's non-compliance with its aged care responsibilities. The sanctions available restrict the approved provider's service offering, payment of subsidy or allocation of places.

The Commissioner is able to graduate the sanction in each of these circumstances. For example if the sanction being applied is due to the approved provider not meeting their prudential obligations, the Commissioner may restrict the use of refundable deposits and/or accommodation bonds to being used only for limited purposes, such as repayments.

This list of sanctions reflects the sanctions available to the Secretary under Part 4.4 of the Aged Care Act.

Division 3 – Notices that must be given, or may be given, before sanctions are imposed

Section 63S – Commissioner must notify approved provider of intention to impose sanctions on the provider

Subsection 63S(1) describes the course of action the Commissioner takes when they are satisfied a provider has not or is not complying with their aged care responsibilities and there is no immediate and severe risk to the safety, health and well-being of care recipients due to the approved providers non-compliance.

Subsections 63S(2) to 63S(4) sets out requirements for the written notice that the Commissioner must provide an approved provider, including the detail it must contain about the kinds of sanctions being considered in relation to its non-compliance and what effect they are likely to have on the approved provider. The Commissioner must also set out the reasons why sanctions are being considered, and broadly describe what actions the approved provider is expected to undertake to remedy the non-compliance.

The Commissioner must provide a minimum 14 days for the approved provider to make a submission in writing in response to the notice, but the Commissioner is able to specify a shorter timeframe to accelerate the process to address non-compliance (e.g. by either agreement under 63T or sanctions) where it is needed or appropriate. The 14 day timeframe is in place to ensure administrative efficiency without undermining procedural fairness.

Section 63T – Approved provider may be required to give undertaking about remedying non-compliance

Subsections 63T(1) to 63T(3) describes the ability of the Commissioner to, by written notice, give a provider notice under 63N an opportunity to remedy the non-compliance prior to a sanction being imposed on them. The Commissioner must include in the written notice they may decide to impose one or more sanctions on the approved provider if the approved provider does not give the required undertaking to remedy the non-compliance or they do not comply with the undertaking they give to the Commissioner.

Under the notice, the approved provider is required to give the Commissioner an undertaking to remedy the non-compliance within 14 days of receiving the notice, or a shorter period if specified by the Commissioner. The approved provider's undertaking must acknowledge and describe their non-compliance, set out the actions they will undertake and the timeframe they will abide by to remedy the non-compliance. The approved provider must acknowledge that if they do not comply with the undertaking, the Commissioner may decide to impose one or more sanctions on them.

Section 63U – Approved provider may be required to agree certain matters if revocation of approval is being considered

This section provides for instances where the Commissioner is satisfied that an approved provider has not complied or is not complying with their aged care responsibilities and is considering a revocation sanction.

Where the Commissioner is considering revoking the approval of a provider as the sanction for the non-compliance, the Commissioner is able to, by written notice, require the approved provider to agree to take certain actions, noting that if they do not agree, the Commissioner may revoke their approval.

An agreement under this section may cover any matters that the Commissioner considers necessary to bring the approved provider back into compliance with its responsibilities, and would commonly include training for staff, payment of debts, and the appointment of an eligible adviser to assist with the clinical governance or corporate governance of the approved provider. It might also require the approved provider to transfer any of their allocated places to another person to provide care.

In the circumstances outlined above, subsection (1) provides that the Commissioner may give notice under this section, where there is an immediate and severe risk to the safety, health and well-being of care recipients without the need to notify an approved provider about the non-compliance under section 63S, before sanctions may be imposed.

Alternatively, where there is not an immediate and severe risk to the safety, health and well-being of care recipients, and the Commissioner has issued a notice under section 63S, the Commissioner may also give notice under this section in the following additional circumstances:

- if the approved provider made submissions in response to a notice given under section 63S and the Commissioner considers the response to be unsatisfactory in terms of the matters listed under paragraph 63T(1)(c); or
- if the approved provider made submissions in response to a notice given under section 63S and the Commissioner considers the response to be satisfactory in terms of the matters listed under paragraph 63T(1)(c) and gives the approved provider notice requiring the approved provider to give an undertaking to take certain actions to remedy the non-compliance, and the approved provider either:
 - o refuses to give an undertaking under section 63T; or
 - o gives an undertaking but fails to comply with the undertaking under section 63T.

The intended effect of these provisions is to allow (but not oblige) the Commissioner to require an approved provider to take specific actions to address the non-compliance before their approval is revoked.

Where a provider fails to comply with an agreement entered into under section 63U, the Commissioner is empowered to sanction the approved provider for not complying with the agreement, without first issuing a notice under section 63S.

Division 4 – Lifting of sanctions imposed on approved providers

Section 63V – Application for lifting of sanction imposed on approved provider

This section provides that a provider may apply to the Commissioner in writing to have their sanction lifted. The application must be made in the manner specified by the Commissioner and accompanied by any fee specified by the Commissioner. The Commissioner has the power to charge fees for any services provided under section 23 of the Quality and Safety Commission Act.

The approved provider can at any time withdraw their application.

Section 63W – Request for further information

This section provides for the Commissioner to be able to ask, by written notice, for additional information from the approved provider, where they have requested that their sanction be lifted under Section 63V. The Commissioner must specify the details of the information they require, the timeframe that it is required to be provided within, which would ordinarily be 28 days after the notice is given.

There is an opportunity for the approved provider to request an extension to the period of time available to deliver the information. If the approved provider does not give the Commissioner the requested information within the specified period, it is taken to be a withdrawal of the approved provider's application for lifting of sanctions. If the request is taken to be withdrawn the approved provider may make another application under 63V.

Section 63X – Commissioner must decide whether to lift sanction imposed on the approved provider

This section provides that the Commissioner must make a decision within 28 days after receiving additional information that had been requested from the approved provider under section 63W, or 28 days after receipt of a provider's application for the lifting of a sanction.

In making their decision the Commissioner must consider if the approved provider is complying with their aged care responsibilities and any other matter specified in the rules.

Section 63Y – Notification of decision relating to lifting sanction imposed on the approved provider

This section describes the written notice that the Commissioner must give to the approved provider setting out their decision in relation to lifting a sanction. The notice must be provided within 14 days after the decision has been made.

Under subsection 63Y(1), if the decision is to lift the sanction the date that the sanction will cease to be in effect must be included and any other matters in the Rules the Commissioner wants to bring to the approved provider's attention. A copy of the notice is to be provided to the Secretary as soon as practicable.

Under subsection 63Y(2), if the decision is not to lift a sanction the reasons for the decision must be included in the notice as well as the how the approved provider applies for reconsideration of the decision. A copy of the notice is to be provided to the Secretary as soon as practicable.

Item 53 – Part 8

This item repeals and substitutes the heading to Part 8 to reflect the inclusion of additional powers under item 57 to support the Commissioner's new function to determine applications for approval as a provider of aged care under Part 7A.

Part 8 – Entry and search powers relating to provider approval applications

Items 54, 55 and 56 – section 64 and Division 2 of Part 8

These items make a number of amendments to the simplified outline and the heading of Division 2 of this part as a consequence of repealing section 73 under item 78 which currently provides for the appointment of authorised complaints officers, and the insertion of section 75A under item 87.

Section 75A provides for the appointment of a broader category of persons, defined as authorised officers, who are conferred regulatory powers for the purposes of the Quality and Safety Commission Act or Commission Rules.

Item 57 – section 64A

This item inserts section 64A which provides authorised officers with entry and search powers, if the Commissioner considers the exercise of these powers necessary for the purpose under subsection 64A(1), of making decisions on applications for approval as a provider of aged care under section 63B. Subsection 64A(3) requires an authorised officer to obtain the consent of the occupier before entering the premises to exercise search powers.

Section 64A confers the same kinds of monitoring powers which are available under Part 2 of the Regulatory Powers Act. However, the Regulatory Powers Act is not triggered for the purposes under paragraph 64A(1)(a) since section 64A is only intended to confer entry and search powers, where entry is authorised by the consent of the occupier and not under warrant. For the purposes of deciding applications for approval as a provider of aged care, entry under warrant would not be appropriate given that persons, such as applicants, have not yet been approved to receive payments made under the Aged Care Act, and their associated obligations, and as such, there are also no statutory provisions specifying requirements or imposing obligations on persons which may be made subject to the powers under the Regulatory Powers Act.

Items 58, 59, 61, 62, 63, 64, 65, 72, 73, 74, 75 and 76 – section 65, subsections 66(1), 66(5), 67(1), 67(2), 71(2) and 72(5) and paragraphs 66(6)(a), 71(1)(a), 72(1)(a) and 72(3)(a)

These items make various amendments to repurpose the operation of Part 8 to accommodate the additional powers inserted under item 57, and facilitate the conferral of these powers on a new broader category of persons exercising regulatory powers, defined as authorised officers which encompasses authorised complaints officers.

Items 60, 66, 67, 68, 69, 70 and 71 – subsections 67(2), 69(1) and 70(2) and paragraphs 66(1)(b) and 69(1)(b)

These items update references to the current responsibility for approved providers to cooperate with persons exercising regulatory powers under Part 8 of the Quality and Safety Commission Act under paragraph 63-1(1)(ba) of the Aged Care Act, with a new responsibility under item 20 that reflects the scope of the Commissioner's regulatory functions from 1 January 2020. These references identify where the responsibility to cooperate interacts with the exercise of certain regulatory powers conferred under Part 8.

The new responsibility under item 20 of Schedule 2 consolidates the current responsibility under paragraph 63-1(1)(ba) to cooperate with persons exercising powers under Part 8 of the Quality and Safety Commission Act or performing related functions, and the responsibility under paragraph 63-1(1)(b) to cooperate with persons exercising powers under Part 6.4 of the Aged Care Act or performing related functions, with a responsibility to also cooperate with persons exercising powers under Parts 2 and 3 of the Regulatory Powers Act or performing related functions. This single responsibility will operate across the applicable functions and powers of the Commissioner and the Secretary.

Item 77 – Division 5 of Part 8 (heading)

This item repeals and substitutes the heading with a heading referring to identity cards.

Division 5 – Identity cards

Item 78 – section 73

This item repeals section 73 which currently provides for the appointment of authorised complaints officers. A new provision is inserted under item 87 which provides for the appointment of a broader category of persons, exercising regulatory powers, which subsumes authorised complaints officers. These persons are appointed under section 75A as authorised officers for the purposes of the Quality and Safety Commission Act, or Commission Rules or both.

In addition, item 78 item substitutes section 73 with a provision requiring authorised officers to carry their identity cards with them at all times when performing functions or exercising powers under Part 8 of the Quality and Safety Commission Act, i.e. without triggering the Regulatory Powers Act. The new requirements under section 73 are intended to complement similar requirements for carrying identity cards under subsections 35(6) and 76(6) of the Regulatory Powers Act which apply in relation to the enforcement provisions which trigger the Regulatory Powers Act under Part 8A of the Quality and Safety Commission Act. Taken together, this means authorised officers will be required to carry their identity cards when exercising entry and search powers under Part 8 of the Quality and Safety Commission Act or monitoring or investigation powers under Parts 2 or 3 of the Regulatory Powers Act.

Items 79 to 84 – section 74

These items make various amendments to the requirements for identity cards under section 74 of the Quality and Safety Commission Act which currently apply to both authorised complaints officers and quality assessors. These amendments limit the scope of the requirements under section 74 to quality assessors, as a consequence of repealing section 73 under item 78 and the category of persons defined as authorised complaints officers. The resulting provisions provide separate requirements for the issuing of identity cards for quality assessors, who are registered under the Commission Rules, to the requirements which apply under section 73.

Item 85 – After Part 8

This item will insert Part 8A into the Quality and Safety Commission Act to confer on the Commissioner functions and powers relating to the enforcement of compliance with aged care responsibilities and related provisions under Part 8A, as part of transferring the similar functions and powers from the Secretary and authorised officers of the Department under Part 6.4 of the Aged Care Act.

Specifically, these include monitoring and investigation powers conferred under Part 6.4 of the Aged Care Act for the purposes of:

- assessing compliance with the responsibilities of approved providers and their record keeping obligations under Part 6.3 (see sections 91-1, 91-2, 91-3, 92-2, 92-5, 92-7, 92-8), and
- investigating the commission of offences under the Aged Care Act, which are related to these responsibilities (sections 92-3, 92-4, 92-6, 92-7, 92-8).

Part 8A—Enforcement of responsibilities of approved providers

Division 1 – Introduction

Section 74A Simplified outline of this Part

Section 74A provides a simplified outline of Part 8A.

Division 2 – Regulatory powers

Section 74B Monitoring powers

Section 74 will trigger Part 2 of the Regulatory Powers Act to provide authorised officers with standard monitoring powers, including to enter and search premises with the consent of the occupier or under warrant.

Provisions subject to monitoring

Subsections 74B(1) and (3) provides that the provisions under Chapter 4 of the Aged Care Act, are subject to monitoring under Part 2 of the Regulatory Powers Act and provisions referred to in Chapter 4 are related provisions for that purpose. Chapter 4 of the Aged Care Act imposes administrative responsibilities on approved providers. Subsection 74B(1) triggers the monitoring powers under Part 2 of the Regulatory Powers Act for the purposes of determining whether these responsibilities are being complied with.

Information subject to monitoring

In addition, subsection 74B(2) makes information given in purported compliance with a monitored provision under subsection (1) or a related provision under subsection (3) under subsection (1), also subject to monitoring under Part 2 of the Regulatory Powers Act, for the purposes of verifying whether this information is correct.

Related provisions

Subsections 74B(3) provides the provisions referred to in Chapter 4 of the Aged Care Act, are also provisions related to the monitoring of a responsibility or the responsibilities under Chapter 4 of the Aged Care Act. As a related provision, subsection (3) enables an authorised officer to secure anything the officer finds that could be evidence of a contravention of a responsibility or responsibilities, in the course of exercising monitoring powers to determine compliance with a responsibility.

Authorised applicant, authorised person, issuing officer, relevant chief executive and relevant court

For the purposes of triggering Part 2 of the Regulatory Powers Act, subsection (4) specifies authorised officers under the Aged Care Act as authorised applicants and authorised persons under the Regulatory Powers Act; a magistrate under the Aged Care Act as the issuing officer under the Regulatory Powers Act; the Commissioner under the Quality and Safety Commission Act as the chief executive under the Regulatory Powers Act; and the Federal Court, Federal Circuit Court and relevant court of a State or Territory with jurisdiction in relation to matters arising under the Aged Care Act or the Transition Act as the relevant courts under the Regulatory Powers Act.

Persons assisting

In addition, subsection (5) provides an authorised officer may be assisted by other persons exercising powers or performing functions under Part 2 of the Regulatory Powers Act in relation to a monitored provision. This provision empowers an authorised officer to be assisted by other persons for the purposes of section 23 of the Regulatory Powers Act. Paragraph 23(1)(a) of the Regulatory Powers Act provides a person exercising monitoring powers may only be assisted by another person if assistance is necessary and reasonable.

Authorised officers will require the assistance of persons who are not staff members of the Commission to perform functions or exercise the powers of an authorised officer under the Quality and Safety Commission Act and Rules from time to time. Given authorised officers may require expertise from a wide range of disciplines and specialist clinical experience to determine compliance with the responsibilities of approved providers, ranging from the provision of quality of care, the protection of user rights and prudential compliance, external engagement of these persons may be an appropriate means of sourcing expertise to ensure it remains current.

Use of force in executing a warrant

Subsection (6) empowers an authorised officer and persons assisting authorised officers to use such force against things as is necessary and reasonable in the circumstances. This reproduces the current powers available under the Aged Care Act which allows the use of reasonable and necessary force in executing a monitoring warrant under section 92-2.

The ability to use force to enter premises under a warrant in order to exercise monitoring powers will be necessary where entry has been demanded but refused, or where an approved provider has abandoned the premises or where there is evidence of non-compliance with a monitored provision being concealed. In these circumstances, it may be reasonably necessary for an authorised person executing a warrant to open locked doors, cabinets, drawers and other similar objects for the purposes of determining whether a monitored provision under the Aged Care Act is being complied with.

Section 74C - Modifications of Part 2 of the Regulatory Powers Act

While section 74B will trigger the monitoring powers under Part 2 of the Regulatory Powers Act, section 74C will modify its application to the monitored provisions listed under subsections 74B(1), (2) and (3).

Consent to entry

Subsection 74C(2) requires an authorised officer to inform the occupier that the occupier has a responsibility under paragraph 63-1(1)(b) to cooperate with a person who is performing functions or exercising powers under Part 8A, before consent is obtained to enter premises for the purposes of monitoring compliance with a provision under 74B(1) or verifying whether information given in purported compliance with a provision under 74B(2) is correct.

If the occupier of the premises is an approved provider, in refusing consent, or withholding consent to enter and search premises, the approved provider may fail to comply with their responsibility to cooperate under paragraph 63-1(1)(b) of the Aged

Care Act. This may result in a sanction being imposed on the approved provider under Part 7B of the Quality and Safety Commission Act. Whether a refusal to provide consent amounts to a failure to comply with an approved provider's responsibility to cooperate, and results in sanctions being imposed, will depend on the circumstances and the reasonableness of a refusal. For example, in some circumstances it may be reasonable to refuse consent to entry when an aged care service is experiencing an infectious disease outbreak or where entry would be inappropriate for cultural reasons such as the recent death of a resident. In practice, it is expected that entry to premises would be negotiated between authorised officers and approved providers to facilitate access on reasonable terms.

Item 20 of Schedule 2 imposes a responsibility on approved providers to cooperate with authorised officers exercising powers listed under paragraph 63-1(1)(b). This responsibility is vital to the Commission's ability to uncover and quickly respond to non-compliance, with the cooperation of approved providers. This is important to the Commission's ability to protect consumers, particularly in dealing with non-compliance that places the health, well-being and safety of consumers at an immediate or severe risk.

As recipients of Commonwealth subsidies for the provision of aged care, approved providers must accept a standard of accountability commensurate with the risks of harm to the well-being, health and safety of aged care consumers. Approved providers are therefore required to accept a statutory responsibility to cooperate when they are approved as providers, choosing to receive a government subsidy for the care they propose to provide, in order to facilitate the monitoring of the quality of care they provide to consumers. Given the potential relative disparity in power and control approved providers exercise over aged care consumers, particularly in a residential care setting, imposing this responsibility is necessary to both the Commission's quality assurance and effective monitoring of approved providers.

In relation to the Commission's quality assurance activities, the Commission audits and reviews the quality of care provided by approved providers in reliance on monitoring powers, which are exercised with the consent and cooperation of approved providers (who are occupiers). These assessments are conducted to identify areas of improvement (e.g. see sections 57 and 68 of the Commission Rules) and to accredit residential care services based on whether approved providers will undertake continuous improvement, against the applicable standards (e.g. see sections 29 and 41 of the Commission Rules). The cooperation of approved providers is appropriate to undertaking assessments for purposes which include assisting, educating and encouraging approved providers implement continuous of improvement against the applicable standards (e.g. see section 5 of the Commission Rules).

In relation to the Commission's compliance monitoring activities, exercising monitoring powers at premises entered with the consent and cooperation of occupiers who are approved providers is also the principal means by which the Commission assesses the quality of care provided by providers, and discovers potential concerns with non-compliance with their legislated responsibilities. While triggering Part 2 of the Regulatory Powers Act in its current form would allow a monitoring warrant to be obtained where consent to enter premises is refused, in the absence of a responsibility to cooperate this regime would be less effective in terms of the Commission's ability

to protect the quality of care and quality of life of aged care service recipients since it would lead to significant delays before access to the aged care service can occur.

In addition, the responsibility to cooperate is valuable not only in gaining access to aged care facilities but also in terms of being provided with assistance in searching computers and documents, and facilitating access to ask consumers and their representatives questions etc as key sources of information through which non-compliance can be feasibly discovered.

Securing electronic equipment and other things

Subsection 74C(3) increases the maximum period for which an authorised officer may secure electronic equipment under section 21, secure things under section 22 or seek extensions to this period under section 33 of the Regulatory Powers Act, from 24 to 48 hours. Section 21 allows authorised officers to secure electronic equipment where there are reasonable grounds to believe it may contain data relevant to a monitored provision and assistance is required to operate the equipment to access the data, and that the data will be altered, concealed or destroyed if action is not taken, under this section. Section 22 allows authorised officers to secure things where there are reasonable grounds to believe it affords evidence of the contravention of a related provision, and the evidence will be altered, concealed or destroyed if action is not taken under this section.

The extended period for securing electronic equipment or things allows additional time for an authorised officer to obtain a warrant, particularly in remote locations where it may not be possible to obtain a warrant within 24 hours.

Asking questions and seeking production of documents

Subsection 74C(4) extends the power of authorised officers under subsection 24(2) of the Regulatory Powers Act, to ask the occupier of the premises to answer any questions, and produce any documents when the premises are entered with consent, to also include asking any other person on the premises. This modification reproduces the effect of the existing power under section 91-2(1) of the Aged Care Act.

The ability to ask any person on the premises to answer questions or produce documents is necessary to enable authorised officers of the Commission to gather information from consumers and their nominated representatives, who may be reside at the premises of an approved provider of a residential care service or the premises at which a home care service is provided. Given the responsibilities of approved providers are primarily directed at protecting consumers and the quality of care they receive, consumers and their nominated representatives provide a critical source of information for assessing an approved provider's compliance with its responsibilities, and verifying whether information given in purported compliance with their responsibilities is correct.

Before asking a question or seeking the production of a document under subsection 24(2) of the Regulatory Powers Act, subsection 74C(5) requires an authorised officer to inform an approved provider it has a responsibility under paragraph 63-1(1)(b) to cooperate with a person who is performing functions or exercising powers under Part 8A of the Quality and Safety Commission Act.

Subsection 74C(6) provides that a person however is not required to comply with a request made under section 24(2) of the Regulatory Powers Act by an authorised officer or a person assisting.

However, if the person to whom the request is made is an approved provider, it has a responsibility under paragraph 63-1(1)(b) of the Aged Care Act to cooperate. If an approved provider, refuses to answer a question or produce a requested document, the approved provider may fail to comply with their responsibility to cooperate under paragraph 63-1(1)(b) of the Aged Care Act. This may result in a sanction being imposed on the approved provider under Part 7B of the Quality and Safety Commission Act. Whether a refusal to provide consent amounts to a failure to comply with an approved provider's responsibility to cooperate, and results in sanctions being imposed, will depend on the circumstances and the reasonableness of a refusal.

Section 74D - Investigation powers

Provisions subject to investigation

Section 74D will confer powers of investigation on authorised officers by triggering Part 3 of the Regulatory Powers Act. Section 74D of the Quality and Safety Commission Act will reproduce the same kinds of powers conferred on authorised officers in relation to offence related warrants under section 92-3 and 92-4 of the Aged Care Act. Triggering the powers under Part 3 of the Regulatory Powers Act is necessary to the effective administration of the offence provisions.

Given the commission of an offence subject to the investigation powers under Part 3 of the Regulatory Powers Act either amounts to a failure to comply with a responsibility, or is related to a failure to comply with a responsibility under Chapter 4 of the Aged Care Act, responsibility for these powers is transferred to the Commission since it complements the Commissioner's other functions of enforcing the responsibilities under Part 8A (specifically 74B and 74C) and imposing sanctions for non-compliance with these responsibilities under Part 7B of the Quality and Safety Commission Act.

Authorised applicant, authorised person, issuing officer, relevant chief executive and relevant court

For the purposes of triggering Part 3 of the Regulatory Powers Act, subsection 74D(2) specifies authorised officers under the Quality and Safety Commission Act as authorised applicants and authorised persons under the Regulatory Powers Act; a magistrate under the Quality and Safety Commission Act as the issuing officer under the Regulatory Powers Act; the Commissioner under the Quality and Safety Commission Act as the chief executive under the Regulatory Powers Act; and the Federal Court, Federal Circuit Court and relevant courts of a State or Territory with jurisdiction in relation to matters arising under the Quality and Safety Commission Act, Aged Care Act or the Transition Act as the relevant courts under the Regulatory Powers Act.

Persons assisting

Subsection 74D(3) provides that an authorised officer may be assisted by other persons exercising powers or performing functions under Part 3 of the Regulatory Powers Act in relation to evidential material that relates to an offence under the Aged Care Act or Quality and Safety Commission Act, as specified under

subsection 74D(1). This provision empowers an authorised officer to be assisted by other persons for the purposes of section 53 of the Regulatory Powers Act. Paragraph 53(1)(a) of the Regulatory Powers Act provides a person exercising monitoring powers may only be assisted by another person if assistance is necessary and reasonable.

Authorised officers will require the assistance of persons who are not staff members of the Commission to perform functions or exercise the powers of an authorised officer under the Quality and Safety Commission Act and Commission Rules from time to time. Given authorised officers may require expertise from various disciplines to search and seize evidential material that affords evidence of the commission of an offence, ranging from the protection of user rights to prudential compliance, external engagement of these persons may be an appropriate means of sourcing expertise to ensure it remains current.

Use of force in executing warrant

Subsection 74D(4) empowers authorised officers and persons assisting authorised officers to use such force against things as is necessary and reasonable in the circumstances. This reproduces the current powers available under the Aged Care Act which allows the use of reasonable and necessary force in executing an offence related (investigation) warrant under section 92-3.

The ability to use force to enter premises under a warrant in order to exercise investigation powers will be necessary where entry has been demanded but refused, or where an approved provider has abandoned the premises, or where depending on the circumstances, there is a reasonable belief there is evidence of an offence at the premises, but is being concealed. In these circumstances, it may be reasonably necessary for an authorised person executing a warrant to open locked doors, cabinets, drawers and other similar objects for the purposes of seizing things which an authorised person reasonably suspects contains evidential material of the contravention of the civil penalty provision under the Aged Care Act.

Section 74E - modifications of Part 3 of the Regulatory Powers Act

While section 74D will trigger the investigation powers under Part 3 of the Regulatory Powers Act, section 74E will modify its application to the offences under the Aged Care Act and the Quality and Safety Commission Act.

Securing electronic equipment and other things

Subsection 74E(2) increases the maximum period for which an authorised officer may secure electronic equipment under section 51 of the Regulatory Powers Act or seek an extension under section 74 of the Regulatory Powers Act. Section 51 of the Regulatory Powers Act allows authorised officers to secure electronic equipment where the authorised officer suspects on reasonable grounds the equipment may contain evidential material of a kind specified in an investigation warrant, and assistance is required to operate the equipment to access the material and that the evidential material may be altered, destroyed or modified if action is not taken under section 51.

The extended period for securing electronic equipment or things allows additional time for an authorised officer to obtain a warrant, particularly in remote locations where it may not be operationally possible to obtain a warrant within 24 hours.

Asking questions and seeking production of documents

Subsection 74E(4) extends the power of authorised officers under subsection 54(2) of the Regulatory Powers Act, to ask the occupier of the premises to answer any questions, and produce any documents when the premises are entered with consent, to also include asking any other person on the premises. This modification reproduces the effect of the existing power under section 92-7 of the Aged Care Act.

This modification is necessary given persons other than the occupier may possess information relevant to determining compliance or verifying information given in purported compliance with the civil penalty provision is correct. For example, speaking with care recipients of a residential care service may be critical to searching or seizing materials which afford evidence of the commission of an offence under subsection 52P-2(4) of the Aged Care Act. Subsection 52P-2(4) creates an offence for former approved providers who fail to refund a refundable deposit balance paid by a care recipient at the particular times, after the provider stops providing care to the care recipient, such as where a care recipient dies or has left the service. Asking care recipients who reside at the premises of a residential care service questions may be critical to locating or obtaining evidential materials in relation to critical elements of such an offence.

Division 3 – Notice to attend to answer questions etc

Division 3 provides powers to issue notices to require persons to attend to answer questions or produce information of documents. Given there are no standard provisions under the Regulatory Powers Act for this kind of power, Division 3 reproduces the existing notice powers in the Aged Care Act with minor changes to modernise the drafting of these provisions consistent with *A Guide to Framing Commonwealth Offences, Infringement notices and Enforcement Powers*. This largely includes separating provisions for notices to produce from notices to attend to improve the clarity of these provisions.

Section 74F Notice to attend to answer questions etc. relevant to whether aged care responsibility is being complied with

Subsection 74F(1) provides that a notice to produce or attend must only be issued where there are reasonable grounds to believe that the person required to produce documents or information or answer questions has custody or control of documents, information or knowledge, relevant to the listed matters. Subsection 74F(1) limits these to matters relevant to an approved provider or former provider's compliance with an aged care responsibility, which reproduces the existing powers under Division 93 of the Aged Care Act, as these relate to assessing whether an approved provider or former approved provider has complied with its responsibilities under Chapter 4 of the Aged Care Act.

However, the existing powers to issue notices to attend or produce under Division 93 has not being reproduced under section 74F for the purposes of assessing an application for approval as a provider of aged care. Conferring coercive investigation like powers would not be appropriate given these powers deal with persons who have

not yet been approved to receive the benefit of care or payments made under the Aged Care Act, and made subject to any obligations related to these payments or benefits.

Subsection 74F(2) sets out what must be contained in a notice, and subsection (3) imposes a new requirement for a notice to provide at least 14 days within which a person must comply. Subsection (4) provides that a person is not required to comply with a notice given under subsection (2) if the requirement does not relate to the affairs of an approved provider (or former approved provider) as a corporation.

Subsection (5) provides that a person who fails to comply with a notice that specifies requirements which relate to the affairs of an approved provider (or former approved provider) that is a corporation, commits an offence. A maximum fine of 30 penalty units may be imposed for this offence.

Subsection (6) entitles a person to reasonable compensation for producing copies of information or documents specified in a notice given under subsection (2).

Section 74G – Attending before authorised officer to answer questions

Section 74G provides additional arrangements to govern the questioning of persons under oath or affirmation. Unlike the existing notice powers under section 93-4 which deals with notices to attend and produce together, subsection 74G(1) limits the application of this section to only where a person is given a notice to attend before an authorised officer to answer questions under subsection 74G(2). Subsection 74G(2) allows an authorised officer to question a person under an oath or affirmation, and to administer the oath or affirmation. Subsection 74G(3) provides that an oath or affirmation taken or made by a person is that the statements made by the person will be true.

Subsection 74G(4) provides that a person is not required to comply with a requirement under subsection (2) if the requirement does not relate to the affairs of an approved provider (or former approved provider) as a corporation.

Subsection 74G(5) provides that a person that does not answer questions under oath or affirmation which relate to the affairs of an approved provider (or former approved provider) that is a corporation, when required by an authorised officer commits an offence. A maximum fine of 30 penalty units may be imposed for this offence.

Part 9 – Miscellaneous

Items 86 and 87 – section 75A

These items incorporate a new section 75A and heading dealing with the appointment of authorised officers. This replaces the existing section 73 of the Quality and Safety Commission Act, which provided for the appointment of authorised complaints officers, and which is repealed under item 78 of Schedule 2. The concept of an authorised complaints officer will be subsumed within the new and broader category of authorised officer, established under section 75A, which deals with all other officers of the Commission appointed for the purposes of exercising regulatory powers whether these are conferred under the Quality and Safety Commission Act, the Commission Rules or the Regulatory Powers Act. An authorised officer appointed under section 75A may therefore exercise the powers conferred on authorised officers

under Part 8 of the Quality and Safety Commission Act, and the monitoring and investigation powers triggered under Parts 2 and 3 of the Regulatory Powers Act.

Further, subsection 75A(1) limits the persons who may be appointed as an authorised officer to a person who is a staff member of the Commission, consistent with the persons who may be authorised officers under the Regulatory Powers Act. It is consistent with Australian Government policy to limit the appointment of authorised officers who exercise coercive powers to Commonwealth employees given these officers are subject to a range of accountability mechanisms by virtue of their employment.

Subsection 75A(2) prevents the Commissioner from appointing persons as authorised officers, unless the Commissioner is satisfied the person has suitable training or experience to properly perform the functions, or exercise the powers, of an authorised officer.

Subsection 75A(3) provides that an authorised officer must comply with the directions of the Commissioner in relation to an authorised officer's exercise of powers or the performance of functions. Subsection 75A(4) is included to assist readers understand the status of a direction given by the Commissioner is not a legislative instrument within the meaning of subsection 8(1) of the *Legislation Act 2003*, and is not intended as an exemption from that Act.

Items 88, 89 and 90 – subsection 76(1)

These items make various changes to section 76 to specifically allow delegations to be made in relation the functions or powers under Part 7B, to both staff members of the Commission, and an APS employee in the Department. This is intended to allow delegations to be made to APS employees in the Department to enforce certain aged care responsibilities, which support the administration of certain functions under Parts 2.4 and 6.3 of the Aged Care Act.

Item 91

This item inserts a note at the end of section 76 regarding sections 34AA to 34A of the *Acts Interpretation Act 1901*. These sections provide for matters related to the delegations of powers and functions that will apply to any delegations made by the Commissioner.

Aged Care (Transitional Provisions) Act 1997

Items 92, 93, 94 - subsection 42-2(1) and paragraphs 57-2(1)(o) and 57A-2(1)(m)

These items make various consequential amendments to the *Aged Care (Transitional Provisions) Act 1997* which update references in relation to the sanctions which may be imposed under 7B of the Quality and Safety Commission Act and other related references.

Social Security Act 1991

Item 95 - subparagraphs 11A(8)(a)(i), (b)(i) and (ba)(i)

This item makes various consequential amendments to the *Social Security Act 1991* which update references in relation to the sanctions which may be imposed under Part 4.4 with Part 7B of the Quality and Safety Commission Act.

Veteran's Entitlements Act 1986

Item 96 – subparagraphs 5LA(8)(a)(i), (b)(i) and (ba)(i)

This item makes various consequential amendments to the *Veteran's Entitlements Act 1986* which update references in relation to the sanctions which may be imposed under Part 4.4 with Part 7B of the Quality and Safety Commission Act.

Schedule 3 – Reconsideration and review of decisions

Aged Care Act 1997

Item 1 – section 85-1

This item will repeal items 1, 3, 54 and 55 of the table of reviewable decisions in section 85-1 of the Aged Care Act to abolish the Secretary's function relating to the reconsideration of these reviewable decisions, as part of transferring these functions for similar kinds of decisions to the Commissioner under Part 8B of the Quality and Safety Commission Act. Part 8B of Quality and Safety Commission Act is inserted by item 6 of Schedule 3.

Aged Care Quality and Safety Commission Act 2018

Item 2 – paragraph 6(f)

Section 6 of the Quality and Safety Commission Act provides a simplified outline of the matters that dealt with under this Act. This item will amend section 6 to outline the additional function of reconsidering and reviewing certain decisions, which will be conferred under the Quality and Safety Commission Act by amendments set out under this Schedule.

Item 3 – section 7

This item provides definitions for the purposes of reconsidering and reviewing certain decisions which will be conferred under the Quality and Safety Commission Act by amendments set out under this Schedule.

Item 4 – paragraph 14(f)

Section 14 of the Quality and Safety Commission Act provides a simplified outline of the Part 3 of this Act. Part 3 deals with matters relating to the Commissioner, including the Commissioner's functions and appointment. This item will amend section 14 to outline the additional function of reconsidering and reviewing certain decisions, to be set out under subsection 16(1).

Items 5 – paragraph 16(1)(f)

Subsection 16(1) of the Quality and Safety Commission Act sets out the functions of the Commissioner, that include (among others) the consumer engagement functions, the complaints functions, the regulatory functions and the education functions.

This item will include under subsection 16(1), the additional function of reconsidering and reviewing certain decisions conferred by Part 8B of the Quality and Safety Commission Act, which will be inserted under item 6 of Schedule 3.

The decisions which will be subject to reconsideration and review relate to the functions of approving providers of aged care, and imposing and lifting sanctions on approved provider under Parts 7A and 7B of the Quality and Safety Commission Act. Parts 7A and 7B are inserted under item 64 of Schedule 1 and item 52 of Schedule 2, respectively.

Item 6 – Before Part 9

This item will insert Part 8B into the Quality and Safety Commission Act to confer on the Commissioner functions relating to the reconsideration and review of certain decisions, connected to the additional functions of approving providers and imposing sanctions on approved providers, as part of transferring these functions from the Secretary under Part 6.1 of the Aged Care Act.

Part 8B – Reconsideration and review of decisions

Division 1 – Introduction

Section 74H – Simplified outline of this Part

Section 74H provides a simplified outline of Part 8B.

Division 2 – Reconsideration and review of decisions

Section 74J - Reviewable decisions and affected persons

This section identifies the decisions that are reviewable decisions and the affected persons who may, under section 74K, request reconsideration of those decisions in relation to the new functions of the Commissioner. These include:

- a decision not to approve a person as a provider of aged care,
- a decision to revoke the approval of a person or body as a provider of aged care
- a decision not to revoke approval of a person or body as a provider of aged care, if requested
- a decision to impose sanctions on a person or body
- a decision to not lift a sanction imposed on an approved provider.

Section 74K Affected person may request reconsideration of reviewable decision

Subsection (1) provides that an affected person may request reconsideration of a reviewable decision. Subsection (2) provides that the request must be made in writing, set out the reasons for the request and be given to the Commissioner within 14 days after the affected person is notified of the reviewable decision.

Section 74L Reconsideration of reviewable decision on request

If a request for reconsideration of a decision is made under section 74K, the Commissioner or the Commissioner's delegate must reconsider the decision. Where a decision is being reconsidered by a delegate, the delegate must occupy a position that is at least the same level as the position occupied by the original decision maker.

The internal decision reviewer must confirm, vary or set the reviewable decision aside and substitute a new decision. Subsection (4) deems a reviewable decision to be affirmed by the Commissioner or the Commissioner's delegate, if the Commissioner or the Commissioner's delegate has not given notice to the affected person within 90 days after receiving the request under section 74K.

Section 74M Reconsideration of reviewable decision on own initiative of Commissioner etc.

Subsection (1) enables the Commissioner or the Commissioner's delegate to reconsider a reviewable decision if satisfied there is sufficient reason to do so, without a request under 74K.

Subsection (2) provides that the Commissioner or the Commissioner's delegate must give written notice to the affected person for the decision that the decision is to be reconsidered. The Commissioner or Commissioner's delegate must confirm, vary or set the reviewable decision aside and substitute a new decision.

Subsection (4) requires written notice of the reconsidered decision to be given to the affected person within 90 days after the Commissioner or Commissioner's delegate commenced reconsideration of the decision. The notice must include the reconsideration decision, the date it takes effect and the reasons for the decision. Subsection (6) requires a copy to be provided to the Secretary as soon as practicable.

If notice of the reconsidered decision is not given in accordance with subsection (4), the reviewable decision will remain unaffected.

Section 74N Review by the Administrative Appeals Tribunal

Subsection (1) provides that an application may be made to the Administrative Appeals Tribunal (AAT) for a review of a reconsidered decision.

Section 27(1) of the *Administrative Appeals Tribunal Act 1975* provides that an application may be made by, or on behalf of any person or person whose interests are affected by the decision.

Schedule 4 – Transitional, application, saving and other provisions

Part 1—Introduction

Schedule 4 sets out matters that will enable the Commission to operate from transition time and deal with any applications or processes currently underway. It also sets out administrative arrangements to facilitate the continuation of business, such as the transfer of records and appointments of authorised officers.

Item 1 – Definitions

This item defines terms that are used in this Schedule, drawing upon definitions from the Aged Care Act and the Quality and Safety Commission Act. Importantly, this item defines:

Sanction notice – to mean a notice given by the Secretary under section 67-5 of the Aged Care Act. This is a notice that has been given to an approved provider, informing them sanctions either have been, or are to be, imposed.

Transferred function – to mean one of the functions that is performed by the Secretary before the transition time, and is to be performed by the Commissioner from that time are set out under Schedules 1, 2 and 3.

Transition time – to mean the date on which this schedule commences.

Part 2 – Approval of providers of aged care

Item 2 – Saving of approval of approved providers

This item establishes that an approved provider for the purposes of the Aged Care Act before the transition time continues to be an approved provider for the purposes of the Quality and Safety Commission Act after the transition time.

To be taken as an approved provider for the purposes of the Quality and Safety Commission Act, the provider must be conducting an aged care service at the transition time, to ensure that bodies that could fall within the broad scope of section 8-6 are not deemed to be an approved provider where they are not current providers. The new notification provision in section 63F would be available for such an entity to use. A provider that, at the transition time, is available to take on new care recipients (whether they currently have any care recipients or not) or is taking preparatory steps to providing care following its approval is intended to be considered to be conducting an aged care service for the purposes of this item, after the transition time.

Item 3 – Pending applications for approval as provider of aged care

This item provides the Commissioner may complete the consideration of applications for approval as a provider of aged care after the transition time, using the new provisions of the Quality and Safety Commission Act.

In addition, if a State or Territory organisation had previously had its approval revoked, the new notification provisions under section 63F are not available to the organisation. It would need to commence a new approval.

As the provisions of the Quality and Safety Commission Act replicate the operation of the provisions of the Aged Care Act, no applicant will be disadvantaged by this item. In addition, applicants will continue to have reconsideration and review rights, with these provided for in the Quality and Safety Commission Act.

Item 4 – Saving of notices requiring further information in relation to approval applications

This item provides that any request for information issued by the Secretary under section 8-4 of the Aged Care Act prior to the transition date will continue to have effect, and the information must be given to the Commissioner. If a provider were to give information to the Secretary after the transition time in purported compliance with a notice, the Secretary would be able to pass this information on to the Commissioner using the information sharing provisions of the Quality and Safety Commission Act.

Item 5 – Saving of notices requesting further information from approved providers

This item means any request for information issued by the Secretary under section 9-2(1) of the Aged Care Act prior to the transition date will continue to have effect, and the information will have to be provided to the Commissioner. If a provider were to give information to the Secretary after the transition time in purported compliance with a notice, the Secretary would be able to pass this

information on to the Commissioner using the information sharing provisions of the Quality and Safety Commission Act.

Item 6 – Saving of notices inviting submissions in relation to revocation of approval

This item means any notice issued under section 10-3 of the Aged Care Act, inviting submissions on whether the approval of a provider should be revoked prior to the transition date will continue to have effect, and the submissions are to be made to the Commissioner. If an approved provider were to give information to the Secretary after the transition time in an attempt to provide these submissions, the Secretary would be able to pass this information on to the Commissioner using the information sharing provisions of the Quality and Safety Commission Act.

Item 7 – Saving of notices relating to revocation of approval as a provider of aged care

This item saves the operation of notices given by the Secretary notifying the Secretary's decision to: revoke a provider's approval; limit an approved provider's approval; or revoked a provider's approval. The effect of this item is to provide that a revocation decision made prior to the transition time, will continue to take effect in accordance with the notices given in relation to the revocation, as if these notices were given by the Commissioner, under corresponding provisions under section 63L of the Quality and Safety Commission Act.

This item provides that a revocation decision made prior to the transition time will continue to take effect as per notices issued prior to the transition time, and will continue under the new provisions of the Quality and Safety Commission Act.

Part 3—Responsibilities of approved providers etc.

Division 1—Transitional etc. provisions relating to the imposition of sanctions on approved providers

Item 8 – Sanctions imposed on approved providers that have not come into effect immediately before transition time

The effect of this item is to provide that any sanction imposed by the Secretary under the Aged Care Act before the transition time and at the transition time has not as yet come into effect or continues in effect after the transition time, is taken to have been imposed by the Commissioner under the provisions of the Quality and Safety Commission Act. This ensures sanctions continue in force, but also enables providers to seek to lift these sanctions under the Quality and Safety Commission Act.

In addition, this item also provides that any agreement entered into before the transition time by an approved provider to do certain things specified in a sanctions notice in lieu of having the approval revoked under section 66-2 of the Aged Care Act, or where the approved provider agrees after the transition time to do more things specified in relation to the sanction notice, the agreement is taken to have been made for the purposes of section 63U.

Item 9 – Imposition of sanctions on approved providers still under consideration by the Secretary at transition time

This item ensures where the Secretary had met all of the requirements of Division 67 of the Aged Care Act prior to the transition time, but had not yet decided whether to impose a sanction, the Commissioner may decide to impose a sanction without complying with the applicable provisions in Division 3 of Part 7B given these natural justice steps would already have been undertaken by the Secretary.

Item 10 – Dealing with certain pre-transition notices of non-compliance

Part 7B of the Quality and Safety Commission Act will not contain an analogous step to the issuing of a notice of non-compliance. Accordingly, this item does not preserve all notices of non-compliance. However, where a notice of non-compliance has been issued and an approved provider has made satisfactory submissions in response, the Commissioner will be able to give a notice under section 63T to give an undertaking to remedy the non-compliance, to avoid an administrative burden from the approved provider needing to repeat their submissions to the Commissioner.

In other circumstances, the Commission would be required to issue a notice under section 63S before imposing a sanction, providing a procedural fairness step for the approved provider.

Item 11 – Saving of notices of intention to impose sanction

This item preserves any notices of an intention to issue sanctions issued by the Secretary prior to the transition time as if they had been issued under section 63T, and enable any submissions in response to the notice to be made to the Commissioner.

If an approved provider were to give information to the Secretary after the transition time in an attempt to provide these submissions, the Secretary would be able to pass this information on to the Commissioner using the information sharing provisions of the Quality and Safety Commission Act.

Item 12 – Saving of notices to remedy non-compliance

This item saves any notices to remedy non-compliance issued by the Secretary prior to the transition time and enables an approved provider to give an undertaking to the Commissioner under the new provisions of the Quality and Safety Commission Act in order to satisfy the notice. The undertaking would then have effect as if it had been given under section 63T.

Item 13 – Continued effect of undertaking given by approved provider to remedy non-compliance

This item saves an undertaking to take steps to remedy non-compliance given to the Secretary before the transition time so that it continues to have effect as if it were an undertaking under section 63T after the transition time. This means that if an approved provider fails to comply with the undertaking, the Commissioner will be empowered to use the powers in Part 7B to impose sanctions for this non-compliance.

Item 14 – Pending applications for lifting sanctions imposed on approved providers

This item allows the Commissioner to continue to deal with an application to lift a sanction after the transition time, where the Secretary was yet to make a decision on the application before the transition time.

Item 15 – Saving of notices requiring further information in relation to application to lift sanctions

This item means that any request for information issued by the Secretary under section 68-5 of the Aged Care Act prior to the transition time will continue to have effect after the transition time and the information will have to be provided to the Commissioner. If an approved provider were to give information to the Secretary after the transition time in purported compliance with a notice, the Secretary would be able to pass this information on to the Commissioner using the information sharing provisions of the Quality and Safety Commission Act.

Item 16 – Application – Part 7B of the Quality and Safety Commission Act

Part 7B of the Quality and Safety Commission Act is intended to apply to failures by providers to comply with their aged care responsibilities whether those failures occur before or after the transition time. This is to establish that, after the transition time, the Commissioner can deal with all instances of non-compliance including identifying and dealing with instances of non-compliance which occur before the transition time.

No person will be disadvantaged by the operation of this provision as the list of sanctions and the aged care responsibilities are not substantively changed by this Bill. Further, while the process for issuing sanctions has been simplified, Part 7B and the provisions in Schedule 4 ensure the same kinds of statutory protections afforded to providers for procedural fairness under the Part 4.4 of the Aged Care Act continue to be afforded under the Part 7B of the Quality and Safety Commission Act prior to the Commissioner issuing sanctions.

In addition, the overarching consideration of the Commissioner in imposing sanctions is to protect the health, welfare and interests of care recipients.

Division 2—Application provisions relating to Part 6.4 of the Aged Care Act

Item 17 – Application – power to enter premises and exercise search powers in relation to certain applications and grants

This item provides that an authorised officer under the Aged Care Act is able to exercise their search powers in relation to applications or grants made prior to the transition time. These authorised officers would have had search powers of a like effect under Part 6.4 of the Aged Care Act prior to the transition time.

Item 18 – Application – Monitoring powers

This item provides that an authorised officer under the Aged Care Act is able to exercise their monitoring powers in relation to appraisals and reappraisals made by providers (or persons acting on behalf of providers) under Part 2.4 of the Aged Care Act. These authorised officers would have had search powers of a like effect under Part 6.4 of the Aged Care Act prior to the transition time.

Item 19 – Application – Investigation powers

This item provides that an authorised officer under the Aged Care Act is able to exercise their investigation powers in relation to a contravention of a civil offence provision that occurred prior to the transition time. These authorised officers would have had search powers of a like effect under Part 6.4 of the Aged Care Act prior to the transition time.

Item 20 – Application – notices to attend to answer questions etc

Section 93-1 of the Aged Care Act enables the Secretary to give notice to a person to attend to answer questions and provide documents to an authorised officer for certain matters. This provision enables any outstanding notices to continue to have effect under the amended section 93-1 where they relate to the continuing functions of the Secretary. These matters are an application under the Aged Care Act or the Transition Act, an appraisal or reappraisal, a claim for payment of subsidy, or a grant.

Item 21 – Saving of appointment of certain authorised officers

This item allows any officers of the Department who were authorised officers under the Aged Care Act prior to the transition time, and are continuing to be APS employees of the Department after the transition time, to continue to be authorised officers after the transition time. This will enable a smooth transition for the Secretary to continue to perform their continuing functions under the Aged Care Act.

Division 3—Application etc. provisions relating to Parts 8 and 8A of the Commission Act**Item 22 – Application – monitoring powers**

This item provides that an authorised officer under the Quality and Safety Commission Act is able to exercise their monitoring powers in relation to conduct or information given prior to, at or after the transition time. Authorised officers of the Department would have had search powers of a like effect under Part 6.4 of the Aged Care Act prior to the transition time.

Item 23 – Application – investigation powers

This item provides that an authorised officer under the Quality and Safety Commission Act is able to exercise their investigation powers in relation to a contravention of a provision before, at or after the transition time. Authorised officers of the Department would have had search powers of a like effect under Part 6.4 of the Aged Care Act prior to the transition time.

Item 24 – Saving of appointment of authorised complaints officers

Authorised complaints officers are appointed by the Commissioner under section 73 of the Quality and Safety Commission Act. After the transition time, these officers will be taken to have been appointed as authorised officers for the purposes of the new provisions of the Quality and Safety Commission Act, and their identity cards will continue to have effect as if they had been issued under the new provisions.

Item 25 – Saving of appointment of certain authorised officers

This item provides that an officer of the Department that was an authorised officer under the Aged Care Act at the transition time, will be taken to be an authorised officer for the purposes of the Quality and Safety Commission Act if they become a member of the staff of the Commission at the transition time. This will enable the

Commission to continue operations, including exercising monitoring and investigation powers, around the transition time.

Item 26 – Saving of identify cares issued to quality assessors

The identity cards issued to quality assessors under section 74 of the Quality and Safety Commission Act prior to the transition time will continue to be able to be used by quality assessors after the transition time.

Division 4—Other matters

Item 27 – Application – suspending approved providers from making appraisals and reappraisals

This item provides that appraisals and reappraisals made prior to, at or after the transition time are required to be made in a proper manner or the Secretary can suspend their ability to make appraisals or reappraisals. No provider will be disadvantaged by this requirement as approved providers have also had a responsibility to conduct appraisals and reappraisals in a proper manner under paragraph 63-1(1)(h) of the Aged Care Act, and the Secretary has been able to impose sanctions for non-compliance with this responsibility.

Item 28 – Transition – annual report

Section 63-2 requires the Minister to make an annual report on the operation of the Aged Care Act. Under paragraph 63-2(2)(g), the Minister is required to include details about the sanctions imposed on providers during the year. This item provides that the report for the financial year 2019-20 will include details of any sanctions issued prior to the transition time. Details of any sanctions imposed after this date will be included in the annual report of the Commission, in compliance with the requirements of the *Public Governance, Performance and Accountability Act 2014*.

Part 4—Reconsideration and review of decisions

Item 29 – Request for reconsideration of pre-transition decisions relating to approval

This item enables a person who has been affected by a reviewable decision by the Secretary under the Aged Care Act relating to a transferred function, where the period for seeking a review of that decision has not expired at the transition time, to apply for a reconsideration under the new provisions of the Quality and Safety Commission Act. To ensure no person is disadvantaged, the period for making the request for reconsideration will continue to be the original reconsideration period as determined under the Aged Care Act.

Item 30 – Pending requests for reconsideration of pre-transition decisions relating to approval etc

Where a request for reconsideration of a decision by the Secretary is made under subsection 85-5(1) but is yet to be determined at the transition time, this item enables the reconsideration to be continued under section 74K of the Quality and Safety Commission Act.

Item 31 – Reconsideration of pre-transition decisions relating to approval etc. at the Commissioner’s own initiative

This item enables reviewable decisions that are made in the performance of a transferred function that would have been subject to reconsideration by the Secretary on the Secretary’s own initiative under subsection 85-4(1) of the Aged Care Act, to continue to be subject to reconsideration on the Commissioner’s own initiative under subsection 74M(1) of the Quality and Safety Commission Act.

Item 32 – Review by the Administrative Appeals Tribunal of certain pre-transition decisions

This item allows a person affected by a reviewable decision made by the Secretary prior to the transition time, to apply to the Administrative Appeals Tribunal for a review, where the time period for making an application for review has not expired as if the Secretary’s reconsideration decision had been made by the Commissioner under the Quality and Safety Commission Act.

Part 5—Provisions relating to transferred functions

Item 33 – Transfer of records

To operationally support the transferred functions in the Commission after the transition time, this item provides that the records and documents of the Department relate to a function transferring to the Commission at the transition time, become records and documents of the Commission.

Item 34 – Protected information

Where information acquired in the course of performing a transferred function or exercising transferred powers is protected information for the purposes of the Aged Care Act prior to the transition time, this information will become protected information under the Quality and Safety Commission Act, and subject to the protections set out in that Act (including an offence for its unauthorised use or disclosure). This item ensures the same protections continue to apply to information such as the personal information of care recipients and information about the affairs of an approved provider or an applicant for approval.

Item 35 – Legal proceedings

This provision enables the Commissioner to be substituted into any legal proceedings underway at the transition time where the legal proceedings relate to a transferred function. For example, if a former approved provider had requested a review of a decision by the Secretary to revoke their approval in the Administrative Appeals Tribunal and the proceedings were still underway at the transition time, the Commissioner would become the party representing the Commonwealth in these proceedings at the transition time.

Part 6—Rules

Item 36 – Rules

This item enables the Minister to make Rules to further deal with transitional matters, in the event that further saving and application provisions are needed to affect the transfer of functions to the Commissioner. Any Rules made under these provisions would be a legislative instrument.