

# EXPOSURE DRAFT

2022-2023

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT
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## **Aged Care Bill 2023**

**No.     , 2023**

*(Health and Aged Care)*

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

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

3     The Parliament of Australia enacts:  
4     **Chapter 1—Introduction**

5     **Part 1—Preliminary**  
6

7     **1 Short title**

8             This Act is the *Aged Care Act 2023*.

EXPOSURE DRAFT

Section 2

2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	1 July 2024.	1 July 2024

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Act binds the Crown

- (1) This Act binds the Crown in each of its capacities.
- (2) This Act does not make the Crown liable to be prosecuted for an offence.

4 Extension to external Territories

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

5 Objects of this Act

- The objects of this Act are to:
- (a) in conjunction with other laws, give effect to Australia’s obligations under the International Covenant on Economic,



# EXPOSURE DRAFT

Introduction **Chapter 1**  
Preliminary **Part 1**

## Section 5

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- 1 Social and Cultural Rights and the Convention on the Rights  
2 of Persons with Disabilities; and
- 3 (b) provide a forward-looking aged care system that is designed  
4 to:
- 5 (i) uphold the rights of individuals under the Statement of  
6 Rights; and
- 7 (ii) assist individuals accessing funded aged care services to  
8 live active, self-determined and meaningful lives; and
- 9 (iii) ensure equitable access to, and flexible delivery of,  
10 funded aged care services that put older people first and  
11 take into account the needs of individuals, regardless of  
12 their location, background and life experience; and
- 13 (iv) support individuals accessing funded aged care services  
14 to effectively participate in society on an equal basis  
15 with others, thereby promoting positive community  
16 attitudes to ageing; and
- 17 (v) facilitate access to integrated services in other sectors  
18 where required; and
- 19 (c) enable individuals accessing funded aged care services to  
20 exercise choice and control in the planning and delivery of  
21 those services; and
- 22 (d) ensure individuals accessing funded aged care services are  
23 free from mistreatment, neglect and harm from poor quality  
24 or unsafe care; and
- 25 (e) provide a robust and risk-based regulatory framework for the  
26 delivery of funded aged care services, including accessible  
27 complaint mechanisms for individuals accessing those  
28 services, that will promote public confidence and trust in the  
29 Commonwealth aged care system; and
- 30 (f) provide and support education and advocacy arrangements  
31 that can assist individuals accessing funded aged care  
32 services to understand their rights, make decisions and  
33 provide feedback on the delivery of their services without  
34 reprisal; and
- 35 (g) provide for sustainable funding arrangements for the delivery  
36 of funded aged care services by a diverse, trained and  
37 appropriately skilled workforce; and
-

# EXPOSURE DRAFT

## Chapter 1 Introduction

### Part 1 Preliminary

#### Section 6

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

#### 4 **6 Simplified outline of this Act**

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

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

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

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

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

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

EXPOSURE DRAFT

Section 6

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

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

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

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

# EXPOSURE DRAFT

Chapter 1 Introduction

Part 2 Definitions and key concepts

Division 1 Definitions

Section 7

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1 **Part 2—Definitions and key concepts**

2 **Division 1—Definitions**

3 **7 Definitions**

4 In this Act:

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

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

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

10 *adverse action warning notice*: see section 276.

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

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

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

17 *aged care digital platform*: see section 128.

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

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

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

25 *aged care worker screening database* means the database  
26 established under section 166.

# EXPOSURE DRAFT

Introduction **Chapter 1**  
Definitions and key concepts **Part 2**  
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## Section 7

---

1 ***aged care worker screening law*** means a law of a State or  
2 Territory prescribed by the rules for the purposes of this definition.

3 ***approved form***:

- 4 (a) in relation to a function of the System Governor—see section  
5 400; or  
6 (b) in relation to a function of the Commissioner—see section  
7 401.

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

- 9 (a) is approved by an entity of a kind prescribed by the rules; and  
10 (b) has completed training of a kind specified by the System  
11 Governor; and  
12 (c) meets any other training or qualification requirements  
13 prescribed by the rules.

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

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

- 18 (a) is approved by an entity of a kind prescribed by the rules; and  
19 (b) meets any other training or qualification requirements  
20 prescribed by the rules.

21 ***approved residential care home*** means a residential care home that  
22 is approved in relation to a registered provider under paragraph  
23 67(1)(b).

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

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

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

29 ***authorised officer*** means an authorised Commission officer or an  
30 authorised System Governor officer.

# EXPOSURE DRAFT

## Chapter 1 Introduction

## Part 2 Definitions and key concepts

## Division 1 Definitions

### Section 7

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- 1 ***authorised System Governor officer*** means a person appointed as  
2 an authorised System Governor officer under section 314.
- 3 ***banning order*** means a banning order made under section 286 or  
4 287.
- 5 ***business location*** means the address shown in the Australian  
6 Business Register as an entity's address for service.
- 7 ***care needs*** means one or both of the following apply in relation to  
8 an individual:
- 9 (a) the individual has difficulty (whether physical, mental or  
10 social) undertaking any daily living activities;
- 11 (b) the individual requires help from another person, or the  
12 assistance of one or more aids, to maintain their physical,  
13 mental or social capacity to function independently.
- 14 ***carer*** means a person who:
- 15 (a) provides personal care, support and assistance to another  
16 individual who needs it because that other individual is an  
17 older individual; and
- 18 (b) does not provide the personal care, support and assistance to  
19 the individual:
- 20 (i) as an aged care worker of a registered provider; or  
21 (ii) in the course of doing voluntary work for a charitable,  
22 welfare or community organisation; or  
23 (iii) as part of the requirements of a course of education or  
24 training.
- 25 ***Chair*** means the Chair of the Advisory Council.
- 26 ***civil penalty provision*** has the same meaning as in the Regulatory  
27 Powers Act.
- 28 ***Commission*** means the Aged Care Quality and Safety Commission  
29 established by section 137.
- 30 ***Commission Act*** means the *Aged Care Quality and Safety*  
31 *Commission Act 2018*.

# EXPOSURE DRAFT

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## Section 7

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- 1           **Commissioner** means the Commissioner of the Commission.
- 2           **complaints functions** means the functions of the Commissioner
- 3           under section 144.
- 4           **compliance notice**: see sections 269 and 270.
- 5           **conduct** means an act, an omission to perform an act or a state of
- 6           affairs.
- 7           **conflict of interest**, in relation to an individual accessing, or
- 8           seeking to access, funded aged care services and a supporter or
- 9           representative of the individual, means any conflict between:
- 10           (a) the interests of the individual; and
- 11           (b) the interests of the supporter or representative;
- 12           that would affect the supporter's or representative's ability to carry
- 13           out the supporter's or representative's role.
- 14           **constitutional corporation** means a trading or financial corporation
- 15           within the meaning of paragraph 51(xx) of the Constitution.
- 16           **continuous improvement plan** means a plan, in writing, which sets
- 17           out:
- 18           (a) how a registered provider intends to improve the quality of
- 19           funded aged care services delivered by the registered
- 20           provider; and
- 21           (b) if the Commissioner imposed a condition on the registration
- 22           of the registered provider under subsection 89(1) which
- 23           relates to the quality of funded aged care services delivered
- 24           by the registered provider—how the registered provider
- 25           intends to comply with that condition.
- 26           **Convention on the Rights of Persons with Disabilities** means the
- 27           Convention on the Rights of Persons with Disabilities done at New
- 28           York on 13 December 2006.
- 29           Note:       The Convention is in Australian Treaty Series 2008 No. 12 ([2008]
- 30                    ATS 12) and could in 2023 be viewed in the Australian Treaties
- 31                    Library on the AustLII website (<http://www.austlii.edu.au>).

# EXPOSURE DRAFT

Chapter 1 Introduction

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## Section 7

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- 1                    ***Covenant on Economic, Social and Cultural Rights*** means the  
2                    International Covenant on Economic, Social and Cultural Rights  
3                    done at New York on 16 December 1966.
- 4                    Note:        The Covenant is in Australian Treaty Series 1976 No. 5 ([1976] ATS  
5                    5) and could in 2023 be viewed in the Australian Treaties Library on  
6                    the AustLII website (<http://www.austlii.edu.au>).
- 7                    ***current conditions*** has the same meaning as in Schedule 2 to the  
8                    *Corporations Act 2001*.
- 9                    ***debtor***: see section 302.
- 10                  ***deliver***, a funded aged care service: see subsection 10(7).
- 11                  ***Deputy Chair*** means the Deputy Chair of the Advisory Council.
- 12                  ***engage in conduct*** means:  
13                  (a) do an act; or  
14                  (b) omit to perform an act.
- 15                  ***engagement and education functions*** means the functions of the  
16                  Commissioner under section 143.
- 17                  ***entity*** means any of the following:  
18                  (a) an individual;  
19                  (b) a body corporate;  
20                  (c) a body politic;  
21                  (d) a partnership;  
22                  (e) any other unincorporated association that has a governing  
23                  body.
- 24                  ***Financial and Prudential Standards*** means the standards made  
25                  under subsection 163(1).
- 26                  ***financial institution*** means a corporation that is an ADI for the  
27                  purposes of the *Banking Act 1959*.
- 28                  ***funded aged care service***: see subsection 8(4).
- 29                  ***governing body*** of a registered provider means:



# EXPOSURE DRAFT

Introduction **Chapter 1**  
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## Section 7

---

- 1 (a) if the registered provider is a body corporate incorporated, or  
2 taken to be incorporated, under the *Corporations Act 2001*,  
3 that has a board of directors—the board of directors; or  
4 (b) otherwise—the person or the group of persons responsible  
5 for the executive decisions of the registered provider.

6 **government entity** means:

- 7 (a) a State or Territory; or  
8 (b) a body established for a public purpose by or under a law of a  
9 State or Territory (other than a local government authority).

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

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

13 **identity card**, in relation to an authorised officer, means an identity  
14 card issued to the officer under section 35 or 76 of the Regulatory  
15 Powers Act.

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

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

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

23 **investigation authorisation** means an authorisation issued under  
24 section 221.

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

28 **monitoring authorisation** means an authorisation issued under  
29 section 220.

30 **National Disability Insurance Scheme** has the meaning given by  
31 the NDIS Act.

# EXPOSURE DRAFT

Chapter 1 Introduction

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## Section 7

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- 1                    **NDIS Act** means the *National Disability Insurance Scheme Act*  
2                    *2013*.
- 3                    **NDIS banning order** means a banning order made under  
4                    section 73ZN of the NDIS Act.
- 5                    **nursing** means the provision of services by or under the  
6                    supervision of a registered nurse acting within the registered  
7                    nurse's scope of practice.
- 8                    **official**, of a Commonwealth entity, has the same meaning as in the  
9                    *Public Governance, Performance and Accountability Act 2013*.
- 10                  **official of the Pricing Authority** has the same meaning as in the  
11                  *National Health Reform Act 2011*.
- 12                  **paid work** means work for financial gain or reward (whether as an  
13                  employee, a self-employed person or otherwise).
- 14                  **personal information** has the same meaning as in the *Privacy Act*  
15                  *1988*.
- 16                  **Pricing Authority** means the Independent Health and Aged Care  
17                  Pricing Authority.
- 18                  **protected information**: see section 322.
- 19                  **provider registration category**: see subsection 10(3).
- 20                  **reasonably practicable** in relation to a duty under Part 5 of  
21                  Chapter 3: see subsection 120(2).
- 22                  **receiving Commonwealth body**: see subsection 339(2).
- 23                  **recoverable amount**: see section 302.
- 24                  **registered NDIS provider** has the meaning given by the NDIS Act.
- 25                  **registered nurse** has the same meaning as in the *Health Insurance*  
26                  *Act 1973*.
- 27                  **registered provider**: see subsection 10(2).

# EXPOSURE DRAFT

Introduction **Chapter 1**  
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## Section 7

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- 1                    **registration of providers functions** means the functions of the  
2                    Commissioner under section 145.
- 3                    **Regulatory Powers Act** means the *Regulatory Powers (Standard*  
4                    *Provisions) Act 2014*.
- 5                    **reportable incident**: see section 15.
- 6                    **representative**, of an individual, means a person appointed as a  
7                    representative of the individual under section 376.
- 8                    **required action notice**: see sections 262 and 263.
- 9                    **residential care home**: see subsections 9(2) to (5).
- 10                  **responsible person**: see section 11.
- 11                  **restrictive practice**: see section 16.
- 12                  **rules** means the rules made under section 413.
- 13                  **safeguarding functions** means the functions of the Commissioner  
14                  under section 142.
- 15                  **serious failure**:
- 16                    (a) in relation to conduct of a registered provider—see  
17                    subsection 120(4); and
- 18                    (b) in relation to conduct of a responsible person—see  
19                    subsection 121(5).
- 20                  **serious injury or illness** of an individual means an injury or illness  
21                  requiring the individual to have:
- 22                    (a) immediate treatment as an in-patient in a hospital; or
- 23                    (b) immediate treatment for:
- 24                          (i) the amputation of any part of the individual's body; or
- 25                          (ii) a serious head injury; or
- 26                          (iii) a serious eye injury; or
- 27                          (iv) a serious burn; or
- 28                          (v) the separation of the individual's skin from an  
29                          underlying tissue (such as degloving or scalping); or

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- 1 (vi) a spinal injury; or  
2 (vii) the loss of a bodily function; or  
3 (viii) serious lacerations; or  
4 (c) medical treatment within 48 hours of exposure to a  
5 substance;  
6 and includes any other injury or illness prescribed by the rules but  
7 does not include an illness or injury of a kind prescribed by the  
8 rules.
- 9 *service* includes the supply of goods.
- 10 *service group*: see subsection 8(3).
- 11 *service type*: see subsection 8(2).
- 12 *SES office or position* means an office or position that is held or  
13 occupied, or the duties of which are performed, by an SES  
14 employee or acting SES employee.
- 15 *setting* means a residential care home or a home or community  
16 setting.
- 17 *sickness* means an infirmity, illness, disease, incapacity or  
18 impairment.
- 19 *significant failure*, in relation to the conduct of a registered  
20 provider or responsible person of a registered provider: see  
21 subsection 18(1).
- 22 *specialist aged care program* means a program prescribed by the  
23 rules under which funded aged care services may be delivered.
- 24 *Statement of Principles* means the principles in section 22.
- 25 *Statement of Rights* means the rights in section 20.
- 26 *suitability matter* in relation to an individual: see section 12.
- 27 *supporter*, of an individual, means a person appointed as a  
28 supporter of the individual under section 374.

# EXPOSURE DRAFT

## Section 7

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- 1                    *systematic pattern of conduct*, in relation to the conduct of a
- 2                    registered provider or responsible person of a registered provider:
- 3                    see subsection 18(2).
  
- 4                    *System Governor* means the Secretary of the Department.
  
- 5                    *this Act* includes:
- 6                    (a) legislative instruments made under this Act; and
- 7                    (b) the Regulatory Powers Act as it applies in relation to this
- 8                    Act.

# EXPOSURE DRAFT

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## Section 8

---

### Division 2—Key concepts

#### 8 Aged care service list and funded aged care services

- (1) The rules must prescribe a list of services for which funding may be payable under this Act. The rules must:
  - (a) list each service; and
  - (b) describe each service; and
  - (c) specify the service type that the service is in; and
  - (d) specify each service group a service type is in; and
  - (e) specify each service type as a service type that is delivered in a residential care home, or a home or community setting, or both; and
  - (f) specify any specialist aged care program under which a service type can be delivered; and
  - (g) specify each provider registration category under which a service type can be delivered.
- (2) For the purposes of paragraph (1)(c), a **service type** means a service type prescribed by the rules.
- (3) For the purposes of paragraph (1)(d), a **service group** means any of the following:
  - (a) home care;
  - (b) home support;
  - (c) permanent residential care;
  - (d) residential respite care;
  - (e) short term restorative care;
  - (f) transition care;
  - (g) any other group prescribed by the rules.
- (4) A **funded aged care service** means a service included on the list referred to in subsection (1) in relation to which funding is payable under this Act.

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### *Matters that must be considered before prescribing services*

- (5) The Minister must ensure that for each service group for which the service types in that group are specified as delivered in a residential care home, nursing is a listed service that is in at least one service type that is in that group.
- (6) The Minister must ensure that funded aged care services in a service type that is specified as a service type that is delivered in a residential care home for the purposes of paragraph (1)(e) are services of the following kind:
- (a) services for the care of persons who are experiencing sickness;
  - (b) services incidental or conducive to the care of persons who are experiencing sickness.
- (7) The Minister must ensure that:
- (a) for each service group (other than the transition care service group)—all service types that the Minister specifies under paragraph (1)(d) as being in the group are service types that are delivered in the same setting and not a mix of settings; and
  - (b) for the permanent residential care and residential respite care service groups—the setting for the purposes of paragraph (a) is a residential care home.
- (8) To avoid doubt, a service type may be included in more than one service group under paragraph (1)(d).

## **9 Where funded aged care services are delivered**

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

### *Residential care home*

- (2) A **residential care home** means a place that:

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- 1 (a) is the place of residence of individuals who, by reason of  
2 sickness, have a continuing need for aged care services,  
3 including nursing services; and  
4 (b) is fitted, furnished and staffed for the purpose of providing  
5 those services.
- 6 (3) To avoid doubt, a **residential care home** includes any of the  
7 following places:  
8 (a) a place within a hospital or other health service that is  
9 covered by an agreement with the Commonwealth to deliver  
10 aged care services alongside existing health services as a part  
11 of an integrated service arrangement;  
12 (b) a place within a retirement village that has been converted to  
13 a place described by subsection (2);  
14 (c) a place which is a complex of buildings.
- 15 (4) To avoid doubt, a **residential care home** does not include any of  
16 the following places:  
17 (a) a private home;  
18 (b) a retirement village (other than a place referred to in  
19 paragraph (3)(b));  
20 (c) a facility for which a declaration under subsection 121-5(6)  
21 of the *Private Health Insurance Act 2007* is in force (other  
22 than a place referred to in paragraph (3)(a));  
23 (d) a hospice or facility that primarily provides palliative care;  
24 (e) any other place prescribed by the rules.
- 25 (5) For the purposes of subsection (2), the rules may prescribe:  
26 (a) circumstances where a place is taken to be 2 or more separate  
27 places; and  
28 (b) circumstances where 2 or more separate places are taken to  
29 be a single place.
- 30 *Home or community setting*
- 31 (6) A **home or community setting** means a place other than a  
32 residential care home where funded aged care services are  
33 delivered.
-



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- 1 (7) Despite subsection (6), a **home or community setting** does not  
2 include any of the following places:  
3 (a) a group home funded under the National Disability Insurance  
4 Scheme;  
5 (b) a hospital;  
6 (c) a psychiatric facility;  
7 (d) a prison or detention centre;  
8 (e) a hospice or facility that primarily provides palliative care;  
9 (f) any other place prescribed by the rules.

### 10 **Who delivers funded aged care services**

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

#### 14 *Registered providers*

- 15 (2) A **registered provider** means an entity registered under paragraph  
16 67(1)(a) in one or more provider registration categories and with  
17 effect in relation to one or more service groups.

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

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

#### 22 *Aged care workers*

- 23 (4) An **aged care worker** of a registered provider means:  
24 (a) an individual employed or otherwise engaged (including as a  
25 volunteer) by the registered provider; or  
26 (b) an individual who:  
27 (i) is employed or otherwise engaged (including as a  
28 volunteer) by an associated provider of the registered  
29 provider; and  
30 (ii) is engaging in conduct under the associated provider's  
31 arrangement with the registered provider relating to the

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1 registered provider's delivery of funded aged care  
2 services; or

3 (c) an individual who is a registered provider.

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

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

#### 8 *Associated providers*

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

14 Note: This means that a registered provider may contravene subsection  
15 88(3) or (4) or another provision of this Act because of conduct  
16 engaged in by an associated provider.

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

### 21 **11 Meaning of *responsible person***

22 (1) Each of the following is a **responsible person** of a registered  
23 provider:

24 (a) any person who is responsible for the executive decisions of  
25 the registered provider;

26 (b) any other person who has authority or responsibility for (or  
27 significant influence over) planning, directing or controlling  
28 the activities of the registered provider;

29 (c) if the registered provider delivers, or proposes to deliver, a  
30 funded aged care service:

31 (i) any person who has responsibility for overall  
32 management of the nursing services delivered by the  
33 registered provider, or overall management of the

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- 1 nursing services delivered at an approved residential  
2 care home of the registered provider, and who is a  
3 registered nurse; and  
4 (ii) any person who is responsible for the day-to-day  
5 operations of the registered provider.
- 6 (2) Without limiting paragraph (1)(a), a person who is responsible for  
7 the executive decisions of a registered provider includes a member  
8 of the governing body of the provider.

### 9 **12 Meaning of *suitability matters* in relation to an individual**

- 10 (1) Each of the following matters is a *suitability matter* in relation to  
11 an individual:
- 12 (a) the individual's experience in providing, at any time, funded  
13 aged care services or other similar services;
- 14 (b) whether a banning order against the individual is, or has at  
15 any time been, in force;
- 16 (c) whether an NDIS banning order against the individual is, or  
17 has at any time been, in force;
- 18 (d) whether the individual has at any time been convicted of an  
19 indictable offence;
- 20 (e) whether a civil penalty order against the individual has been  
21 made at any time;
- 22 (f) whether the individual is, or has at any time been, an  
23 insolvent under administration;
- 24 (g) whether the individual is, or has at any time been, the subject  
25 of adverse findings or enforcement action by any of the  
26 following:
- 27 (i) a Department of the Commonwealth or of a State or  
28 Territory;
- 29 (ii) the Australian Securities and Investments Commission;
- 30 (iii) the Australian Charities and Not-for-profits  
31 Commission;
- 32 (iv) the Australian Competition and Consumer Commission;
- 33 (v) the Australian Prudential Regulation Authority;
- 34 (vi) the Australian Crime Commission;

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- 1 (vii) AUSTRAC;  
2 (viii) the Australian Health Practitioner Regulation Agency;  
3 (ix) another body established for a public purpose by or  
4 under a law of the Commonwealth;  
5 (x) a State or Territory authority (including, but not limited  
6 to, a body that is equivalent to a body mentioned in  
7 subparagraphs (ii) to (viii));  
8 (xi) a local government authority;  
9 (xii) a body responsible for maintaining standards of conduct  
10 in a profession that is involved in the delivery of funded  
11 aged care services;  
12 (h) whether the individual:  
13 (i) is, or has at any time been, the subject of any findings or  
14 judgment in relation to fraud, misrepresentation or  
15 dishonesty in any administrative, civil or criminal  
16 proceedings; or  
17 (ii) is currently party to any proceedings that may result in  
18 the individual being the subject of such findings or  
19 judgment;  
20 (i) whether the individual is, or has at any time been,  
21 disqualified from managing corporations under Part 2D.6 of  
22 the *Corporations Act 2001*;  
23 (j) if circumstances prescribed by the rules apply in relation to  
24 the individual—the individual has a current aged care worker  
25 screening check;  
26 (k) any other matter prescribed by the rules.  
27 (2) This section does not affect the operation of Part VIIC of the  
28 *Crimes Act 1914* (which includes provisions that, in certain  
29 circumstances, relieve persons from the requirement to disclose  
30 spent convictions and require persons aware of such convictions to  
31 disregard them).

## 13 Aged Care Code of Conduct

- 32  
33 (1) The rules may prescribe requirements relating to the conduct of the  
34 following:
-

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- 1 (a) registered providers;  
2 (b) aged care workers of registered providers;  
3 (c) responsible persons of registered providers.
- 4 Note: These requirements are the *Aged Care Code of Conduct*: see section  
5 7.
- 6 (2) Without limiting subsection (1), the rules may provide as follows:  
7 (a) that a provision of the Aged Care Code of Conduct applies to  
8 any or all of the following:  
9 (i) registered providers;  
10 (ii) aged care workers of registered providers;  
11 (iii) responsible persons of registered providers;  
12 (b) that a provision of the Aged Care Code of Conduct applies to  
13 the following:  
14 (i) specified kinds of aged care workers of registered  
15 providers;  
16 (ii) aged care workers of specified kinds of registered  
17 providers;  
18 (iii) specified kinds of responsible persons of registered  
19 providers;  
20 (iv) responsible persons of specified kinds of registered  
21 providers.

### 14 Aged Care Quality Standards

- 23 (1) The rules may prescribe standards relating to the quality of funded  
24 aged care services delivered by a registered provider.
- 25 Note 1: These standards are the *Aged Care Quality Standards*: see section 7.  
26 Note 2: Only registered providers in certain registration categories are  
27 required to be audited against these standards before registration: see  
28 paragraph 68(2)(e). Certain registered providers are required to  
29 comply with the standards as a condition of registration: see sections  
30 88 and 97.
- 31 (2) Without limiting subsection (1), the rules may prescribe standards  
32 about the following matters:

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- 1 (a) how registered providers must treat, and engage with,  
2 individuals seeking to access, or accessing, funded aged care  
3 services;
- 4 (b) how registered providers must deliver funded aged care  
5 services, including governance arrangements, and  
6 arrangements for planning and delivery of palliative care;
- 7 (c) the physical environments in which funded aged care  
8 services are required to be delivered;
- 9 (d) how registered providers must deliver quality and safe  
10 clinical care to individuals, including infection prevention  
11 and control procedures and arrangements;
- 12 (e) how registered providers must deliver food and drink to meet  
13 the nutritional needs and preferences of individuals;
- 14 (f) how registered providers must support individuals accessing  
15 funded aged care services in approved residential care  
16 homes;
- 17 (g) how registered providers must manage and respond to  
18 feedback and complaints;
- 19 (h) how registered providers must monitor and drive  
20 improvements to their delivery of funded aged care services.
- 21 (3) Without limiting subsection (1), the rules may provide that a  
22 provision of the Aged Care Quality Standards applies to the  
23 following:
  - 24 (a) all registered providers;
  - 25 (b) registered providers in specified provider registration  
26 categories;
  - 27 (c) specified kinds of registered providers.

### 15 Meaning of reportable incident

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

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- 1 (b) unlawful sexual contact, or inappropriate sexual conduct,  
2 inflicted on the individual;
- 3 (c) psychological or emotional abuse of the individual;
- 4 (d) unexpected death of the individual;
- 5 (e) stealing from, or financial coercion of, the individual by an  
6 aged care worker of the provider;
- 7 (f) neglect of the individual;
- 8 (g) use of a restrictive practice in relation to the individual (other  
9 than in circumstances prescribed by the rules);
- 10 (h) unexplained absence of the individual in the course of the  
11 delivery of funded aged care services to the individual.
- 12 (2) Despite subsection (1), the rules may prescribe:
  - 13 (a) that a specified act, omission or event involving an individual  
14 to whom a registered provider is delivering funded aged care  
15 services is a **reportable incident**; or
  - 16 (b) that a specified act, omission or event involving an individual  
17 to whom a registered provider is delivering funded aged care  
18 services is not a **reportable incident**.

## 16 Restrictive practice in relation to an individual

- 20 (1) A **restrictive practice** in relation to an individual is any practice or  
21 intervention that has the effect of restricting the rights or freedom  
22 of movement of that individual.
- 23 (2) Without limiting subsection (1), the rules may provide that a  
24 practice or intervention is a **restrictive practice** in relation to an  
25 individual.

## 17 Restrictive practice requirements

- 27 (1) The rules made for the purposes of section 106 relating to the use  
28 of restrictive practices in relation to an individual to whom a  
29 provider is delivering funded aged care services must:
  - 30 (a) require that a restrictive practice in relation to the individual  
31 is used only:

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- 1 (i) as a last resort to prevent harm to the individual or other  
2 persons; and
- 3 (ii) after consideration of the likely impact of the use of the  
4 practice on the individual; and
- 5 (b) require that, to the extent possible, alternative strategies are  
6 used before a restrictive practice in relation to the individual  
7 is used; and
- 8 (c) require that alternative strategies that have been considered  
9 or used in relation to the individual are documented; and
- 10 (d) require that a restrictive practice in relation to the individual  
11 is used only to the extent that it is necessary and in  
12 proportion to the risk of harm to the individual or other  
13 persons; and
- 14 (e) require that, if a restrictive practice in relation to the  
15 individual is used, it is used in the least restrictive form, and  
16 for the shortest time, necessary to prevent harm to the  
17 individual or other persons; and
- 18 (f) require that informed consent is given to the use of a  
19 restrictive practice in relation to the individual; and
- 20 (g) make provision for, or in relation to, the monitoring and  
21 review of the use of a restrictive practice in relation to the  
22 individual.
- 23 (2) The rules made for the purposes of section 106 may make  
24 provision for, or in relation to, the persons or bodies who may give  
25 informed consent to the use of a restrictive practice in relation to an  
26 individual to whom a registered provider is delivering funded aged  
27 care services if that individual lacks capacity to give that consent.
- 28 (3) The rules made for the purposes of section 106 may provide that a  
29 requirement prescribed by those rules does not apply if the use of a  
30 restrictive practice in relation to an individual to whom a registered  
31 provider is delivering funded aged care services is necessary in an  
32 emergency.
- 33 (4) Subsections (1), (2) and (3) do not limit the matters that may be  
34 prescribed by the rules made for the purposes of section 106.



1 **18 Meaning of *significant failure* and *systematic pattern of conduct***

- 2 (1) A registered provider's or responsible person of a registered  
3 provider's conduct involves a ***significant failure*** if the conduct  
4 represents a significant departure from the conduct that could  
5 reasonably be expected from a registered provider or responsible  
6 person, having regard to the requirements registered providers and  
7 responsible persons are subject to under this Act.
- 8 (2) In determining whether a registered provider's or responsible  
9 person of a registered provider's conduct is part of a ***systematic***  
10 ***pattern of conduct*** regard must be had to the following:
- 11 (a) the number of times (the ***relevant contraventions***) the  
12 provider's or responsible person's conduct has not complied  
13 with a provision of this Act;
- 14 (b) the period over which the relevant contraventions occurred;
- 15 (c) the number of individuals affected by the relevant  
16 contraventions;
- 17 (d) the provider's or responsible person's response, or failure to  
18 respond, to any complaints about the relevant contraventions.

19 **19 Meaning of *high quality care***

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

- 23 (a) puts the individual first; and
- 24 (b) upholds the rights of the individual under the Statement of  
25 Rights; and
- 26 (c) prioritises the following:
- 27 (i) kindness, compassion and respect for the life  
28 experiences, self-determination, dignity, quality of life,  
29 mental health and wellbeing of the individual;
- 30 (ii) the timely and responsive delivery of the service to the  
31 individual;
- 32 (iii) specific tailoring of care to the personal needs,  
33 aspirations and preferences of the individual, including

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- 1 preferences regarding the time when the service is  
2 delivered;
- 3 (iv) respecting the individual's preferences regarding  
4 privacy and time alone;
- 5 (v) supporting the improvement of the individual's physical  
6 and cognitive capacity, where the individual chooses to,  
7 including by keeping the individual mobile and engaged  
8 if they are living in an approved residential care home;
- 9 (vi) supporting the individual to participate in meaningful  
10 and respectful activities and remain connected to the  
11 community, where the individual chooses to;
- 12 (vii) supporting the individual to remain connected to the  
13 natural environment, and animals and pets, where the  
14 individual chooses to;
- 15 (viii) implementing inclusive policies and procedures, in  
16 partnership with Aboriginal or Torres Strait Islander  
17 persons, family and community to ensure that culturally  
18 safe, culturally appropriate and accessible care is  
19 delivered to those persons at all times, which  
20 incorporates flexibility and recognises the unique  
21 experience of those persons;
- 22 (ix) adapting policy, practices and environments to ensure  
23 that services are culturally appropriate for the diverse  
24 life experiences of individuals, including by engaging  
25 workers with lived experience of diversity in the  
26 provider's workforce and governing body;
- 27 (x) bilingual aged care workers and interpreters being made  
28 available if requested by the individual;
- 29 (xi) worker retention and training to facilitate the delivery of  
30 the service by well-skilled and empowered aged care  
31 workers who are able to develop and maintain a  
32 relationship with the individual.

## Part 3—Aged care rights and principles

### Division 1—Aged care rights

#### 20 Statement of Rights

##### *Independence, autonomy, empowerment and freedom of choice*

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

##### *Equitable access*

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

##### *Quality and safe funded aged care services*

- (3) An individual has a right to:

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

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

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

#### 21 *Respect for privacy and information*

- 22 (5) An individual has a right to have the individual's:  
23 (a) personal privacy respected; and  
24 (b) personal information protected.  
25 (6) An individual has a right to seek, and be provided with,  
26 information about the individual's rights under this section and the  
27 funded aged care services the individual accesses, including the  
28 costs of those services.

#### 29 *Person-centred communication and ability to raise issues without* 30 *consequences*

- 31 (7) An individual has a right to:

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- 1 (a) be informed, in a way the individual understands, about the  
2 funded aged care services the individual accesses; and  
3 (b) express opinions about the funded aged care services the  
4 individual accesses and be heard.
- 5 (8) An individual has a right to communicate in the individual's  
6 preferred language or method of communication, with access to  
7 interpreters and communication aids as required.
- 8 (9) An individual has a right to:  
9 (a) make complaints using an accessible mechanism, without  
10 fear of reprisal, about the delivery of funded aged care  
11 services to the individual; and  
12 (b) have the individual's complaints dealt with fairly and  
13 promptly.
- 14 *Advocates, significant persons and social connections*
- 15 (10) An individual has a right to be supported by an advocate or a  
16 person of the individual's choice, including when exercising the  
17 individual's rights in this section, voicing the individual's opinions,  
18 making decisions that affect the individual's life and making  
19 complaints.
- 20 (11) An individual has a right to have the role of persons who are  
21 significant to the individual, including carers, be acknowledged  
22 and respected.
- 23 (12) An individual has a right to opportunities, and assistance, to stay  
24 connected (if the individual so chooses) with:  
25 (a) significant persons in the individual's life and pets, including  
26 through safe visitation by family members or friends where  
27 the individual lives and visits to family members or friends;  
28 and  
29 (b) the individual's community, including by participating in  
30 public life and leisure, cultural, spiritual and lifestyle  
31 activities; and  
32 (c) if the individual is an Aboriginal or Torres Strait Islander  
33 person—community and Country.

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### 1      **21 Effect of Statement of Rights**

- 2                    (1) An individual is entitled to the rights specified in section 20 when  
3                    accessing, or seeking to access, funded aged care services.
- 4                    (2) It is the intention of the Parliament that registered providers  
5                    delivering funded aged care services to individuals must not act in  
6                    a way that is incompatible with the rights specified in section 20,  
7                    taking into account that limits on rights may be necessary to  
8                    balance competing or conflicting rights and the rights and  
9                    freedoms of other individuals.
- 10                   (3) Nothing in this Division creates rights or duties that are  
11                   enforceable by proceedings in a court or tribunal.

**Division 2—Aged care principles**

**22 Statement of Principles**

*A person-centred aged care system*

- (1) The safety, health, wellbeing and quality of life of individuals is the primary consideration in the delivery of funded aged care services.
- (2) The Commonwealth aged care system supports the delivery of funded aged care services by registered providers that:
  - (a) puts older people first; and
  - (b) treats older people as unique individuals; and
  - (c) recognises the rights of individuals under the Statement of Rights.
- (3) The Commonwealth aged care system supports individuals to:
  - (a) be able to reside at the individual's home (if the individual so chooses) or, if that is not possible, in a setting that is appropriate given the individual's circumstances and preferences; and
  - (b) exercise individual responsibility and make decisions that enable the individual to lead an active and fulfilling life, including by engaging in the community and maintaining relationships with people (if the individual so chooses); and
  - (c) be active and informed in decision-making about the funded aged care services the individual accesses; and
  - (d) maintain or improve the individual's physical, mental, cognitive and communication capabilities to the extent possible, except where it is the individual's choice to access palliative care and end-of-life care; and
  - (e) be aware of, and exercise, their rights under the Statement of Rights when accessing, or seeking to access, funded aged care services.
- (4) The Commonwealth aged care system offers accessible, culturally safe, culturally appropriate, trauma-aware and healing-informed

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### Part 3 Aged care rights and principles

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- 1 funded aged care services, if required by an individual and based  
2 on the needs of the individual, regardless of the individual's  
3 location, background and life experiences.
- 4 Note: This may include individuals who:
- 5 (a) are Aboriginal or Torres Strait Islander persons, including those  
6 from stolen generations; or
  - 7 (b) are veterans or war widows; or
  - 8 (c) are from culturally, ethnically and linguistically diverse  
9 backgrounds; or
  - 10 (d) are financially or socially disadvantaged; or
  - 11 (e) are experiencing homelessness or at risk of experiencing  
12 homelessness; or
  - 13 (f) are parents and children who are separated by forced adoption or  
14 removal; or
  - 15 (g) are adult survivors of institutional child sexual abuse; or
  - 16 (h) are care-leavers, including Forgotten Australians and former  
17 child migrants placed in out of home care; or
  - 18 (i) are lesbian, gay, bisexual, trans/transgender or intersex or other  
19 sexual orientations or are gender diverse or bodily diverse; or
  - 20 (j) are an individual with disability or mental ill-health; or
  - 21 (k) are neurodivergent; or
  - 22 (l) are deaf, deafblind, vision impaired or hard of hearing; or
  - 23 (m) live in rural, remote or very remote areas.
- 24 (5) The Commonwealth aged care system builds the capacity of  
25 registered providers and connections with individuals in the  
26 community to support:
- 27 (a) continuity of funded aged care services; and
  - 28 (b) access to integrated services, including strong linkages with  
29 the health, mental health, veterans, disability and community  
30 services sectors.
- 31 *An aged care system that values workers and carers*
- 32 (6) The Commonwealth aged care system:
- 33 (a) supports funded aged care services being delivered by a  
34 diverse, trained and appropriately skilled workforce who are  
35 valued and respected; and



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Aged care rights and principles **Part 3**  
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## Section 22

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- 1 (b) supports aged care workers of registered providers being  
2 empowered, including through access to relevant  
3 information, to:  
4 (i) provide feedback, suggest measures and take actions  
5 that support innovation, continuous improvement and  
6 the delivery of high quality care; and  
7 (ii) participate in governance and accountability  
8 mechanisms related to the delivery of funded aged care  
9 services; and  
10 (c) recognises the important role of volunteers in improving  
11 individuals' experiences of the Commonwealth aged care  
12 system.
- 13 (7) The Commonwealth aged care system recognises the valuable  
14 contribution carers make to society, consistent with the *Carer*  
15 *Recognition Act 2010*, and carers should be considered partners  
16 with registered providers who deliver funded aged care services.
- 17 *A transparent and sustainable aged care system that represents*  
18 *value for money*
- 19 (8) The Commonwealth aged care system is transparent and provides  
20 publicly available information, about funded aged care services,  
21 that is understandable, accessible and communicated through a  
22 variety of methods and languages.
- 23 (9) Funding by the Commonwealth for funded aged care services  
24 supports the delivery and regulation of those services to the  
25 individuals who have been prioritised on the basis of need for  
26 funded aged care services, taking into account the availability of  
27 resources and the needs of the individuals relative to other  
28 individuals.
- 29 (10) Individuals accessing funded aged care services are expected to  
30 meet some of the costs of those services if those individuals have  
31 the financial means to do so.
- 32 (11) The Commonwealth aged care system focusses on the needs of  
33 older people, and should not be used inappropriately to address

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## Chapter 1 Introduction

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1 service gaps in other care and support sectors preventing  
2 individuals from accessing the best available services to meet the  
3 needs, goals and preferences of those individuals.

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

10 *An aged care system that continues to improve*

- 11 (13) The regulation of the Commonwealth aged care system:
- 12 (a) promotes innovation, continuous improvement and  
13 contemporary evidence-based best practice in the  
14 Commonwealth aged care system; and
  - 15 (b) is responsive and proportionate to risk, with a focus on  
16 prevention and timely action; and
  - 17 (c) focusses on the safety, health, wellbeing and quality of life of  
18 individuals, and prioritises the areas of highest risk to  
19 individuals; and
  - 20 (d) promotes the provision of high quality care; and
  - 21 (e) strives for regulatory alignment (if appropriate) with other  
22 care and support sectors; and
  - 23 (f) is undertaken in collaboration with older people.
- 24 (14) Feedback and complaints about the delivery and accessibility of  
25 funded aged care services are used to inform and promote  
26 continuous improvement in the Commonwealth aged care system.

### 23 Effect of Statement of Principles

- 28 (1) It is the intention of Parliament that the Minister, the System  
29 Governor, the Commissioner and any other person or body,  
30 performing functions or exercising powers under this Act, must  
31 have regard to the principles specified in section 22 when  
32 performing those functions or exercising those powers.

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- 1
- 2
- 3
- 4
- 5
- (2) Nothing in this Division creates rights or duties that are enforceable by proceedings in a court or tribunal.

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

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## Part 4—Supporters and representatives

### Division 1—Actions and duties of supporters and representatives

#### Subdivision A—Actions and duties of supporters

#### 24 Actions of supporters

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

- (a) request, access or receive information or documents;
- (b) communicate information, including the will, preferences and decisions of the individual;
- (c) a thing prescribed by the rules.

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

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

#### 25 Giving information and documents to supporters

- (1) Any information or document that is required or authorised under, or for the purposes of, this Act to be given to an individual must also be given to a supporter (if any) of the individual if the individual has consented to information or a document of that kind being given to the supporter.
- (2) Any information or document given to the supporter of an individual under subsection (1) must, in every respect, be in the same form, and in the same terms, as if it were being given to the individual.

#### 26 Duties of supporters

- (1) A supporter of an individual has:
-

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- 1 (a) the duties set out in this section; and  
2 (b) the duty set out in section 31 (duty to inform of matters  
3 affecting ability or capacity to act as supporter or  
4 representative); and  
5 (c) the duty to act honestly, diligently and in good faith in  
6 discharging the supporter's other duties; and  
7 (d) any duty prescribed by the rules.
- 8 (2) If the supporter is doing a thing under section 24 to support the  
9 individual to do a thing under, or for the purposes of, this Act, it is  
10 a duty of the supporter to:  
11 (a) act in a manner that promotes the will, preferences and  
12 personal, cultural and social wellbeing of the individual; and  
13 (b) act honestly, diligently and in good faith; and  
14 (c) support the individual only to the extent necessary for the  
15 individual to do the thing, applying the supporter's best  
16 endeavours to maintain the ability of the individual to make  
17 the individual's own decisions.
- 18 (3) It is a duty of the supporter to avoid or manage any conflict of  
19 interest in relation to the supporter and the individual, and to  
20 inform the System Governor of any such conflict as it arises.

## Subdivision B—Actions and duties of representatives

### 27 Actions of representatives

- 23 (1) A representative of an individual may, on behalf of the individual,  
24 do any thing that may or must be done by the individual under, or  
25 for the purposes of, this Act.
- 26 Note 1: If there is more than one representative of an individual, the  
27 representatives may do a thing under this subsection jointly or  
28 severally: see paragraph 376(3)(b).
- 29 Note 2: For the provisions about how supporters and representatives are  
30 appointed: see Part 4 of Chapter 8.
- 31 (2) However, subsection (1) does not apply to the doing of a thing,  
32 including the giving of consent, in relation to a restrictive practice.

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Note: The giving of consent in relation to a restrictive practice may be dealt with by rules made for the purposes of section 106 (condition of registration in relation to restrictive practices).

- (3) To avoid doubt and for the purposes of subsections (1) and (2), doing a thing includes making a decision.
- (4) Any thing done by a representative of an individual under this section has effect, for the purposes of this Act (other than this Part), as if it had been done by the individual.
- (5) If an individual is required under, or for the purposes of, this Act to do a thing, failure by a representative of the individual to comply with the requirement on behalf of the individual is taken, for the purposes of this Act (other than this Part), to be a failure of the individual to comply with the requirement.

## 28 Role of guardians etc.

- (1) A person must not make a decision under, or for the purposes of, this Act on behalf of an individual unless the person is appointed as a representative of the individual under section 376.
- (2) Subsection (1) applies even if the person:
  - (a) has guardianship of the individual under a law of the Commonwealth, a State or a Territory; or
  - (b) is appointed by a court, tribunal, board or panel (however described) under a law of the Commonwealth, a State or a Territory, and has power to make decisions for the individual; or
  - (c) holds an enduring power of attorney granted by the individual; or
  - (d) is a nominee of the individual (within the meaning of the *National Disability Insurance Scheme Act 2013* or the *Social Security (Administration) Act 1999*); or
  - (e) is a person of a kind prescribed by the rules.

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### 29 Giving information and documents to representatives

- (1) Any information or document that is required or authorised under, or for the purposes of, this Act to be given to an individual must also be given to the representative (if any) of the individual.
- (2) Any information or document given to the representative of an individual under subsection (1) must, in every respect, be in the same form, and in the same terms, as if it were being given to the individual.

### 30 Duties of representatives

- (1) A representative of an individual has:
- (a) the duties set out in this section; and
  - (b) the duty set out in section 31 (duty to inform of matters affecting ability or capacity to act as supporter or representative); and
  - (c) the duty to act honestly, diligently and in good faith in discharging the representative's other duties; and
  - (d) any duty prescribed by the rules.
- (2) It is a duty of the representative to:
- (a) apply the representative's best endeavours to maintain the ability of the individual to make the individual's own decisions; and
  - (b) refrain from doing a thing on behalf of the individual under section 27 unless:
    - (i) the representative is satisfied that it is not possible for the individual to do, or to be supported to do, the thing; or
    - (ii) it is possible for the individual to do the thing but the individual does not want to do the thing themselves.
- (3) If the representative is doing a thing, or refraining from doing a thing, on behalf of the individual under section 27, it is a duty of the representative to:

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- 1 (a) act in a manner that promotes the personal, cultural and  
2 social wellbeing of the individual; and  
3 (b) act honestly, diligently and in good faith; and  
4 (c) make reasonable efforts to ascertain the will and preferences  
5 of the individual in relation to the thing or, if the individual's  
6 will and preferences cannot be ascertained, to ascertain the  
7 individual's likely will and preferences based on all the  
8 information available to the representative; and  
9 (d) take reasonable steps to consult the following:  
10 (i) any person referred to in subsection 28(2) (which deals  
11 with guardians and persons in other similar positions);  
12 (ii) any other representative of the individual;  
13 (iii) when appropriate, any other person who assists the  
14 individual to manage the individual's day-to-day  
15 activities or, if there is no such person, any family  
16 members or other persons who have a close continuing  
17 relationship with the individual; and  
18 (e) subject to subsection (4), act in accordance with the  
19 following principles:  
20 (i) the individual's will and preferences must be given  
21 effect or, if they cannot be ascertained, the individual's  
22 likely will and preferences must be given effect;  
23 (ii) the individual's will and preferences, or likely will and  
24 preferences, may be overridden only if necessary to  
25 prevent serious risk to the individual's personal, cultural  
26 and social wellbeing;  
27 (iii) the individual's rights under the Statement of Rights  
28 must be promoted and upheld, and actions taken on the  
29 individual's behalf must be the least restrictive of those  
30 rights.  
31 (4) However, if the representative cannot act in accordance with all of  
32 the principles in paragraph (3)(e) in doing a thing or refraining  
33 from doing a thing on behalf of the individual, the representative  
34 must give precedence to those principles in the order in which they  
35 appear in that paragraph.



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## Section 31

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

### 4 **Subdivision C—Actions and duties of supporters and** 5 **representatives**

#### 6 **31 Duty to inform of matters affecting ability or capacity to act as** 7 **supporter or representative**

- 8 (1) A supporter or representative of an individual has a duty to inform  
9 the System Governor if:  
10 (a) either:  
11 (i) an event or change of circumstances happens; or  
12 (ii) the supporter or representative becomes aware that an  
13 event or change of circumstances is likely to happen;  
14 and  
15 (b) the event or change of circumstances is likely to affect:  
16 (i) the ability or capacity of the supporter or representative  
17 to act as a supporter or representative of the individual,  
18 including complying with the duties of supporters or  
19 representatives referred to in subsection 26(1) or 30(1)  
20 respectively; or  
21 (ii) the ability of the System Governor to contact the  
22 supporter or representative for the purposes of this Act;  
23 or  
24 (iii) the ability or capacity of the supporter or representative  
25 to comply with notices given to, and imposing  
26 requirements on, the supporter or representative by the  
27 System Governor under, or for the purposes of, this Act.
- 28 (2) The supporter or representative must inform the System Governor  
29 under subsection (1):  
30 (a) within the period specified for this purpose in the notice of  
31 the supporter or representative's appointment given under  
32 section 379; and

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## Chapter 1 Introduction

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- 1 (b) in accordance with any requirements specified in that notice  
2 as to how the supporter or representative is to inform the  
3 System Governor.

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

- 8 (3) This section extends to:

- 9 (a) acts, omissions, matters and things outside Australia, whether  
10 or not in a foreign country; and  
11 (b) all persons, irrespective of their nationality or citizenship.

## 12 32 When there is no breach of duty

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

19 (2) A supporter or representative of an individual does not breach a  
20 duty of supporters or representatives referred to in subsection 26(1)  
21 or 30(1) respectively by refraining from doing a thing if, at the  
22 relevant time, the supporter or representative reasonably believes  
23 that the supporter or representative is refraining from doing the  
24 thing to comply with the supporter's or representative's duties  
25 under that subsection.

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Protections relating to supporters and representatives **Division 2**

## Section 33

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### **Division 2—Protections relating to supporters and representatives**

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

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

#### **34 Protection of supporter or representative against liability**

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

- (a) any act or omission of the individual; or
- (b) anything done, in good faith, by the supporter or representative in their capacity as supporter or representative of the individual.

#### **35 Offence for abuse of position as supporter or representative**

*Offence for current supporters and representatives*

(1) A person commits an offence if:

- (a) the person is a supporter or representative of an individual accessing, or seeking to access, funded aged care services; and
- (b) the person:
  - (i) exercises any influence that the person has in their capacity as a supporter or representative of the individual; or
  - (ii) engages in any conduct when doing a thing under section 24 or 27 as a supporter or representative of the individual; or

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- 1 (iii) uses any information that the person obtained in the  
2 person's capacity as a supporter or representative of the  
3 individual; and  
4 (c) the person does so with the intention of:  
5 (i) dishonestly obtaining a benefit for the person or any  
6 other person; or  
7 (ii) dishonestly causing a detriment to another person.

8 Penalty: 60 penalty units.

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

#### 10 *Offence for former supporters and representatives*

- 11 (3) A person commits an offence if:  
12 (a) the person has ceased to be a supporter or representative of  
13 an individual accessing, or seeking to access, funded aged  
14 care services; and  
15 (b) the person obtained information in the person's capacity as a  
16 supporter or representative of the individual; and  
17 (c) the person uses the information with the intention of:  
18 (i) dishonestly obtaining a benefit for the person or any  
19 other person; or  
20 (ii) dishonestly causing a detriment to another person.

21 Penalty: 60 penalty units.

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

#### 23 *Dishonesty*

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

#### 26 *Definitions*

- 27 (6) In this section:

28 ***dishonest*** means:

- 29 (a) dishonest according to the standards of ordinary people; and

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1 (b) known by the defendant to be dishonest according to the  
2 standards of ordinary people.

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Chapter 2 Entry to the Commonwealth aged care system

Part 1 Introduction

Section 36

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## Chapter 2—Entry to the Commonwealth aged care system

### Part 1—Introduction

#### 36 Simplified outline of this Chapter

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

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

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

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

For service groups other than permanent residential care, a classification assessment is undertaken at the same time as the aged care needs assessment and a classification decision is made by the System Governor in relation to any service group the individual

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1 has been approved for. The classification decision generally affects  
2 the level of funding available under Chapter 4 to deliver funded  
3 aged care services to the individual.

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

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

16 Alternative allocation arrangements apply in relation to individuals  
17 accessing funded aged care services under specialist aged care  
18 programs.

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**Chapter 2** Entry to the Commonwealth aged care system

**Part 2** Eligibility for entry

**Division 1** General requirements

## Section 37

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### **Part 2—Eligibility for entry**

#### **Division 1—General requirements**

##### **37 General requirements for entry to Commonwealth aged care system**

An individual can access a funded aged care service if:

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

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

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



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Entry to the Commonwealth aged care system **Chapter 2**  
Eligibility for entry **Part 2**  
Applying for access to funded aged care services **Division 2**

## Section 38

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### **Division 2—Applying for access to funded aged care services**

#### **38 Requirements for applications**

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

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

#### **39 System Governor must decide whether to make determination**

- (1) The System Governor must consider the application for access to funded aged care services and decide whether to make an eligibility determination for an aged care needs assessment for the individual.
- (2) The decision must be made within the period prescribed by the rules.
- (3) If the System Governor decides not to make a determination under subsection (1), the individual's application for access to funded aged care services is taken to be withdrawn.

#### **40 Eligibility determination for an aged care needs assessment**

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

- (a) the individual:
  - (i) is aged 65 or over; or
  - (ii) is an Aboriginal or Torres Strait Islander person and is aged at least 50; or
  - (iii) is homeless, or at risk of homelessness, and is aged at least 50; and
- (b) information of a kind prescribed by the rules has been provided relating to the individual's care needs; and
- (c) if the individual is aged less than 65, the individual:

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**Chapter 2** Entry to the Commonwealth aged care system

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## Section 41

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- 1 (i) has elected, in the approved form, to be provided with  
2 funded aged care services before the individual turns 65;  
3 and  
4 (ii) was informed, prior to making the election, of any other  
5 services that may be available to meet the care needs of  
6 the individual.

### 7 **41 Notice of decision not to make a determination**

- 8 (1) If the System Governor decides under section 39 not to make an  
9 eligibility determination for an aged care needs assessment for an  
10 individual, the System Governor must give notice of the decision  
11 to the individual within 14 days after the day the decision is made.
- 12 (2) The notice under subsection (1) must include:  
13 (a) the reasons for the decision; and  
14 (b) a statement that the effect of the decision is that the  
15 individual's application for access to funded aged care  
16 services is taken to be withdrawn; and  
17 (c) how the individual may apply for reconsideration of the  
18 decision.

### 19 **42 Period of effect of determination**

20 An eligibility determination for an aged care needs assessment  
21 made under section 39 takes effect at the time it is made and  
22 remains in effect until it is revoked under section 54 or 55.

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Entry to the Commonwealth aged care system **Chapter 2**

Eligibility for entry **Part 2**

Aged care needs assessments and reassessments **Division 3**

## Section 43

### Division 3—Aged care needs assessments and reassessments

#### 43 Aged care needs assessments

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

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

#### 44 Undertaking aged care needs assessments

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

Note: An individual must have an eligibility determination for an aged care needs assessment under section 39 in effect before an aged care needs assessment can be undertaken for the individual.

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**Chapter 2** Entry to the Commonwealth aged care system

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## Section 45

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- 1                   (2) The aged care needs assessment must include:
- 2                   (a) a discussion with the individual about what the assessment
- 3                   has identified in terms of funded aged care services the
- 4                   individual may require access to and may assist the
- 5                   individual to maintain the individual's independence; and
- 6                   (b) a discussion with the individual about the individual's
- 7                   preferences and goals, the next steps in terms of the
- 8                   individual's application for funded aged care services and
- 9                   how the individual will be informed of the outcome of the
- 10                  application; and
- 11                  (c) any other thing prescribed by the rules.

### 45 Aged care needs assessment reports

- 13                  (1) The approved needs assessor must provide a report of the
- 14                  assessment to the System Governor as soon as practicable after the
- 15                  assessment is completed.
- 16                  (2) The report must include information about:
- 17                  (a) the funded aged care services the assessor considers the
- 18                  individual needs in order to meet the individual's care needs;
- 19                  and
- 20                  (b) any service groups the assessor considers should be approved
- 21                  under subsection 47(2) for the individual; and
- 22                  (c) any service types the assessor considers should be approved
- 23                  under subparagraph 47(2)(b)(i) for the individual; and
- 24                  (d) any funded aged care services the assessor considers should
- 25                  be approved under subparagraph 47(2)(b)(ii) for the
- 26                  individual.

27                  Note:       For service groups other than permanent residential care, the

28                  classification assessment report required under section 58 may be

29                  included with the report under this section.

### 46 Aged care needs reassessments

- 31                  (1) The System Governor must decide if a reassessment of an
- 32                  individual's need for funded aged care services is required if:

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Entry to the Commonwealth aged care system **Chapter 2**

Eligibility for entry **Part 2**

Aged care needs assessments and reassessments **Division 3**

## Section 46

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- 1 (a) an eligibility determination for an aged care needs  
2 assessment under section 39 is in effect for the individual;  
3 and  
4 (b) the individual makes an application in an approved form; and  
5 (c) either:  
6 (i) the System Governor is satisfied that a significant  
7 change in circumstances prescribed by the rules applies  
8 in relation to the individual; or  
9 (ii) other circumstances prescribed by the rules apply in  
10 relation to the individual.
- 11 (2) If the System Governor decides under subsection (1) that a  
12 reassessment of an individual's need for funded aged care services  
13 is required, the System Governor must:  
14 (a) if subparagraph (1)(c)(i) applies—arrange for a new  
15 assessment of the individual's need for funded aged care  
16 services to be undertaken by an approved needs assessor in  
17 accordance with section 43; or  
18 (b) if subparagraph (1)(c)(ii) applies—make the reassessment on  
19 the basis of information of a kind prescribed by the rules  
20 being provided in relation to the individual.
- 21 Note: Where the System Governor decides a reassessment of an individual's  
22 need for funded aged care services is required, the System Governor  
23 must make new decisions under subsections 47(1) and (2) (which deal  
24 with approving access to funded aged care services).
- 25 (3) If the System Governor decides under subsection (1) that a  
26 reassessment of an individual's need for funded aged care services  
27 is not required, the System Governor must, within 14 days after the  
28 decision is made, give notice to the individual of the decision.
- 29 (4) A notice under subsection (3) must include:  
30 (a) the reasons for the decision; and  
31 (b) how the individual may apply for reconsideration of the  
32 decision.

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Chapter 2 Entry to the Commonwealth aged care system

Part 2 Eligibility for entry

Division 4 Approval of access to funded aged care services

## Section 47

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### Division 4—Approval of access to funded aged care services

#### 47 Approval of access to funded aged care services

*Approval decision—access to funded aged care services*

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

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

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

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

- (2) If the System Governor decides under subsection (1) that an individual requires access to funded aged care services, the System Governor must decide whether:
- (a) to approve one or more service groups for the individual; and
  - (b) if the individual is not an Aboriginal or Torres Strait Islander person and subsection (3) applies to the service group:
    - (i) to approve one or more service types in that group for the individual; and
    - (ii) if the service type is prescribed by the rules for the purposes of this paragraph—to approve one or more funded aged care services in that type for the individual.

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

# EXPOSURE DRAFT

Entry to the Commonwealth aged care system **Chapter 2**

Eligibility for entry **Part 2**

Approval of access to funded aged care services **Division 4**

## Section 48

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

### 6 *Timing of decisions*

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

## 9 **48 Restrictions on approvals of service groups**

10 The System Governor must not approve a service group under

11 paragraph 47(2)(a) for an individual unless the System Governor is

12 satisfied that:

- 13 (a) the individual meets any eligibility requirements prescribed
- 14 by the rules for the service group; and
- 15 (b) if the individual is not an Aboriginal or Torres Strait Islander
- 16 person and the service types in the group are delivered in an
- 17 approved residential care home—the individual has, by
- 18 reason of sickness, a continuing need for funded aged care
- 19 services (including nursing services) in those service types.

20 Note: The requirement in paragraph (b) needs to be met for the permanent

21 residential care and residential respite care service groups to be

22 approved for an individual.

## 23 **49 Restrictions on approvals of service types or services in certain**

24 **service groups**

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

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**Chapter 2** Entry to the Commonwealth aged care system

**Part 2** Eligibility for entry

**Division 4** Approval of access to funded aged care services

## Section 49

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- 1 (b) any of the following apply:
- 2 (i) access to the funded aged care services in the service
- 3 type, or the funded aged care service, is necessary to
- 4 support the individual to live and be included in the
- 5 community, and to prevent isolation or segregation of
- 6 the individual from the community;
- 7 (ii) access to the funded aged care services in the service
- 8 type, or the funded aged care service, will facilitate
- 9 personal mobility of the individual in the manner and at
- 10 the time of the individual's choice;
- 11 (iii) the funded aged care services in the service type each
- 12 involve, or the funded aged care service involves, a
- 13 mobility aid or device, or assistive technology, live
- 14 assistance or intermediaries that will facilitate personal
- 15 mobility of the individual;
- 16 (iv) the funded aged care services in the service type are
- 17 each, or the funded aged care service is, a health service
- 18 that the individual needs because of the individual's
- 19 impairment or because of the interaction of the
- 20 individual's impairment with various barriers;
- 21 (v) the funded aged care services in the service type are
- 22 each, or the funded aged care service is, a habilitation or
- 23 rehabilitation service;
- 24 (vi) the funded aged care services in the service type are
- 25 each, or the funded aged care service is, a service that
- 26 will assist the individual to access a service mentioned
- 27 in subparagraph (iv) or (v);
- 28 (vii) the funded aged care services in the service type, or the
- 29 funded aged care service, will minimise the prospects of
- 30 the individual acquiring a further impairment or prevent
- 31 the individual from acquiring a further impairment;
- 32 (viii) the funded aged care services in the service type are
- 33 each, or the funded aged care service is, a medical
- 34 service required by the individual because of sickness.
- 35 (2) For the purposes of paragraph (1)(a), an impairment may be
- 36 long-term despite the fact it is episodic, fluctuating or varying in
- 37 intensity over time.
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# EXPOSURE DRAFT

Entry to the Commonwealth aged care system **Chapter 2**

Eligibility for entry **Part 2**

Approval of access to funded aged care services **Division 4**

## Section 50

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### **50 Conditions on approvals of service types or services in certain service groups**

- (1) If a service type, or a funded aged care service, in a service group is approved under paragraph 47(2)(b) for an individual, the System Governor may include one or more conditions on the approval.
- (2) Without limiting subsection (1), conditions included on an approval of a service type or a funded aged care service for an individual may include any of the following:
  - (a) that the individual must provide to a registered provider that will deliver funded aged care services in the service type, or the funded aged care service, information of a kind prescribed by the rules;
  - (b) that the individual can only access the funded aged care services in the service type, or the funded aged care service, through a registered provider of a kind prescribed by the rules;
  - (c) that a person of a kind prescribed by the rules has confirmed, in accordance with any requirements prescribed by the rules, that the individual requires access to the funded aged care services in the service type, or the funded aged care service.

### **51 Notice of decision**

- (1) The System Governor must give written notice of a decision under subsection 47(1) or (2) to the individual within 14 days after the decision is made.
- (2) The notice under subsection (1) must include for each decision:
  - (a) the reasons for the decision; and
  - (b) how the individual may apply for reconsideration of the decision; and
  - (c) for a decision under subsection 47(2), all of the following:
    - (i) any service groups approved under subsection 47(2) for the individual;
    - (ii) any service types approved under subparagraph 47(2)(b)(i) for the individual;

# EXPOSURE DRAFT

**Chapter 2** Entry to the Commonwealth aged care system

**Part 2** Eligibility for entry

**Division 4** Approval of access to funded aged care services

## Section 52

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- 1 (iii) any funded aged care services approved under  
2 subparagraph 47(2)(b)(ii) for the individual;  
3 (iv) any conditions included, under section 50, on an  
4 approval referred to in subparagraph (ii) or (iii) of this  
5 paragraph.
- 6 Note 1: For service groups other than permanent residential care, the notice of  
7 the classification decision under section 60 for a service group may be  
8 included with the notice of approval under this section for the service  
9 group.
- 10 Note 2: The notice of an individual's priority for the ongoing home care or  
11 permanent residential care service group under section [to be drafted]  
12 may be included with the notice of approval under this section for the  
13 service group.

## 52 Period of effect of approval

- 14 An access approval takes effect on the day specified in the notice  
15 of the decision under section 51 and remains in effect until the  
16 earlier of the following:  
17
- 18 (a) the individual's eligibility determination for an aged care  
19 needs assessment under section 39, or the access approval, is  
20 revoked under section 54 or 55;  
21 (b) another decision is made for the individual under subsection  
22 47(1);  
23 (c) the day (if any), or the day worked out in accordance with a  
24 method (if any), prescribed by the rules for that service  
25 group.
- 26 Note: Paragraph (c) is required for service groups, such as transition care  
27 and short-term restorative care, that are time limited.

# EXPOSURE DRAFT

Entry to the Commonwealth aged care system **Chapter 2**  
Eligibility for entry **Part 2**  
Revoking eligibility determinations and access approvals **Division 5**

Section 53

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## **Division 5—Revoking eligibility determinations and access approvals**

### **53 Request for revocation**

- (1) If an eligibility determination for an aged care needs assessment under section 39 is in effect for an individual who is under age 65, the individual may request the System Governor revoke the determination.
- (2) If an access approval is in effect for an individual, the individual may request the System Governor to revoke the approval.
- (3) A request under this section must be in an approved form.

### **54 Revocation on request**

- (1) If a request for revocation is made under section 53, the System Governor must revoke the eligibility determination or access approval within 28 days after the day the request is made.
- (2) The System Governor must, within 14 days after making the decision, give written notice of the revocation to the individual.
- (3) If the System Governor revokes an eligibility determination or access approval under subsection (1), any pending application for the individual under section 38 or 46 is taken to be withdrawn.

### **55 Revocation on initiative of System Governor**

- (1) The System Governor may revoke an eligibility determination for an aged care needs assessment under section 39, or access approval, or both, for an individual if the System Governor is satisfied that:
  - (a) the individual gave information, or a document, in relation to the application for access to funded aged care services to which the determination or access approval relates; and
  - (b) either:

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**Chapter 2** Entry to the Commonwealth aged care system

**Part 2** Eligibility for entry

**Division 5** Revoking eligibility determinations and access approvals

## Section 55

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- 1 (i) the information or document (as the case may be) was  
2 false or misleading; or  
3 (ii) the information omitted any matter or thing without  
4 which the information is misleading.
- 5 (2) Before the System Governor makes a decision under subsection (1)  
6 for an individual, the System Governor must, by written notice,  
7 notify the individual that the System Governor is considering  
8 making that decision.
- 9 (3) The notice must:  
10 (a) set out the reasons why the System Governor is considering  
11 making the decision; and  
12 (b) invite the applicant to make submissions, in writing, to the  
13 System Governor in relation to the matter within 14 days  
14 after receiving the notice, or such longer period as is  
15 specified in the notice; and  
16 (c) inform the individual that the System Governor may, after  
17 considering any submissions made by the individual, make  
18 the decision.
- 19 (4) The System Governor must consider any submissions made by an  
20 individual in accordance with a notice under subsection (3).
- 21 (5) If, after considering an individual's submissions under  
22 subsection (4), the System Governor decides to revoke the  
23 individual's eligibility determination, or access approval, or both,  
24 the System Governor must, within 14 days after the day the  
25 decision is made, give written notice of the following to the  
26 individual:  
27 (a) the decision;  
28 (b) the reasons for the decision;  
29 (c) how the individual may apply for reconsideration of the  
30 decision.
- 31 (6) If the System Governor revokes an individual's eligibility  
32 determination, or access approval, or both under subsection (1),  
33 any pending application for the individual under section 38 or 46 is  
34 taken to be withdrawn.
-

# EXPOSURE DRAFT

Entry to the Commonwealth aged care system **Chapter 2**

Classification **Part 3**

Classification assessments and decisions **Division 1**

## Section 56

### Part 3—Classification

#### Division 1—Classification assessments and decisions

##### 56 Classification assessments

- (1) A classification assessment for the purposes of determining an individual's classification level for a service group must be undertaken if:
- (a) for a service group other than the permanent residential care service group, either of the following apply:
    - (i) during an aged care needs assessment for the individual under section 43, the approved needs assessor considers the service group should be approved for the individual under subsection 47(2);
    - (ii) if the service group is prescribed by the rules—on the basis of information given under paragraph 46(2)(b) (which deals with reassessments), the System Governor considers the service group should be approved for the individual under subsection 47(2); or
  - (b) for the permanent residential care service group, all of the following apply:
    - (i) an access approval for the individual is in effect for the service group;
    - (ii) the individual is allocated a place in the service group;
    - (iii) a registered provider is delivering funded aged care services in the service group to the individual at an approved residential care home of the registered provider;
    - (iv) an application for a classification assessment for the individual is made under Division 2.

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

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

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**Chapter 2** Entry to the Commonwealth aged care system

**Part 3** Classification

**Division 1** Classification assessments and decisions

## Section 57

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1 under Division 2. Limits apply in relation to the circumstances in  
2 which subsequent applications can be made: see subsection 63(1).

3 (2) A classification assessment referred to in paragraph (1)(b) must be  
4 arranged by the System Governor.

5 Note: For the permanent residential care service group, the initial  
6 classification assessment occurs after the aged care needs assessment  
7 and the individual has begun accessing the funded aged care service,  
8 whereas for all other service groups the initial classification  
9 assessment is done at the same time as the aged care needs  
10 assessment.

### 11 **57 Undertaking classification assessments**

12 (1) A classification assessment for an individual for a service group  
13 must be carried out:

14 (a) for a classification assessment required under subparagraph  
15 56(1)(a)(i)—by an approved needs assessor using an  
16 assessment tool prescribed by the rules for the service group  
17 and in accordance with any other requirements prescribed by  
18 the rules; or

19 (b) for a classification assessment required under subparagraph  
20 56(1)(a)(ii)—by the System Governor in accordance with  
21 any requirements prescribed by the rules; or

22 (c) for a classification assessment required under paragraph  
23 56(1)(b):

24 (i) unless subparagraph (ii) applies—by an approved needs  
25 assessor using an assessment tool prescribed by the  
26 rules for the service group and in accordance with any  
27 other requirements prescribed by the rules; or

28 (ii) if circumstances prescribed by the rules apply and  
29 information of a kind prescribed by the rules is given to  
30 the System Governor—by the System Governor in  
31 accordance with any requirements prescribed by the  
32 rules.

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

# EXPOSURE DRAFT

Entry to the Commonwealth aged care system **Chapter 2**

Classification **Part 3**

Classification assessments and decisions **Division 1**

## Section 58

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### 58 Classification assessment reports

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

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

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

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

### 59 Classification decisions

(1) The System Governor must establish a classification level for an individual for a service group in accordance with any criteria, methods or procedures prescribed by the rules for the purposes of section 62, if:

- (a) the System Governor is given a report of a classification assessment for the individual for the service group under section 58; or
- (b) information is given to the System Governor as referred to in subparagraph 56(1)(a)(ii) or 57(1)(c)(ii).

(2) If subsection 58(3) applies in relation to an individual and a service group, the classification level for the individual for the service group is taken to be the classification level prescribed for the service group by rules made for the purposes of subsection 62(1).

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**Chapter 2** Entry to the Commonwealth aged care system

**Part 3** Classification

**Division 1** Classification assessments and decisions

## Section 60

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- 1 (3) Despite subsection (1), the System Governor is not required to  
2 make a decision under that subsection in relation to a service group  
3 (other than the permanent residential care service group) if the  
4 System Governor decides not to approve, under subsection 47(2),  
5 the service group for the individual.

### 60 Notice of decision

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

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

- 11 (a) the individual's classification level for the service group; and  
12 (b) details about when the classification decision did, or will,  
13 come into effect; and  
14 (c) the reasons for the decision; and  
15 (d) how the individual may apply for reconsideration of the  
16 decision.

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

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

### 61 Period of effect of decision

- 26 (1) A classification decision under section 59 for an individual for a  
27 service group takes effect on the day worked out in accordance  
28 with the method prescribed by the rules for the service group and  
29 remains in effect until the earliest of the following:  
30 (a) the day the individual ceases to access funded aged care  
31 services in the service group;  
32 (b) the day the individual's access approval for the service group  
33 is revoked;
-



# EXPOSURE DRAFT

Entry to the Commonwealth aged care system **Chapter 2**

Classification **Part 3**

Classification assessments and decisions **Division 1**

## Section 62

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- 1 (c) the day worked out in accordance with any method  
2 prescribed by the rules for the service group;  
3 (d) for a service group other than a service group to which  
4 paragraph (e) applies—another classification decision is  
5 made for the individual and the service group under section  
6 59;  
7 (e) for a service group prescribed by the rules—the day the  
8 individual is allocated a place for the service group after  
9 another classification decision is made for the individual for  
10 the service group under section 59.
- 11 (2) However, if an individual for whom a classification decision is not  
12 in effect because of paragraph (1)(a) starts to access funded aged  
13 care services in that service group again at a time, the classification  
14 resumes to be in effect from that time.

## 15 **62 Classification levels and procedures**

- 16 (1) The rules may prescribe classification levels for each service  
17 group.
- 18 (2) Without limiting subsection (1), the rules may:  
19 (a) set out different classification levels for different service  
20 groups; and  
21 (b) set out criteria for each classification level that are to be used  
22 in deciding an individual's classification level for a service  
23 group.
- 24 (3) Subject to subsection (4), the rules may specify methods or  
25 procedures that the System Governor must follow in deciding an  
26 individual's classification level for a service group.
- 27 (4) If the service group is the permanent residential care service group,  
28 rules made for the purposes of subsection (1) must:  
29 (a) set out compounding factors (based on results against  
30 relevant assessment items mentioned in subsection 58(2))  
31 that will be used to establish an individual's classification  
32 level; and

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**Chapter 2** Entry to the Commonwealth aged care system

**Part 3** Classification

**Division 1** Classification assessments and decisions

## Section 62

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- 1 (b) prescribe the scientific population study that will be used by
- 2 the System Governor to derive a method for establishing
- 3 when these compounding factors, taken together, are
- 4 significant because they indicate the individual has
- 5 significantly higher care needs relative to the needs of other
- 6 individuals.

# EXPOSURE DRAFT

Entry to the Commonwealth aged care system **Chapter 2**

Classification **Part 3**

Applying for a classification assessment for permanent residential care **Division 2**

Section 63

## **Division 2—Applying for a classification assessment for permanent residential care**

### **63 Requirements for applications for classification assessments**

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

(a) either of the following apply:

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

(b) either of the following apply:

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

- (2) The application must:

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

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

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

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

(a) any of the following apply:

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**Part 3** Classification

**Division 2** Applying for a classification assessment for permanent residential care

## Section 63

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- 1 (i) there is no classification decision in effect for the
- 2 individual for that service group;
- 3 (ii) there is a classification decision in effect for the
- 4 individual for that service group for the classification
- 5 level prescribed by the rules;
- 6 (iii) circumstances prescribed by the rules apply; and
- 7 (b) the individual is not accessing funded aged care services
- 8 under a specialist aged care program; and
- 9 (c) a commencement notification is given to the System
- 10 Governor in relation to an approved residential care home.
- 11 (4) An application under subsection (1) is taken to be withdrawn if any
- 12 of the following apply:
- 13 (a) an exit notification for the individual is given to the System
- 14 Governor in relation to the approved residential care home;
- 15 (b) a commencement notification is given to the System
- 16 Governor for another approved residential care home;
- 17 (c) the individual's access approval for the service group is
- 18 revoked;
- 19 (d) circumstances prescribed by the rules apply.

# EXPOSURE DRAFT

Entry to the Commonwealth aged care system **Chapter 2**

Classification **Part 3**

Changing classifications **Division 3**

Section 64

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## Division 3—Changing classifications

### 64 Changing classifications

- (1) The System Governor must change a classification decision (the *original decision*) for an individual under Division 1 if the System Governor is satisfied that:
  - (a) the assessment of the care needs of the individual that was made for the purposes of the original decision (see section 57) was incorrect or inaccurate; or
  - (b) the original decision was, for any other reason, incorrect.
- (2) The original decision cannot be changed under this section in any other circumstances.
- (3) Before changing the original decision, the System Governor must review the decision, having regard to:
  - (a) any material on which the original decision was based that the System Governor considers relevant; and
  - (b) any matters prescribed by the rules as matters to which the System Governor must have regard; and
  - (c) any other material or information that the System Governor considers relevant (including material or information that has become available since the original decision was made).
- (4) If the System Governor changes the original decision:
  - (a) the change takes effect on the same day that the original decision took effect (see subsection 61(1)); and
  - (b) the System Governor must notify the individual for whom the original decision was made, and any registered provider that is providing funded aged care services to the individual, in writing, of the change.

EXPOSURE DRAFT

Chapter 2 Entry to the Commonwealth aged care system  
Part 4 Prioritisation

Section 64

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1     **Part 4—Prioritisation**  
2  
3                     [To be drafted.]

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Entry to the Commonwealth aged care system **Chapter 2**  
Place allocation **Part 5**

Section 64

**Part 5—Place allocation**

[To be drafted.]

# EXPOSURE DRAFT

**Chapter 3** Registered providers, aged care workers and aged care digital platform operators

**Part 1** Introduction

Section 65

---

## **Chapter 3—Registered providers, aged care workers and aged care digital platform operators**

### **Part 1—Introduction**

#### **65 Simplified outline of this Chapter**

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

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

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

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

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



EXPOSURE DRAFT

Registered providers, aged care workers and aged care digital platform operators

Chapter 3

Introduction Part 1

Section 65

1	The Commissioner maintains a register of registered providers and
2	former registered providers which is generally required to be
3	published.
4	A registered provider must comply with key obligations, including
5	conditions on their registration, when delivering funded aged care
6	services. Civil penalties or offences generally apply for failure to
7	meet these obligations. Statutory duties also apply to registered
8	providers (and responsible persons of providers) with individuals
9	able to seek compensation in cases resulting in serious illness or
10	injury.
11	The Commissioner can revoke or suspend a provider’s registration
12	in certain circumstances, including where the entity is no longer
13	suitable to deliver funded aged care services. The Commissioner
14	can also vary a provider’s registration on the Commissioner’s own
15	initiative in certain circumstances.
16	Separate obligations are also placed on responsible persons and
17	aged care workers of registered providers, including to comply
18	with the Aged Care Code of Conduct.
19	An aged care worker screening scheme is established which
20	facilitates mutual recognition of worker screening across the aged
21	care and disability sectors.

# EXPOSURE DRAFT

**Chapter 3** Registered providers, aged care workers and aged care digital platform operators

**Part 2** Provider registration process

**Division 1** Applications for registration and registration decisions

Section 66

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## Part 2—Provider registration process

### Division 1—Applications for registration and registration decisions

#### 66 Registration of providers

- (1) An entity may apply to the Commissioner to be registered as a registered provider.
- (2) The application must:
  - (a) be in an approved form; and
  - (b) be accompanied by the application fee (if any) prescribed by the rules.

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

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

- (3) Without limiting subsection (2), the application must specify:
  - (a) each provider registration category that the entity is applying to be registered in; and
  - (b) each service type (the *intended service types*) that funded aged care services are in that the entity intends to deliver; and
  - (c) each service group through which the entity intends to deliver those service types; and
  - (d) any specialist aged care program the entity intends to deliver those service types under; and
  - (e) each residential care home (if any) that the entity is applying for approval for; and
  - (f) any information prescribed by the rules for each residential care home specified in the application in accordance with paragraph (e); and
  - (g) each responsible person of the entity; and
  - (h) any other information prescribed by the rules.

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Provider registration process **Part 2**

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- 1 (4) Despite subsection (1), an entity may not make an application  
2 under that subsection if, at the time of making the application, the  
3 entity is already a registered provider and the remaining  
4 registration period is more than the period prescribed by the rules.

### 5 **67 Commissioner must decide whether to register the entity**

- 6 (1) The Commissioner must consider an application made by an entity  
7 under section 66, and the registration requirements in  
8 Subdivision B, and decide:  
9 (a) whether to register the entity as a registered provider and in  
10 which registration categories; and  
11 (b) whether to approve any residential care home in relation to  
12 the entity.

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

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

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

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

- 25 (2) The decision under subsection (1) must be made within the period  
26 prescribed by the rules, or the period worked out in accordance  
27 with a method prescribed by the rules.

# EXPOSURE DRAFT

**Chapter 3** Registered providers, aged care workers and aged care digital platform operators

**Part 2** Provider registration process

**Division 2** Registration requirements

Section 68

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## Division 2—Registration requirements

### 68 Registration requirements

#### *General requirements*

- (1) The Commissioner must not register an entity as a registered provider unless the Commissioner is satisfied that:
  - (a) the entity has an ABN; and
  - (b) the entity is suitable to deliver funded aged care services having regard to the following:
    - (i) the entity's compliance with any law of the Commonwealth or any law of a State or Territory in which the entity operates (including any history of non-compliance with such laws);
    - (ii) whether a banning order or an NDIS banning order against the entity is, or has at any time been, in force;
    - (iii) if the entity was previously a registered provider, an approved provider or a registered NDIS provider—that registration was not revoked (other than on request by the entity);
    - (iv) if the entity is a registered provider or a registered NDIS provider—the registration is not suspended;
    - (v) the entity's previous experience in delivering funded aged care services in the entity's intended service types or other similar services;
    - (vi) any other matter prescribed by the rules; and
  - (c) each responsible person of the entity is suitable to deliver funded aged care services having regard to the suitability matters; and
  - (d) the entity satisfies the requirements in subsection (2) for at least one of the provider registration categories specified in the entity's application under paragraph 66(3)(a); and
  - (e) the entity satisfies any other requirements prescribed by the rules.

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**Section 68**

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## *Provider registration category specific requirements*

- (2) For each provider registration category specified in an entity's application under paragraph 66(3)(a), the Commissioner must be satisfied of the following before deciding to register the entity in that provider registration category under paragraph 67(1)(a):
- (a) the entity's intended service types include service types that are in the provider registration category and the entity intends to deliver those service types in the 3 year period after the application is made;
  - (b) the entity has an understanding of the funded aged care services in the intended service types;
  - (c) the entity has the commitment, capability and capacity (including through any systems the entity has, or proposes to have), to deliver funded aged care services in the intended service types;
  - (d) if any of the funded aged care services in the intended service types are services delivered in a residential care home—at least one residential care home specified in the entity's application under paragraph 66(3)(e) meets the residential care home requirements in subsection (3);
  - (e) for a provider registration category prescribed by the rules—either:
    - (i) an audit conducted in accordance with rules made for the purposes of section 69 has found the entity will be able to comply with the Aged Care Quality Standards that apply to the provider registration category; or
    - (ii) circumstances prescribed by the rules apply in relation to the entity and the provider registration category;
  - (f) the entity has a record of sound financial management and has methods that the entity uses, or proposes to use, in order to ensure sound financial management in relation to the delivery of the funded aged care services in the intended service types;
  - (g) any other requirements prescribed by the rules.

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### *Residential care home specific requirements*

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

(a) both of the following apply:

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

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

(b) either of the following apply:

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

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

### *Rules may exempt certain providers*

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

## **69 Audit requirements**

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

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

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

(b) the type and scope of audits that can be conducted for a provider registration category and the circumstances in which a particular type of audit is to be conducted;

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## Section 69

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- 1 (c) fees payable by an entity for an audit for a provider  
2 registration category;  
3 (d) audit timeframes for a provider registration category;  
4 (e) requirements (including qualifications) that a person  
5 conducting an audit must meet.

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

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

- 10 Note: Examples of different kinds of registered providers include:  
11 (a) providers delivering funded aged care services under a specialist  
12 aged care program; and  
13 (b) providers delivering funded aged care services at a specified  
14 number of residential care homes; and  
15 (c) providers that have previously been registered providers in a  
16 provider registration category; and  
17 (d) providers that have not previously been registered providers in a  
18 provider registration category; and  
19 (e) providers that are applying for approval of a new residential care  
20 home; and  
21 (f) providers who are applying for approval of a residential care  
22 home that has been previously approved for the provider or  
23 another registered provider.

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**Part 2** Provider registration process

**Division 3** Notice of decisions and other provisions

## Section 70

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### **Division 3—Notice of decisions and other provisions**

#### **70 Notices of possible refusal**

- (1) The Commissioner must give a written notice under this section in relation to an application made by an entity under section 66 before the Commissioner decides any of the following:
  - (a) to not register the entity in all the provider registration categories specified in the entity's application under paragraph 66(3)(a);
  - (b) to not approve all the residential care homes specified in the entity's application under paragraph 66(3)(e);
  - (c) to not register the entity in any provider registration category.
- (2) The notice must:
  - (a) set out the reasons why the Commissioner is considering making the decision; and
  - (b) invite the applicant to make submissions, in writing, to the Commissioner in relation to the matter within 14 days after receiving the notice, or such longer period as is specified in the notice; and
  - (c) inform the applicant that the Commissioner may, after considering any submissions made by the entity, still make the decision.
- (3) The Commissioner must consider any submissions made by the entity in accordance with the notice.

#### **71 Notice of decision to register**

- (1) If the Commissioner decides under paragraph 67(1)(a) to register an entity as a registered provider the Commissioner must, within 14 days after making the decision:
  - (a) give the entity the following:
    - (i) written notice of the decision;
    - (ii) a certificate of registration; and



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## Section 72

(b) record the details of the entity's registration on the Provider Register.

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

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

## 72 Effect of registration in relation to service groups

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

### *Constitutional corporations*

- (2) For a registered provider that is a constitutional corporation and registered in a provider registration category (other than the residential care category), the registration in that category only has effect in relation to the following service groups:
- (a) home care;
  - (b) short term restorative care;
  - (c) home support.

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---

1 (3) For a registered provider that is a constitutional corporation and is  
2 registered in the provider registration category that is the  
3 residential care category, the registration in that category only has  
4 effect in relation to the following service groups, where the service  
5 types in those groups are delivered in an approved residential care  
6 home:

- 7 (a) permanent residential care;  
8 (b) residential respite care.

9 *Other entities*

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

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

- 20 (a) permanent residential care;  
21 (b) residential respite care.

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

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

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### 73 Notice of refusal decisions

- (1) The Commissioner must give written notice to an entity of any of the following decisions:
  - (a) a decision under paragraph 67(1)(a) to not register the entity in a provider registration category;
  - (b) a decision under paragraph 67(1)(b) to not approve a residential care home;
  - (c) a decision under paragraph 67(1)(a) to not register the entity in any provider registration category.
- (2) The notice must be given within 14 days after the decision is made.
- (3) The notice must include:
  - (a) the decision;
  - (b) the reasons for the decision;
  - (c) how the entity may apply for reconsideration of the decision.

### 74 Registration period

- (1) For the purposes of paragraph 71(2)(c), the registration period for a registered provider is the period that starts on the day the decision is made to register the provider under section 67 and ends at:
  - (a) the end of the period of 3 years; or
  - (b) if the Commissioner determines a shorter or longer registration period under subsection (2)—the end of that period; or
  - (c) the end of the day that the entity's registration is revoked.
- (2) For the purposes of paragraph (1)(b), the Commissioner may determine a shorter or longer registration period if the Commissioner is satisfied that it is appropriate to do so having regard to all of the circumstances.

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### 75 Deemed registration

- (1) The System Governor may determine, in writing, that an entity in a class of entities prescribed by the rules is taken to be registered as a registered provider.
- (2) The determination under subsection (1) must specify in relation to the entity:
  - (a) the name of the entity; and
  - (b) the registration period, being 3 months or such longer period as is specified in the determination; and
  - (c) each provider registration category in which the entity is taken to be registered under paragraph 67(1)(a); and
  - (d) the conditions to which the deemed registration in each of those categories is taken to be subject to under Part 3; and
  - (e) each residential care home that is taken to have been approved under paragraph 67(1)(b); and
  - (f) any other matter prescribed by the rules.
- (3) The System Governor must not make a determination under subsection (1) unless the System Governor is satisfied that:
  - (a) a situation of emergency exists that could result in, or has resulted in, another entity being unable to deliver funded aged care services; and
  - (b) a determination made under this section would ensure that the delivery of certain funded aged care services did not cease, or would resume.
- (4) If the System Governor makes a determination under subsection (1), the System Governor must give notice of the determination and a certificate of registration to the entity and the Commissioner.

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Section 76

## Part 3—Variations, suspensions and revocations of registration

### 76 Variation of registration on Commissioner's own initiative

- (1) The Commissioner may at any time, on the Commissioner's own initiative, vary the registration of a registered provider to:
  - (a) vary or revoke a condition to which the registration is subject under section 89; or
  - (b) impose a new condition to which the registration is subject under that section; or
  - (c) remove the provider from being registered in a provider registration category; or
  - (d) reduce or extend the period for which the registration is in force; or
  - (e) remove a residential care home approved in relation to the provider.
- (2) However, the Commissioner must only vary the registration of a registered provider under subsection (1) if the Commissioner considers it appropriate in all the circumstances to do so.

### 77 Variation of registration on application by registered provider

- (1) The Commissioner may on application by a registered provider, vary the registration of a registered provider to:
  - (a) register the provider in a new provider registration category; or
  - (b) remove the provider from being registered in a provider registration category; or
  - (c) approve a new residential care home in relation to the provider; or
  - (d) remove a residential care home approved in relation to the provider; or

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- 1 (e) vary or revoke a condition to which the registration is subject  
2 under section 89; or  
3 (f) impose a new condition to which the registration is subject  
4 under that section.

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

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

- 11 (3) However, the Commissioner must not vary the registration unless:  
12 (a) the Commissioner considers it appropriate in all the  
13 circumstances to do so; and  
14 (b) for a variation to register the provider in a new provider  
15 registration category—the Commissioner is satisfied of all  
16 the matters referred to in subsection 68(2) in relation to the  
17 provider and the category; and  
18 (c) for a variation to approve a new residential care home—the  
19 Commissioner is satisfied of all the matters referred to in  
20 subsection 68(3) in relation to the provider and the residential  
21 care home.

## 22 78 Notice of possible variation of registration

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

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

- 33 (2) The notice must:
-

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- 1 (a) set out the reasons why the Commissioner is considering  
2 making a decision to vary the registration of the registered  
3 provider; and  
4 (b) invite the registered provider to make submissions, in  
5 writing, to the Commissioner in relation to the matter within  
6 14 days after receiving the notice, or such longer period as is  
7 specified in the notice; and  
8 (c) inform the registered provider that the Commissioner may,  
9 after considering any submissions made by the registered  
10 provider, decide to vary the registration of the registered  
11 provider.
- 12 (3) The Commissioner must consider any submissions made by the  
13 registered provider in accordance with the notice.

#### 14 **79 Notice of possible refusal to vary registration**

- 15 (1) Before the Commissioner decides not to vary the registration of a  
16 registered provider under subsection 77(1), the Commissioner  
17 must, by written notice, notify the registered provider that the  
18 Commissioner is considering making that decision.
- 19 (2) The notice must:
- 20 (a) set out the reasons why the Commissioner is considering  
21 making a decision not to vary the registration of the  
22 registered provider; and  
23 (b) invite the registered provider to make submissions, in  
24 writing, to the Commissioner in relation to the matter within  
25 14 days after receiving the notice, or such longer period as is  
26 specified in the notice; and  
27 (c) inform the registered provider that the Commissioner may,  
28 after considering any submissions made by the registered  
29 provider, decide not to vary the registration of the registered  
30 provider.
- 31 (3) The Commissioner must consider any submissions made by the  
32 registered provider in accordance with the notice.

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**Part 3** Variations, suspensions and revocations of registration

## Section 80

---

### 80 Notice of decision to vary

- (1) If the Commissioner decides under subsection 76(1) or 77(1) to vary the registration of a registered provider, the Commissioner must, within 14 days after making the decision:
  - (a) give the entity the following:
    - (i) notice of the decision;
    - (ii) the certificate of registration as varied; and
  - (b) update the details of the entity's registration on the Provider Register.
- (2) The notice under paragraph (1)(a) must include:
  - (a) the decision;
  - (b) the reasons for the decision;
  - (c) how the entity may apply for reconsideration of the decision.
- (3) A variation of the registration of a registered provider takes effect on the day specified in the notice given under subparagraph (1)(a)(i).

### 81 Notice of decision not to vary

- (1) If the Commissioner decides under subsection 77(1) not to vary the registration of a registered provider, the Commissioner must give notice of the decision within 14 days after the day the decision is made.
- (2) The notice under subsection (1) must include:
  - (a) the decision; and
  - (b) the reasons for the decision; and
  - (c) how the entity may apply for reconsideration of the decision.

### 82 Extension of registration period—pending applications

- (1) Subsection (2) applies if:
  - (a) the registration of an entity as a registered provider will cease to be in force on a particular day; and



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- 1 (b) in the period prescribed by the rules before that day, the  
2 entity makes an application under section 66 to be registered  
3 as a registered provider.
- 4 (2) Despite paragraph 71(2)(c) (which relates to the registration period  
5 specified on the certificate of registration), the registration of the  
6 registered provider continues in force until the Commissioner  
7 makes a decision on the application under section 67.

### 8 **83 Suspension of registration**

#### 9 *Suspension on Commissioner's own initiative*

- 10 (1) The Commissioner may, in writing, suspend the registration of an  
11 entity as a registered provider for a specified period if:  
12 (a) the Commissioner reasonably believes that the entity has  
13 contravened, is contravening, or is proposing to contravene,  
14 this Act; or  
15 (b) the Commissioner reasonably believes that the application  
16 for registration by the entity contained information that was  
17 false or misleading in a material particular; or  
18 (c) the entity is an insolvent under administration; or  
19 (d) the Commissioner is satisfied that the entity is no longer  
20 suitable to deliver funded aged care services, having regard  
21 to any matters prescribed by the rules; or  
22 (e) the Commissioner is satisfied that the responsible persons of  
23 the entity are no longer suitable to be involved in the delivery  
24 of funded aged care services, having regard to any matters  
25 prescribed by the rules; or  
26 (f) a circumstance exists that is a circumstance prescribed by the  
27 rules.
- 28 (2) The period specified under subsection (1) must either:  
29 (a) not be longer than 90 days; or  
30 (b) be expressed to end upon the entity satisfying a specified  
31 condition.

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- 1 (3) To avoid doubt, subsection (2) does not prevent the Commissioner  
2 suspending the registration of an entity as a registered provider  
3 more than once.
- 4 (4) In deciding whether to suspend the registration of an entity under  
5 subsection (1), the Commissioner must have regard to the  
6 following matters:
- 7 (a) the nature, significance and persistence of any contravention,  
8 or proposed contravention, of this Act;
- 9 (b) action that can be taken to address any contravention, or  
10 proposed contravention, of this Act;
- 11 (c) the extent (if any) to which the entity is delivering funded  
12 aged care services in a way that may cause harm to, or  
13 jeopardise, public trust in the Commonwealth aged care  
14 system;
- 15 (d) the safety, health or wellbeing of individuals accessing  
16 funded aged care services delivered by the entity;
- 17 (e) any other matter the Commissioner considers relevant.

### *Suspension at the request of registered provider*

- 18
- 19 (5) The Commissioner may, in writing, suspend the registration of an  
20 entity as a registered provider for a specified period if the entity  
21 requests the Commissioner, in writing, to suspend the registration.
- 22 (6) In deciding whether to suspend the registration of an entity under  
23 subsection (5), the Commissioner must consider whether  
24 appropriate arrangements are in place to ensure continuity of care  
25 for individuals to whom the provider is delivering funded aged care  
26 services.

## **84 Revocation of registration**

### *Revocation on Commissioner's own initiative*

- 27
- 28
- 29 (1) The Commissioner may, in writing, revoke the registration of an  
30 entity as a registered provider if:

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- 1 (a) the Commissioner reasonably believes that the entity has  
2 contravened, is contravening, or is proposing to contravene,  
3 this Act; or  
4 (b) the application for registration by the entity contained  
5 information that was false or misleading in a material  
6 particular; or  
7 (c) the entity is an insolvent under administration; or  
8 (d) the Commissioner is satisfied that the entity is no longer  
9 suitable to deliver funded aged care services, having regard  
10 to any matters prescribed by the rules; or  
11 (e) the Commissioner is no longer satisfied that the responsible  
12 persons of the entity are suitable to deliver funded aged care  
13 services, having regard to any matters prescribed by the  
14 rules; or  
15 (f) a circumstance exists that is a circumstance prescribed by the  
16 rules.
- 17 (2) In deciding whether to revoke the registration of an entity under  
18 subsection (1), the Commissioner must have regard to the  
19 following matters:  
20 (a) the nature, significance and persistence of any contravention,  
21 or proposed contravention, of this Act;  
22 (b) action that can be taken to address any contravention, or  
23 proposed contravention, of this Act;  
24 (c) the extent (if any) to which the entity is conducting its affairs  
25 as a registered provider in a way that may cause harm to, or  
26 jeopardise, public trust in the Commonwealth aged care  
27 system;  
28 (d) the safety, health or wellbeing of individuals accessing  
29 funded aged care services delivered by the entity;  
30 (e) any other matter the Commissioner considers relevant.

#### 31 *Revocation at the request of registered provider*

- 32 (3) The Commissioner may, in writing, revoke the registration of an  
33 entity as a registered provider if the entity requests the  
34 Commissioner, in writing, to revoke the registration.

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- 1 (4) In deciding whether to revoke the registration of an entity under  
2 subsection (3), the Commissioner must consider whether  
3 appropriate arrangements are in place to ensure continuity of care  
4 for individuals to whom the provider is delivering funded aged care  
5 services.

### 6 **85 Notice of possible suspension or revocation**

- 7 (1) Before deciding to suspend or revoke the registration of an entity  
8 under subsection 83(1) or 84(1), the Commissioner must notify the  
9 entity that suspension or revocation is being considered. The notice  
10 must be in writing and must:  
11 (a) set out the reasons why the Commissioner is considering the  
12 suspension or revocation; and  
13 (b) invite the entity to make submissions, in writing, to the  
14 Commissioner in relation to the matter within 14 days after  
15 receiving the notice, or such longer period as is specified in  
16 the notice; and  
17 (c) inform the entity that if no submissions are made within the  
18 period specified in the notice, any suspension or revocation  
19 may take effect as early as 7 days after the end of the period  
20 specified in the notice.  
21 (2) In deciding whether to suspend or revoke the registration under  
22 subsection 83(1) or 84(1), the Commissioner must consider any  
23 submissions given to the Commissioner in accordance with the  
24 notice.

### 25 **86 Notice of decision**

#### 26 *Commissioner initiated decisions*

- 27 (1) The Commissioner must notify an entity, in writing, of a decision  
28 to suspend or revoke the registration of the entity under  
29 subsection 83(1) or 84(1).  
30 (2) The notice under subsection (1) must include:  
31 (a) the decision; and

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

#### 3 *Decisions on request by registered entity*

- 4 (3) The Commissioner must notify an entity, in writing, of a decision
- 5 to suspend or revoke the registration of the entity under
- 6 subsection 83(5) or 84(3).
- 7 (4) A notice under subsection (3) must include:
- 8 (a) the day the suspension or revocation takes effect (which must
- 9 not be earlier than the day the notice is given); and
- 10 (b) for a suspension—the period for which the suspension is in
- 11 force.

### 12 **87 Register of registered providers**

- 13 (1) The Commissioner must establish and maintain a register for the
- 14 purposes of this Act, to be known as the Provider Register.
- 15 (2) The Provider Register may be kept in any form that the
- 16 Commissioner considers appropriate.
- 17 (3) The Provider Register must include each of the following in
- 18 relation to the registration of a registered provider in a registration
- 19 category:
- 20 (a) the name of the registered provider;
- 21 (b) the ABN (if any) of the registered provider;
- 22 (c) the business location of the provider;
- 23 (d) the registration period;
- 24 (e) each registration category the provider is registered in;
- 25 (f) if the provider delivers funded aged care services in one or
- 26 more approved residential care homes—the name and
- 27 address of each of those homes;
- 28 (g) if the provider delivers funded aged care services in a home
- 29 or community setting—each local government area in which
- 30 the provider delivers those services;
- 31 (h) whether the registration is in effect or is suspended;

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- 1 (i) if the provider has given an undertaking under section 114 of  
2 the Regulatory Powers Act (as applied by section 246 of this  
3 Act)—information about the undertaking;
- 4 (j) if a compliance notice has been given to the provider under  
5 section 269 or 270—information about the compliance  
6 notice;
- 7 (k) if a banning order against the provider is in force under  
8 section 286—information about the banning order;
- 9 (l) any other matter prescribed by the rules.
- 10 (4) The Provider Register may include any of the following in relation  
11 to an entity who was a registered provider:
  - 12 (a) the name of the entity;
  - 13 (b) the entity's ABN (if any);
  - 14 (c) the address of the entity;
  - 15 (d) if the entity was a registered provider and the entity's  
16 registration was revoked on the Commissioner's initiative—  
17 information about the revocation;
  - 18 (e) any other matter prescribed by the rules.
- 19 (5) The Provider Register must include each of the following in  
20 relation to a responsible person, or an aged care worker, of a  
21 registered provider against whom a banning order is in force under  
22 section 287:
  - 23 (a) the name of the person or worker;
  - 24 (b) the person's or worker's ABN (if any);
  - 25 (c) information about the banning order;
  - 26 (d) any other matter prescribed by the rules.
- 27 (6) The Provider Register may include each of the following in  
28 relation to a responsible person, or an aged care worker, of a  
29 registered provider against whom a banning order was in force  
30 under section 287:
  - 31 (a) the name of the person or worker;
  - 32 (b) the person's or worker's ABN (if any);
  - 33 (c) information about the banning order;

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- 1 (d) any other matter prescribed by the rules.
- 2 (7) The rules may make provision for and in relation to the following:
- 3 (a) the correction of entries in the Provider Register;
- 4 (b) the publication of the Provider Register in whole or part, or
- 5 of specified information entered on the Provider Register;
- 6 (c) any other matter relating to the administration or operation of
- 7 the Provider Register.

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**Division 1** Conditions on provider registration

## Section 88

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

#### **Division 1—Conditions on provider registration**

##### **88 Conditions of registration**

(1) The registration of a registered provider is subject to the following conditions:

- (a) the conditions set out in this Division that apply in relation to the provider;
- (b) any conditions prescribed by the rules that apply in relation to the provider;
- (c) any conditions imposed on the registration by the Commissioner under section 89.

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

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

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

(3) An entity contravenes this subsection if:

- (a) the entity is a registered provider; and
- (b) the entity engages in conduct; and
- (c) the conduct breaches a condition to which the entity's registration is subject.

**Civil penalty:** 250 penalty units.

(4) An entity contravenes this subsection if:

- (a) the entity is a registered provider; and



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- 1 (b) the entity engages in conduct; and
- 2 (c) the conduct breaches a condition to which the entity's
- 3 registration is subject; and
- 4 (d) the conduct:
- 5 (ii) involves a significant failure; or
- 6 (i) is part of a systematic pattern of conduct.

7 Civil penalty: 500 penalty units.

### 8 **89 Conditions imposed by the Commissioner**

- 9 (1) The Commissioner may impose conditions on the registration of a
- 10 registered provider.
- 11 (2) A condition may be imposed:
- 12 (a) at the time of registration; or
- 13 (b) at a later time in accordance with subsection 76(1) or 77(1).
- 14 (3) The conditions may include, but are not limited to, conditions
- 15 relating to the following matters:
- 16 (a) the quality and safety of funded aged care services delivered
- 17 by a registered provider;
- 18 (b) the rules made for the purposes of subsection 69(1) (which
- 19 deals with audit requirements);
- 20 (c) any additional reporting requirements that a registered
- 21 provider must comply with;
- 22 (d) the Financial and Prudential Standards;
- 23 (e) the Aged Care Code of Conduct;
- 24 (f) requirements relating to the funded aged care services that a
- 25 registered provider may or may not deliver.

### 26 **90 Compliance with Aged Care Code of Conduct**

- 27 It is a condition of registration that a registered provider must:
- 28 (a) comply with the Aged Care Code of Conduct;

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

### 4 **91 Workforce and aged care worker requirements**

- 5 It is a condition of registration that a registered provider must:
- 6 (a) comply with the worker screening requirements prescribed  
7 by the rules; and
- 8 (b) ensure that aged care workers and responsible persons of the  
9 provider comply with the worker screening requirements  
10 prescribed by the rules; and
- 11 (c) ensure that aged care workers meet any qualifications and  
12 training requirements prescribed by the rules; and
- 13 (d) ensure that aged care workers meet any other requirements  
14 prescribed by the rules.

### 15 **92 Rights and principles**

#### 16 *Rights*

- 17 (1) It is a condition of registration that a registered provider that is  
18 registered in a provider registration category prescribed by the  
19 rules must:
- 20 (a) demonstrate that the provider understands the rights of  
21 individuals under the Statement of Rights; and
- 22 (b) have in place practices designed to ensure delivery of funded  
23 aged care services by the registered provider is not  
24 incompatible with the rights of individuals under the  
25 Statement of Rights.

#### 26 *Principles—person-centred aged care system*

- 27 (2) It is a condition of registration that a registered provider that is  
28 registered in a provider registration category prescribed by the  
29 rules must demonstrate that the provider understands that the

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

### 3 **93 Personal information and record keeping**

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

### 10 **94 Fees and payments**

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

### 15 **95 Incident management**

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

### 27 **96 Complaints and whistleblowers**

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

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- 1 (a) implement and maintain a complaints and feedback
- 2 management system in accordance with any requirements
- 3 prescribed by the rules; and
- 4 (b) manage complaints and feedback in accordance with that
- 5 system and any other requirements prescribed by the rules;
- 6 and
- 7 (c) not victimise or discriminate against anyone for making a
- 8 complaint or giving feedback; and
- 9 (d) maintain a whistleblower policy in accordance with any
- 10 requirements prescribed by the rules.

## 11 **97 Compliance with Aged Care Quality Standards**

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

## 15 **98 Compliance with Financial and Prudential Standards**

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

## 23 **99 Continuous improvement**

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

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- 1 (2) It is a condition of registration that a registered provider that is  
2 registered in a provider registration category prescribed by the  
3 rules must have a continuous improvement plan.

#### 4 **100 Membership of governing bodies**

- 5 (1) This section applies to a registered provider that is an entity other  
6 than:  
7 (a) a government entity; or  
8 (b) a local government authority; or  
9 (c) a registered provider of a kind prescribed by the rules.
- 10 (2) Subject to subsections (3), (4) and (5), it is a condition of  
11 registration that a registered provider must ensure that:  
12 (a) a majority of the members of the governing body of the  
13 provider are independent non-executive members; and  
14 (b) if the provider is a registered provider of a kind prescribed by  
15 the rules—at least one member of the governing body of the  
16 provider has experience in the provision of clinical care.
- 17 (3) Subsection (2) does not apply in relation to a registered provider at  
18 a particular time if both of the following apply at that time:  
19 (a) the governing body of the provider has fewer than 5  
20 members;  
21 (b) the provider delivers funded aged care services to fewer than  
22 40 individuals accessing funded aged care services.
- 23 (4) Subsection (2) does not apply in relation to a registered provider at  
24 a particular time if, at that time, the provider is a kind of body that  
25 is known as an Aboriginal Community Controlled Organisation.
- 26 (5) Paragraph (2)(a) or (b) does not apply in relation to a registered  
27 provider at a particular time if a determination under section 102  
28 that the requirement set out in that paragraph does not apply in  
29 relation to the provider is in force at that time.

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## Section 101

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### 101 Advisory body requirements

- (1) It is a condition of registration that a registered provider that is of a kind prescribed by the rules must:
  - (a) establish, and continue in existence, a body (the *quality care advisory body*) that:
    - (i) complies with the requirements about membership prescribed by the rules; and
    - (ii) is required, at least once every 6 months, to give the governing body of the provider a written report about the quality of the funded aged care services delivered by the provider; and
    - (iii) is able, at any time, to give feedback to the governing body of the provider about the quality of the funded aged care services delivered by the provider; and
  - (b) require the governing body of the provider:
    - (i) to consider such a report, or any such feedback, when making decisions in relation to the quality of the funded aged care services delivered by the provider; and
    - (ii) to advise, in writing, the quality care advisory body how the governing body considered such a report or any such feedback.
- (2) A report given under subparagraph (1)(a)(ii) must comply with any requirements prescribed by the rules.
- (3) It is a condition of registration that the registered provider must, if requested to do so by the quality care advisory body, give the body information about the quality of the funded aged care services delivered by the provider.
- (4) It is a condition of registration that a registered provider that is of a kind prescribed by the rules must:
  - (a) offer, at least once every 12 months, individuals accessing funded aged care services and their supporters and representatives the opportunity to establish one or more bodies (the *consumer advisory bodies*) to give the governing

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- 1 body of the provider feedback about the quality of the funded  
2 aged care services delivered by the provider; and  
3 (b) if one or more consumer advisory bodies are established—  
4 require the governing body of the provider:  
5 (i) to consider any such feedback given by the body or  
6 bodies when making decisions in relation to the quality  
7 of the funded aged care services delivered by the  
8 provider; and  
9 (ii) to advise, in writing, the body or bodies how the  
10 governing body considered any such feedback.  
11 (5) The offer under paragraph (4)(a) must be made in writing.

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

#### *Application for determination*

- 15 (1) A registered provider may apply to the Commissioner for a  
16 determination that either or both of the following conditions (the  
17 ***governance conditions***) do not apply in relation to the provider:  
18 (a) the condition set out in paragraph 100(2)(a);  
19 (b) the condition set out in paragraph 100(2)(b).  
20 (2) The application must:  
21 (a) be made in writing; and  
22 (b) be in an approved form; and  
23 (c) be accompanied by the application fee (if any) prescribed by  
24 the rules.

#### *Making of determination*

- 26 (3) If a registered provider makes an application under subsection (1),  
27 the Commissioner may determine that either or both of the  
28 governance conditions do not apply in relation to the provider if  
29 the Commissioner is satisfied that it is reasonable to do so.

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- 1 (4) In deciding whether to make the determination in relation to the  
2 registered provider, the Commissioner may take into account the  
3 following matters:
- 4 (a) the number of funded aged care services that the provider  
5 delivers;
- 6 (b) the number of individuals to whom the provider delivers  
7 those services;
- 8 (c) the location of those services;
- 9 (d) the annual turnover in the provider's responsible persons;
- 10 (e) the membership of the governing body of the provider;
- 11 (f) any arrangements that the provider has made, or proposes to  
12 make, to assist:
- 13 (i) the members of the governing body of the provider to  
14 act objectively and independently in the best interests of  
15 the provider; or
- 16 (ii) the governing body of the provider to seek, when it  
17 considers it necessary to do so, advice from a person  
18 with experience in the provision of clinical care;
- 19 (g) any other requirements applying to the provider under a law  
20 of the Commonwealth or a law of a State or Territory in  
21 which the provider operates as a registered provider;
- 22 (h) any other matter prescribed by the rules.
- 23 *Notice of determination etc.*
- 24 (5) If the Commissioner decides to make the determination in relation  
25 to the registered provider, the Commissioner must give the  
26 provider written notice of the following:
- 27 (a) the making of the determination;
- 28 (b) the governance condition to which the determination relates;
- 29 (c) the period for which the determination is in force.
- 30 Note: The determination may remain in force for a period specified by the  
31 Commissioner or until it is revoked under section 103.



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- 1 (6) If the Commissioner decides not to make the determination in  
2 relation to the registered provider, the Commissioner must give the  
3 provider written notice of the following:  
4 (a) the decision;  
5 (b) the reasons for the decision;  
6 (c) how the provider may apply for reconsideration of the  
7 decision.

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

- 10 (1) The Commissioner may, on the Commissioner's own initiative,  
11 vary or revoke a determination made under subsection 102(3) in  
12 relation to a registered provider if the Commissioner is satisfied it  
13 is appropriate to do so.
- 14 (2) If the Commissioner decides to vary or revoke the determination in  
15 relation to the registered provider, the Commissioner must, as soon  
16 as is practicable, give the provider a written notice that:  
17 (a) sets out the decision; and  
18 (b) sets out the reasons for the decision; and  
19 (c) specifies the day on which the variation or revocation takes  
20 effect; and  
21 (d) states how the person may apply for reconsideration of the  
22 decision.

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

*Corporations under the Corporations Act 2001*

- 26 (1) If:  
27 (a) a registered provider is a body corporate that is incorporated,  
28 or taken to be incorporated, under the *Corporations Act*  
29 *2001*; and

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

10 *Aboriginal and Torres Strait Islander corporations*

- 11 (2) If:  
12 (a) a registered provider is an Aboriginal and Torres Strait  
13 Islander corporation (within the meaning of the *Corporations*  
14 *(Aboriginal and Torres Strait Islander) Act 2006*); and  
15 (b) the provider is a wholly-owned subsidiary (within the  
16 meaning of that Act) of another body corporate (the holding  
17 company); and  
18 (c) the holding company is not a registered provider;  
19 the registered provider must ensure that the constitution of the  
20 provider does not authorise a director of the provider to act in good  
21 faith in the best interests of the holding company.

## 22 **105 Delivery of funded aged care services**

- 23 It is a condition of registration that a registered provider that is  
24 registered in a provider registration category prescribed by the  
25 rules must:  
26 (a) deliver funded aged care services in accordance with any  
27 applicable requirements prescribed by the rules; and  
28 (b) provide and explain, in accordance with any requirements  
29 prescribed by the rules, information to an individual  
30 accessing funded aged care services; and

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## Section 106

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- 1 (c) maintain and manage any residential care homes in  
2 accordance with any applicable requirements prescribed by  
3 the rules.

### 4 **106 Restrictive practices**

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

### 11 **107 Ceasing the provision of funded aged care services**

- 12 It is a condition of registration that a registered provider must  
13 comply with any requirements prescribed by the rules:  
14 (a) relating to ceasing to deliver a funded aged care service to an  
15 individual; or  
16 (b) relating to ceasing to deliver any funded aged care services to  
17 any individuals.

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

## Section 108

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

#### **108 Compliance with laws**

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

#### **109 Reporting**

(1) A registered provider must:

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

(2) The persons are the following:

- (a) the Commissioner;
- (b) the Complaints Commissioner;
- (c) the Inspector-General of Aged Care;
- (d) the System Governor;
- (e) the Pricing Authority.

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

- (a) complaints made to a registered provider;
- (b) the workforce, and governance, of a registered provider;
- (c) compliance by a registered provider with requirements relating to nursing services;
- (d) locations at which funded aged care services are delivered by a registered provider;

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### Section 110

- 1 (e) specified groups of individuals to whom a registered provider  
2 is delivering funded aged care services;  
3 (f) how specified funded aged care services are delivered;  
4 (g) specified financial and prudential matters.
- 5 (4) Without limiting subsection (1), the rules may prescribe  
6 requirements in relation to reporting periods and the timeframes  
7 within which the information must be given in relation to those  
8 reporting periods.
- 9 (5) An entity contravenes this subsection if:  
10 (a) the entity is a registered provider; and  
11 (b) the entity fails to comply with subsection (1).
- 12 Civil penalty: 250 penalty units.

### 110 Change in circumstances

- 14 (1) A registered provider of a kind prescribed by the rules must give  
15 notice to the Commissioner of any change of a kind prescribed by  
16 the rules in accordance with any requirements prescribed by the  
17 rules.
- 18 (2) If circumstances prescribed by the rules apply, a notice under  
19 subsection (1) must also be given to the System Governor.
- 20 (3) Without limiting subsection (1), the rules may prescribe that a  
21 registered provider must give notice of a change in relation to the  
22 following:  
23 (a) a change of circumstances or an event that materially affects  
24 the provider's suitability to be a registered provider taking  
25 into account the matters referred to in paragraph 68(1)(b)  
26 (which deals with suitability of registered providers);  
27 (b) a change of circumstances that relates to a suitability matter  
28 in relation to a responsible person of the provider;  
29 (c) a change in the responsible persons of the provider;

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- 1 (d) a significant change in the organisation or governance  
2 arrangements of the provider;
- 3 (e) a significant change in the scale of the provider in relation to  
4 the funded aged care services delivered by the provider;
- 5 (f) a change in the service types delivered by the provider  
6 relative to the intended service types the provider included on  
7 the provider's application for registration;
- 8 (g) specified changes relating to the associated providers of the  
9 provider;
- 10 (h) specified changes to an approved residential care home;
- 11 (i) specified financial and prudential matters.
- 12 (4) A notification under subsection (1) or (2) must:
- 13 (a) be given within 14 days after the registered provider becomes  
14 aware of the change in circumstances or the event occurring;  
15 and
- 16 (b) be in an approved form; and
- 17 (c) include any information prescribed by the rules in relation to  
18 a change of circumstances or event of a kind prescribed by  
19 the rules.
- 20 (5) An entity contravenes this subsection if:
- 21 (a) the entity is a registered provider; and
- 22 (b) the entity fails to comply with subsection (1) or (2).
- 23 Civil penalty: 30 penalty units.

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

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

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(2) The notification must:

- (a) be given in writing; and
- (b) be given within 14 days after the person becomes aware of the change of circumstances; and
- (c) set out the details of the change of circumstances that relates to a suitability matter in relation to the person.

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

- (a) the person is one of the responsible persons of a registered provider; and
- (b) the person fails to comply with subsection (1).

Penalty: 30 penalty units.

## **112 Determination relating to suitability of responsible persons of a registered provider**

### *Determination relating to suitability of responsible persons*

- (1) The Commissioner may, at any time, determine that a person who is one of the responsible persons of a registered provider is not suitable to be involved in the delivery of funded aged care services.
- (2) In deciding whether to make the determination under subsection (1), the Commissioner must consider the suitability matters in relation to the person.
- (3) Subsection (2) does not limit the matters the Commissioner may consider in deciding whether to make the determination under subsection (1) in relation the person.

### *Notice of intention to make determination*

- (4) Before the Commissioner makes the determination in relation to a person who is one of the responsible persons of the registered provider, the Commissioner must, by written notice, notify the person and the provider that the Commissioner is considering making such a determination.

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- 1 (5) The notice must:
- 2 (a) set out the reasons why the Commissioner is considering
- 3 making the determination in relation to a person who is one
- 4 of the responsible persons of the registered provider; and
- 5 (b) invite the person and the provider to make submissions, in
- 6 writing, to the Commissioner in relation to the matter within:
- 7 (i) 14 days after receiving the notice; or
- 8 (ii) if a shorter period is specified in the notice—that shorter
- 9 period; and
- 10 (c) inform the person and the provider that the Commissioner
- 11 may, after considering any submissions made by them,
- 12 decide to make the determination.
- 13 (6) The Commissioner must consider any submissions made by the
- 14 person and the registered provider in accordance with the notice.

### 15 *Notice of determination*

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

## 26 **113 Offence relating to failure to take action as required by**

### 27 **determination**

28 An entity commits an offence if:

- 29 (a) the entity is a registered provider; and



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- (b) the Commissioner makes a determination under subsection 112(1) in relation to a person who is one of the responsible persons of the registered provider; and
- (c) the entity fails to take the action specified in the notice of the determination within the period specified in that notice.

Note: Section 4K of the *Crimes Act 1914*, which deals with continuing and multiple offences, applies to this offence.

Penalty: 300 penalty units.

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

- (1) A registered provider of a kind prescribed by the rules must, in relation to a person who is one of the responsible persons of the registered provider:
- (a) at least once every 12 months:
    - (i) consider the suitability matters in relation to the person in accordance with any requirements prescribed by the rules; and
    - (ii) be reasonably satisfied that the person is suitable to be involved in the delivery of funded aged care services; and
  - (b) keep a record of those matters that complies with any requirements prescribed by the rules; and
  - (c) comply with any other requirements prescribed by the rules.
- (2) An entity commits an offence if:
- (a) the entity is a registered provider; and
  - (b) the entity fails to comply with subparagraph (1)(a)(i).

Penalty: 300 penalty units.

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## Section 115

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### 115 Cooperation with other persons

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

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

- (a) legislative instruments made under this Act; and
- (b) the Regulatory Powers Act as it applies in relation to this Act.

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

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

### 116 Registered nurses

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

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

- (a) the System Governor grants the registered provider an exemption in accordance with any rules made for the purposes of subsection (3); or
- (b) the registered provider is delivering funded aged care services at the approved residential care home under a specialised aged care program that is prescribed by the rules.

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

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

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- 1 (a) provide for the circumstances in which an exemption from  
2 subsection (1) may be granted (on application or otherwise)  
3 to a registered provider in relation to an approved residential  
4 care home; and
- 5 (b) provide that before granting such an exemption, the System  
6 Governor must be satisfied that the provider has taken  
7 reasonable steps to ensure that the clinical care needs of the  
8 individuals residing in the approved residential care home  
9 will be met during the period for which the exemption is in  
10 force; and
- 11 (c) provide that such an exemption that is granted to a registered  
12 provider in relation to an approved residential care home  
13 must not be in force for more than 12 months; and
- 14 (d) provide that more than one such exemption may be granted  
15 to a registered provider in relation to an approved residential  
16 care home; and
- 17 (e) provide for the conditions that may apply to such an  
18 exemption that is granted to a registered provider in relation  
19 to an approved residential care home.
- 20 (5) If an exemption from subsection (1) is granted to a registered  
21 provider in relation to an approved residential care home, the  
22 System Governor must make publicly available information about  
23 the exemption, including:
  - 24 (a) the name of the registered provider and the approved  
25 residential care home; and
  - 26 (b) the period for which the exemption is in force; and
  - 27 (c) any conditions that apply to the exemption; and
  - 28 (d) any other information of a kind prescribed by the rules.

#### 117 Protection of personal information

- 30 (1) A registered provider must ensure the protection of personal  
31 information, relating to an individual to whom the registered  
32 provider delivers funded aged care services, including as follows:
  - 33 (a) the personal information must not be used other than:

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- 1 (i) for a purpose connected with the delivery of a funded  
2 aged care service to the individual by the registered  
3 provider; or  
4 (ii) for a purpose for which the personal information was  
5 given by or on behalf of the individual to the registered  
6 provider;  
7 (b) except with the written consent of the individual, the personal  
8 information must not be disclosed to any other person other  
9 than:  
10 (i) for a purpose connected with the delivery of a funded  
11 aged care service to the individual by the registered  
12 provider; or  
13 (ii) for a purpose connected with the delivery of a funded  
14 aged care service to the individual by an associated  
15 provider of the registered provider or another registered  
16 provider; or  
17 (iii) for a purpose for which the personal information was  
18 given by or on behalf of the individual; or  
19 (iv) for the purpose of complying with an obligation under  
20 this Act;  
21 (c) the personal information must be protected by security  
22 safeguards that it is reasonable in the circumstances to take  
23 against the loss or misuse of the information.  
24 (2) This section does not prevent personal information being given to a  
25 court, or to a tribunal, authority or person having the power to  
26 require the production of documents or the answering of questions,  
27 in accordance with a requirement of that court, tribunal, authority  
28 or person.

## 29 **118 Aged care workers of registered providers must comply with** 30 **Aged Care Code of Conduct**

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

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- 1 (2) An aged care worker of a registered provider contravenes this  
2 subsection if the worker fails to comply with the provisions of the  
3 Aged Care Code of Conduct that apply to the worker.
- 4 Civil penalty: 250 penalty units.

#### 5 **119 Responsible persons of registered providers must comply with** 6 **Aged Care Code of Conduct**

- 7 (1) A responsible person of a registered provider must comply with the  
8 provisions of the Aged Care Code of Conduct that apply to the  
9 person.
- 10 (2) A responsible person of a registered provider contravenes this  
11 subsection if the person fails to comply with the provisions of the  
12 Aged Care Code of Conduct that apply to the person.
- 13 Civil penalty: 250 penalty units.

# EXPOSURE DRAFT

**Chapter 3** Registered providers, aged care workers and aged care digital platform operators

**Part 5** Statutory duty and compensation

**Division 1** Provider and responsible person duties

## Section 120

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### Part 5—Statutory duty and compensation

#### Division 1—Provider and responsible person duties

##### 120 Registered provider duty

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

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

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

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

##### *Strict liability offence—serious failures*

- (3) A registered provider commits an offence of strict liability if:
- (a) the provider has a duty under subsection (1); and
  - (b) the provider engages in conduct that does not comply with the duty; and
  - (c) the conduct amounts to a serious failure by the provider to comply with the duty.

Penalty:

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## Section 120

- 1 (a) in the case of an offence committed by a registered provider  
2 that is an individual—150 penalty units; or  
3 (b) in the case of an offence committed by a registered provider  
4 other than an individual—1000 penalty units.
- 5 (4) Conduct of a registered provider amounts to a *serious failure* to  
6 comply with the duty in subsection (1) if:  
7 (a) the conduct exposes an individual to whom the duty is owed  
8 a risk of death or serious injury or illness; and  
9 (b) the conduct:  
10 (i) involves a significant failure; or  
11 (ii) is part of a systematic pattern of conduct.

### *Strict liability offence—death or serious injury or illness*

- 12  
13 (5) A registered provider commits an offence of strict liability if:  
14 (a) the provider has a duty under subsection (1); and  
15 (b) the provider engages in conduct; and  
16 (c) the conduct amounts to a serious failure by the provider to  
17 comply with the duty; and  
18 (d) the conduct results in the death of, or serious injury to, or  
19 illness of, an individual to whom the duty is owed.

### *Penalty:*

- 20  
21 (a) in the case of an offence committed by a registered provider  
22 that is an individual—500 penalty units; or  
23 (b) in the case of an offence committed by a registered provider  
24 other than an individual—4,800 penalty units.

### *Fault-based offence—death or serious injury or illness*

- 25  
26 (6) A registered provider commits an offence if:  
27 (a) the provider has a duty under subsection (1); and  
28 (b) the provider engages in conduct; and  
29 (c) the conduct amounts to a serious failure by the provider to  
30 comply with the duty; and

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- 1 (d) the conduct results in the death of, or serious injury to, or  
2 illness of, an individual to whom the duty is owed.
- 3 **Penalty:**
- 4 (a) in the case of an offence committed by a registered provider  
5 that is an individual—1000 penalty units or 5 years  
6 imprisonment or both; or
- 7 (b) in the case of an offence committed by a registered provider  
8 other than an individual—9,500 penalty units.
- 9 *General defence of reasonable excuse*
- 10 (7) Subsection (3), (5) or (6) does not apply if the registered provider  
11 has a reasonable excuse.
- 12 **Note:** A defendant bears an evidential burden in relation to the matter in  
13 subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

## 121 Responsible person duty

- 15 (1) A responsible person of a registered provider must exercise due  
16 diligence to ensure that the provider complies with the provider's  
17 duty under section 120.
- 18 (2) In this section, *due diligence* includes taking reasonable steps:
- 19 (a) to acquire and maintain knowledge of requirements applying  
20 to registered providers under this Act; and
- 21 (b) to gain an understanding of the nature of the funded aged  
22 care services the registered provider delivers and the  
23 potential adverse effects that can result to individuals when  
24 delivering those services; and
- 25 (c) to ensure that the registered provider has available for use,  
26 and uses, appropriate resources and processes to manage  
27 adverse effects to health and safety of individuals accessing  
28 funded aged care services delivered by the provider; and
- 29 (d) to ensure that the registered provider has appropriate  
30 processes for receiving and considering information  
31 regarding incidents and risks and responding in a timely way  
32 to that information; and



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## Section 121

1 (e) to ensure that the registered provider has, and implements,  
2 processes for complying with any duty or requirement of the  
3 registered provider under this Act.

4 (3) A responsible person of a registered provider may be convicted or  
5 found guilty of an offence under this Act relating to a duty under  
6 this section whether or not the registered provider has been  
7 convicted or found guilty of an offence under section 120.

### 8 *Strict liability offence—serious failures*

9 (4) A responsible person of a registered provider commits an offence  
10 of strict liability if:

- 11 (a) the person has a duty under subsection (1); and  
12 (b) the person engages in conduct that does not comply with the  
13 duty; and  
14 (c) the conduct amounts to a serious failure by the responsible  
15 person to comply with the duty.

16 Penalty: 150 penalty units.

17 (5) Conduct of a responsible person of a registered provider amounts  
18 to a **serious failure** to comply with the duty in subsection (1) if:

- 19 (a) the conduct exposes an individual to whom the duty is owed  
20 a risk of death or serious injury or illness; and  
21 (b) the conduct:  
22 (i) involves a significant failure; or  
23 (ii) is part of a systematic pattern of conduct.

### 24 *Strict liability offence—death or serious injury or illness*

25 (6) A responsible person of a registered provider commits an offence  
26 of strict liability if:

- 27 (a) the person has a duty under subsection (1); and  
28 (b) the person engages in conduct; and  
29 (c) the conduct amounts to a serious failure by the responsible  
30 person to comply with the duty; and

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- 1 (d) the conduct results in the death of, or serious injury to, or  
2 illness of, an individual to whom the duty in section 120 is  
3 owed by the registered provider.

4 Penalty: 500 penalty units.

### 5 *Fault-based offence—death or serious injury or illness*

- 6 (7) A responsible person of a registered provider commits an offence  
7 if:

- 8 (a) the person has a duty under subsection (1); and  
9 (b) the person engages in conduct; and  
10 (c) the conduct amounts to a serious failure by the responsible  
11 person to comply with the duty.  
12 (d) the conduct results in the death of, or serious injury to, or  
13 illness of, an individual to whom the duty in section 120 is  
14 owed by the registered provider.

15 Penalty: 1000 penalty units or 5 years imprisonment or both.

### 16 *General defence of reasonable excuse*

- 17 (8) Subsection (4), (6) or (7) does not apply if the responsible person  
18 has a reasonable excuse.

19 Note: A defendant bears an evidential burden in relation to the matter in  
20 subsection (8) (see subsection 13.3(3) of the *Criminal Code*).

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Other provisions that apply to duties Division 2

Section 122

## Division 2—Other provisions that apply to duties

### 122 Duties not transferrable

A duty cannot be transferred to another entity.

### 123 Entity may have more than 1 duty

An entity can have more than 1 duty by virtue of being in more than 1 class of duty holder.

### 124 More than 1 entity can have a duty

- (1) More than 1 entity can concurrently have the same duty.
- (2) Each duty holder must comply with that duty to the standard required by this Act even if another duty holder has the same duty.
- (3) If more than 1 entity has a duty for the same matter, each entity:
  - (a) retains responsibility for the entity's duty in relation to the matter; and
  - (b) must discharge the entity's duty to the extent to which the entity has the capacity to influence and control the matter or would have had that capacity but for an agreement or arrangement purporting to limit or remove that capacity.

### 125 Other duties not affected

This Part does not affect any duty imposed by, or under, any other law of the Commonwealth, or of a State or Territory, or under the common law.

### 126 Concurrent operation of State and Territory laws

This Part does not exclude or limit the operation of a law of a State or Territory that is capable of operating concurrently with this Part.

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**Part 5** Statutory duty and compensation

**Division 3** Compensation pathway

## Section 127

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### 1 **Division 3—Compensation pathway**

#### 2 **127 Compensation orders**

- 3 (1) The Federal Court or the Federal Circuit and Family Court of  
4 Australia (Division 2) may order an entity to compensate an  
5 individual for serious injury or illness if:  
6 (a) the entity is found guilty of an offence against this Part; and  
7 (b) the serious injury or illness resulted from the commission of  
8 the offence.
- 9 (2) The court may make the order only if:  
10 (a) either:  
11 (i) the Commissioner applies for an order under this section  
12 with the consent of the individual; or  
13 (ii) the individual applies for an order under this section;  
14 and  
15 (b) the application is made within 6 years of the day the cause of  
16 action that relates to the commission of the offence accrued.
- 17 (3) If the court makes the order, the amount of compensation specified  
18 in the order that is to be paid to the individual may be recovered as  
19 a debt due to the individual.

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Registered providers, aged care workers and aged care digital platform operators

Chapter 3

Aged care digital platform operators Part 6

Section 128

## Part 6—Aged care digital platform operators

### 128 Meaning of *aged care digital platform*

- (1) An *aged care digital platform* means an online enabled application, website or system operated to facilitate the delivery of services in the aged care system (whether funded aged care services or not), where:
  - (a) the operator of the application, website or system acts as an intermediary for individuals seeking to access those services who interact with entities providing the services via the application, website or system; and
  - (b) the operator of the application, website or system requires, and processes, payments referable to that intermediary function.
- (2) An *aged care digital platform* also means an online enabled application, website or system that is prescribed by the rules.
- (3) An *aged care digital platform* does not include an online application, website or system prescribed by the rules.
- (4) For the purposes of subsection (2) or (3), the rules may:
  - (a) prescribe an online application, website or system by name or by inclusion in a specified class or specified classes; or
  - (b) prescribe an online application, website or system in respect of all services in the aged care system, or in respect of specified services in the aged care system.

### 129 Duty of operators of aged care digital platforms

- (1) An operator of an aged care digital platform contravenes this subsection if:
  - (a) an entity represents via the platform that the entity can deliver a service in the aged care system; and
  - (b) the operator does not check and display on the platform:
    - (i) whether the entity is a registered provider or not; and

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**Part 6** Aged care digital platform operators

## Section 130

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- 1 (ii) if the entity is a registered provider—the registration  
2 categories in which the entity is registered.
- 3 (2) An operator of an aged care digital platform contravenes this  
4 subsection if:
- 5 (a) a person represents via the platform that the person can  
6 perform work involved in the delivery of a service in the  
7 aged care system; and
- 8 (b) the operator does not check and display on the platform:  
9 (i) whether the person is an aged care worker of a  
10 registered provider or not; and
- 11 (ii) if the person is an aged care worker of a registered  
12 provider—details of the registered provider and whether  
13 the registered provider is satisfied the provider has met  
14 the requirements under section 91 in relation to the  
15 person.
- 16 (3) An entity or person is liable to a civil penalty if the entity or person  
17 contravenes subsection (1) or (2).
- 18 Civil penalty: 500 penalty units.

## 130 Other obligations of certain operators of aged care digital platforms

- 21 (1) An entity that is a constitutional corporation and the operator of an  
22 aged care digital platform must:
- 23 (a) notify the Commissioner, in accordance with any  
24 requirements prescribed by the rules, that the entity operates  
25 the platform; and
- 26 (b) implement a complaints management system and manage  
27 complaints in accordance with that system and any other  
28 requirements prescribed by the rules; and
- 29 (c) implement an incident management system and manage  
30 incidents in accordance with that system and any other  
31 requirements prescribed by the rules; and
- 32 (d) display on the platform a summary and explanation of the  
33 complaints management system referred to in paragraph (b)

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Aged care digital platform operators Part 6

Section 130

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- and the incident management system referred to in paragraph (c); and
- (e) report to the Commissioner, the System Governor, the Complaints Commissioner or the Inspector-General of Aged Care, any information prescribed by the rules to be reported to that person; and
- (f) display on the platform, in a way that is prominent to individuals using the platform to access funded aged care services, the Statement of Rights.
- Note: Registered providers, as a condition of their registration, have obligations in relation to reporting, incident management and complaints management: see sections 109, 95 and 96.
- (2) An entity is liable to a civil penalty if the entity contravenes subsection (1).
- Civil penalty: 250 penalty units.

# EXPOSURE DRAFT

**Chapter 4** Fees, payments and subsidies  
**Part 1** Introduction

Section 130

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1 **Chapter 4—Fees, payments and subsidies**

2 **Part 1—Introduction**

3  
4 [To be drafted.]

5 **Part 2—Means testing**

6  
7 [To be drafted.]

8 **Part 3—Subsidies**

9  
10 [To be drafted.]

11 **Part 4—Payments and fee arrangements**

12  
13 [To be drafted.]



## Chapter 5—Governance of the aged care system

### Part 1—Introduction

#### 131 Simplified outline of this Chapter

The Commonwealth aged care system is governed by the Secretary (known as the System Governor) and the Aged Care Quality and Safety Commissioner (the Commissioner). There is also a Complaints Commissioner and an Aged Care Quality and Safety Advisory Council (the Advisory Council).

The System Governor has functions relating to the Commonwealth's administration of the aged care system, including:

- (a) facilitating equitable access to funded aged care services; and
- (b) providing stewardship of the Commonwealth's administration of the aged care system; and
- (c) protecting and upholding the integrity of the Commonwealth's administration of the aged care system and the Commonwealth's investment in the system.

The Commissioner's functions include the following:

- (a) safeguarding functions;
- (b) engagement and education functions;
- (c) complaints functions;
- (d) registration of providers functions.

The Commissioner may also make the Financial and Prudential Standards.

The Commission consists of the Commissioner and the staff of the Commission. The Commission has the function of assisting the

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**Chapter 5** Governance of the aged care system  
**Part 1** Introduction

## Section 131

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Commissioner in the performance of the Commissioner's functions. The Commissioner may also be assisted by certain other officers and employees, and may engage consultants.

The Complaints Commissioner is a member of the staff of the Commission who has the function of assisting the Commissioner in the performance of the Commissioner's complaints functions.

The Advisory Council consists of a Chair, a Deputy Chair and at least 7, but not more than 11, other members. The members are appointed by the Minister and must have substantial experience or knowledge in a specified field.

The Advisory Council's functions include the following:

- (a) monitoring the performance of the Commissioner's functions;
- (b) providing advice to the Commissioner and the Minister about matters arising in relation to those functions;
- (c) supporting the development of the strategic objectives of the Commission and identifying systemic performance issues within the Commission.

## Part 2—System Governor

### 132 Functions of the System Governor

- (1) The System Governor has the following functions:
- (a) to facilitate equitable access to funded aged care services, including in respect of location and individuals who identify with a number of diversity characteristics;
  - (b) to support the continuity of funded aged care services when the delivery of services by a registered provider is disrupted;
  - (c) to provide stewardship of the Commonwealth's administration of the aged care system and encourage the delivery of high quality care by:
    - (i) developing policy to make ongoing improvements to the Commonwealth's administration of the aged care system, including by consulting with individuals of diverse backgrounds and individuals who identify with a number of diversity characteristics; and
    - (ii) promoting the availability of funded aged care services in areas of unmet demand; and
    - (iii) promoting diversity of registered providers to enable individuals to choose between registered providers; and
    - (iv) providing education to build the capacity of registered providers to adopt best practice in the delivery of funded aged care services;
  - (d) to protect and uphold the integrity of the Commonwealth's administration of the aged care system and the Commonwealth's investment in the system, by:
    - (i) collecting, maintaining and providing accurate information about the Commonwealth's administration of the aged care system, including on expenditure by registered providers on the delivery of funded aged care services; and
    - (ii) providing oversight of the Commonwealth's payments to registered providers, including ensuring compliance with this Act and other relevant requirements;

# EXPOSURE DRAFT

## Chapter 5 Governance of the aged care system

### Part 2 System Governor

#### Section 133

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- 1 (e) to monitor and encourage the training and development of  
2 aged care workers;
- 3 (f) to review the Commonwealth's administration of the aged  
4 care system, or a part of that system, including undertaking  
5 research, evaluation and analysis, such as periodic review of  
6 the Aged Care Quality Standards;
- 7 (g) any other functions conferred on the System Governor by  
8 this Act or any other law of the Commonwealth;
- 9 (h) to do anything incidental or conducive to the performance of  
10 any of the above functions.
- 11 (2) The System Governor may, by notifiable instrument, make  
12 guidelines relating to the performance of any of the functions  
13 mentioned in subsection (1).

#### 133 Executive power of the Commonwealth

- 14 This Part does not limit the executive power of the  
15 Commonwealth.  
16

#### 134 Register of coroner's reports

- 17 (1) The System Governor is to maintain a register of reports that:
- 18 (a) are received by the Department from a coroner about the  
19 death of an individual accessing funded aged care services;  
20 and  
21 (b) include a recommendation to the Department.
- 22 (2) The register must include, in relation to each report, the following  
23 information:  
24 (a) the de-identified circumstances of the death of the individual;  
25 (b) the recommendations made to the Department;  
26 (c) a summary of any actions taken by the Department in  
27 response to those recommendations;  
28 (d) any other information prescribed by the rules.
- 29 (3) However, the register need not include the report, or certain  
30 information referred to in subsection (2) in relation to the report, if  
31

# EXPOSURE DRAFT

Governance of the aged care system **Chapter 5**  
System Governor **Part 2**

## Section 135

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1 the System Governor is satisfied that the report or information is  
2 protected information.

3 (4) The register is to be maintained by electronic means.

4 (5) The register is to be made available for public inspection on the  
5 internet.

6 (6) The register is not a legislative instrument.

### 7 **135 Reporting on the register of coroner's reports**

8 The System Governor must, as soon as practicable after the end of  
9 each financial year, prepare and give to the Inspector-General of  
10 Aged Care a report on the following matters for that year:

- 11 (a) the matters listed in paragraphs 134(2)(b) and (c);  
12 (b) an evaluation of the effectiveness of any actions of the  
13 Department taken under paragraph 134(2)(c).

### 14 **136 System Governor may request information or documents from** 15 **persons**

16 (1) If the System Governor reasonably believes that a person has  
17 information or documents relevant to the System Governor's  
18 functions, the System Governor may request the person to give the  
19 System Governor any such information or documents (or copies of  
20 any such documents).

21 (2) The person is not required to comply with the request.

22 Note: The System Governor may require a person to attend to answer  
23 questions or give information or documents under Division 4 of  
24 Part 10 of Chapter 6.

# EXPOSURE DRAFT

**Chapter 5** Governance of the aged care system

**Part 3** Aged Care Quality and Safety Commission

**Division 1** Establishment and functions of the Aged Care Quality and Safety Commission

## Section 137

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### **Part 3—Aged Care Quality and Safety Commission**

#### **Division 1—Establishment and functions of the Aged Care Quality and Safety Commission**

##### **137 Aged Care Quality and Safety Commission**

(1) The Aged Care Quality and Safety Commission is established by this section.

(2) For the purposes of the finance law (within the meaning of the *Public Governance, Performance and Accountability Act 2013*):

(a) the Commission is a listed entity; and

(b) the Commissioner is the accountable authority of the Commission; and

(c) the following persons are officials of the Commission:

(i) the Commissioner;

(ii) the staff of the Commission;

(iii) persons assisting the Commission referred to in section 158;

(iv) consultants engaged under section 159; and

(d) the purposes of the Commission include:

(i) the function of the Commission referred to in section 139; and

(ii) the functions of the Commissioner referred to in section 141.

##### **138 Constitution of the Commission**

The Commission consists of:

(a) the Commissioner; and

(b) the staff of the Commission.

# EXPOSURE DRAFT

Governance of the aged care system **Chapter 5**  
Aged Care Quality and Safety Commission **Part 3**  
Establishment and functions of the Aged Care Quality and Safety Commission  
**Division 1**

## Section 139

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1     **139 Function of the Commission**

2                     The Commission's function is to assist the Commissioner in the  
3                     performance of the Commissioner's functions.

# EXPOSURE DRAFT

**Chapter 5** Governance of the aged care system

**Part 3** Aged Care Quality and Safety Commission

**Division 2** Establishment and functions of the Commissioner

## Section 140

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### **Division 2—Establishment and functions of the Commissioner**

#### **140 Commissioner**

(1) There is to be a Commissioner of the Aged Care Quality and Safety Commission.

(2) The Commissioner is to be appointed by the Minister by written instrument.

Note: The Commissioner may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

(3) The Commissioner holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

#### **141 Functions of the Commissioner**

(1) The Commissioner has the following functions:

(a) the safeguarding functions;

(b) the engagement and education functions;

(c) the complaints functions;

(d) the registration of providers functions;

(e) any other functions conferred on the Commissioner by this Act or any other law of the Commonwealth;

(f) to reconsider and review decisions relating to the above functions;

(g) to do anything incidental or conducive to the performance of the above functions.

(2) The Commissioner may, by notifiable instrument, make guidelines relating to the performance of any of the functions mentioned in subsection (1).

(3) The Commissioner has power to do all things necessary or convenient to be done for or in connection with the performance of the Commissioner's functions.



# EXPOSURE DRAFT

Governance of the aged care system **Chapter 5**  
Aged Care Quality and Safety Commission **Part 3**  
Establishment and functions of the Commissioner **Division 2**

## Section 142

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- 1 (4) In performing the Commissioner's functions, the Commissioner  
2 must:
- 3 (a) take reasonable steps to provide opportunities for individuals  
4 accessing funded aged care services to engage with the  
5 Commissioner; and
- 6 (b) take into consideration the rights under the Statement of  
7 Rights, wishes and views of individuals accessing funded  
8 aged care services.
- 9 (5) In performing functions under this section, the Commissioner may  
10 consult with the following:
- 11 (a) the System Governor;
- 12 (b) the Inspector-General of Aged Care;
- 13 (c) the Pricing Authority.

### 142 Safeguarding functions

- 15 The *safeguarding functions* of the Commissioner are the  
16 following:
- 17 (a) to uphold the rights under the Statement of Rights, and  
18 protect and enhance the safety, health, wellbeing and quality  
19 of life, of individuals accessing funded aged care services,  
20 including through encouraging the delivery of culturally safe,  
21 culturally appropriate, trauma aware and healing informed  
22 funded aged care services;
- 23 (b) to protect continuity of care through:
- 24 (i) monitoring the financial viability and sustainability of  
25 registered providers; and
- 26 (ii) monitoring the compliance of registered providers with  
27 their financial and prudential obligations under section  
28 98 and taking proactive steps to prevent non-compliance  
29 with those obligations; and
- 30 (iii) taking proactive steps to mitigate prudential and  
31 financial risks;
- 32 (c) to promote:
- 33 (i) continuous improvement for registered providers and  
34 aged care workers of registered providers; and

# EXPOSURE DRAFT

**Chapter 5** Governance of the aged care system

**Part 3** Aged Care Quality and Safety Commission

**Division 2** Establishment and functions of the Commissioner

## Section 143

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- 1 (ii) the delivery of high quality care by registered providers;
- 2 and
- 3 (iii) the confidence and trust of individuals in the delivery of
- 4 funded aged care services;
- 5 (d) to ensure registered providers and operators of aged care
- 6 digital platforms comply with this Act, using the regulatory
- 7 mechanisms available to the Commissioner under Chapter 6;
- 8 (e) to ensure aged care workers and responsible persons of
- 9 registered providers comply with their obligations under the
- 10 Aged Care Code of Conduct, using the regulatory
- 11 mechanisms available to the Commissioner under Chapter 6;
- 12 (f) to support registered providers to develop and implement
- 13 effective incident management systems;
- 14 (g) to build the capability of registered providers to prevent and
- 15 manage reportable incidents;
- 16 (h) to oversee the notification and management of reportable
- 17 incidents and respond where appropriate;
- 18 (i) to collect, correlate, analyse and disseminate information
- 19 relating to reportable incidents to identify trends or systemic
- 20 issues;
- 21 (j) if the Commissioner considers it appropriate to do so, to seek
- 22 and consider clinical advice relevant to functions of the
- 23 Commissioner;
- 24 (k) if the Commissioner considers it appropriate to do so, to seek
- 25 and consider any professional advice (including financial
- 26 advice) relevant to functions of the Commissioner.

### 27 **143 Engagement and education functions**

28 The *engagement and education functions* of the Commissioner  
29 are the following:

- 30 (a) to engage with individuals accessing funded aged care
- 31 services and their supporters, representatives or other people
- 32 supporting those individuals, to learn about their experiences
- 33 with aged care services;
- 34 (b) to develop, in consultation with individuals accessing funded
- 35 aged care services and their supporters, representatives or

# EXPOSURE DRAFT

Governance of the aged care system **Chapter 5**  
Aged Care Quality and Safety Commission **Part 3**  
Establishment and functions of the Commissioner **Division 2**

## Section 144

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- 1 other people supporting those individuals, best practice  
2 models for the engagement of registered providers and aged  
3 care workers with the individuals accessing those services;  
4 (c) to promote those best practice models to registered providers  
5 and responsible persons and aged care workers of registered  
6 providers;  
7 (d) to engage and educate registered providers, responsible  
8 persons and aged care workers of registered providers,  
9 individuals accessing funded aged care services and their  
10 supporters, representatives or other people supporting those  
11 individuals, and operators of aged care digital platforms, on  
12 the following:  
13 (i) the rights of individuals under the Statement of Rights;  
14 (ii) the functions of the Commissioner;  
15 (iii) the obligations that apply to registered providers under  
16 Part 4 of Chapter 3;  
17 (e) to build capability of registered providers, responsible  
18 persons and aged care workers of registered providers,  
19 individuals accessing funded aged care services and their  
20 supporters, representatives or other people supporting those  
21 individuals, and operators of aged care digital platforms, to  
22 understand and promote the objectives of this Act;  
23 (f) to collect, correlate, analyse and disseminate information  
24 relating to the Commissioner's functions.

### 144 Complaints functions

25 The *complaints functions* of the Commissioner are the following:

- 26 (a) to uphold the rights under the Statement of Rights, and  
27 protect and enhance the safety, health, wellbeing and quality  
28 of life, of individuals accessing funded aged care services, by  
29 maintaining independent, transparent, accountable,  
30 accessible, safe and culturally safe processes for:  
31 (i) making complaints about the compliance with this Act  
32 of a registered provider or an aged care worker or  
33 responsible person of a registered provider; and  
34

# EXPOSURE DRAFT

**Chapter 5** Governance of the aged care system

**Part 3** Aged Care Quality and Safety Commission

**Division 2** Establishment and functions of the Commissioner

## Section 144

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- 1 (ii) making complaints about a registered provider acting in
- 2 a way that is incompatible with the Statement of Rights;
- 3 and
- 4 (iii) giving the Commissioner other information (*feedback*)
- 5 about a registered provider or aged care worker;
- 6 (b) to deal with complaints and feedback received by the
- 7 Commissioner; and
- 8 (c) to collect, correlate, analyse and disseminate information
- 9 relating to complaints and feedback to identify trends or
- 10 systemic issues;
- 11 (d) for complaints and feedback that is better dealt with by other
- 12 persons or bodies—to refer the complaints and feedback to
- 13 those persons or bodies;
- 14 (e) to promote a culture for registered providers and aged care
- 15 workers of raising concerns, open disclosure (including of
- 16 complaints and feedback) and best practice in handling
- 17 complaints and feedback, including by developing
- 18 educational material and promoting the use of advocates;
- 19 (f) to promote a culture for registered providers of continuous
- 20 improvement including considering complaints and feedback
- 21 and responding to complaints and feedback where
- 22 appropriate;
- 23 (g) to build the capability of individuals to pursue complaints
- 24 and give feedback;
- 25 (h) to build the capability of registered providers to develop a
- 26 culture of learning and innovation to deliver quality funded
- 27 aged care services and respond to complaints and feedback;
- 28 (i) to support registered providers to develop and implement
- 29 effective complaints management systems;
- 30 (j) to seek and consider clinical advice, professional advice, and
- 31 advice from other organisations;
- 32 (k) to provide analysis of complaints to the Department;
- 33 (l) to give the Minister written reports on complaints received
- 34 by the Commissioner as prescribed by the rules.

# EXPOSURE DRAFT

Governance of the aged care system **Chapter 5**  
Aged Care Quality and Safety Commission **Part 3**  
Establishment and functions of the Commissioner **Division 2**

## Section 145

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### 145 Registration of providers functions

The *registration of providers functions* of the Commissioner are the following:

- (a) functions relating to the registration of registered providers by the Commissioner under Part 2 of Chapter 3;
- (b) to monitor the delivery of funded aged care services.

### 146 Commissioner may request information or documents from persons

- (1) If the Commissioner reasonably believes that a person has information or documents relevant to the Commissioner's functions, the Commissioner may request the person to give the Commissioner any such information or documents (or copies of any such documents).

- (2) The person is not required to comply with the request.

Note: The Commissioner may require a person to attend to answer questions or give information or documents under Division 4 of Part 10 of Chapter 6.

### 147 Deputy Commissioners

- (1) The Commissioner may, in writing, appoint a person who is a member of the staff of the Commission as a Deputy Commissioner to assist the Commissioner in the performance of the Commissioner's functions.
- (2) The Commissioner may appoint more than one person as a Deputy Commissioner under subsection (1).

### 148 Appointment of Chief Clinical Advisor

The Commissioner must, in writing, appoint a person who is a member of the staff of the Commission, or a consultant engaged under section 159, as the Chief Clinical Advisor to assist the Commissioner in the performance of the Commissioner's functions.

# EXPOSURE DRAFT

**Chapter 5** Governance of the aged care system

**Part 3** Aged Care Quality and Safety Commission

**Division 2** Establishment and functions of the Commissioner

## Section 149

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### 149 Minister may give directions

- (1) The Minister may, by legislative instrument, give written directions to the Commissioner about the performance of the Commissioner's functions.

Note: Section 42 (disallowance) and Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* do not apply to the directions (see regulations made for the purposes of paragraphs 44(2)(b) and 54(2)(b) of that Act).

- (2) A direction given by the Minister under subsection (1):

- (a) must be of a general nature only; and
- (b) must not relate to a particular registered provider or individual accessing, or seeking to access, funded aged care services.

- (3) The Commissioner must comply with a direction under subsection (1).

- (4) Subsection (2) does not apply to the extent that the direction relates to the Commissioner's performance of functions or exercise of powers under the following Acts in relation to the Commission:

- (a) the *Public Service Act 1999*;
- (b) the *Public Governance, Performance and Accountability Act 2013*.

# EXPOSURE DRAFT

Governance of the aged care system **Chapter 5**  
Aged Care Quality and Safety Commission **Part 3**  
Administration **Division 3**

## Section 150

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### **Division 3—Administration**

#### **150 Acting appointments**

The Minister may, by written instrument, appoint a person to act as the Commissioner:

- (a) during a vacancy in the office of the Commissioner (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the Commissioner:
  - (i) is absent from duty or from Australia; or
  - (ii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

#### **151 Remuneration and allowances**

- (1) The Commissioner is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Commissioner is to be paid the remuneration that is prescribed by the rules.
- (2) The Commissioner is to be paid the allowances that are prescribed by the rules.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

#### **152 Leave of absence**

- (1) The Commissioner has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant the Commissioner leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

# EXPOSURE DRAFT

**Chapter 5** Governance of the aged care system  
**Part 3** Aged Care Quality and Safety Commission  
**Division 3** Administration

## Section 153

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### 153 Other paid work

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

### 154 Other terms and conditions

The Commissioner holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined, in writing, by the Minister.

### 155 Resignation

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

### 156 Termination of appointment

- (1) The Minister may terminate the appointment of the Commissioner:
  - (a) for misbehaviour; or
  - (b) if the Commissioner is unable to perform the duties of the Commissioner's office because of physical or mental incapacity.
- (2) The Minister may terminate the appointment of the Commissioner if:
  - (a) the Commissioner:
    - (i) becomes bankrupt; or
    - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
    - (iii) compounds with the Commissioner's creditors; or
    - (iv) makes an assignment of the Commissioner's remuneration for the benefit of the Commissioner's creditors; or



# EXPOSURE DRAFT

Governance of the aged care system **Chapter 5**  
Aged Care Quality and Safety Commission **Part 3**  
Administration **Division 3**

## Section 156

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- 1 (b) the Commissioner is absent, except on leave of absence, for
- 2 14 consecutive days or for 28 days in any 12 months; or
- 3 (c) the Commissioner engages, except with the Minister's
- 4 approval, in paid work outside the duties of the
- 5 Commissioner's office (see section 153); or
- 6 (d) the Commissioner fails, without reasonable excuse, to
- 7 comply with section 29 of the *Public Governance,*
- 8 *Performance and Accountability Act 2013* (which deals with
- 9 the duty to disclose interests) or rules made for the purposes
- 10 of that section.

# EXPOSURE DRAFT

**Chapter 5** Governance of the aged care system  
**Part 3** Aged Care Quality and Safety Commission  
**Division 4** Staff of the Commission

## Section 157

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### Division 4—Staff of the Commission

#### 157 Staff

- (1) The staff of the Commission must be persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
  - (a) the Commissioner and the staff of the Commission together constitute a Statutory Agency; and
  - (b) the Commissioner is the Head of that Statutory Agency.

#### 158 Persons assisting the Commissioner

- (1) The Commissioner may also be assisted by:
  - (a) officers and employees of Agencies (within the meaning of the *Public Service Act 1999*), and of authorities of the Commonwealth, whose services are made available to the Commissioner in connection with the performance of any of the Commissioner's functions; and
  - (b) persons whose services are made available under arrangements made under subsection (2).
- (2) The Commissioner may, on behalf of the Commonwealth, make an arrangement with the appropriate authority or officer of:
  - (a) a State or Territory government; or
  - (b) a State or Territory government authority;under which the government or authority makes officers or employees available to the Commissioner to perform services in connection with the performance of any of the Commissioner's functions.
- (3) An arrangement under subsection (2) may provide for the Commonwealth to reimburse a State or Territory with respect to the services of a person or persons to whom the arrangement relates.

# EXPOSURE DRAFT

Governance of the aged care system **Chapter 5**  
Aged Care Quality and Safety Commission **Part 3**  
Staff of the Commission **Division 4**

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## Section 159

- 1 (4) When performing services for the Commissioner under this  
2 section, a person is subject to the directions of the Commissioner.

### 3 **159 Consultants**

- 4 The Commissioner may, on behalf of the Commonwealth, engage  
5 consultants to assist in the performance of the Commissioner's  
6 functions.

# EXPOSURE DRAFT

**Chapter 5** Governance of the aged care system  
**Part 3** Aged Care Quality and Safety Commission  
**Division 5** Reporting and planning

## Section 160

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### Division 5—Reporting and planning

#### 160 Annual report

- (1) The annual report prepared by the Commissioner and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* for a period (the **reporting period**) must include the following:
- (a) an assessment of the extent to which the Commission’s operations during the reporting period have contributed to the priorities set out in the annual operational plan for the period;
  - (b) particulars of any variations of the annual operational plan during the reporting period;
  - (c) an evaluation of the Commission’s overall performance during the reporting period against the performance indicators set out in the operational plan for the reporting period;
  - (d) a summary of activity undertaken in the reporting period for each of the functions mentioned in subsection 141(1);
  - (e) the key outcomes achieved by the Commissioner in the reporting period for individuals accessing funded aged care services;
  - (f) information about the use by the Commissioner of regulatory mechanisms under Chapter 6 in the reporting period;
  - (g) analysis of complaints received by the Commissioner in the reporting period;
  - (h) an operational plan for the next reporting period that:
    - (i) complies with subsection (2); and
    - (ii) was prepared in accordance with subsection (3);
  - (i) any other matters prescribed by the rules.
- (2) For the purposes of subparagraph (1)(h)(i), the operational plan must:
- (a) set out particulars of the action that the Commissioner intends to take during the next reporting period to give effect to, or further, the objectives set out in the plan; and

# EXPOSURE DRAFT

Governance of the aged care system **Chapter 5**  
Aged Care Quality and Safety Commission **Part 3**  
Reporting and planning **Division 5**

## Section 161

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- 1 (b) set out the Commissioner's priorities for work to be  
2 undertaken during the next reporting period; and  
3 (c) set out how the Commissioner will apply the resources of the  
4 Commission to achieve those objectives; and  
5 (d) include an assessment of risks faced by the Commission for  
6 the next reporting period, together with a plan to manage  
7 those risks; and  
8 (e) include such performance indicators as the Commissioner  
9 considers appropriate for assessing the performance of the  
10 Commissioner during the next reporting period.
- 11 (3) For the purposes of subparagraph (1)(h)(ii), in preparing the  
12 operational plan, the Commissioner must consult the Minister and  
13 the Advisory Council.

### 14 **161 Minister may request report on matters relating to** 15 **Commissioner's functions**

- 16 (1) The Minister may, by notice in writing given to the Commissioner,  
17 request the Commissioner to inquire into and report to the Minister  
18 on a matter mentioned in section 141.
- 19 (2) When a request is made under subsection (1), the Commissioner  
20 must inquire into the matter and give the Minister a report in  
21 writing on that matter.

### 22 **162 Consulting on corporate plans**

23 In preparing a corporate plan under section 35 of the *Public*  
24 *Governance, Performance and Accountability Act 2013*, the  
25 Commissioner must consult the Minister and the Advisory  
26 Council.

# EXPOSURE DRAFT

**Chapter 5** Governance of the aged care system  
**Part 3** Aged Care Quality and Safety Commission  
**Division 6** Financial and Prudential Standards

## Section 163

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### Division 6—Financial and Prudential Standards

#### 163 Commissioner may make Financial and Prudential Standards

- (1) The Commissioner may, by legislative instrument, make standards in relation to financial and prudential matters.

Note 1: These standards are the *Financial and Prudential Standards*: see section 7.

Note 2: It is a condition of registration that a registered provider must comply with the Financial and Prudential Standards: see section 98. If a registered provider breaches a condition of registration, the provider may be liable to a civil penalty: see subsection 88(3).

- (2) The standards may only deal with the following:

- (a) requirements in relation to the liquidity and capital adequacy of registered providers that:

- (i) are providing funded aged care services in an approved residential care home; and
- (ii) are not government entities;

- (b) requirements in relation to the keeping of financial records relating to the delivery of funded aged care services, including records about refundable deposits, accommodation bonds, fees and payments;

- (c) requirements in relation to governance systems and strategies that registered providers must have in place to ensure that they remain:

- (i) financially viable and sustainable; and
- (ii) able to comply with the other applicable requirements in the standards;

- (d) requirements in relation to the disclosure and reporting, by registered providers, of information that may assist the Commissioner to:

- (i) monitor the financial viability and sustainability of registered providers; and
- (ii) monitor the compliance of registered providers with the other applicable requirements in the standards; and

# EXPOSURE DRAFT

Governance of the aged care system **Chapter 5**  
Aged Care Quality and Safety Commission **Part 3**  
Financial and Prudential Standards **Division 6**

## Section 164

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- 1 (iii) quantify prudential and financial risk relating to  
2 registered providers;  
3 (e) requirements in relation to any other prudential matter  
4 prescribed by the rules.
- 5 (3) Without limiting subsection (1), the standards may specify  
6 different requirements for different kinds of registered providers.
- 7 Note: For example, the standards might specify different requirements for  
8 registered providers in different registration categories.
- 9 (4) Without limiting paragraph (2)(e), rules prescribing a prudential  
10 matter for the purposes of that paragraph may also prescribe that  
11 any standards made under subsection (1) dealing with that  
12 prudential matter only apply to registered providers in a specified  
13 registration category.
- 14 (5) Subsections (3) and (4) of this section do not limit  
15 subsection 33(3A) of the *Acts Interpretation Act 1901*.

### 164 Having regard to principles, and consultation, in making standards

- 18 (1) In making standards under subsection 163(1), the Commissioner  
19 must have regard to the Statement of Principles and the following  
20 principles:  
21 (a) for a registered provider to deliver ongoing quality and safe  
22 care, the registered provider must remain financially viable  
23 and sustainable;  
24 (b) safeguarding of the refundable deposits, accommodation  
25 bonds and entry contributions of individuals that are held by  
26 registered providers is helped by registered providers:  
27 (i) remaining financially viable and sustainable; and  
28 (ii) having responsible management.
- 29 (2) The Commissioner must consult the System Governor before  
30 making standards under subsection 163(1).

# EXPOSURE DRAFT

**Chapter 5** Governance of the aged care system  
**Part 3** Aged Care Quality and Safety Commission  
**Division 6** Financial and Prudential Standards

## Section 165

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1     **165 Effect of Financial and Prudential Standards**

2                     Standards made under subsection 163(1) that are inconsistent with  
3                     the rules have no effect to the extent of the inconsistency, but the  
4                     standards are taken to be consistent with the rules to the extent that  
5                     the standards are capable of operating concurrently with the rules.



# EXPOSURE DRAFT

Governance of the aged care system **Chapter 5**  
Aged Care Quality and Safety Commission **Part 3**  
Worker screening **Division 7**

## Section 166

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### **Division 7—Worker screening**

#### **Subdivision A—Aged care worker screening database**

#### **166 Aged care worker screening database**

- (1) The Commissioner must establish, operate and maintain a database for the purposes of this Act, to be known as the aged care worker screening database.
- (2) The aged care worker screening database must be kept in electronic form.

#### *Purposes of the database*

- (3) The purposes of the aged care worker screening database are the following:
  - (a) to maintain, for the purposes of this Act, an up-to-date record of persons who, under decisions made under aged care worker screening laws, have been found, in working, or seeking to work, with individuals accessing funded aged care services not to pose a risk, or to pose a risk, to such individuals;
  - (b) in relation to persons covered by paragraph (a)—to maintain an up-to-date record of other decisions that relate to the decisions covered by that paragraph;
  - (c) to share information in the database:
    - (i) with registered providers that are employers or potential employers of persons; and
    - (ii) with persons or bodies (whether the persons or bodies are registered providers or not) for the purposes of this Act or for the purposes of those persons or bodies facilitating the employment, engagement or training of other persons to work with individuals accessing funded aged care services; and
    - (iii) with the Commissioner of the NDIS Quality and Safeguards Commission for the purposes of that

# EXPOSURE DRAFT

Chapter 5 Governance of the aged care system  
Part 3 Aged Care Quality and Safety Commission  
Division 7 Worker screening

## Section 166

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- 1 Commissioner performing that Commissioner's  
2 functions; and  
3 (iv) with the Chief Executive Officer of the National  
4 Disability Insurance Agency for the purposes of  
5 performing the functions of the Agency;  
6 (v) with persons or bodies (including employers and  
7 potential employers) for the purposes of the National  
8 Disability Insurance Scheme;  
9 (d) any other purpose prescribed by the rules.
- 10 (4) Paragraphs (3)(a) to (c) do not limit paragraph (3)(d).
- 11 *Information in the database*
- 12 (5) The aged care worker screening database may include the  
13 following information for the purposes of subsection (3):  
14 (a) information relating to persons (each of whom is a **screening**  
15 **applicant**) who have made applications (each of which is a  
16 **screening application**) for an aged care worker screening  
17 check and information relating to those applications;  
18 (b) information relating to each screening applicant in respect of  
19 whom a screening application is no longer being considered  
20 and the reasons for this;  
21 (c) information relating to each screening applicant in respect of  
22 whom a decision (a **clearance decision**) (however described)  
23 is in force, under an aged care worker screening law, to the  
24 effect that the person, in working, or seeking to work, with  
25 individuals accessing funded aged care services does not  
26 pose a risk to such individuals and information relating to the  
27 decision;  
28 (d) information relating to any decisions made under an aged  
29 care worker screening law, in relation to each screening  
30 applicant, while the screening applicant's application is  
31 pending;  
32 (e) information relating to each screening applicant in respect of  
33 whom a decision (an **exclusion decision**) (however  
34 described) is in force, under an aged care worker screening  
35 law, to the effect that the person, in working, or seeking to

# EXPOSURE DRAFT

Governance of the aged care system **Chapter 5**  
Aged Care Quality and Safety Commission **Part 3**  
Worker screening **Division 7**

## Section 166

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- 1 work, with individuals accessing funded aged care services  
2 does pose a risk to such individuals and information relating  
3 to the decision;
- 4 (f) if a clearance decision or an exclusion decision specifies the  
5 period for which the decision is in force—information setting  
6 out that period;
- 7 (g) information relating to each person in respect of whom a  
8 decision (however described), under an aged care worker  
9 screening law, suspending a clearance decision has been  
10 made and information relating to the suspension;
- 11 (h) information relating to each person in respect of whom a  
12 decision (however described), under an aged care worker  
13 screening law, revoking a clearance decision or an exclusion  
14 decision has been made and information relating to the  
15 revocation;
- 16 (i) information relating to persons or bodies (whether the  
17 persons or bodies are registered providers or not) that  
18 employ, engage or train, or propose to employ, engage or  
19 train, persons who have made screening applications;
- 20 (j) any other information prescribed by the rules.
- 21 (6) Paragraphs (5)(a) to (i) do not limit paragraph (5)(j).
- 22 (7) The aged care worker screening database may also include the  
23 following information:
- 24 (a) information relating to persons (each of whom is a **screening**  
25 **applicant**) who:
- 26 (i) have made applications (each of which is a **screening**  
27 **application**) for an NDIS worker screening check  
28 (within the meaning of the NDIS Act); and
- 29 (ii) are identified (in screening applications or otherwise) as  
30 seeking to work with individuals accessing funded aged  
31 care services;
- 32 and information relating to those applications;
- 33 (b) information relating to each screening applicant in respect of  
34 whom a screening application is no longer being considered  
35 and the reasons for this;
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# EXPOSURE DRAFT

**Chapter 5** Governance of the aged care system  
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**Division 7** Worker screening

## Section 166

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- 1 (c) information relating to each screening applicant in respect of  
2 whom a decision (a **clearance decision**) (however described)  
3 is in force, under an NDIS worker screening law (within the  
4 meaning of the NDIS Act), to the effect that the person, in  
5 working, or seeking to work, with people with disability does  
6 not pose a risk to such people and information relating to the  
7 decision;
- 8 (d) information relating to any decisions made under an NDIS  
9 worker screening law (within the meaning of the NDIS Act),  
10 in relation to each screening applicant, while the screening  
11 applicant's application is pending;
- 12 (e) information relating to each screening applicant in respect of  
13 whom a decision (an **exclusion decision**) (however  
14 described) is in force, under an NDIS worker screening law  
15 (within the meaning of the NDIS Act), to the effect that the  
16 person, in working, or seeking to work, with people with  
17 disability does pose a risk to such people and information  
18 relating to the decision;
- 19 (f) if a clearance decision or an exclusion decision specifies the  
20 period for which the decision is in force—information setting  
21 out that period;
- 22 (g) information relating to each person in respect of whom a  
23 decision (however described), under an NDIS worker  
24 screening law (within the meaning of the NDIS Act),  
25 suspending a clearance decision has been made and  
26 information relating to the suspension;
- 27 (h) information relating to each person in respect of whom a  
28 decision (however described), under an NDIS worker  
29 screening law (within the meaning of the NDIS Act),  
30 revoking a clearance decision or an exclusion decision has  
31 been made and information relating to the revocation;
- 32 (i) information relating to employers or potential employers of  
33 persons who have made screening applications.

34 *Database may include personal information*

- 35 (8) The information included under paragraphs (5)(a) to (j) and (7)(a)  
36 to (i) may include personal information.
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# EXPOSURE DRAFT

Governance of the aged care system **Chapter 5**  
Aged Care Quality and Safety Commission **Part 3**  
Worker screening **Division 7**

## Section 167

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*Database not a legislative instrument*

- (9) The aged care worker screening database is not a legislative instrument.

### **Subdivision B—NDIS worker screening database**

#### **167 Additional purposes of NDIS worker screening database**

- (1) It is also a purpose of the NDIS worker screening database under subsection 181Y(3) of the NDIS Act to share information in that database with the following:
- (a) the Commissioner, for the purpose of assisting in the performance of the functions, or the exercise of the powers, of the Commissioner;
  - (b) the System Governor, for the purpose of assisting in the performance of the functions, or the exercise of the powers, of the System Governor under this Act.
- (2) It is also a purpose of the NDIS worker screening database under subsection 181Y(3) of the NDIS Act to share information in that database about an individual:
- (a) with registered providers that are employers or potential employers of the individual; or
  - (b) with persons or bodies facilitating the employment, engagement or training of other persons to work with individuals accessing funded aged care services.
- (3) To avoid doubt, for the purposes of authorising disclosure of information in accordance with subparagraph 67A(1)(d)(i) of the NDIS Act, the purposes stated in subsections (1) and (2) of this section are taken to be purposes of that Act.

# EXPOSURE DRAFT

Chapter 5 Governance of the aged care system

Part 4 Aged Care Quality and Safety Advisory Council

Section 168

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## Part 4—Aged Care Quality and Safety Advisory Council

### 168 Establishment of the Aged Care Quality and Safety Advisory Council

The Aged Care Quality and Safety Advisory Council is established by this section.

### 169 Functions of the Advisory Council

The functions of the Advisory Council are the following:

- (a) to monitor the performance of the Commissioner's functions;
- (b) on its own initiative or at the request of the Commissioner, to provide advice to the Commissioner in relation to the Commissioner's functions, including by identifying current and emerging risks and recommending solutions;
- (c) on its own initiative or at the request of the Minister, to provide advice to the Minister about matters arising in relation to the performance of the Commissioner's functions, including by identifying current and emerging risks and recommending solutions;
- (d) to support the Commission in developing its strategic objectives;
- (e) to identify systemic performance issues within the Commission and to make referrals to the Minister if appropriate.

### 170 Minister may give directions about the Advisory Council's functions

- (1) The Minister may, by legislative instrument, give written directions to the Advisory Council about the performance of the Advisory Council's functions.

Note: Section 42 (disallowance) and Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* do not apply to the directions (see regulations

# EXPOSURE DRAFT

Governance of the aged care system **Chapter 5**  
Aged Care Quality and Safety Advisory Council **Part 4**

## Section 171

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- 1 made for the purposes of paragraphs 44(2)(b) and 54(2)(b) of that  
2 Act).
- 3 (2) A direction given by the Minister under subsection (1):  
4 (a) must be of a general nature only; and  
5 (b) must not relate to a particular registered provider or  
6 individual accessing, or seeking to access, funded aged care  
7 services.
- 8 (3) The Advisory Council must comply with a direction under  
9 subsection (1).

### 171 Membership of the Advisory Council

- 11 (1) The Advisory Council consists of the following members:  
12 (a) a Chair;  
13 (b) a Deputy Chair;  
14 (c) at least 7, and not more than 11, other members.
- 15 (2) The members of the Advisory Council are not officials for the  
16 purposes of the *Public Governance, Performance and*  
17 *Accountability Act 2013*.

### 172 Appointment of Advisory Council members

- 19 (1) Each Advisory Council member is to be appointed by the Minister  
20 by written instrument, on a part-time basis.
- 21 Note: An Advisory Council member may be reappointed: see section 33AA  
22 of the *Acts Interpretation Act 1901*.
- 23 (2) An Advisory Council member holds office for the period specified  
24 in the instrument of appointment. The period must not exceed 4  
25 years.
- 26 (3) A person is not eligible for appointment to the Advisory Council  
27 unless the Minister is satisfied that the person has substantial  
28 experience or knowledge in at least one of the following fields:  
29 (a) evaluation of quality management systems;  
30 (b) delivery of funded aged care services to individuals;

# EXPOSURE DRAFT

Chapter 5 Governance of the aged care system

Part 4 Aged Care Quality and Safety Advisory Council

## Section 173

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- 1 (c) health consumer issues;
  - 2 (d) geriatrics or gerontology;
  - 3 (e) aged care nursing or an allied health profession;
  - 4 (f) psychiatry of individuals likely to access, or seek to access,
  - 5 funded aged care services;
  - 6 (g) adult education;
  - 7 (h) public administration;
  - 8 (i) leadership and management;
  - 9 (j) law;
  - 10 (k) contemporary regulatory best practice;
  - 11 (l) financial and prudential regulation;
  - 12 (m) data analytics;
  - 13 (n) any other appropriate field of expertise.
- 14 (4) A person is not eligible for appointment to the Advisory Council if
- 15 the person is a registered provider or a responsible person of a
- 16 registered provider.

### 173 Acting appointments

#### 18 *Chair*

- 19 (1) The Minister may, by written instrument, appoint a person to act as
- 20 the Chair:
- 21 (a) during a vacancy in the office of the Chair (whether or not an
  - 22 appointment has previously been made to the office); or
  - 23 (b) during any period, or during all periods, when the Chair:
  - 24 (i) is absent from duty or from Australia; or
  - 25 (ii) is, for any reason, unable to perform the duties of the
  - 26 office.

#### 27 *Other Advisory Council members*

- 28 (2) The Minister may, by written instrument, appoint a person to act as
- 29 an Advisory Council member (other than the Chair):



# EXPOSURE DRAFT

Governance of the aged care system **Chapter 5**  
Aged Care Quality and Safety Advisory Council **Part 4**

## Section 174

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- 1 (a) during a vacancy in the office of an Advisory Council  
2 member (other than the Chair), whether or not an  
3 appointment has previously been made to the office; or  
4 (b) during any period, or during all periods, when an Advisory  
5 Council member (other than the Chair):  
6 (i) is absent from duty or from Australia; or  
7 (ii) is, for any reason, unable to perform the duties of the  
8 office.

### 9 *Eligibility*

- 10 (3) A person is not eligible for appointment under subsection (1) or (2)  
11 unless the person is eligible for appointment as an Advisory  
12 Council member.

13 Note 1: For eligibility to be appointed as an Advisory Council member, see  
14 subsection 172(3).

15 Note 2: For rules that apply to acting appointments, see sections 33AB and  
16 33A of the *Acts Interpretation Act 1901*.

### 17 *Period of appointment*

- 18 (4) An appointment under this section has effect for the period  
19 specified in the instrument of appointment. The period must not  
20 exceed 12 months.

## 21 **174 Remuneration and allowances**

- 22 (1) An Advisory Council member is to be paid the remuneration that is  
23 determined by the Remuneration Tribunal. If no determination of  
24 that remuneration by the Tribunal is in operation, the member is to  
25 be paid the remuneration that is prescribed by the rules.
- 26 (2) However, an Advisory Council member is not entitled to be paid  
27 remuneration if the member holds an office or appointment, or is  
28 otherwise employed, on a full-time basis in the service or  
29 employment of:  
30 (a) a State; or  
31 (b) a corporation (a *public statutory corporation*) that:

# EXPOSURE DRAFT

## Chapter 5 Governance of the aged care system

### Part 4 Aged Care Quality and Safety Advisory Council

#### Section 175

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- 1 (i) is established for a public purpose by a law of a State;  
2 and  
3 (ii) is not a tertiary education institution; or  
4 (c) a company limited by guarantee, where the interests and  
5 rights of the members in or in relation to the company are  
6 beneficially owned by a State; or  
7 (d) a company in which all the stock or shares are beneficially  
8 owned by a State or by a public statutory corporation.

9 Note: A similar rule applies to an Advisory Council member who has a  
10 similar relationship with the Commonwealth or a Territory: see  
11 subsection 7(11) of the *Remuneration Tribunal Act 1973*.

12 (3) An Advisory Council member is to be paid the allowances that are  
13 prescribed by the rules.

14 (4) This section has effect subject to the *Remuneration Tribunal Act*  
15 *1973*.

#### 16 **175 Leave of absence**

- 17 (1) The Minister may grant leave of absence to the Chair or the Deputy  
18 Chair on the terms and conditions that the Minister determines.  
19 (2) The Chair may grant leave of absence to another Advisory Council  
20 member (other than the Deputy Chair) on the terms and conditions  
21 that the Chair determines.

#### 22 **176 Disclosure of interests to the Minister**

23 An Advisory Council member must give written notice to the  
24 Minister of all interests, pecuniary or otherwise, that the member  
25 has or acquires and that conflict or could conflict with the proper  
26 performance of the member's functions.

#### 27 **177 Disclosure of interests to the Advisory Council**

- 28 (1) An Advisory Council member who has an interest, pecuniary or  
29 otherwise, in a matter being considered or about to be considered

# EXPOSURE DRAFT

Governance of the aged care system **Chapter 5**  
Aged Care Quality and Safety Advisory Council **Part 4**

## Section 178

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- 1 by the Advisory Council must disclose the nature of the interest to  
2 a meeting of the Advisory Council.
- 3 (2) The disclosure must be made as soon as possible after the relevant  
4 facts have come to the Advisory Council member's knowledge.
- 5 (3) The disclosure must be recorded in the minutes of the meeting of  
6 the Advisory Council.
- 7 (4) Unless the Advisory Council otherwise determines, the Advisory  
8 Council member:  
9 (a) must not be present during any deliberation by the Advisory  
10 Council on the matter; and  
11 (b) must not take part in any decision of the Advisory Council  
12 with respect to the matter.
- 13 (5) For the purposes of making a determination under subsection (4),  
14 the Advisory Council member:  
15 (a) must not be present during any deliberation of the Advisory  
16 Council for the purpose of making the determination; and  
17 (b) must not take part in making the determination.
- 18 (6) A determination under subsection (4) must be recorded in the  
19 minutes of the meeting of the Advisory Council.

### 178 Resignation

- 20  
21 (1) An Advisory Council member may resign the member's  
22 appointment by giving the Minister a written resignation.
- 23 (2) The resignation takes effect on the day it is received by the  
24 Minister or, if a later day is specified in the resignation, on that  
25 later day.

### 179 Termination of appointment

- 26  
27 (1) The Minister may terminate the appointment of an Advisory  
28 Council member:  
29 (a) for misbehaviour; or

# EXPOSURE DRAFT

## Chapter 5 Governance of the aged care system

### Part 4 Aged Care Quality and Safety Advisory Council

#### Section 180

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- 1 (b) if the Advisory Council member is unable to perform the  
2 duties of the member's office because of physical or mental  
3 incapacity.
- 4 (2) The Minister may terminate the appointment of the Advisory  
5 Council member if:
- 6 (a) the Advisory Council member:
- 7 (i) becomes bankrupt; or  
8 (ii) applies to take the benefit of any law for the relief of  
9 bankrupt or insolvent debtors; or  
10 (iii) compounds with the member's creditors; or  
11 (iv) makes an assignment of the member's remuneration for  
12 the benefit of the member's creditors; or
- 13 (b) the Advisory Council member is absent, except on leave of  
14 absence, from 3 consecutive meetings of the Advisory  
15 Council; or
- 16 (c) fails, without reasonable excuse, to comply with section 176  
17 or 177 (which deal with the disclosure of interests).

#### 180 Other terms and conditions

- 19 An Advisory Council member holds office on the terms and  
20 conditions (if any) in relation to matters not covered by this Act  
21 that are determined, in writing, by the Minister.

#### 181 Procedures of the Advisory Council

- 23 (1) The Minister may give the Advisory Council written directions  
24 about the procedures to be followed in relation to meetings of the  
25 Advisory Council.
- 26 (2) A direction given by the Minister under subsection (1):
- 27 (a) must be of a general nature only; and  
28 (b) must not relate to a particular registered provider or  
29 individual accessing, or seeking to access, funded aged care  
30 services.

# EXPOSURE DRAFT

Governance of the aged care system **Chapter 5**  
Aged Care Quality and Safety Advisory Council **Part 4**

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## Section 181

- 1           (3) A direction given under subsection (1) is not a legislative  
2           instrument.

# EXPOSURE DRAFT

Chapter 5 Governance of the aged care system  
Part 5 Complaints Commissioner

## Section 182

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### Part 5—Complaints Commissioner

#### 182 Appointment of Complaints Commissioner

The Commissioner must, in writing, appoint a person who is an SES employee of the staff of the Commission as the Complaints Commissioner to assist the Commissioner in the performance of the Commissioner's complaints functions.

#### 183 Dealing with complaints

- (1) The rules may make provision in relation to dealing with complaints made, or information provided, to the Commissioner about an entity's compliance with this Act.
- (2) Without limiting subsection (1), the rules may make provision in relation to the following:
  - (a) how complaints may be made to the Commissioner about:
    - (i) a registered provider or aged care worker's compliance with this Act; and
    - (ii) a registered provider acting in a way that is incompatible with the Statement of Rights; and
  - (b) how complaints may be dealt with and resolved;
  - (c) the roles, rights and responsibilities of complainants, registered providers, aged care workers and any other relevant persons;
  - (d) the considerations relevant to dealing with complaints;
  - (e) the processes for resolving complaints, including early resolution and restorative justice processes;
  - (f) the actions that may be taken to address complaints, which may include requiring a registered provider or aged care worker to do something;
  - (g) how the Commissioner may evaluate the effectiveness of actions taken to address complaints, including by following up on a sample of complaints;

EXPOSURE DRAFT

Governance of the aged care system **Chapter 5**  
Complaints Commissioner **Part 5**

Section 183

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- 1
- 2
- (h) the review or reconsideration of decisions made under the scheme, including providing for procedural fairness.

## Chapter 6—Regulatory mechanisms

### Part 1—Introduction

#### 184 Simplified outline of this Chapter

This Chapter provides for a range of regulatory mechanisms that are available to the Commissioner and the System Governor in relation to their functions. These include powers under the Regulatory Powers Act and additional powers under this Chapter.

The additional powers include the following:

- (a) powers for authorised Commission officers, acting under authorisation by the Commissioner, to enter and search approved residential care homes without a warrant or consent for monitoring and investigation purposes;
- (b) powers for the Commissioner and the System Governor to give required action notices and compliance notices to registered providers in relation to their functions;
- (c) a power for the Commissioner to give adverse action warning notices to registered providers;
- (d) powers for the Commissioner to make banning orders prohibiting or restricting current and former registered providers, aged care workers and responsible persons from delivering (or being involved in delivering) funded aged care services;
- (e) powers for the Commissioner and the System Governor to require persons to attend before authorised officers to answer questions or give information or documents in relation to their functions;
- (f) a power for the System Governor to conduct assurance activities for the purposes of the System Governor's functions;



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Section 184

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(g) powers for the System Governor recover amounts of  
subsidy or grants paid by the Commonwealth to entities  
that were not entitled to be paid those amounts.

[Critical powers—to be drafted.]

This Chapter also deals with the appointment, functions and  
powers of authorised officers and miscellaneous matters.

# EXPOSURE DRAFT

Chapter 6 Regulatory mechanisms

Part 2 Monitoring under Part 2 of the Regulatory Powers Act

Division 1 Triggering Part 2 of the Regulatory Powers Act

Section 185

---

## Part 2—Monitoring under Part 2 of the Regulatory Powers Act

### Division 1—Triggering Part 2 of the Regulatory Powers Act

#### 185 Provisions, information subject to monitoring

##### *Provisions subject to monitoring*

- (1) A provision is subject to monitoring under Part 2 of the Regulatory Powers Act if it is:
- (a) a provision of this Act; or
  - (b) an offence provision of the *Crimes Act 1914* or the *Criminal Code*, to the extent that it relates to this Act.

Note 1: The expression *this Act* (see section 7) includes:

- (a) legislative instruments made under this Act; and
- (b) the Regulatory Powers Act as it applies in relation to this Act.

Note 2: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether a provision has been complied with. It includes powers of entry and inspection.

##### *Information subject to monitoring*

- (2) Information given in compliance or purported compliance with a provision of this Act is subject to monitoring under Part 2 of the Regulatory Powers Act.

#### 186 Related provisions, issuing officer and relevant court

For the purposes of Part 2 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection 185(1) and the information mentioned in subsection 185(2) of this Act:

- (a) there are no related provisions; and
- (b) each of the following is an issuing officer:
  - (i) a magistrate;

# EXPOSURE DRAFT

Regulatory mechanisms **Chapter 6**  
Monitoring under Part 2 of the Regulatory Powers Act **Part 2**  
Triggering Part 2 of the Regulatory Powers Act **Division 1**

## Section 187

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- 1 (ii) a Judge of a court of a State or Territory;  
2 (iii) a Judge of the Federal Court or the Federal Circuit and  
3 Family Court of Australia (Division 2); and  
4 (c) each of the following is a relevant court:  
5 (i) the Federal Court;  
6 (ii) the Federal Circuit and Family Court of Australia  
7 (Division 2);  
8 (iii) a court of a State or Territory that has jurisdiction in  
9 relation to matters arising under this Act.

### 187 Authorised applicant, authorised person and relevant chief executive—Commissioner functions

- 12 For the purposes of Part 2 of the Regulatory Powers Act, as that  
13 Part applies in relation to the provisions mentioned in  
14 subsection 185(1) and the information mentioned in  
15 subsection 185(2) of this Act that relate to a function of the  
16 Commissioner:  
17 (a) an authorised Commission officer is an authorised applicant;  
18 and  
19 (b) an authorised Commission officer is an authorised person;  
20 and  
21 (c) the Commissioner is the relevant chief executive.

### 188 Authorised applicant, authorised person and relevant chief executive—System Governor functions

- 24 For the purposes of Part 2 of the Regulatory Powers Act, as that  
25 Part applies in relation to the provisions mentioned in  
26 subsection 185(1) and the information mentioned in  
27 subsection 185(2) of this Act that relate to a function of the System  
28 Governor:  
29 (a) an authorised System Governor officer is an authorised  
30 applicant; and  
31 (b) an authorised System Governor officer is an authorised  
32 person; and  
33 (c) the System Governor is the relevant chief executive.

# EXPOSURE DRAFT

**Chapter 6** Regulatory mechanisms

**Part 2** Monitoring under Part 2 of the Regulatory Powers Act

**Division 1** Triggering Part 2 of the Regulatory Powers Act

## Section 189

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1     **189 Persons assisting authorised persons**

2                     An authorised person may be assisted by other persons in  
3                     exercising powers or performing functions or duties under Part 2 of  
4                     the Regulatory Powers Act in relation to the provisions mentioned  
5                     in subsection 185(1) and the information mentioned in  
6                     subsection 185(2) of this Act.

# EXPOSURE DRAFT

Regulatory mechanisms **Chapter 6**  
Monitoring under Part 2 of the Regulatory Powers Act **Part 2**  
Modifications of Part 2 of the Regulatory Powers Act **Division 2**

Section 190

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## **Division 2—Modifications of Part 2 of the Regulatory Powers Act**

### **190 Application of this Division**

This Division applies in relation to Part 2 of the Regulatory Powers Act as that Part applies in relation to the provisions mentioned in subsection 185(1) and the information mentioned in subsection 185(2) of this Act.

### **191 Use of force in executing monitoring warrants**

In executing a monitoring warrant under Part 2 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection 185(1) and the information mentioned in subsection 185(2) of this Act, an authorised person:

- (a) may use force against things only if all reasonable measures to execute the warrant effectively without the use of force have been exhausted; and
- (b) if paragraph (a) applies—may use only such force against things as is necessary and reasonable in the circumstances.

### **192 Extension of Part 2 of the Regulatory Powers Act to external Territories**

Part 2 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection 185(1) and the information mentioned in subsection 185(2) of this Act, extends to the external Territories other than the Territory of Ashmore and Cartier Islands.

### **193 Additional monitoring powers**

For the purposes of determining:

- (a) whether a provision mentioned in subsection 185(1) has been, or is being, complied with; or
- (b) the correctness of information mentioned in subsection 185(2);

# EXPOSURE DRAFT

## Chapter 6 Regulatory mechanisms

### Part 2 Monitoring under Part 2 of the Regulatory Powers Act

#### Division 2 Modifications of Part 2 of the Regulatory Powers Act

#### Section 194

---

1 the additional powers mentioned in Part 5 of this Chapter are taken  
2 to be included in the monitoring powers under Part 2 of the  
3 Regulatory Powers Act.

#### 4 **194 Entry with consent—action before obtaining consent**

5 Before obtaining the consent of an occupier of premises who is a  
6 registered provider for the purposes of paragraph 18(2)(a) of the  
7 Regulatory Powers Act, an authorised person must inform the  
8 registered provider that the registered provider has an obligation  
9 under section 115 of this Act to cooperate with a person who is  
10 performing functions, or exercising powers, under Part 2 of that  
11 Act.

12 Note: See section 25 of the Regulatory Powers Act for additional rules about  
13 consent.

#### 14 **195 Times for securing electronic equipment etc.**

15 Sections 21, 22 and 33 of the Regulatory Powers Act are taken to  
16 apply as if:

- 17 (a) a reference to “24 hours” in sections 21 and 22 of that Act  
18 were a reference to “48 hours”; and  
19 (b) a reference to a “24-hour period” in sections 21 and 22 of  
20 that Act were a reference to a “48-hour period”.

#### 21 **196 Entry with consent—asking for answers to questions or** 22 **production of documents**

- 23 (1) The second reference to the occupier of premises in  
24 subsection 24(2) of the Regulatory Powers Act is taken to include a  
25 reference to any other person on the premises.
- 26 (2) Before requesting a person who is a registered provider to answer a  
27 question, or produce a document, under subsection 24(2) of the  
28 Regulatory Powers Act, an authorised person must inform the  
29 person that the registered provider has an obligation under  
30 section 115 of this Act to cooperate with a person who is  
31 performing functions, or exercising powers, under Part 2 of that  
32 Act.

# EXPOSURE DRAFT

Regulatory mechanisms **Chapter 6**  
Monitoring under Part 2 of the Regulatory Powers Act **Part 2**  
Modifications of Part 2 of the Regulatory Powers Act **Division 2**

## Section 197

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- 1 (3) If an authorised person requests a person to answer a question, or  
2 produce a document, under subsection 24(2) of the Regulatory  
3 Powers Act, the person is not required to comply with the request.

4 **197 Exception to requirement to return identity card if authorised**  
5 **person continues to exercise other powers**

6 Subsection 35(3) of the Regulatory Powers Act does not apply if a  
7 person who ceases to be an authorised person for the purposes of  
8 Part 2 of that Act, as that Part applies in relation to the provisions  
9 mentioned in subsection 185(1) and the information mentioned in  
10 subsection 185(2) of this Act, continues to be a person who  
11 exercises powers under this Act, or Part 3 of that Act as that Part  
12 applies in relation to this Act, for which the person is required to  
13 hold an identity card.

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

# EXPOSURE DRAFT

Chapter 6 Regulatory mechanisms

Part 2 Monitoring under Part 2 of the Regulatory Powers Act

Division 3 Delegations by relevant chief executives

Section 198

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## Division 3—Delegations by relevant chief executives

### 198 Delegation by relevant chief executive—Commissioner functions

- (1) The relevant chief executive under section 187 may, in writing, delegate the powers and functions mentioned in subsection (3) of this section to a member of the staff of the Commission.
- (2) However, the relevant chief executive under section 187 must not delegate a function or power to a person under subsection (1) of this section unless the relevant chief executive under section 187 is satisfied that the person has suitable training or experience to properly perform the function or exercise the power.
- (3) The powers and functions that may be delegated are:
  - (a) powers and functions under Part 2 of the Regulatory Powers Act in relation to the provisions mentioned in subsection 185(1) and the information mentioned in subsection 185(2) of this Act that relate to a function of the Commissioner; and
  - (b) powers and functions under the Regulatory Powers Act that are incidental to a power or function mentioned in paragraph (a).
- (4) A person exercising powers or performing functions under a delegation under subsection (1) must comply with any written directions of the relevant chief executive under section 187.

### 199 Delegation by relevant chief executive—System Governor functions

- (1) The relevant chief executive under section 188 may, in writing, delegate the powers and functions mentioned in subsection (3) of this section to an APS employee in the Department.
- (2) However, the relevant chief executive under section 188 must not delegate a function or power to a person under subsection (1) of this section unless the relevant chief executive under section 188 is



# EXPOSURE DRAFT

Regulatory mechanisms **Chapter 6**  
Monitoring under Part 2 of the Regulatory Powers Act **Part 2**  
Delegations by relevant chief executives **Division 3**

## Section 199

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- 1 satisfied that the person has suitable training or experience to  
2 properly perform the function or exercise the power.
- 3 (3) The powers and functions that may be delegated are:
- 4 (a) powers and functions under Part 2 of the Regulatory Powers  
5 Act in relation to the provisions mentioned in  
6 subsection 185(1) and the information mentioned in  
7 subsection 185(2) of this Act that relate to a function of the  
8 System Governor; and
- 9 (b) powers and functions under the Regulatory Powers Act that  
10 are incidental to a power or function mentioned in  
11 paragraph (a).
- 12 (4) A person exercising powers or performing functions under a  
13 delegation under subsection (1) must comply with any written  
14 directions of the relevant chief executive under section 188.

# EXPOSURE DRAFT

Chapter 6 Regulatory mechanisms

Part 3 Investigating under Part 3 of the Regulatory Powers Act

Division 1 Triggering Part 3 of the Regulatory Powers Act

Section 200

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## Part 3—Investigating under Part 3 of the Regulatory Powers Act

### Division 1—Triggering Part 3 of the Regulatory Powers Act

#### 200 Provisions subject to investigation

A provision is subject to investigation under Part 3 of the  
Regulatory Powers Act if it is:

- (a) an offence provision of this Act; or
- (b) a civil penalty provision of this Act; or
- (c) an offence provision of the *Crimes Act 1914* or the *Criminal Code*, to the extent that it relates to this Act.

Note 1: The expression *this Act* (see section 7) includes:

- (a) legislative instruments made under this Act; and
- (b) the Regulatory Powers Act as it applies in relation to this Act.

Note 2: Part 3 of the Regulatory Powers Act creates a framework for  
investigating whether a provision has been contravened. It includes  
powers of entry, search and seizure.

#### 201 Related provisions, issuing officer and relevant court

For the purposes of Part 3 of the Regulatory Powers Act, as that  
Part applies in relation to evidential material that relates to a  
provision mentioned in section 200 of this Act:

- (a) there are no related provisions; and
- (b) each of the following is an issuing officer:
  - (i) a magistrate;
  - (ii) a Judge of a court of a State or Territory;
  - (iii) a Judge of the Federal Court or the Federal Circuit and  
Family Court of Australia (Division 2); and
- (c) each of the following is a relevant court:
  - (i) the Federal Court;

# EXPOSURE DRAFT

Regulatory mechanisms **Chapter 6**  
Investigating under Part 3 of the Regulatory Powers Act **Part 3**  
Triggering Part 3 of the Regulatory Powers Act **Division 1**

## Section 202

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- 1 (ii) the Federal Circuit and Family Court of Australia  
2 (Division 2);  
3 (iii) a court of a State or Territory that has jurisdiction in  
4 relation to matters arising under this Act.

### 202 Authorised applicant, authorised person and relevant chief executive—Commissioner functions

- 5 For the purposes of Part 3 of the Regulatory Powers Act, as that  
6 Part applies in relation to evidential material that relates to a  
7 provision mentioned in section 200 of this Act that relates to a  
8 function of the Commissioner:  
9 (a) an authorised Commission officer is an authorised applicant;  
10 and  
11 (b) an authorised Commission officer is an authorised person;  
12 and  
13 (c) the Commissioner is the relevant chief executive.  
14  
15

### 203 Authorised applicant, authorised person and relevant chief executive—System Governor functions

- 16 For the purposes of Part 3 of the Regulatory Powers Act, as that  
17 Part applies in relation to evidential material that relates to a  
18 provision mentioned in section 200 of this Act that relates to a  
19 function of the System Governor:  
20 (a) an authorised System Governor officer is an authorised  
21 applicant; and  
22 (b) an authorised System Governor officer is an authorised  
23 person; and  
24 (c) the System Governor is the relevant chief executive.  
25  
26

### 204 Persons assisting authorised persons

- 27 An authorised person may be assisted by other persons in  
28 exercising powers or performing functions or duties under Part 3 of  
29 the Regulatory Powers Act in relation to evidential material that  
30 relates to a provision mentioned in section 200 of this Act.  
31

# EXPOSURE DRAFT

Chapter 6 Regulatory mechanisms

Part 3 Investigating under Part 3 of the Regulatory Powers Act

Division 2 Modifications of Part 3 of the Regulatory Powers Act

Section 205

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1 **Division 2—Modifications of Part 3 of the Regulatory**  
2 **Powers Act**

3 **205 Application of this Division**

4 This Division applies in relation to Part 3 of the Regulatory Powers  
5 Act as that Part applies in relation to evidential material that relates  
6 to a provision mentioned in section 200 of this Act.

7 **206 Use of force in executing investigation warrants**

8 In executing an investigation warrant under Part 3 of the  
9 Regulatory Powers Act, as that Part applies in relation to evidential  
10 material that relates to a provision mentioned in section 200 of this  
11 Act, an authorised person:

- 12 (a) may use force against things only if all reasonable measures  
13 to execute the warrant effectively without the use of force  
14 have been exhausted; and  
15 (b) if paragraph (a) applies—may use only such force against  
16 things as is necessary and reasonable in the circumstances.

17 **207 Extension of Part 3 of the Regulatory Powers Act to external**  
18 **Territories**

19 Part 3 of the Regulatory Powers Act, as that Part applies in relation  
20 to a provision mentioned in section 200 of this Act, extends to the  
21 external Territories other than the Territory of Ashmore and Cartier  
22 Islands.

23 **208 Additional investigation powers**

24 The additional powers mentioned in Part 5 of this Chapter are  
25 taken to be included in the investigation powers under Part 3 of the  
26 Regulatory Powers Act, as Part 3 of that Act applies in relation to  
27 evidential material that relates to a provision mentioned in  
28 section 200 of this Act.

# EXPOSURE DRAFT

Regulatory mechanisms **Chapter 6**  
Investigating under Part 3 of the Regulatory Powers Act **Part 3**  
Modifications of Part 3 of the Regulatory Powers Act **Division 2**

## Section 209

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### **209 Entry with consent—action before obtaining consent**

Before obtaining the consent of an occupier of premises who is a registered provider for the purposes of paragraph 48(2)(a) of the Regulatory Powers Act, an authorised person must inform the registered provider that the registered provider has an obligation under section 115 of this Act to cooperate with a person who is performing functions, or exercising powers, under Part 3 of the Regulatory Powers Act.

Note: See section 55 of the Regulatory Powers Act for additional rules about consent.

### **210 Times for securing electronic equipment etc.**

Sections 51 and 74 of the Regulatory Powers Act are taken to apply as if:

(a) a reference to “24 hours” in section 51 of that Act were a reference to “48 hours”; and

(b) a reference to a “24-hour period” in section 51 of that Act were a reference to a “48-hour period”.

### **211 Entry with consent—asking for answers to questions or production of documents**

(1) The second reference to the occupier of premises in subsection 54(2) of the Regulatory Powers Act is taken to include a reference to any other person on the premises.

(2) Before requesting a person who is a registered provider to answer a question, or produce a document, under subsection 54(2) of the Regulatory Powers Act, an authorised person must inform the person that the registered provider has an obligation under section 115 of this Act to cooperate with a person who is performing functions, or exercising powers, under Part 3 of the Regulatory Powers Act.

(3) If an authorised person requests a person to answer a question, or produce a document, under subsection 54(2) of the Regulatory Powers Act, the person is not required to comply with the request.

# EXPOSURE DRAFT

**Chapter 6** Regulatory mechanisms

**Part 3** Investigating under Part 3 of the Regulatory Powers Act

**Division 2** Modifications of Part 3 of the Regulatory Powers Act

## Section 212

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1     **212 Exception to requirement to return identity card if authorised**  
2             **person continues to exercise other powers**

3             Subsection 76(3) of the Regulatory Powers Act does not apply if  
4             the person who ceases to be an authorised person for the purposes  
5             of Part 3 of that Act, as that Part applies in relation to evidential  
6             material that relates to a provision mentioned in section 200 of this  
7             Act, continues to be a person who exercises powers under this Act,  
8             or Part 2 of that Act as it applies in relation to this Act, for which  
9             the person is required to hold an identity card.

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

# EXPOSURE DRAFT

Regulatory mechanisms **Chapter 6**  
Investigating under Part 3 of the Regulatory Powers Act **Part 3**  
Delegations by relevant chief executives **Division 3**

## Section 213

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### **Division 3—Delegations by relevant chief executives**

#### **213 Delegation by relevant chief executive—Commissioner functions**

- (1) The relevant chief executive under section 202 may, in writing, delegate the powers and functions mentioned in subsection (3) of this section to a member of the staff of the Commission.
- (2) However, the relevant chief executive under section 202 must not delegate a function or power to a person under subsection (1) of this section unless the relevant chief executive under section 202 is satisfied that the person has suitable training or experience to properly perform the function or exercise the power.
- (3) The powers and functions that may be delegated are:
  - (a) powers and functions under Part 3 of the Regulatory Powers Act in relation to evidential material that relates to a provision mentioned in section 200 of this Act that relates to a function of the Commissioner; and
  - (b) powers and functions under the Regulatory Powers Act that are incidental to a power or function mentioned in paragraph (a).
- (4) A person exercising powers or performing functions under a delegation under subsection (1) must comply with any written directions of the relevant chief executive under section 202.

#### **214 Delegation by relevant chief executive—System Governor functions**

- (1) The relevant chief executive under section 203 may, in writing, delegate the powers and functions mentioned in subsection (3) of this section to an APS employee in the Department.
- (2) However, the relevant chief executive under section 203 must not delegate a function or power to a person under subsection (1) of this section unless the relevant chief executive under section 203 is satisfied that the person has suitable training or experience to properly perform the function or exercise the power.

# EXPOSURE DRAFT

**Chapter 6** Regulatory mechanisms

**Part 3** Investigating under Part 3 of the Regulatory Powers Act

**Division 3** Delegations by relevant chief executives

## Section 214

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- 1                   (3) The powers and functions that may be delegated are:
- 2                    (a) powers and functions under Part 3 of the Regulatory Powers
- 3                        Act in relation to evidential material that relates to a
- 4                        provision mentioned in section 200 of this Act that relates to
- 5                        a function of the System Governor; and
- 6                    (b) powers and functions under the Regulatory Powers Act that
- 7                        are incidental to a power or function mentioned in
- 8                        paragraph (a).
- 9                   (4) A person exercising powers or performing functions under a
- 10                   delegation under subsection (1) must comply with any written
- 11                   directions of the relevant chief executive under section 203.



# EXPOSURE DRAFT

Regulatory mechanisms **Chapter 6**  
Monitoring and investigating under authorisation by Commissioner **Part 4**  
Powers of authorised Commission officers **Division 1**

Section 215

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## **Part 4—Monitoring and investigating under authorisation by Commissioner**

### **Division 1—Powers of authorised Commission officers**

#### **215 Entering approved residential care homes under monitoring authorisations**

(1) An authorised Commission officer may enter an approved residential care home for one or more of the following purposes if the entry is made under a monitoring authorisation:

- (a) determining whether a provision mentioned in subsection 185(1) has been, or is being, complied with;
- (b) determining whether the information mentioned in subsection 185(2) is correct;
- (c) deciding whether to exercise a power under this Act.

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

- (a) legislative instruments made under this Act; and
- (b) the Regulatory Powers Act as it applies in relation to this Act.

(2) Subsections (3), (4) and (5) apply if an authorised Commission officer enters an approved residential care home as mentioned in subsection (1).

(3) Subdivision A of Division 2 of Part 2 and sections 26 to 29 of the Regulatory Powers Act apply in accordance with Part 1 of this Chapter as if:

- (a) entry to the approved residential care home were made under section 18 of that Act under a monitoring warrant; and
- (b) the purposes for which section 18 of that Act permits the monitoring powers to be exercised included the purpose of deciding whether to exercise a power under this Act; and
- (c) for the purposes of that Subdivision, relevant data included information relevant to deciding whether to exercise a power under this Act; and

# EXPOSURE DRAFT

## Chapter 6 Regulatory mechanisms

### Part 4 Monitoring and investigating under authorisation by Commissioner

#### Division 1 Powers of authorised Commission officers

##### Section 215

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- 1 (d) a reference in that Subdivision and sections 26 to 29 of the  
2 Regulatory Powers Act to an authorised person were a  
3 reference to an authorised Commission officer; and  
4 (e) a reference in that Subdivision and sections 26 to 29 of the  
5 Regulatory Powers Act to a monitoring warrant were a  
6 reference to a monitoring authorisation; and  
7 (f) a reference in that Subdivision and sections 26 to 29 of the  
8 Regulatory Powers Act to executing a monitoring warrant  
9 were a reference to exercising powers under a monitoring  
10 authorisation; and  
11 (g) a reference in that Subdivision and sections 26 to 29 of the  
12 Regulatory Powers Act to the monitoring powers included  
13 the additional powers mentioned in Part 5 of this Chapter.
- 14 Note 1: Subdivision A of Division 2 of Part 2 and sections 26 to 29 of the  
15 Regulatory Powers Act are about monitoring powers and  
16 compensation for damage to electronic equipment operated under  
17 those powers.
- 18 Note 2: Part 1 of this Chapter expands the monitoring powers under  
19 Subdivision A of Division 2 of Part 2 of the Regulatory Powers Act.
- 20 (4) The application of Subdivision A of Division 2 of Part 2 and  
21 sections 26 to 29 of the Regulatory Powers Act under  
22 subsection (3) of this section is in addition to their application  
23 under Part 1 of this Chapter.
- 24 (5) Part 5 of this Chapter applies under paragraph (3)(g) as if:  
25 (a) a reference in Subdivision A of Division 2 of Part 2 and  
26 sections 26 to 29 of the Regulatory Powers Act to an  
27 authorised person were a reference to an authorised  
28 Commission officer; and  
29 (b) a reference in that Subdivision and those sections to the  
30 premises were a reference to the approved residential care  
31 home; and  
32 (c) a reference in that Subdivision and those sections to the  
33 relevant chief executive were a reference to the  
34 Commissioner.

# EXPOSURE DRAFT

Regulatory mechanisms **Chapter 6**  
Monitoring and investigating under authorisation by Commissioner **Part 4**  
Powers of authorised Commission officers **Division 1**

## Section 216

### 216 Entering approved residential care homes under investigation authorisations

- (1) An authorised Commission officer may enter an approved residential care home if:
- (a) the officer reasonably suspects that there may be, at the approved residential care home, a particular thing:
    - (i) with respect to which an offence provision or a civil penalty provision mentioned in section 200 has been contravened or is suspected, on reasonable grounds, to have been contravened; or
    - (ii) that there are reasonable grounds for suspecting will afford evidence as to the contravention of such an offence provision or a civil penalty provision; or
    - (iii) that there are reasonable grounds for suspecting is intended to be used for the purpose of contravening such an offence provision or a civil penalty provision; and
  - (b) the entry is made under an investigation authorisation.

Note: Section 200 mentions provisions for offences against this Act, provisions for offences against the *Crimes Act 1914* or the *Criminal Code* relating to this Act, and civil penalty provisions of this Act.

- (2) Subsections (3), (4) and (5) apply if an authorised Commission officer enters an approved residential care home as mentioned in subsection (1).
- (3) Divisions 2 and 5 of Part 3 and sections 56 to 59 and 61 of the Regulatory Powers Act apply in accordance with Part 2 of this Chapter as if:
- (a) entry to the approved residential care home were made under section 48 of that Act under an investigation warrant; and
  - (b) the thing referred to in subsection (1) of this section were evidential material of a kind specified in an investigation warrant; and
  - (c) a reference in Divisions 2 and 5 of Part 3 and sections 56 to 59 and 61 to an authorised person were a reference to an authorised Commission officer; and

# EXPOSURE DRAFT

## Chapter 6 Regulatory mechanisms

### Part 4 Monitoring and investigating under authorisation by Commissioner

#### Division 1 Powers of authorised Commission officers

##### Section 216

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- 1 (d) a reference in those Divisions and sections to an investigation  
2 warrant were a reference to an investigation authorisation;  
3 and  
4 (e) a reference in those Divisions and sections to executing an  
5 investigation warrant were a reference to exercising powers  
6 under an investigation authorisation; and  
7 (f) a reference in those Divisions and sections to the  
8 investigation powers included the additional powers  
9 mentioned in Part 5 of this Chapter.
- 10 Note 1: Divisions 2 and 5 of Part 3 and sections 56 to 59 and 61 of the  
11 Regulatory Powers Act are about investigation powers, seizure and  
12 compensation for damage to electronic equipment operated under  
13 investigation powers.
- 14 Note 2: Part 3 of this Chapter expands the investigation powers under  
15 Subdivision A of Division 2 of Part 3 of the Regulatory Powers Act.
- 16 (4) The application of Divisions 2 and 5 of Part 3 and sections 56 to 59  
17 and 61 of the Regulatory Powers Act under subsection (3) of this  
18 section is in addition to their application under Part 2 of this  
19 Chapter.
- 20 (5) Part 5 of this Chapter applies under paragraph (3)(f) as if:  
21 (a) a reference in Divisions 2 and 5 of Part 3 and sections 56 to  
22 59 and 61 to an authorised person were a reference to an  
23 authorised Commission officer; and  
24 (b) a reference in those Divisions and sections to the premises  
25 were a reference to the approved residential care home; and  
26 (c) a reference in those Divisions and sections to the relevant  
27 chief executive were a reference to the Commissioner.

# EXPOSURE DRAFT

Regulatory mechanisms **Chapter 6**  
Monitoring and investigating under authorisation by Commissioner **Part 4**  
Obligations of authorised Commission officers **Division 2**

## Section 217

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### 1 **Division 2—Obligations of authorised Commission officers**

#### 2 **217 Use of force in entering approved residential care homes**

3 In entering an approved residential care home under a monitoring  
4 authorisation or an investigation authorisation, and while at that  
5 approved residential care home, an authorised Commission officer:

- 6 (a) may use force against things only if all reasonable measures  
7 to execute the authorisation effectively without the use of  
8 force have been exhausted; and  
9 (b) if paragraph (a) applies—may use only such force against  
10 things as is necessary and reasonable in the circumstances.

# EXPOSURE DRAFT

Chapter 6 Regulatory mechanisms

Part 4 Monitoring and investigating under authorisation by Commissioner

Division 3 Occupier's rights and responsibilities

## Section 218

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### 1 **Division 3—Occupier's rights and responsibilities**

#### 2 **218 Right to observe exercise of powers**

- 3 (1) The occupier of an approved residential care home entered under a  
4 monitoring authorisation or an investigation authorisation, or  
5 another person who apparently represents the occupier, is entitled  
6 to observe the exercise of powers under the authorisation if the  
7 occupier or other person is present at the approved residential care  
8 home while the powers are being exercised.
- 9 (2) The right to observe the exercise of powers ceases if the occupier  
10 or other person impedes the exercise of those powers.
- 11 (3) This section does not prevent powers being exercised in 2 or more  
12 areas of the approved residential care home at the same time.

#### 13 **219 Responsibility to provide facilities and assistance**

- 14 (1) The occupier of an approved residential care home entered under a  
15 monitoring authorisation or an investigation authorisation, or  
16 another person who apparently represents the occupier, must  
17 provide:  
18 (a) an authorised Commission officer exercising powers; and  
19 (b) any person assisting the officer;  
20 with all reasonable facilities and assistance for the effective  
21 exercise of their powers while at the approved residential care  
22 home.
- 23 (2) A person commits an offence if:  
24 (a) the person is subject to subsection (1); and  
25 (b) the person fails to comply with that subsection.
- 26 Penalty: 30 penalty units.

# EXPOSURE DRAFT

Regulatory mechanisms **Chapter 6**  
Monitoring and investigating under authorisation by Commissioner **Part 4**  
Issue of authorisations **Division 4**

## Section 220

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### Division 4—Issue of authorisations

#### 220 Monitoring authorisations

##### *Application for authorisation*

- (1) An authorised Commission officer may apply to the Commissioner for an authorisation under this section in relation to an approved residential care home.

##### *Issue of authorisation*

- (2) The Commissioner may issue the authorisation if the Commissioner is reasonably satisfied that:
- (a) there is a severe risk to the safety, health or wellbeing of an individual to whom funded aged care services are being delivered; and
  - (b) entry to the approved residential care home without a warrant or consent is necessary in the circumstances.

##### *Content of authorisation*

- (3) The authorisation must:
- (a) describe the approved residential care home to which the authorisation relates; and
  - (b) state that the authorisation is issued under this section; and
  - (c) state the purpose for which the authorisation is issued; and
  - (d) authorise one or more authorised Commission officers (whether or not named in the authorisation) from time to time while the authorisation remains in force:
    - (i) to enter the approved residential care home; and
    - (ii) to exercise the powers set out in Part 2 of the Regulatory Powers Act in relation to the approved residential care home; and
  - (e) state whether entry is authorised to be made at any time of the day or during specified hours of the day; and

# EXPOSURE DRAFT

Chapter 6 Regulatory mechanisms

Part 4 Monitoring and investigating under authorisation by Commissioner

Division 4 Issue of authorisations

## Section 221

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- 1 (f) specify the day (not more than 3 months after the issue of the  
2 authorisation) on which the authorisation ceases to be in  
3 force.

### 4 **221 Investigation authorisations**

#### 5 *Application for authorisation*

- 6 (1) An authorised Commission officer may apply to the Commissioner  
7 for an authorisation under this section in relation to an approved  
8 residential care home.

#### 9 *Issue of authorisation*

- 10 (2) The Commissioner may issue the authorisation if the  
11 Commissioner is reasonably satisfied that:  
12 (a) there is a severe risk to the safety, health or wellbeing of an  
13 individual to whom funded aged care services are being  
14 delivered; and  
15 (b) there is, or there may be within the next 72 hours, evidential  
16 material at the approved residential care home; and  
17 (c) entry to the approved residential care home without a warrant  
18 or consent is necessary in the circumstances.
- 19 (3) However, the Commissioner must not issue the authorisation  
20 unless the authorised Commission officer or some other person has  
21 given to the Commissioner, either orally or in writing, such further  
22 information (if any) as the Commissioner requires concerning the  
23 grounds on which the issue of the authorisation is being sought.

#### 24 *Content of authorisation*

- 25 (4) The authorisation must:  
26 (a) state each offence provision or civil penalty provision  
27 mentioned in section 200 to which the authorisation relates;  
28 and  
29 (b) describe the approved residential care home to which the  
30 authorisation relates; and  
31 (c) state that the authorisation is issued under this section; and
-



# EXPOSURE DRAFT

Regulatory mechanisms **Chapter 6**  
Monitoring and investigating under authorisation by Commissioner **Part 4**  
Issue of authorisations **Division 4**

## Section 221

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- 1 (d) specify the kinds of evidential material to be searched for
- 2 under the authorisation; and
- 3 (e) state that evidential material of the kind specified may be
- 4 seized under the authorisation; and
- 5 (f) state that the person exercising powers under the
- 6 authorisation may seize any other thing found in the course
- 7 of exercising the powers if the person reasonably believes
- 8 that the thing is evidential material of a kind not specified in
- 9 the authorisation; and
- 10 (g) name one or more authorised Commission officers; and
- 11 (h) authorise the named authorised Commission officers:
- 12 (i) to enter the approved residential care home; and
- 13 (ii) to exercise the powers set out in Part 3 of the
- 14 Regulatory Powers Act in relation to the approved
- 15 residential care home; and
- 16 (i) state whether entry is authorised to be made at any time of
- 17 the day or during specified hours of the day; and
- 18 (j) specify the day (not more than 1 week after the issue of the
- 19 authorisation) on which the authorisation ceases to be in
- 20 force.

# EXPOSURE DRAFT

**Chapter 6** Regulatory mechanisms

**Part 4** Monitoring and investigating under authorisation by Commissioner

**Division 5** Immunity of officers and persons assisting

Section 222

---

1     **Division 5—Immunity of officers and persons assisting**

2     **222 Protection from liability for authorised Commission officers and**  
3         **persons assisting**

4             (1) An authorised Commission officer is not liable to civil proceedings  
5                 for loss, damage or injury of any kind suffered by another person  
6                 as a result of anything done, or omitted to be done, by the officer in  
7                 good faith in the exercise or purported exercise of any power under  
8                 this Part or Part 2 or 3 of the Regulatory Powers Act as it applies  
9                 under this Part.

10            (2) A person assisting an authorised Commission officer in the  
11                 exercise or purported exercise of any power under this Part, or  
12                 Part 2 or 3 of the Regulatory Powers Act as it applies under this  
13                 Part, is not liable to civil proceedings for loss, damage or injury of  
14                 any kind suffered by another person as a result of anything done, or  
15                 omitted to be done, in good faith for the purpose of assisting the  
16                 officer.

## **Part 5—Additional monitoring and investigation powers and compensation**

### **223 Purpose of this Part**

This Part:

- (a) sets out additional powers for the purposes of sections 193 and 208 and paragraphs 215(3)(g) and 216(3)(f); and
- (b) provides for compensation for damage to electronic equipment.

Note: Subsections 215(5) and 216(5) modify the application of this Part for the purposes of paragraphs 215(3)(g) and 216(3)(f).

### **224 Use of equipment to examine or process things**

*Equipment may be brought to premises*

- (1) An authorised person or a person assisting may bring to the premises any equipment reasonably necessary for the examination or processing of a thing found at the premises in order to determine whether the thing may be seized.

*Thing may be moved for examination or processing*

- (2) A thing found at the premises may be moved to another place for examination or processing in order to determine whether the thing may be seized if:
  - (a) both of the following apply:
    - (i) it is significantly more practicable to do so having regard to the timeliness and cost of examining or processing the thing at another place and the availability of expert assistance;
    - (ii) the authorised person or a person assisting suspects on reasonable grounds that the thing contains or constitutes evidential material; or
  - (b) the occupier of the premises consents in writing.

# EXPOSURE DRAFT

## Chapter 6 Regulatory mechanisms

## Part 5 Additional monitoring and investigation powers and compensation

## Section 224

*Notification of examination or processing and right to be present*

- (3) If the thing is moved to another place for the purpose of examination or processing under subsection (2), the authorised person must, if it is practicable to do so:
  - (a) inform the occupier of the premises of the address of the place and the time at which the examination or processing will be carried out; and
  - (b) allow the occupier or the occupier's representative to be present during the examination or processing.
- (4) The authorised person need not comply with paragraph (3)(a) or (b) if the authorised person believes on reasonable grounds that to do so might:
  - (a) endanger the safety of a person; or
  - (b) prejudice an investigation or prosecution.

*Time limit on moving the thing*

- (5) The thing may be moved to another place for examination or processing for no longer than 14 days.
- (6) An authorised person may apply to an issuing officer for one or more extensions of that time if the authorised person believes on reasonable grounds that the thing cannot be examined or processed within 14 days or that time as previously extended.
- (7) The authorised person must give notice of the application to the occupier of the premises, and that person is entitled to be heard in relation to the application.
- (8) A single extension cannot exceed 7 days.

*Equipment at premises may be operated*

- (9) An authorised person or a person assisting may operate equipment already at the premises to carry out the examination or processing of a thing found at the premises in order to determine whether it is a thing that may be seized if the authorised person or person assisting believes on reasonable grounds that:

# EXPOSURE DRAFT

Regulatory mechanisms **Chapter 6**  
Additional monitoring and investigation powers and compensation **Part 5**

## Section 225

---

- 1 (a) the equipment is suitable for the examination or processing;  
2 and  
3 (b) the examination or processing can be carried out without  
4 damage to the equipment or the thing.

### 5 **225 Use of electronic equipment at other place**

- 6 (1) If electronic equipment is moved from the premises to another  
7 place under subsection 224(2), the authorised person or a person  
8 assisting may operate the equipment to access data (including data  
9 held at another place).
- 10 (2) If the authorised person or the person assisting suspects on  
11 reasonable grounds that any data accessed by operating the  
12 electronic equipment constitutes evidential material, the authorised  
13 person or the person assisting may copy any or all of the data  
14 accessed by operating the electronic equipment to a disk, tape or  
15 other associated device.
- 16 (3) If the relevant chief executive is satisfied that the data is not  
17 required (or is no longer required) for the purposes of this Act or  
18 for other judicial or administrative review proceedings, the relevant  
19 chief executive must arrange for:  
20 (a) the removal of the data from any device in the control of the  
21 Commission or Department (as applicable); and  
22 (b) the destruction of any other reproduction of the data in the  
23 control of the Commission or Department (as applicable).
- 24 (4) If the authorised person or the person assisting, after operating the  
25 equipment, finds that evidential material is accessible by doing so,  
26 the authorised person or the person assisting may:  
27 (a) seize the equipment and any disk, tape or other associated  
28 device; or  
29 (b) if the material can be put in documentary form—put the  
30 material in that form and seize the documents so produced.
- 31 (5) An authorised person or a person assisting may seize equipment  
32 under paragraph (4)(a) only if:

# EXPOSURE DRAFT

## Chapter 6 Regulatory mechanisms

### Part 5 Additional monitoring and investigation powers and compensation

#### Section 226

---

- 1 (a) it is not practicable to copy the data as mentioned in  
2 subsection (2) or to put the material in documentary form as  
3 mentioned in paragraph (4)(b); or  
4 (b) possession of the equipment by the occupier of the premises  
5 could constitute an offence.

#### 6 **226 Person with knowledge of a computer or a computer system to** 7 **assist access etc.**

- 8 (1) An authorised person may apply to an issuing officer for an order  
9 requiring a specified person to provide any information or  
10 assistance that is reasonable and necessary to allow an authorised  
11 person or person assisting to do one or more of the following:  
12 (a) access data held in, or accessible from, a computer or data  
13 storage device that:  
14 (i) is on the premises; or  
15 (ii) has been moved under subsection 224(2) and is at a  
16 place for examination or processing; or  
17 (iii) has been seized under this Act or under the Regulatory  
18 Powers Act as it applies in relation to this Act;  
19 (b) copy data held in, or accessible from, a computer, or data  
20 storage device, described in paragraph (a) to another data  
21 storage device;  
22 (c) convert into documentary form or another form intelligible to  
23 an authorised person or person assisting:  
24 (i) data held in, or accessible from, a computer, or data  
25 storage device, described in paragraph (a); or  
26 (ii) data held in a data storage device to which the data was  
27 copied as described in paragraph (b); or  
28 (iii) data held in a data storage device removed from  
29 premises under the Regulatory Powers Act as it applies  
30 in relation to this Act.  
31 (2) The issuing officer may grant the order if the issuing officer is  
32 satisfied that:

# EXPOSURE DRAFT

Regulatory mechanisms **Chapter 6**  
Additional monitoring and investigation powers and compensation **Part 5**

## Section 226

---

- 1 (a) there are reasonable grounds for suspecting that evidential  
2 material is held in, or is accessible from, the computer or data  
3 storage device; and  
4 (b) the specified person is:  
5 (i) if the premises were entered under an investigation  
6 warrant—reasonably suspected of having committed the  
7 offence or contravened the civil penalty provision stated  
8 in the warrant; or  
9 (ii) the owner or lessee of the computer or device; or  
10 (iii) an employee of the owner or lessee of the computer or  
11 device; or  
12 (iv) a person engaged under a contract for services by the  
13 owner or lessee of the computer or device; or  
14 (v) a person who uses or has used the computer or device;  
15 or  
16 (vi) a person who is or was a system administrator for the  
17 system including the computer or device; and  
18 (c) the specified person has relevant knowledge of:  
19 (i) the computer or device or a computer network of which  
20 the computer or device forms or formed a part; or  
21 (ii) measures applied to protect data held in, or accessible  
22 from, the computer or device.
- 23 (3) If:  
24 (a) the computer or data storage device that is the subject of the  
25 order is seized under this Act or under the Regulatory Powers  
26 Act as it applies in relation to this Act; and  
27 (b) the order was granted on the basis of an application made  
28 before the seizure;  
29 the order does not have effect on or after the seizure.
- 30 Note: An application for another order under this section relating to the  
31 computer or data storage device may be made after the seizure.
- 32 (4) If the computer or data storage device is not on the premises, the  
33 order must:  
34 (a) specify the period within which the person must provide the  
35 information or assistance; and
-

# EXPOSURE DRAFT

## Chapter 6 Regulatory mechanisms

### Part 5 Additional monitoring and investigation powers and compensation

#### Section 227

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- 1 (b) specify the place at which the person must provide the  
2 information or assistance; and  
3 (c) specify the conditions (if any) determined by the issuing  
4 officer as the conditions to which the requirement on the  
5 person to provide the information or assistance is subject.
- 6 (5) A person commits an offence if the person fails to comply with the  
7 order.
- 8 Penalty: Imprisonment for 2 years.

#### 9 **227 Compensation for damage to electronic equipment**

- 10 (1) This section applies if:  
11 (a) as a result of electronic equipment being operated as  
12 mentioned in section 224 or 225:  
13 (i) damage is caused to the equipment; or  
14 (ii) the data recorded on the equipment is damaged; or  
15 (iii) programs associated with the use of the equipment, or  
16 with the use of the data, are damaged or corrupted; and  
17 (b) the damage or corruption occurs because:  
18 (i) insufficient care was exercised in selecting the person  
19 who was to operate the equipment; or  
20 (ii) insufficient care was exercised by the person operating  
21 the equipment.
- 22 (2) The Commonwealth must pay the owner of the equipment, or the  
23 user of the data or programs, such reasonable compensation for the  
24 damage or corruption as the Commonwealth and the owner or user  
25 agree on.
- 26 (3) However, if the owner or user and the Commonwealth fail to  
27 agree, the owner or user may institute proceedings in:  
28 (a) the Federal Court of Australia; or  
29 (b) the Federal Circuit and Family Court of Australia  
30 (Division 2); or  
31 (c) a court of a State or Territory that has jurisdiction in relation  
32 to the matter;



# EXPOSURE DRAFT

Regulatory mechanisms **Chapter 6**  
Additional monitoring and investigation powers and compensation **Part 5**

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## Section 227

- 1                   for such reasonable amount of compensation as the court  
2                   determines.
- 3                   (4) In determining the amount of compensation payable, regard is to  
4                   be had to whether the occupier of the premises, or the occupier's  
5                   employees or agents, if they were available at the time, provided  
6                   any appropriate warning or guidance on the operation of the  
7                   equipment.

# EXPOSURE DRAFT

Chapter 6 Regulatory mechanisms

Part 6 Civil penalties under Part 4 of the Regulatory Powers Act

Division 1 Triggering Part 4 of the Regulatory Powers Act

Section 228

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## Part 6—Civil penalties under Part 4 of the Regulatory Powers Act

### Division 1—Triggering Part 4 of the Regulatory Powers Act

#### 228 Enforceable civil penalty provisions

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

Note 1: The expression *this Act* (see section 7) includes:

- (a) legislative instruments made under this Act; and
- (b) the Regulatory Powers Act as it applies in relation to this Act.

Note 2: Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

#### 229 Authorised applicant—Commissioner functions

For the purposes of Part 4 of the Regulatory Powers Act, the Commissioner is an authorised applicant in relation to the civil penalty provisions of this Act that relate to a function of the Commissioner.

#### 230 Authorised applicant—System Governor functions

For the purposes of Part 4 of the Regulatory Powers Act, the System Governor is an authorised applicant in relation to the civil penalty provisions of this Act that relate to a function of the System Governor.

#### 231 Relevant court

For the purposes of Part 4 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the civil penalty provisions of this Act:

- (a) the Federal Court;

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Regulatory mechanisms **Chapter 6**  
Civil penalties under Part 4 of the Regulatory Powers Act **Part 6**  
Triggering Part 4 of the Regulatory Powers Act **Division 1**

Section 231

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- 1
- 2
- 3
- 4
- (b) the Federal Circuit and Family Court of Australia  
(Division 2);

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

# EXPOSURE DRAFT

**Chapter 6** Regulatory mechanisms

**Part 6** Civil penalties under Part 4 of the Regulatory Powers Act

**Division 2** Modifications of Part 4 of the Regulatory Powers Act

Section 232

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1     **Division 2—Modifications of Part 4 of the Regulatory**  
2                     **Powers Act**

3     **232 Crown not liable to pecuniary penalty**

4                     Part 4 of the Regulatory Powers Act, as that Part applies in relation  
5                     to the civil penalty provisions of this Act, does not make the  
6                     Crown liable to a pecuniary penalty.

7     **233 Extension of Part 4 of the Regulatory Powers Act to external**  
8                     **Territories**

9                     Part 4 of the Regulatory Powers Act, as that Part applies in relation  
10                    to the civil penalty provisions of this Act, extends to the external  
11                    Territories other than the Territory of Ashmore and Cartier Islands.

# EXPOSURE DRAFT

Regulatory mechanisms **Chapter 6**  
Civil penalties under Part 4 of the Regulatory Powers Act **Part 6**  
Delegations by authorised applicants **Division 3**

## Section 234

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### **Division 3—Delegations by authorised applicants**

#### **234 Delegation by authorised applicant—Commissioner functions**

- (1) The authorised applicant under section 229 may, in writing, delegate the authorised applicant's powers and functions under Part 4 of the Regulatory Powers Act in relation to the civil penalty provisions of this Act that relate to a function of the Commissioner to a member of the staff of the Commission who is an SES employee or an acting SES employee.
- (2) A person exercising powers or performing functions under a delegation under subsection (1) must comply with any written directions of the authorised applicant under section 229.

#### **235 Delegation by authorised applicant—System Governor functions**

- (1) The authorised applicant under section 230 may, in writing, delegate the authorised applicant's powers and functions under Part 4 of the Regulatory Powers Act in relation to the civil penalty provisions of this Act that relate to a function of the System Governor to an SES employee, or an acting SES employee, in the Department.
- (2) A person exercising powers or performing functions under a delegation under subsection (1) must comply with any written directions of the authorised applicant under section 230.

# EXPOSURE DRAFT

Chapter 6 Regulatory mechanisms

Part 7 Infringement notices under Part 5 of the Regulatory Powers Act

Division 1 Triggering Part 5 of the Regulatory Powers Act

Section 236

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## Part 7—Infringement notices under Part 5 of the Regulatory Powers Act

### Division 1—Triggering Part 5 of the Regulatory Powers Act

#### 236 Provisions subject to an infringement notice

The following provisions are subject to an infringement notice under Part 5 of the Regulatory Powers Act:

- (a) a civil penalty provision of this Act;
- (b) a provision of this Act the contravention of which constitutes an offence of strict liability.

Note 1: The expression *this Act* (see section 7) includes:

- (a) legislative instruments made under this Act; and
- (b) the Regulatory Powers Act as it applies in relation to this Act.

Note 2: Part 5 of the Regulatory Powers Act creates a framework for using infringement notices in relation to provisions.

#### 237 Infringement officer and relevant chief executive— Commissioner functions

For the purposes of Part 5 of the Regulatory Powers Act, the Commissioner:

- (a) is an infringement officer; and
- (b) is the relevant chief executive;

in relation to the provisions mentioned in section 236 of this Act that relate to a function of the Commissioner.

#### 238 Infringement officer and relevant chief executive—System Governor functions

For the purposes of Part 5 of the Regulatory Powers Act, the System Governor:

- (a) is an infringement officer; and
- (b) is the relevant chief executive;

# EXPOSURE DRAFT

Regulatory mechanisms **Chapter 6**  
Infringement notices under Part 5 of the Regulatory Powers Act **Part 7**  
Triggering Part 5 of the Regulatory Powers Act **Division 1**

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## Section 238

- 1 in relation to the provisions mentioned in section 236 of this Act  
2 that relate to a function of the System Governor.

# EXPOSURE DRAFT

Chapter 6 Regulatory mechanisms

Part 7 Infringement notices under Part 5 of the Regulatory Powers Act

Division 2 Modifications of Part 5 of the Regulatory Powers Act

Section 239

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1 **Division 2—Modifications of Part 5 of the Regulatory**  
2 **Powers Act**

3 **239 Crown not liable to be given infringement notice**

4 Despite section 3, the Crown is not liable to be given an  
5 infringement notice in relation to the provisions mentioned in  
6 section 236.

7 **240 Extension to external Territories**

8 Part 5 of the Regulatory Powers Act, as that Part applies in relation  
9 to the provisions mentioned in section 236 of this Act, extends to  
10 the external Territories other than the Territory of Ashmore and  
11 Cartier Islands.

12 **241 Single infringement notice may deal with more than one**  
13 **contravention**

14 Despite subsection 103(3) of the Regulatory Powers Act, a single  
15 infringement notice may be given to a person in respect of:

- 16 (a) 2 or more alleged contraventions of a provision mentioned in  
17 section 236 of this Act; or  
18 (b) alleged contraventions of 2 or more provisions mentioned in  
19 section 236 of this Act.

20 However, the notice must not require the person to pay more than  
21 one amount in respect of the same conduct.



# EXPOSURE DRAFT

Regulatory mechanisms **Chapter 6**  
Infringement notices under Part 5 of the Regulatory Powers Act **Part 7**  
Delegations by infringement officers and relevant chief executives **Division 3**

## Section 242

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### **Division 3—Delegations by infringement officers and relevant chief executives**

#### **242 Delegation by infringement officer—Commissioner functions**

- (1) An infringement officer under section 237 may, in writing, delegate the infringement officer's powers and functions under Part 5 of the Regulatory Powers Act in relation to the provisions mentioned in section 236 of this Act that relate to a function of the Commissioner to a member of the staff of the Commission who is:
  - (a) an SES employee or acting SES employee; or
  - (b) an APS employee who holds, or is acting in, an Executive Level 2, or equivalent, position.
- (2) A person exercising powers or performing functions under a delegation under subsection (1) must comply with any written directions of the infringement officer.

#### **243 Delegation by relevant chief executive—Commissioner functions**

- (1) The relevant chief executive under section 237 may, in writing, delegate the relevant chief executive's powers and functions under Part 5 of the Regulatory Powers Act in relation to the provisions mentioned in section 236 of this Act that relate to a function of the Commissioner to a member of the staff of the Commission who is an SES employee or an acting SES employee.
- (2) A person exercising powers or performing functions under a delegation under subsection (1) must comply with any written directions of the relevant chief executive under section 237.

#### **244 Delegation by infringement officer—System Governor functions**

- (1) An infringement officer under section 238 may, in writing, delegate the infringement officer's powers and functions under Part 5 of the Regulatory Powers Act in relation to the provisions mentioned in section 236 of this Act that relate to a function of the System Governor to:

# EXPOSURE DRAFT

**Chapter 6** Regulatory mechanisms

**Part 7** Infringement notices under Part 5 of the Regulatory Powers Act

**Division 3** Delegations by infringement officers and relevant chief executives

## Section 245

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- 1 (a) an SES employee or acting SES employee in the Department;  
2 or  
3 (b) an APS employee who holds, or is acting in, an Executive  
4 Level 2, or equivalent, position in the Department.
- 5 (2) A person exercising powers or performing functions under a  
6 delegation under subsection (1) must comply with any written  
7 directions of the infringement officer.

### 245 Delegation by relevant chief executive—System Governor functions

- 8  
9
- 10 (1) The relevant chief executive under section 238 may, in writing,  
11 delegate the relevant chief executive's powers and functions under  
12 Part 5 of the Regulatory Powers Act in relation to the provisions  
13 mentioned in section 236 of this Act that relate to a function of the  
14 System Governor to an SES employee, or an acting SES employee,  
15 in the Department.
- 16 (2) A person exercising powers or performing functions under a  
17 delegation under subsection (1) must comply with any written  
18 directions of the relevant chief executive under section 238.

# EXPOSURE DRAFT

Regulatory mechanisms **Chapter 6**  
Enforceable undertakings under Part 6 of the Regulatory Powers Act **Part 8**  
Triggering Part 6 of the Regulatory Powers Act **Division 1**

## Section 246

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### **Part 8—Enforceable undertakings under Part 6 of the Regulatory Powers Act**

#### **Division 1—Triggering Part 6 of the Regulatory Powers Act**

##### **246 Enforceable provisions**

The following provisions are enforceable under Part 6 of the Regulatory Powers Act:

- (a) a provision of Part 4 of Chapter 3 of this Act (obligations of registered providers);
- (b) a provision of the rules made for the purposes of a provision mentioned in paragraph (a).

**Note:** Part 6 of the Regulatory Powers Act creates a framework for accepting and enforcing undertakings relating to compliance with provisions.

##### **247 Authorised person—Commissioner functions**

For the purposes of Part 6 of the Regulatory Powers Act, the Commissioner is an authorised person in relation to the provisions mentioned in section 246 of this Act that relate to a function of the Commissioner.

##### **248 Authorised person—System Governor functions**

For the purposes of Part 6 of the Regulatory Powers Act, the System Governor is an authorised person in relation to the provisions mentioned in section 246 of this Act that relate to a function of the System Governor.

##### **249 Relevant court**

For the purposes of Part 6 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the provisions mentioned in section 246 of this Act:

# EXPOSURE DRAFT

**Chapter 6** Regulatory mechanisms

**Part 8** Enforceable undertakings under Part 6 of the Regulatory Powers Act

**Division 1** Triggering Part 6 of the Regulatory Powers Act

## Section 249

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- 1 (a) the Federal Court;
- 2 (b) the Federal Circuit and Family Court of Australia
- 3 (Division 2);
- 4 (c) a court of a State or Territory that has jurisdiction in relation
- 5 to matters arising under this Act.

# EXPOSURE DRAFT

Regulatory mechanisms **Chapter 6**  
Enforceable undertakings under Part 6 of the Regulatory Powers Act **Part 8**  
Modifications of Part 6 of the Regulatory Powers Act **Division 2**

Section 250

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## **Division 2—Modifications of Part 6 of the Regulatory Powers Act**

### **250 Extension to external Territories**

Part 6 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in section 246 of this Act, extends to the external Territories other than the Territory of Ashmore and Cartier Islands.

### **251 Other undertakings**

- (1) An authorised person may accept any of the following undertakings:
  - (a) a written undertaking given by a person that the person will, in order to provide compensation for loss or damage suffered as a result of a contravention or alleged contravention by the person of a provision mentioned in section 246, pay another person an amount worked out in accordance with the undertaking;
  - (b) a written undertaking given by a person in connection with a matter relating to a contravention or alleged contravention by the person of a provision mentioned section 246.
- (2) The undertaking must be expressed to be an undertaking under this section.
- (3) The power in subsection (1) is in addition to the power of an authorised person under subsection 114(1) of the Regulatory Powers Act.
- (4) Part 6 of the Regulatory Powers Act, other than subsections 114(1) and (2), applies to an undertaking accepted under subsection (1) of this section as if it were an undertaking accepted under subsection 114(1) of that Act.

# EXPOSURE DRAFT

Chapter 6 Regulatory mechanisms

Part 8 Enforceable undertakings under Part 6 of the Regulatory Powers Act

Division 3 Delegations by authorised persons

## Section 252

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### Division 3—Delegations by authorised persons

#### 252 Delegation by authorised person—Commissioner functions

- (1) The authorised person under section 247 may, in writing, delegate the authorised person's powers and functions under Part 6 of the Regulatory Powers Act in relation to the provisions mentioned in section 246 of this Act that relate to a function of the Commissioner to a member of the staff of the Commission who is:
  - (a) an SES employee or acting SES employee; or
  - (b) an APS employee who holds, or is acting in, an Executive Level 2, or equivalent, position.
- (2) However, the authorised person under section 247 must not delegate a function or power to a person under subsection (1) of this section unless the authorised person under section 247 is satisfied that the person has suitable training or experience to properly perform the function or exercise the power.
- (3) A person exercising powers or performing functions under a delegation under subsection (1) must comply with any written directions of the authorised person under section 247.

#### 253 Delegation by authorised person—System Governor functions

- (1) The authorised person under section 248 may, in writing, delegate the authorised person's powers and functions under Part 6 of the Regulatory Powers Act in relation to the provisions mentioned in section 246 of this Act that relate to a function of the System Governor to:
  - (a) an SES employee or acting SES employee in the Department; or
  - (b) an APS employee who holds, or is acting in, an Executive Level 2, or equivalent, position in the Department.
- (2) However, the authorised person under section 248 must not delegate a function or power to a person under subsection (1) of this section unless the authorised person under section 248 is

# EXPOSURE DRAFT

Regulatory mechanisms **Chapter 6**  
Enforceable undertakings under Part 6 of the Regulatory Powers Act **Part 8**  
Delegations by authorised persons **Division 3**

## Section 253

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- 1 satisfied that the person has suitable training or experience to  
2 properly perform the function or exercise the power.
- 3 (3) A person exercising powers or performing functions under a  
4 delegation under subsection (1) must comply with any written  
5 directions of the authorised person under section 248.

# EXPOSURE DRAFT

Chapter 6 Regulatory mechanisms

Part 9 Injunctions under Part 7 of the Regulatory Powers Act

Division 1 Triggering Part 7 of the Regulatory Powers Act

Section 254

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## Part 9—Injunctions under Part 7 of the Regulatory Powers Act

### Division 1—Triggering Part 7 of the Regulatory Powers Act

#### 254 Enforceable provisions

The following provisions are enforceable under Part 7 of the Regulatory Powers Act:

- (a) a provision of Part 4 of Chapter 3 of this Act (obligations of registered providers);
- (b) a provision of the rules made for the purposes of a provision mentioned in paragraph (a).

Note: Part 7 of the Regulatory Powers Act creates a framework for using injunctions to enforce provisions.

#### 255 Authorised person—Commissioner functions

For the purposes of Part 7 of the Regulatory Powers Act, the Commissioner is an authorised person in relation to the provisions mentioned in section 254 of this Act that relate to a function of the Commissioner.

#### 256 Authorised person—System Governor functions

For the purposes of Part 7 of the Regulatory Powers Act, the System Governor is an authorised person in relation to the provisions mentioned in section 254 of this Act that relate to a function of the System Governor.

#### 257 Relevant court

For the purposes of Part 7 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the provisions mentioned in section 254 of this Act:

- (a) the Federal Court;



# EXPOSURE DRAFT

Regulatory mechanisms **Chapter 6**  
Injunctions under Part 7 of the Regulatory Powers Act **Part 9**  
Triggering Part 7 of the Regulatory Powers Act **Division 1**

## Section 257

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- 1 (b) the Federal Circuit and Family Court of Australia
- 2 (Division 2);
- 3 (c) a court of a State or Territory that has jurisdiction in relation
- 4 to matters arising under this Act.

# EXPOSURE DRAFT

**Chapter 6** Regulatory mechanisms

**Part 9** Injunctions under Part 7 of the Regulatory Powers Act

**Division 2** Modifications of Part 7 of the Regulatory Powers Act

Section 258

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1     **Division 2—Modifications of Part 7 of the Regulatory**  
2                     **Powers Act**

3     **258 Consent injunctions**

4                     A relevant court may grant an injunction under Part 7 of the  
5                     Regulatory Powers Act in relation to a provision mentioned in  
6                     section 254 of this Act by consent of all the parties to proceedings  
7                     brought under that Part, whether or not the court is satisfied that  
8                     section 121 of that Act applies.

9     **259 Extension to external Territories**

10                    Part 7 of the Regulatory Powers Act, as that Part applies in relation  
11                    to the provisions mentioned in section 254 of this Act, extends to  
12                    the external Territories other than the Territory of Ashmore and  
13                    Cartier Islands.

# EXPOSURE DRAFT

Regulatory mechanisms **Chapter 6**  
Injunctions under Part 7 of the Regulatory Powers Act **Part 9**  
Delegations by authorised persons **Division 3**

Section 260

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## **Division 3—Delegations by authorised persons**

### **260 Delegation by authorised person—Commissioner functions**

- (1) The authorised person under section 255 may, in writing, delegate the authorised person's powers and functions under Part 7 of the Regulatory Powers Act in relation to the provisions mentioned in section 254 of this Act that relate to a function of the Commissioner to a member of the staff of the Commission who is an SES employee or an acting SES employee.
- (2) A person exercising powers or performing functions under a delegation under subsection (1) must comply with any written directions of the authorised person.

### **261 Delegation by authorised person—System Governor functions**

- (1) The authorised person under section 256 may, in writing, delegate the authorised person's powers and functions under Part 7 of the Regulatory Powers Act in relation to the provisions mentioned in section 254 of this Act that relate to a function of the System Governor to an SES employee, or an acting SES employee, in the Department.
- (2) A person exercising powers or performing functions under a delegation under subsection (1) must comply with any written directions of the authorised person.

# EXPOSURE DRAFT

Chapter 6 Regulatory mechanisms

Part 10 Notices requiring action

Division 1 Required action notices

Section 262

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## Part 10—Notices requiring action

### Division 1—Required action notices

#### Subdivision A—Giving required action notices

##### 262 Commissioner may give required action notices relating to Commissioner's functions

The Commissioner may give a registered provider a written notice (a *required action notice*) in relation to a matter that relates to the Commissioner's functions if the Commissioner is satisfied of any of the grounds mentioned in section 264 in relation to the matter.

##### 263 System Governor may give required action notices relating to System Governor's functions

The System Governor may give a registered provider a written notice (a *required action notice*) in relation to a matter that relates to the System Governor's functions if the System Governor is satisfied of any of the grounds mentioned in section 264 in relation to the matter.

##### 264 Grounds for giving required action notices

For the purposes of sections 262 and 263, the grounds are as follows:

- (a) the provider has not complied, or is not complying, with this Act;
- (b) there is information that suggests that the provider may not have complied, or may not be complying, with this Act;
- (c) it is likely that the provider will fail to comply with this Act and that the failure will give rise to:
  - (i) a risk to the safety, health or wellbeing of an individual to whom the provider is delivering funded aged care services; or
  - (ii) a prudential risk;

# EXPOSURE DRAFT

Regulatory mechanisms **Chapter 6**

Notices requiring action **Part 10**

Required action notices **Division 1**

## Section 265

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- 1 (d) the provider is, or is about to become, unable to meet its
- 2 liabilities;
- 3 (e) there is, or there might be, a material risk to the security of
- 4 the provider's assets;
- 5 (f) there is, or there might be a material deterioration in the
- 6 provider's financial condition;
- 7 (g) the provider is conducting its affairs in an improper or
- 8 financially unsound way;
- 9 (h) the provider is conducting its affairs in a way that may cause
- 10 or promote instability in the Commonwealth aged care
- 11 system;
- 12 (i) the notice would address a matter affecting the interests of an
- 13 individual to whom the provider is delivering, or might in the
- 14 future deliver, funded aged care services.

### 15 **265 Contents of required action notices**

16 A required action notice given to a registered provider must set out  
17 the following:

- 18 (a) the name of the provider;
- 19 (b) brief details of the matter in relation to which the notice is
- 20 given;
- 21 (c) action that the provider must take, or refrain from taking, in
- 22 relation to the matter;
- 23 (d) a reasonable period within which the provider must take, or
- 24 refrain from taking, the action;
- 25 (e) a reasonable period within which the provider must give the
- 26 Commissioner or the System Governor (as applicable) a
- 27 written response in relation to the notice;
- 28 (f) that a failure to comply with the notice is subject to a civil
- 29 penalty under section 268;
- 30 (g) the actions that the Commissioner or the System Governor
- 31 (as applicable) may take under this Act in response to a
- 32 failure to comply with the notice;
- 33 (h) any other matters prescribed by the rules.

# EXPOSURE DRAFT

Chapter 6 Regulatory mechanisms

Part 10 Notices requiring action

Division 1 Required action notices

## Section 266

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### Subdivision B—Varying or revoking required action notices

#### 266 Commissioner may vary or revoke required action notices

- (1) The Commissioner may, by written notice given to a registered provider, vary a required action notice given to the provider by the Commissioner if, at the time of the variation, the Commissioner considers that the variation is appropriate.
- (2) The Commissioner may, by written notice given to a registered provider, revoke a required action notice given to the provider by the Commissioner if, at the time of the revocation, the Commissioner considers that the notice is no longer appropriate.
- (3) In deciding whether to vary or revoke a required action notice given to a registered provider, the Commissioner must consider any written response received from the provider before the end of the period set out in the notice under paragraph 265(e).

#### 267 System Governor may vary or revoke required action notices

- (1) The System Governor may, by written notice given to a registered provider, vary a required action notice given to the provider by the System Governor if, at the time of the variation, the System Governor considers that the variation is appropriate.
- (2) The System Governor may, by written notice given to a registered provider, revoke a required action notice given to the provider by the System Governor if, at the time of the revocation, the System Governor considers that the notice is no longer appropriate.
- (3) In deciding whether to vary or revoke a required action notice given to a registered provider, the System Governor must consider any written response received from the provider before the end of the period set out in the notice under paragraph 265(e).

EXPOSURE DRAFT

Regulatory mechanisms Chapter 6  
Notices requiring action Part 10  
Required action notices Division 1

Section 268

1 Subdivision C—Penalty for contravening required action  
2 notices

3 268 Penalty for contravening required action notices

4 A registered provider contravenes this section if the provider fails  
5 to comply with a required action notice given to the provider.

6 Civil penalty: 60 penalty units.

# EXPOSURE DRAFT

Chapter 6 Regulatory mechanisms

Part 10 Notices requiring action

Division 2 Compliance notices

Section 269

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## Division 2—Compliance notices

### Subdivision A—Giving compliance notices

#### 269 Commissioner may give compliance notices relating to Commissioner's functions

The Commissioner may give a registered provider a written notice (a *compliance notice*) if:

(a) the Commissioner:

(i) is satisfied that the provider has not complied, or is not complying, with this Act; or

(ii) is aware of information that suggests that the provider may not have complied, or may not be complying, with this Act; and

(b) the non-compliance or possible non-compliance relates to a matter that relates to the Commissioner's functions.

#### 270 System Governor may give compliance notices relating to System Governor's functions

The System Governor may give a registered provider a written notice (a *compliance notice*) if:

(a) the System Governor:

(i) is satisfied that the provider has not complied, or is not complying, with this Act; or

(ii) is aware of information that suggests that the provider may not have complied, or may not be complying, with this Act; and

(b) the non-compliance or possible non-compliance relates to a matter that relates to the System Governor's functions.

#### 271 Contents of compliance notices—general

A compliance notice given to a provider must set out the following:

(a) the name of the provider;



# EXPOSURE DRAFT

Regulatory mechanisms **Chapter 6**

Notices requiring action **Part 10**

Compliance notices **Division 2**

## Section 272

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- 1 (b) brief details of the non-compliance or possible
- 2 non-compliance;
- 3 (c) action that the provider must take, or refrain from taking, to
- 4 address the non-compliance or possible non-compliance;
- 5 (d) a reasonable period within which the provider must take, or
- 6 refrain from taking, the action;
- 7 (e) a reasonable period within which the provider must give the
- 8 Commissioner or the System Governor (as applicable) a
- 9 written response in relation to the notice;
- 10 (f) that a failure to comply with the notice is subject to a civil
- 11 penalty under section 275;
- 12 (g) the actions that the Commissioner or the System Governor
- 13 (as applicable) may take under this Act in response to a
- 14 failure to comply with the notice;
- 15 (h) any other matters prescribed by the rules.

### 16 **272 Contents of compliance notices—additional content for notices**

### 17 **given by Commissioner in relation to significant failures**

### 18 **or systematic patterns of conduct**

19 If the Commissioner is satisfied that non-compliance by a

20 registered provider is conduct that:

- 21 (a) involves a significant failure; or
  - 22 (b) is part of a systematic pattern of conduct;
- 23 a compliance notice given to the provider by the Commissioner in
- 24 relation to the non-compliance must also set out that the
- 25 Commissioner is so satisfied and brief reasons that the
- 26 Commissioner is so satisfied.

27 Note: See the definitions of *significant failure* and *systematic pattern of*

28 *conduct* in section 18. See also the registered provider and responsible

29 person duties in sections 120 and 121.

# EXPOSURE DRAFT

Chapter 6 Regulatory mechanisms

Part 10 Notices requiring action

Division 2 Compliance notices

## Section 273

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### Subdivision B—Varying or revoking compliance notices

#### 273 Commissioner may vary or revoke compliance notices

(1) The Commissioner may, by written notice given to a registered provider, vary or revoke a compliance notice given to the provider by the Commissioner if the Commissioner considers that it is appropriate in all the circumstances to do so.

(2) In deciding whether to vary or revoke a compliance notice given to a registered provider, the Commissioner must consider any written response received from the provider before the end of the period set out in the notice under paragraph 271(e).

#### 274 System Governor may vary or revoke compliance notices

(1) The System Governor may, by written notice given to a registered provider, vary or revoke a compliance notice given to the provider by the System Governor if the System Governor considers that it is appropriate in all the circumstances to do so.

(2) In deciding whether to vary or revoke a compliance notice given to a registered provider, the System Governor must consider any written response received from the provider before the end of the period set out in the notice under paragraph 271(e).

### Subdivision C—Penalty for contravening compliance notices

#### 275 Penalty for contravening compliance notices

A registered provider contravenes this section if the provider fails to comply with a compliance notice.

Civil penalty: 60 penalty units.

**Division 3—Adverse action warning notices**

**276 Commissioner may give adverse action warning notice**

The Commissioner may give a registered provider a written notice (an *adverse action warning notice*) if:

- (a) the Commissioner is satisfied that the provider has not complied, or is not complying, with this Act; and
- (b) the non-compliance relates to a matter that relates to the Commissioner's functions; and
- (c) any of the following apply:
  - (i) the Commissioner is satisfied that, as a result of the non-compliance, there is an immediate and severe risk to the safety, health or wellbeing of an individual to whom the provider is delivering funded aged care services;
  - (ii) the provider has failed to comply with a compliance notice given in relation to the non-compliance;
  - (iii) the provider has breached an undertaking given by the provider and accepted by the Commissioner as an authorised person under section 247 in relation to the non-compliance; and
- (d) the Commissioner is considering doing any of the following:
  - (i) revoking the provider's registration;
  - (ii) suspending the provider's registration;
  - (iii) varying the provider's registration to remove the provider from being registered in a provider registration category;
  - (iv) varying the provider's registration to remove a residential care home approved in relation to the provider;
  - (v) another action, prescribed by the rules, that would have a significant and adverse impact on the provider's delivery of funded aged care services.

# EXPOSURE DRAFT

Chapter 6 Regulatory mechanisms

Part 10 Notices requiring action

Division 3 Adverse action warning notices

## Section 277

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### 277 Contents of adverse action warning notice

- (1) An adverse action warning notice given to a provider must set out the following:
  - (a) the name of the provider;
  - (b) brief details of the non-compliance;
  - (c) action that the provider must agree to take, or refrain from taking, to address the non-compliance;
  - (d) a reasonable period within which the provider must give the Commissioner their agreement to take, or refrain from taking, the action;
  - (e) a reasonable period within which the provider must take, or refrain from taking, the action;
  - (f) a reasonable period within which the provider must give the Commissioner a written response in relation to the notice;
  - (g) the action mentioned in paragraph 276(d) that the Commissioner may take in relation to the non-compliance in response to a failure to comply with the notice;
  - (h) any other matters prescribed by the rules.
- (2) Without limiting subsection (1), the following are actions that the Commissioner may require the provider to take:
  - (a) to provide, at the provider's expense, specified training for the provider's responsible persons and aged care workers;
  - (b) to provide specified security for any debts owed by the provider to the Commonwealth;
  - (c) to appoint an adviser who meets the requirements mentioned in subsection (3) to assist the provider to comply with this Act, and to give the adviser all necessary information required by the adviser to provide that assistance;
  - (d) for funded aged care services that the provider is delivering—to arrange for another registered provider to deliver those services;
  - (e) for individuals in a residential care home approved in relation to the provider—to arrange for those individuals to be moved to another residential care home;

# EXPOSURE DRAFT

Regulatory mechanisms **Chapter 6**  
Notices requiring action **Part 10**  
Adverse action warning notices **Division 3**

## Section 277

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- 1 (f) to refund excess accommodation payments or  
2 accommodation contributions charged by the provider;  
3 (g) to refund a refundable deposit in accordance with this Act;  
4 (h) another action prescribed by the rules.
- 5 (3) For the purposes of paragraph (2)(c), the adviser must be a person  
6 who:  
7 (a) has appropriate qualifications, skills or experience; and  
8 (b) is not the Commissioner, the System Governor or an APS  
9 employee; and  
10 (c) is not a person prescribed by the rules.
- 11 (4) The rules may prescribe matters that the Commissioner must take  
12 into account in specifying a period for the purposes of  
13 paragraph (1)(d), (e) or (f).

# EXPOSURE DRAFT

Chapter 6 Regulatory mechanisms

Part 10 Notices requiring action

Division 4 Notices to attend to answer questions or give information or documents

## Section 278

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### **Division 4—Notices to attend to answer questions or give information or documents**

#### **Subdivision A—Notices to attend**

#### **278 Notice to attend to answer questions etc. relevant to Commissioner's functions**

- (1) This section applies if the Commissioner reasonably believes that a person has information or documents relevant to:
  - (a) whether a registered provider, or a former registered provider, is complying with this Act in relation to a matter that relates to the Commissioner's functions; or
  - (b) whether an individual who is or was an aged care worker of a registered provider, or a former registered provider, is complying, or has complied, with a provision of this Act that applies or applied to the individual.
- (2) The Commissioner may, by written notice, require the person to attend before an authorised Commission officer to do either or both of the following:
  - (a) to answer questions relating to the matter;
  - (b) to give such information or documents (or copies of documents) as are specified in the notice.
- (3) The notice must:
  - (a) specify the authorised Commission officer before whom the person is required to attend; and
  - (b) specify the day on which, and the time and place at which, the person is required to attend; and
  - (c) if the person is a registered provider—inform the registered provider that it is a condition of the registered provider's registration under section 115 that the registered provider must cooperate with a person who is performing functions, or exercising powers, under this Act.
- (4) The day specified under paragraph (3)(b) must be at least 14 days after the notice is given.

# EXPOSURE DRAFT

Regulatory mechanisms **Chapter 6**

Notices requiring action **Part 10**

Notices to attend to answer questions or give information or documents **Division 4**

## Section 279

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### **279 Notice to attend to answer questions etc. relevant to System Governor's functions**

- (1) This section applies if the System Governor reasonably believes that a person has information or documents relevant to whether a registered provider, or a former registered provider, is complying with this Act in relation to a matter that relates to the System Governor's functions.
- (2) The System Governor may, by written notice, require the person to attend before an authorised System Governor officer to do either or both of the following:
  - (a) to answer questions relating to the matter;
  - (b) to give such information or documents (or copies of documents) as are specified in the notice.
- (3) The notice must:
  - (a) specify the authorised System Governor officer before whom the person is required to attend; and
  - (b) specify the day on which, and the time and place at which, the person is required to attend; and
  - (c) if the person is a registered provider—inform the registered provider that it is a condition of the registered provider's registration under section 115 that the registered provider must cooperate with a person who is performing functions, or exercising powers, under this Act.
- (4) The day specified under paragraph (3)(b) must be at least 14 days after the notice is given.

### **280 Offence for failure to comply with notice**

A person commits an offence if:

- (a) the person is given a notice under subsection 278(2) or 279(2); and
- (b) the person fails to comply with a requirement of the notice.

Penalty: 30 penalty units.

# EXPOSURE DRAFT

Chapter 6 Regulatory mechanisms

Part 10 Notices requiring action

Division 4 Notices to attend to answer questions or give information or documents

## Section 281

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### **281 Attending before authorised officer to answer questions— making oath or affirmation**

(1) This section applies if:

- (a) a person is given a notice under subsection 278(2) or 279(2);  
and
- (b) the notice requires the person to attend before an authorised officer to answer questions; and
- (c) the person attends before the authorised officer for that purpose.

(2) The authorised officer may question the person on oath or affirmation and may, for that purpose:

- (a) require the person to take an oath or make an affirmation; and
- (b) administer an oath or affirmation to the person.

(3) The oath or affirmation to be taken or made by the person for the purposes of subsection (2) is an oath or affirmation that the statements that the person will make will be true.

#### *Offence*

(4) A person commits an offence if:

- (a) the person is required by an authorised officer to take an oath or make an affirmation for the purposes of answering questions; and
- (b) the person refuses or fails to comply with the requirement.

Penalty: 30 penalty units.

### **Subdivision B—Notices to give information or produce documents**

### **282 Notices to give information or produce documents required for Commissioner's functions**

(1) The Commissioner may, by notice in writing given to a person, require the person, within a reasonable time stated in the notice, to:



# EXPOSURE DRAFT

Regulatory mechanisms **Chapter 6**

Notices requiring action **Part 10**

Notices to attend to answer questions or give information or documents **Division 4**

## Section 283

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- 1 (a) give the Commissioner any information; or  
2 (b) produce to the Commissioner any documents (or copies of  
3 documents);  
4 specified in the notice that the Commissioner requires for the  
5 performance of the Commissioner's functions.
- 6 (2) The Commissioner may, by notice in writing given to the person,  
7 extend the time within which the information must be given or  
8 documents or copies of documents must be produced in accordance  
9 with the notice under subsection (1).

### 283 Notices to give information or produce documents required for System Governor's functions

- 12 (1) The System Governor may, by notice in writing given to a person,  
13 require the person, within a reasonable time stated in the notice, to:  
14 (a) give the System Governor any information; or  
15 (b) produce to the System Governor any documents (or copies of  
16 documents);  
17 specified in the notice that the System Governor requires for the  
18 performance of the System Governor's functions.
- 19 (2) The System Governor may, by notice in writing given to the  
20 person, extend the time within which the information must be  
21 given or documents or copies of documents must be produced in  
22 accordance with the notice under subsection (1).

### 284 Strict liability offence for failure to comply with notice

- 24 A person commits an offence of strict liability if:  
25 (a) the person is required to give information, or produce  
26 documents or copies of documents, in accordance with a  
27 notice given to the person under subsection 282(1) or 283(1);  
28 and  
29 (b) the person fails to comply with the requirement.
- 30 Penalty: 30 penalty units.

# EXPOSURE DRAFT

**Chapter 6** Regulatory mechanisms

**Part 10** Notices requiring action

**Division 4** Notices to attend to answer questions or give information or documents

## Section 285

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1     **Subdivision C—Privilege against self-incrimination**

2     **285 Privilege against self-incrimination not abrogated**

3             (1) Nothing in this Division affects the right of a person to refuse to  
4                 answer a question, give information or give a document on the  
5                 ground that answering the question, giving the information or  
6                 giving the document might tend to incriminate the person.

7             (2) The fact that this section is included in this Division does not imply  
8                 that the privilege against self-incrimination is abrogated in any  
9                 other Act.

EXPOSURE DRAFT

Regulatory mechanisms **Chapter 6**  
Critical failures powers **Part 11**

Section 285

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1  
2  
3

**Part 11—Critical failures powers**

[To be drafted.]

# EXPOSURE DRAFT

Chapter 6 Regulatory mechanisms

Part 12 Banning orders

Division 1 Making banning orders

Section 286

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## Part 12—Banning orders

### Division 1—Making banning orders

#### 286 Banning orders on current and former registered providers

- (1) The Commissioner may, by written notice, make an order (the **banning order**) prohibiting or restricting either of the following by an entity that is or was a registered provider:

- (a) delivery of funded aged care services generally;
- (b) delivery of funded aged care services in a specified service type.

Note: Before making the banning order, the Commissioner needs to give the entity notice of the intention to make the order and allow the entity to comment, except in certain circumstances: see section 288.

- (2) However, the banning order cannot prohibit or restrict delivery of funded aged care services in a specified service type if the entity is registered as a registered provider in a provider registration category because the entity intended to deliver funded aged care services in that service type.

#### *Grounds for banning order*

- (3) The Commissioner may make an order under subsection (1) only if:
- (a) the Commissioner has revoked the registration of the entity as a registered provider; or
  - (b) the Commissioner reasonably believes that the entity has contravened, is contravening, or is likely to contravene this Act; or
  - (c) the Commissioner reasonably believes that the entity has been involved in, or is likely to become involved in, a contravention of this Act by another entity; or
  - (d) if the order is to prohibit or restrict the delivery of funded aged care services generally by the entity—the Commissioner reasonably believes that the entity is unsuitable to deliver funded aged care services generally; or

# EXPOSURE DRAFT

Regulatory mechanisms **Chapter 6**

Banning orders **Part 12**

Making banning orders **Division 1**

## Section 287

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- 1 (e) if the order is to prohibit or restrict the delivery of funded  
2 aged care services in a specified service type—the  
3 Commissioner reasonably believes that the entity is  
4 unsuitable to deliver funded aged care services in that service  
5 type; or  
6 (f) if the entity is a registered provider—there is a severe risk to  
7 the safety, health or wellbeing of an individual accessing  
8 funded aged care services if the entity continues to be a  
9 registered provider; or  
10 (g) the entity is convicted of an offence involving fraud or  
11 dishonesty; or  
12 (h) the entity becomes an insolvent under administration.

13 *Matters affecting entity's suitability*

- 14 (4) In considering whether an entity is unsuitable as described in  
15 paragraph (3)(d) or (e), the Commissioner must have regard to the  
16 matters referred to in paragraph 68(1)(b). This does not limit the  
17 matters to which the Commissioner may have regard in that  
18 consideration.

### 19 **287 Banning orders on individuals as aged care workers and** 20 **responsible persons**

- 21 (1) The Commissioner may make an order (the ***banning order***)  
22 prohibiting or restricting the involvement of an individual, as either  
23 an aged care worker, or a responsible person, of a registered  
24 provider, in:  
25 (a) delivery of funded aged care services generally; or  
26 (b) delivery of funded aged care services in a specified service  
27 type; or  
28 (c) a specified activity of a registered provider.

29 Note: Before making the banning order, the Commissioner needs to give the  
30 individual notice of the intention to make the order and allow the  
31 individual to comment, except in certain circumstances: see  
32 section 288.

# EXPOSURE DRAFT

Chapter 6 Regulatory mechanisms

Part 12 Banning orders

Division 1 Making banning orders

## Section 287

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### *Grounds for banning order*

- (2) The Commissioner may make an order under subsection (1) affecting an individual (the ***affected individual***) only if:
- (a) if the order is to prohibit or restrict the involvement of the affected individual in the delivery of funded aged care services generally—the Commissioner reasonably believes that the individual is unsuitable to be involved in the delivery of funded aged care services generally; or
  - (b) if the order is to prohibit or restrict the involvement of the affected individual in the delivery of funded aged care services in a specified service type—the Commissioner reasonably believes that the individual is unsuitable to be involved in the delivery of funded aged care services in that type; or
  - (c) if the order is to prohibit or restrict the involvement of the affected individual in a specified activity of a registered provider—the Commissioner reasonably believes that the individual is unsuitable to be involved in the activity; or
  - (d) the affected individual is or was an aged care worker, or a responsible person, of a registered provider and any of the following applies:
    - (i) the Commissioner reasonably believes that the affected individual did not comply, is not complying or is not likely to comply with a provision of the Aged Care Code of Conduct that applies or applied to the individual;
    - (ii) the Commissioner reasonably believes there is a severe risk to the safety, health or wellbeing of one or more individuals accessing funded aged care services if the affected individual is involved, or continues to be involved, in a matter to which the order is to relate;
    - (iii) the individual has at any time been convicted of an indictable offence involving fraud or dishonesty;
    - (iv) the individual is an insolvent under administration.

*Matters affecting individual's suitability*

- (3) In considering whether an individual is unsuitable as described in paragraph (2)(a), (b) or (c), the Commissioner must have regard to the suitability matters. This does not limit the matters to which the Commissioner may have regard in that consideration.

## **288 Notice of intention to make a banning order**

- (1) Before the Commissioner makes a banning order against an entity (whether an individual or not), the Commissioner must, by written notice, notify the entity that the Commissioner is considering making the order.
- (2) Subsection (1) does not apply if:
- (a) the Commissioner reasonably believes that there is an immediate and severe risk to the safety, health or wellbeing of one or more individuals accessing funded aged care services if the banning order is not made against the entity; or
  - (b) the Commissioner has revoked the registration of the entity as a registered provider.
- (3) The notice must:
- (a) set out the reasons why the Commissioner is considering making the banning order against the entity; and
  - (b) invite the entity to make submissions, in writing, to the Commissioner in relation to the matter within 14 days after receiving the notice; and
  - (c) inform the entity that the Commissioner may make the order against the entity after the end of that period and considering any submissions made by the entity within that period.
- (4) The Commissioner must consider any submissions made by the entity in accordance with the notice.

## **289 Contraventions of banning orders**

- (1) An entity contravenes this subsection if:
- (a) a banning order against the entity is in force; and

# EXPOSURE DRAFT

Chapter 6 Regulatory mechanisms

Part 12 Banning orders

Division 1 Making banning orders

## Section 290

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- 1 (b) the entity engages in conduct; and  
2 (c) the conduct breaches the order or a condition to which the  
3 order is subject.
- 4 Civil penalty: 1,000 penalty units.
- 5 (2) An entity contravenes this subsection if:  
6 (a) the entity is a registered provider; and  
7 (b) an individual is an aged care worker, or a responsible person,  
8 of the registered provider; and  
9 (c) a banning order against the individual is in force; and  
10 (d) the entity fails to take reasonable steps to ensure that the  
11 individual does not engage in conduct that breaches the order  
12 or a condition to which the order is subject.
- 13 Civil penalty: 1,000 penalty units.

## 290 Scope of banning orders

- 15 A banning order may:  
16 (a) apply generally or be of limited application; and  
17 (b) be permanent or for a specified period; and  
18 (c) be made subject to specified conditions.

## 291 Notice of decision about banning order

- 20 (1) As soon as is practicable after deciding whether to make a banning  
21 order against an entity, the Commissioner must give the entity a  
22 written notice that:  
23 (a) sets out the decision; and  
24 (b) sets out the reasons for the decision; and  
25 (c) if the decision is to make the order:  
26 (i) specifies whether the order applies generally or the  
27 order is of limited application; and  
28 (ii) if the order is of limited application—specifies that  
29 limited application; and  
30 (iii) specifies the day on which the order takes effect; and



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Regulatory mechanisms **Chapter 6**

Banning orders **Part 12**

Making banning orders **Division 1**

## Section 292

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- 1 (iv) if the order is to cease to have effect on a particular  
2 day—specifies that day; and  
3 (v) specifies any conditions to which the order is subject;  
4 and  
5 (vi) states how the entity may apply for reconsideration of  
6 the decision.
- 7 (2) If the Commissioner gives a notice under subsection (1) of a  
8 decision to make a banning order against an aged care worker, or  
9 responsible person, of a registered provider, the Commissioner  
10 must give the provider a copy of the notice as soon as is  
11 practicable.

### 292 Banning orders are not legislative instruments

A banning order is not a legislative instrument.

# EXPOSURE DRAFT

Chapter 6 Regulatory mechanisms

Part 12 Banning orders

Division 2 Varying or revoking banning orders

## Section 293

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### Division 2—Varying or revoking banning orders

#### 293 Varying or revoking banning order on Commissioner's own initiative

- (1) The Commissioner may, on the Commissioner's own initiative, vary or revoke a banning order made against an entity if the Commissioner considers that it is appropriate in all the circumstances to do so.
- (2) Without limiting subsection (1), the Commissioner may in varying a banning order do either or both of the following:
  - (a) vary, or revoke, a condition to which the order is subject;
  - (b) specify one or more new conditions to which the order is to be subject.
- (3) If the Commissioner decides to vary or revoke a banning order made against an entity, the Commissioner must, as soon as is practicable, give the entity a written notice that:
  - (a) sets out the decision; and
  - (b) sets out the reasons for the decision; and
  - (c) specifies the day on which the variation or revocation takes effect; and
  - (d) if a condition to which the order is subject is varied—sets out the condition as varied; and
  - (e) specifies any conditions to which the order was subject that have been revoked; and
  - (f) specifies any new conditions to which the order is subject; and
  - (g) states how the entity may apply for reconsideration of the decision.
- (4) If the Commissioner gives a notice under subsection (3) to an aged care worker, or responsible person, of a registered provider, the Commissioner must give the provider a copy of the notice as soon as is practicable.

# EXPOSURE DRAFT

Regulatory mechanisms **Chapter 6**

Banning orders **Part 12**

Varying or revoking banning orders **Division 2**

## Section 294

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### 294 Varying or revoking banning order on application

#### *Application for variation or revocation*

- (1) An entity against which a banning order has been made may apply to the Commissioner for variation or revocation of either the order or a condition to which the order is subject.
- (2) The application must:
  - (a) be made in writing; and
  - (b) be in a form approved by the Commissioner; and
  - (c) be accompanied by any documents or information specified by the Commissioner.

#### *Variation or revocation*

- (3) After receiving the application, the Commissioner may vary or revoke the banning order or condition, or specify one or more new conditions to which the order is subject, if the Commissioner considers that it is appropriate in all the circumstances to do so.

#### *Notice of intention not to vary or revoke as requested*

- (4) If the Commissioner proposes not to vary or revoke the banning order or condition, or proposes to specify one or more new conditions to which the order is to be subject, the Commissioner must give the entity a written notice that:
  - (a) sets out the reasons for the Commissioner's proposal; and
  - (b) invites the entity to make written submissions on the proposal to the Commissioner within:
    - (i) 14 days after receiving the notice; or
    - (ii) if a shorter period is specified in the notice—that shorter period; and
  - (c) informs the entity that the Commissioner may decide not to proceed with the proposal after the end of that period and considering any submissions made by the entity in accordance with the invitation.

# EXPOSURE DRAFT

Chapter 6 Regulatory mechanisms

Part 12 Banning orders

Division 2 Varying or revoking banning orders

## Section 295

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- 1 (5) The Commissioner must consider any submissions made by the  
2 entity in accordance with the invitation.

3 *Notice of decision*

- 4 (6) As soon as practicable after deciding whether to vary or revoke the  
5 banning order or a condition to which the order is subject, the  
6 Commissioner must give the entity a written notice that:  
7 (a) sets out the decision; and  
8 (b) sets out the reasons for the decision; and  
9 (c) if the order is varied or revoked—specifies the day on which  
10 the variation or revocation takes effect; and  
11 (d) if a condition to which the order is subject is varied—sets out  
12 the condition as varied and specifies the day on which the  
13 variation takes effect; and  
14 (e) if a condition to which the order is subject is revoked—  
15 specifies the day on which the revocation takes effect; and  
16 (f) if the order is subject to new conditions—specifies them and  
17 when they take effect; and  
18 (g) states how the entity may apply for reconsideration of the  
19 decision.

20 **295 Variations and revocations of banning orders are not legislative**  
21 **instruments**

22 A variation or revocation of a banning order is not a legislative  
23 instrument.

# EXPOSURE DRAFT

Regulatory mechanisms **Chapter 6**  
Banning orders **Part 12**  
Register of banning orders **Division 3**

## Section 296

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### Division 3—Register of banning orders

#### 296 Register of banning orders

(1) The Commissioner must establish and maintain a register that includes the following information in relation to each entity against which a banning order has been made at any time:

- (a) the name of the entity;
- (b) the entity's ABN (if any);
- (c) the details of the banning order made against the entity (including any conditions to which the order is subject);
- (d) if an application has been made under subsection 294(1) for the revocation of the banning order, and the application has not been finally determined—a statement to that effect;
- (e) if a request has been made under [to be drafted] for the reconsideration of a decision to make the banning order or not to revoke the banning order, and a reconsideration decision has not yet been made—a statement to that effect;
- (f) if a decision has been made under [to be drafted] to reconsider a decision to make the banning order or not to revoke the banning order, and a reconsideration decision has not yet been made—a statement to that effect;
- (g) if an application has been made to the Administrative Appeals Tribunal for review of a reconsideration decision that relates to a decision to make the banning order or not to revoke the banning order, and the application has not been finally determined—a statement to that effect;
- (h) any other information prescribed by the rules.

Note: Other information about entities that are or were registered providers is published in the Provider Register: see section 87. Information about banning orders against those entities may also be included in that register.

(2) Subsection (1) applies in relation to a banning order even if the banning order is no longer in force, unless it is no longer in force because:

- (a) the banning order has been revoked under section 294; or

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**Chapter 6** Regulatory mechanisms

**Part 12** Banning orders

**Division 3** Register of banning orders

## Section 296

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- 1 (b) the decision to make the banning order has been set aside on  
2 reconsideration under [to be drafted] or on review.
- 3 (3) The Commissioner must ensure that the register is kept up to date.
- 4 (4) The register may be kept in any form that the Commissioner  
5 considers appropriate.
- 6 (5) The rules must make provision for, or in relation to, the correction  
7 of information that is included in the register, including how an  
8 entity may access information about the entity that is included in  
9 the register and seek the correction of such information.
- 10 (6) The rules may make provision for, or in relation to, the following  
11 matters:
- 12 (a) making the register, in whole or in part, publicly available;  
13 (b) making specified information that is included in the register  
14 publicly available;  
15 (c) any other matter relating to the administration or operation of  
16 the register.

## **Part 13—System Governor functions assurance activities**

### **297 System Governor may conduct assurance activities**

- (1) The System Governor may conduct activities (*assurance activities*) for the purposes of the System Governor's functions.
- (2) Without limiting subsection (1), matters that assurance activities could relate to include the following:
  - (a) how registered providers are using subsidy or grants and charging for funded aged care services, including justifications for amounts charged to individuals;
  - (b) how registered providers are structuring their financial accounting for delivering funded aged care services;
  - (c) how registered providers are delivering funded aged care services;
  - (d) the nature and type of dealings that registered providers have with individuals to whom they are delivering funded aged care services;
  - (e) the procedures and documentation of registered providers in relation to matters mentioned in any of the above paragraphs.

Note: Assurance activities may be conducted before or after, or in conjunction with, other actions that the System Governor may take under this Chapter, and may inform those other actions. Any findings, conclusions or recommendations made as a result of assurance activities may provide a basis for the System Governor to exercise other powers under this Chapter.

### **298 Terms of reference for assurance activities**

The System Governor may, in writing, specify terms of reference for an assurance activity, including:

- (a) the registered provider or providers, or class or classes of registered providers, that the activity relates to; and
- (b) the matter or matters that the activity relates to.

# EXPOSURE DRAFT

Chapter 6 Regulatory mechanisms

Part 13 System Governor functions assurance activities

## Section 299

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### 299 Reports by System Governor on assurance activities

#### *Reports for publication*

- (1) The System Governor may prepare and publish reports on assurance activities, dealing with any findings, conclusions or recommendations made as a result of the activities.
- (2) A report under subsection (1) must not include personal information.

#### *Other reports*

- (3) The System Governor may prepare a report on any particular assurance activity, dealing with any findings, conclusions or recommendations made as a result of the activity.
- (4) If the System Governor prepares a report under subsection (3), the System Governor may give a copy of the report to any registered provider to which the activity relates.

### 300 Assistance to System Governor in conducting and reporting on assurance activities

- (1) The System Governor may be assisted in the conduct of assurance activities and the preparation of any reports on the activities by:
  - (a) APS employees in the Department; or
  - (b) persons engaged under contract by the System Governor to provide that assistance and any of their employees who are providing that assistance.
- (2) However, the power to give a registered provider a notice under 279 or 283 may not be exercised by a person assisting the System Governor under subsection (1) of this section unless the power has been delegated to the person under subsection 363(1).



EXPOSURE DRAFT

Section 301

1 301 Registered providers must provide facilities and assistance for  
2 assurance activities

3 A registered provider to which an assurance activity relates must  
4 provide the person conducting the activity, and any individuals  
5 assisting that person, with all reasonable facilities and assistance  
6 necessary for the effective exercise of the person’s duties in  
7 relation to the activity.

8 Civil penalty: 30 penalty units.

# EXPOSURE DRAFT

Chapter 6 Regulatory mechanisms

Part 14 Recoverable amounts

Division 1 Recoverable amounts

Section 302

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## Part 14—Recoverable amounts

### Division 1—Recoverable amounts

#### 302 Recoverable amounts and debtors

(1) If:

- (a) the Commonwealth pays an amount to an entity by way of:
  - (i) subsidy; or
  - (ii) a grant under Part 6 of Chapter 8; and
- (b) the entity was not entitled for any reason to the payment of the amount;

then:

- (c) the amount is a *recoverable amount*; and
- (d) the entity is a *debtor* in relation to the recoverable amount.

(2) Without limiting paragraph (1)(b), an entity is taken not to have been entitled to the payment of an amount if the payment should not have been made for one or more of the following reasons:

- (a) the payment was made as a result of:
  - (i) a computer error or an administrative error; or
  - (ii) a contravention of this Act; or
  - (iii) a false or misleading statement or a misrepresentation; or
  - (iv) incorrect information being provided in purported compliance with this Act;
- (b) if the amount was paid by way of subsidy—incorrect information being provided in relation to the claim for the payment;
- (c) if the amount was paid by way of a grant—a condition to which the grant is subject is not met.

#### 303 Recoverable amounts are debts due to the Commonwealth

A recoverable amount is a debt due to the Commonwealth.

# EXPOSURE DRAFT

Regulatory mechanisms **Chapter 6**

Recoverable amounts **Part 14**

Recovery of recoverable amounts **Division 2**

Section 304

## Division 2—Recovery of recoverable amounts

### 304 Legal proceedings

- (1) A recoverable amount may be recovered by the Commonwealth in a court of competent jurisdiction.
- (2) Subject to subsections (3), (4) and (5), legal proceedings for the recovery of a recoverable amount are not to be commenced after the end of the period (the *recovery period*) of 6 years starting on the first day any of the following becomes aware, or could reasonably be expected to have become aware, of the circumstances that gave rise to the recoverable amount:
  - (a) the System Governor;
  - (b) an APS employee in any of the following:
    - (i) the Department;
    - (ii) Services Australia;
    - (iii) the Department administered by the Minister who administers the *Data-matching Program (Assistance and Tax) Act 1990*.
- (3) If, within the recovery period, part of the recoverable amount is paid, legal proceedings for the recovery of the balance of the recoverable amount may be commenced within the period of 6 years starting on the day of payment.
- (4) If, within the recovery period, a debtor in relation to the recoverable amount acknowledges that the debtor owes the recoverable amount, legal proceedings for the recovery of the recoverable amount may be commenced within the period of 6 years starting on the day of acknowledgement.
- (5) If, within the recovery period, either of the following occurs:
  - (a) a review of a file relating to action for the recovery of the recoverable amount;
  - (b) other internal Departmental activity relating to action for the recovery of the recoverable amount;

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# EXPOSURE DRAFT

Chapter 6 Regulatory mechanisms

Part 14 Recoverable amounts

Division 2 Recovery of recoverable amounts

## Section 305

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1                    action under this section for the recovery of the recoverable  
2                    amount may be commenced within the period of 6 years after the  
3                    end of the activity.

### 4                    **305 Arrangements between System Governor and debtors**

- 5                    (1) The System Governor may, on behalf of the Commonwealth, enter  
6                    into an arrangement in writing with a debtor in relation to a  
7                    recoverable amount under which the debtor is to pay the  
8                    recoverable amount, or the outstanding amount of the recoverable  
9                    amount, in a way set out in the arrangement (including payment in  
10                    instalments).
- 11                    (2) An arrangement entered into under subsection (1) has effect, or is  
12                    taken to have had effect, on and after the day specified in the  
13                    arrangement as the day the arrangement commences (whether that  
14                    day is before, on or after the day the arrangement is entered into).
- 15                    (3) If an arrangement entered into under subsection (1) does not  
16                    specify a day as mentioned in subsection (2), it has effect on and  
17                    after the day on which it is entered into.
- 18                    (4) The System Governor may, on behalf of the Commonwealth, in  
19                    writing, terminate or alter an arrangement entered into under  
20                    subsection (1):  
21                    (a) at the debtor's request; or  
22                    (b) after giving 28 days' notice, in writing, to the debtor of the  
23                    proposed termination or alteration; or  
24                    (c) without notice, if the System Governor is satisfied that the  
25                    debtor has failed to disclose material information about the  
26                    debtor's true capacity to pay the recoverable amount, or the  
27                    outstanding amount of the recoverable amount.

### 28                    **306 Recovery of amounts from financial institutions**

29                    *Notice about payment made to wrong account*

- 30                    (1) If:

# EXPOSURE DRAFT

Regulatory mechanisms **Chapter 6**

Recoverable amounts **Part 14**

Recovery of recoverable amounts **Division 2**

## Section 306

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- 1 (a) a recoverable amount is paid to a financial institution for the  
2 credit of an account kept with the institution; and  
3 (b) the System Governor is satisfied that the payment was  
4 intended to be made to someone who was not the person or  
5 one of the persons in whose name or names the account was  
6 kept;  
7 the System Governor may give a written notice to the institution  
8 setting out the matters mentioned in paragraphs (a) and (b) and  
9 requiring the institution to pay to the Commonwealth, within a  
10 reasonable period stated in the notice, the lesser of the following  
11 amounts:  
12 (c) an amount specified in the notice that is equal to the  
13 recoverable amount;  
14 (d) the amount standing to the credit of the account when the  
15 notice is received by the institution.

16 *Notice about payment made to account of deceased person after*  
17 *their death*

- 18 (2) If:  
19 (a) the payment of a recoverable amount that is intended to be  
20 made to or in respect of a person (the **first person**) is made to  
21 a financial institution for the credit of an account that was  
22 kept with the institution by the first person or by the first  
23 person and one or more other persons; and  
24 (b) the first person died before the payment or payments were  
25 made;  
26 the System Governor may give a written notice to the institution  
27 setting out the matters mentioned in paragraphs (a) and (b) and  
28 requiring the institution to pay to the Commonwealth, within a  
29 reasonable period stated in the notice, the lesser of the following  
30 amounts:  
31 (c) an amount specified in the notice that is equal to the  
32 recoverable amount;  
33 (d) the amount standing to the credit of the account when the  
34 notice is received by the institution.

# EXPOSURE DRAFT

# EXPOSURE DRAFT

Chapter 6 Regulatory mechanisms

Part 14 Recoverable amounts

Division 2 Recovery of recoverable amounts

## Section 307

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### *Informing deceased estate*

- (3) As soon as possible after issuing a notice under subsection (2), the System Governor must inform the deceased estate in writing of:
- (a) the amount sought to be recovered from the deceased person's account; and
  - (b) the reasons for the recovery action.

### *Offence*

- (4) A financial institution must comply with a notice given to it under subsection (1) or (2).

Penalty: 300 penalty units.

### *Defence*

- (5) It is a defence to a prosecution of a financial institution for failing to comply with a notice given to it under subsection (1) or (2) if the financial institution proves that it was incapable of complying with the notice.

Note: A defendant bears a legal burden in relation to the matter in subsection (5): see section 13.4 of the *Criminal Code*.

### *Reduction of recoverable amount by amount recovered*

- (6) If a financial institution pays an amount to the Commonwealth in compliance with a notice given to it under subsection (1) or (2) in respect of a recoverable amount, the recoverable amount is reduced by the amount paid to the Commonwealth by the institution.

## **307 Recovery by deductions from amounts payable to debtor**

If a person is a debtor in relation to a recoverable amount, the amount (or part of it) may be deducted from one or more other amounts payable to the person under this Act.

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Regulatory mechanisms **Chapter 6**

Recoverable amounts **Part 14**

Non-recovery of recoverable amounts **Division 4**

## Section 308

### Division 4—Non-recovery of recoverable amounts

#### 308 Write-off of recoverable amounts

- (1) Subject to subsections (2) and (3), the System Governor may, on behalf of the Commonwealth, decide to write off a recoverable amount or class of recoverable amounts, for a stated period or otherwise.
- (2) The System Governor may decide to write off a recoverable amount under subsection (1) if, and only if:
  - (a) the recoverable amount is irrecoverable at law under subsection (4); or
  - (b) a debtor in relation to the recoverable amount has no capacity to repay the recoverable amount; or
  - (c) the whereabouts of a debtor in relation to the recoverable amount are unknown after all reasonable efforts have been made to locate the debtor; or
  - (d) it is not cost effective for the Commonwealth to take action to recover the recoverable amount.
- (3) The System Governor may decide to write off a class of recoverable amounts under subsection (1) if, and only if, a paragraph of subsection (2) applies to each recoverable amount in the class.
- (4) For the purposes of paragraph (2)(a), a recoverable amount is irrecoverable at law if, and only if:
  - (a) both:
    - (i) the recoverable amount cannot be recovered by means of legal proceedings because the relevant 6 year period mentioned in section 304 has elapsed; and
    - (ii) the recoverable amount cannot be recovered by means of deductions under section 307; or
  - (b) there is no proof of the recoverable amount capable of sustaining legal proceedings for its recovery; or
  - (c) all of the following apply:

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## Chapter 6 Regulatory mechanisms

### Part 14 Recoverable amounts

#### Division 4 Non-recovery of recoverable amounts

##### Section 309

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- 1 (i) a debtor in relation to the recoverable amount is  
2 discharged from bankruptcy;
- 3 (ii) the recoverable amount was incurred before the debtor  
4 became bankrupt;
- 5 (iii) the recoverable amount was not incurred by fraud; or
- 6 (d) a debtor in relation to the recoverable amount has died,  
7 leaving:
- 8 (i) no estate; or
- 9 (ii) insufficient funds in the debtor's estate to repay the  
10 recoverable amount.
- 11 (5) A decision made under subsection (1) takes effect:
- 12 (a) if no day is specified in the decision—on the day the decision  
13 is made; or
- 14 (b) if a day is specified in the decision—on the day so specified  
15 (whether that day is before, on or after the day the decision is  
16 made).
- 17 (6) Nothing in this section prevents anything being done at any time to  
18 recover a recoverable amount that has been written off under this  
19 section.

##### 20 **309 Waiver of right to recover recoverable amount**

- 21 (1) Subject to subsections (2) and (3), the System Governor may, on  
22 behalf of the Commonwealth, waive the right of the  
23 Commonwealth to recover:
- 24 (a) the whole or a part of a recoverable amount; or
- 25 (b) a class of recoverable amounts.
- 26 (2) The System Governor may, on behalf of the Commonwealth,  
27 waive the right of the Commonwealth to recover the whole or a  
28 part of a recoverable amount only in the circumstances described in  
29 section 310, 311 or 312.
- 30 (3) The System Governor may, on behalf of the Commonwealth,  
31 waive the right of the Commonwealth to recover a class of  
32 recoverable amounts only if circumstances described in



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Recoverable amounts **Part 14**

Non-recovery of recoverable amounts **Division 4**

## Section 310

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1 section 310, 311 or 312 apply to each recoverable amount in the  
2 class.

3 (4) A waiver takes effect:

- 4 (a) on the day specified in the waiver (whether that day is before,  
5 on or after the day the decision to waive is made); or  
6 (b) if the waiver does not specify when it takes effect—on the  
7 day the decision to waive is made.

8 Note: If the System Governor waives the Commonwealth's right to recover  
9 all or part of a recoverable amount, this is a permanent bar to recovery  
10 of the recoverable amount or part of the recoverable amount and the  
11 recoverable amount or part of the recoverable amount effectively  
12 ceases to exist.

### 13 **310 Circumstances for waiver—small amounts**

14 The System Governor may waive the right to recover a recoverable  
15 amount if:

- 16 (a) the recoverable amount is, or is likely to be, less than \$200;  
17 and  
18 (b) it is not cost effective for the Commonwealth to take action  
19 to recover the recoverable amount.

### 20 **311 Circumstances for waiver—settlements between** 21 **Commonwealth and debtors**

22 *Civil actions*

- 23 (1) If the Commonwealth has agreed to settle a civil action against a  
24 debtor in relation to a recoverable amount for recovery of an  
25 amount that is less than the full amount of the recoverable amount,  
26 the System Governor must waive the right to recover the difference  
27 between the recoverable amount and the amount that is the subject  
28 of the settlement.

29 *Proceedings before the Administrative Appeals Tribunal*

- 30 (2) If the System Governor has agreed to settle proceedings before the  
31 Administrative Appeals Tribunal relating to recovery of a

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## Chapter 6 Regulatory mechanisms

### Part 14 Recoverable amounts

#### Division 4 Non-recovery of recoverable amounts

##### Section 311

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1 recoverable amount on the basis that a debtor in relation to the  
2 recoverable amount will pay less than the full amount of the  
3 recoverable amount, the System Governor must waive the right to  
4 recover the difference between the recoverable amount and the  
5 amount that is the subject of the settlement.

6 *Agreement after recovery of at least 80% of recoverable amount*

7 (3) If:

- 8 (a) the Commonwealth has recovered at least 80% of the original  
9 value of a recoverable amount from a debtor in relation to the  
10 recoverable amount; and  
11 (b) the Commonwealth and the debtor agree that the recovery is  
12 in full satisfaction for the whole of the recoverable amount;  
13 and  
14 (c) the debtor cannot repay a greater proportion of the  
15 recoverable amount;  
16 the System Governor must waive the remaining 20% or less of the  
17 value of the original recoverable amount.

18 *Agreement for payment of present value of unpaid amount*

- 19 (4) If the System Governor and a debtor in relation to a recoverable  
20 amount agree that the recoverable amount will be fully satisfied if  
21 the debtor pays the Commonwealth an amount (the **agreed**  
22 **amount**) that is less than the amount of the recoverable amount  
23 outstanding at the time of the agreement (the **unpaid amount**), the  
24 System Governor must waive the right to recover the difference  
25 between the unpaid amount and the agreed amount.
- 26 (5) The System Governor must not make an agreement described in  
27 subsection (4) unless the System Governor is satisfied that the  
28 agreed amount is at least the present value of the unpaid amount if  
29 it is repaid in instalments of amounts, and at times, determined by  
30 the System Governor.
- 31 (6) For the purposes of subsection (5), the present value of the unpaid  
32 amount is the amount worked out in accordance with the method  
33 prescribed by the rules.

# EXPOSURE DRAFT

Regulatory mechanisms **Chapter 6**

Recoverable amounts **Part 14**

Non-recovery of recoverable amounts **Division 4**

## Section 312

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### 312 Circumstances for waiver—special circumstances

The System Governor may waive the right to recover a recoverable amount if:

- (a) the recoverable amount did not arise in whole or part as a result of:
  - (i) a contravention of this Act; or
  - (ii) a false or misleading statement or a misrepresentation; and
- (b) there are special circumstances (other than financial hardship) that the System Governor is satisfied make waiver appropriate; and
- (c) the System Governor is satisfied that waiver is more appropriate than writing off the recoverable amount.

# EXPOSURE DRAFT

Chapter 6 Regulatory mechanisms

Part 15 Authorised Commission officers and authorised System Governor officers

Division 1 Appointment

Section 313

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## Part 15—Authorised Commission officers and authorised System Governor officers

### Division 1—Appointment

#### 313 Appointment of authorised Commission officers

- (1) The Commissioner may, in writing, appoint a person as an authorised Commission officer for the purposes of this Act if:
  - (a) the person is:
    - (i) a member of the staff of the Commission; or
    - (ii) another person who the Commissioner considers it necessary to appoint as an authorised Commission officer; and
  - (b) the person satisfies the training and qualification requirements for authorised Commission officers determined under subsection (4).
- (2) An appointment may specify the period during which it has effect.
- (3) The Commissioner may, in writing, vary or revoke an appointment at any time.
- (4) The Commissioner must determine, in writing, training and qualification requirements for authorised Commission officers.
- (5) A determination made under subsection (4) is not a legislative instrument.

#### 314 Appointment of authorised System Governor officers

- (1) The System Governor may, in writing, appoint a person as an authorised System Governor officer for the purposes of this Act if:
  - (a) the person is:
    - (i) a member of the staff of the Department; or
    - (ii) another person who the System Governor considers it necessary to appoint as an authorised System Governor officer; and

# EXPOSURE DRAFT

Regulatory mechanisms **Chapter 6**  
Authorised Commission officers and authorised System Governor officers **Part 15**  
Appointment **Division 1**

## Section 314

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- 1 (b) the person satisfies the training and qualification  
2 requirements for authorised System Governor officers  
3 determined under subsection (4).
- 4 (2) An appointment may specify the period during which it has effect.
- 5 (3) The System Governor may, in writing, vary or revoke an  
6 appointment at any time.
- 7 (4) The System Governor must determine, in writing, training and  
8 qualification requirements for authorised System Governor  
9 officers.
- 10 (5) A determination made under subsection (4) is not a legislative  
11 instrument.

# EXPOSURE DRAFT

**Chapter 6** Regulatory mechanisms

**Part 15** Authorised Commission officers and authorised System Governor officers

**Division 2** Functions and powers

## Section 315

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1     **Division 2—Functions and powers**

2     **315 Functions and powers of authorised Commission officers**

- 3             (1) An authorised Commission officer has the functions and powers  
4                 conferred on an authorised Commission officer by this Act.
- 5             (2) Subsection (1) has effect subject to any restrictions specified in the  
6                 authorised Commission officer's instrument of appointment.
- 7             (3) In performing functions or exercising powers under this Act, an  
8                 authorised Commission officer must comply with any written  
9                 directions of the Commissioner.
- 10            (4) If a direction is given under subsection (3) in writing, the direction  
11               is not a legislative instrument.

12    **316 Functions and powers of authorised System Governor officers**

- 13            (1) An authorised System Governor officer has the functions and  
14               powers conferred on an authorised System Governor officer by this  
15               Act.
- 16            (2) Subsection (1) has effect subject to any restrictions specified in the  
17               authorised System Governor officer's instrument of appointment.
- 18            (3) In performing functions or exercising powers under this Act, an  
19               authorised System Governor officer must comply with any written  
20               directions of the System Governor.
- 21            (4) If a direction is given under subsection (3) in writing, the direction  
22               is not a legislative instrument.

# EXPOSURE DRAFT

Regulatory mechanisms **Chapter 6**

Miscellaneous **Part 16**

Civil penalty provisions for false or misleading information or documents **Division 1**

Section 317

## Part 16—Miscellaneous

### Division 1—Civil penalty provisions for false or misleading information or documents

#### 317 Civil penalty provision for false or misleading information

- (1) A person is liable to a civil penalty if:
- (a) the person gives information in compliance or purported compliance with this Act; and
  - (b) the person does so knowing that the information:
    - (i) is false or misleading; or
    - (ii) omits any matter or thing without which the information is misleading.

Civil penalty: 60 penalty units.

- (2) Subsection (1) does not apply as a result of subparagraph (1)(b)(i) if the information is not false or misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in this subsection: see section 96 of the Regulatory Powers Act.

- (3) Subsection (1) does not apply as a result of subparagraph (1)(b)(ii) if the information did not omit any matter or thing without which the information is misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in this subsection: see section 96 of the Regulatory Powers Act.

- (4) Subsection (1) does not apply if, before the information was given by a person to another person (the *official*) in compliance or purported compliance with this Act, the official did not take reasonable steps to inform the person that the person may be liable to a civil penalty for contravening subsection (1).

Note: A defendant bears an evidential burden in relation to the matter in this subsection: see section 96 of the Regulatory Powers Act.

- (5) For the purposes of subsection (4), it is sufficient if the following form of words is used:

# EXPOSURE DRAFT

Chapter 6 Regulatory mechanisms

Part 16 Miscellaneous

Division 1 Civil penalty provisions for false or misleading information or documents

## Section 318

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

### 3 **318 Civil penalty provision for false or misleading documents**

- 4 (1) A person is liable to a civil penalty if:
- 5 (a) the person produces a document to another person; and
  - 6 (b) the person does so knowing that the document is false or  
7 misleading; and
  - 8 (c) the document is produced in compliance or purported  
9 compliance with this Act.

10 Civil penalty: 60 penalty units.

- 11 (2) Subsection (1) does not apply if the document is not false or  
12 misleading in a material particular.

13 Note: A defendant bears an evidential burden in relation to the matter in this  
14 subsection: see section 96 of the Regulatory Powers Act.

- 15 (3) Subsection (1) does not apply to a person who produces a  
16 document if the document is accompanied by a written statement  
17 signed by the person or, in the case of a body corporate, by a  
18 competent officer of the body corporate:

- 19 (a) stating that the document is, to the knowledge of the person  
20 or officer, false or misleading in a material particular; and
- 21 (b) setting out, or referring to, the material particular in which  
22 the document is, to the knowledge of the person or officer,  
23 false or misleading.

24 Note: A defendant bears an evidential burden in relation to the matter in this  
25 subsection: see section 96 of the Regulatory Powers Act.



# EXPOSURE DRAFT

Regulatory mechanisms **Chapter 6**

Miscellaneous **Part 16**

General rules about offences and civil penalty provisions **Division 2**

Section 319

---

## Division 2—General rules about offences and civil penalty provisions

### 319 Physical elements of offences

(1) This section applies if a provision of this Act provides that a person contravening another provision of this Act (the *conduct rule provision*) commits an offence.

(2) For the purposes of applying Chapter 2 of the *Criminal Code* to the offence, the physical elements of the offence are set out in the conduct rule provision.

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

### 320 Contravening offence and civil penalty provisions

(1) This section applies if a provision of this Act provides that a person contravening another provision of this Act (the *conduct provision*) commits an offence or is liable to a civil penalty.

(2) For the purposes of this Act, a reference to a contravention of an offence provision or a civil penalty provision includes a reference to a contravention of the conduct provision.

Note: This also affects references in the Regulatory Powers Act to a contravention of an offence provision or a civil penalty provision: see the definition of *this Act* in section 7.

Section 321

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1     **Chapter 7—Information management**

2     **Part 1—Introduction**

3

4     **321 Simplified outline of this Chapter**

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Certain information obtained or generated for the purposes of this Act, or derived from such information, is protected by limiting the recording, use and disclosure of the information. However, this Chapter authorises the recording, use and disclosure of that information in certain circumstances.

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Persons making certain disclosures of information indicating suspected contraventions of this Act are protected from having their identities revealed and from victimisation.

## Part 2—Confidentiality of information

### Division 1—Introduction

#### 322 Definition of *protected information*

- (1) Information is *protected information* if it is covered by subsections (2) and (3).
- (2) This subsection covers the following:
- (a) personal information;
  - (b) information that:
    - (i) is information whose disclosure could reasonably be expected to prejudice the financial interests of an entity; and
    - (ii) is not public; and
    - (iii) is not readily discoverable.

Note: Under the *Privacy Act 1988*, personal information includes sensitive information (within the meaning of that Act). Information is not personal information if it is only about a person who has died.

- (3) This subsection covers information that:
- (a) is obtained or generated for the purposes of this Act; or
  - (b) is derived from information obtained or generated for the purposes of this Act.

# EXPOSURE DRAFT

Chapter 7 Information management

Part 2 Confidentiality of information

Division 2 Limits on recording, use and disclosure of protected information

Section 323

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## Division 2—Limits on recording, use and disclosure of protected information

### 323 Basic limits on recording, use and disclosure of protected information

- (1) A person commits an offence if:
- (a) the person records, uses or discloses information; and
  - (b) the information is protected information; and
  - (c) the person is or was any of the following:
    - (i) the Minister;
    - (ii) the System Governor;
    - (iii) an APS employee in the Department;
    - (iv) an official of the Commission under paragraph 137(2)(c);
    - (v) any other person employed or engaged by the Commonwealth to provide services to the Commonwealth in connection with the Department or the Commission;
    - (vi) a delegate of the System Governor or the Commissioner;
    - (vii) an official of the Pricing Authority;
    - (viii) any other person in a class of persons prescribed by the rules and employed or engaged by the Commonwealth or a body corporate established by a law of the Commonwealth; and
  - (d) the person obtained or generated the information:
    - (i) in the course of performing a function or duty, or exercising a power, under or in connection with this Act; or
    - (ii) in connection with facilitating another person to perform a function or duty, or exercise a power, under or in connection with this Act.

Penalty: Imprisonment for 2 years.

# EXPOSURE DRAFT

Information management **Chapter 7**

Confidentiality of information **Part 2**

Limits on recording, use and disclosure of protected information **Division 2**

## Section 323

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- 1 (2) A person commits an offence if:
- 2 (a) the person records, uses or discloses information; and
- 3 (b) the information is protected information; and
- 4 (c) the information was disclosed to the person; and
- 5 (d) the disclosure of the information to the person was authorised
- 6 by or under this Act or another Act.
- 7 Penalty: Imprisonment for 2 years.
- 8 (3) Paragraphs (1)(a) and (2)(a) do not apply to conduct authorised by
- 9 or under this Act or another Act.
- 10 Note 1: A defendant bears an evidential burden in relation to the matter in
- 11 subsection (3): see subsection 13.3(3) of the *Criminal Code*.
- 12 Note 2: Division 3 authorises recording, use and disclosure of protected
- 13 information in various circumstances. As well as having effect for the
- 14 purposes of subsection (3), these authorisations have effect for the
- 15 purposes of the *Privacy Act 1988*.
- 16 (4) Paragraphs (1)(a) and (2)(a) do not apply to:
- 17 (a) conduct of registered providers; or
- 18 (b) conduct of aged care workers or responsible persons of
- 19 registered providers in the course of performing their duties
- 20 as aged care workers or responsible persons.
- 21 Note: A defendant bears an evidential burden in relation to the matter in
- 22 subsection (4): see subsection 13.3(3) of the *Criminal Code*.

# EXPOSURE DRAFT

Chapter 7 Information management

Part 2 Confidentiality of information

Division 3 Authorisation of recording, use or disclosure of protected information

Section 324

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## **Division 3—Authorisation of recording, use or disclosure of protected information**

### **Subdivision A—Authorisation of persons generally**

#### **324 Recording, use or disclosure connected with function, duty or power under this Act**

A person may record, use or disclose protected information:

- (a) in the course of performing a function or duty, or exercising a power, under or in connection with this Act; or
- (b) in connection with facilitating another person to perform a function or duty, or exercise a power, under or in connection with this Act.

#### **325 Recording, use or disclosure for purpose for which information was disclosed**

If protected information is disclosed to a person, the person may record, use or disclose the information for the purpose for which it was disclosed to the person.

#### **326 Recording, use or disclosure with consent of person to whom information relates**

A person may record, use or disclose protected information relating to another person if the other person consents to the recording, use or disclosure (whether the consent is express or implied).

#### **327 Disclosure to entity to which information relates**

A person may disclose protected information relating to another entity to:

- (a) that entity; or
- (b) if that entity is not a person—a person acting for that entity.

# EXPOSURE DRAFT

Information management **Chapter 7**

Confidentiality of information **Part 2**

Authorisation of recording, use or disclosure of protected information **Division 3**

## Section 328

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### 328 Disclosure to provider of information

A person may disclose protected information to a person from whom the information was obtained for the purposes of this Act (so that the information became protected information).

**Note:** This section authorises a person (the *authorised discloser*) to disclose protected information whether or not the authorised discloser obtained it directly from the person from whom it was obtained for the purposes of this Act and whether or not the information is about the person from whom it was obtained.

### 329 Disclosure to Minister

- (1) A person may disclose protected information to the Minister for the purposes of the Minister's performance of the Minister's functions.
- (2) Subsection (1) does not authorise disclosure of personal information if the purposes mentioned in that subsection can be achieved by the disclosure of information that has been de-identified (within the meaning of the *Privacy Act 1988*).

### 330 Disclosure for obtaining legal advice or service

A person may disclose protected information for the purposes of obtaining legal advice or another legal service.

### 331 Disclosure to court etc.

A person may disclose protected information to a court, or any other body or person that has power to require the production of documents or the answering of questions, for the purpose of complying with such a requirement.

**Note:** Section 354 limits the circumstances in which the court, body or person with such power may make such a requirement.

**Example:** A Royal Commission under the *Royal Commissions Act 1902* is an example of a body or person that has power to require the production of documents or the answering of questions.

# EXPOSURE DRAFT

Chapter 7 Information management

Part 2 Confidentiality of information

Division 3 Authorisation of recording, use or disclosure of protected information

## Section 332

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### 332 Disclosure for worker screening

A person may disclose protected information for the purpose of facilitating the performance of a function or duty, or the exercise of a power, under an aged care worker screening law or an NDIS worker screening law (within the meaning of the NDIS Act).

### 333 Recording, use or disclosure to avert or report serious threat to individual seeking or accessing funded aged care

A person may record, use or disclose protected information if the person reasonably believes that the recording, use or disclosure is necessary to lessen, prevent or report a serious threat to the life, health or safety of an individual seeking to access, or accessing, funded aged care services.

### 334 Recording, use or disclosure for provision of services to an individual

A person may record, use or disclose for any of the following purposes protected information relating to an individual seeking to access, or accessing, funded aged care services:

- (a) delivery of funded aged care services or other community, health or social services to the individual;
- (b) assessing the individual's needs for funded aged care services or other community, health or social services;
- (c) if the individual is accessing funded aged care services—assessing the level of care the individual needs, relative to the needs of other individuals accessing such services;
- (d) reporting on (without publishing personal information), and conducting research into, the level of need for, and access to, funded aged care services or other community, health or social services;
- (e) monitoring, reporting on (without publishing personal information), and conducting research into, the quality or safety of funded aged care services.



# EXPOSURE DRAFT

Information management **Chapter 7**

Confidentiality of information **Part 2**

Authorisation of recording, use or disclosure of protected information **Division 3**

## Section 335

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### **335 Recording, use or disclosure of publicly available information**

A person may record, use or disclose protected information that has already been lawfully made available to the public.

### **Subdivision B—Authorisation of System Governor and Commissioner**

### **336 Disclosure relating to payment of subsidy**

The System Governor or Commissioner may disclose protected information to the Chief Executive Centrelink or the Chief Executive Medicare for a purpose relating to the payment of subsidy.

### **337 Disclosure for law enforcement and revenue protection**

If the System Governor or Commissioner reasonably believes that disclosure of protected information is necessary for:

- (a) enforcement of the criminal law; or
- (b) enforcement of a law imposing a pecuniary penalty; or
- (c) protection of the public revenue;

the System Governor or Commissioner may disclose the information to an agency whose functions include that enforcement or protection, for the purposes of that enforcement or protection.

### **338 Disclosure for maintenance of professional standards**

If the System Governor or Commissioner reasonably believes that:

- (a) a person's conduct breaches, or may breach, the standards of professional conduct of a profession of which the person is a member; and
- (b) the person should be reported to a body responsible for standards of conduct in the profession;

the System Governor or Commissioner may disclose protected information to that body for the purposes of maintaining standards of professional conduct in the profession.

# EXPOSURE DRAFT

Chapter 7 Information management

Part 2 Confidentiality of information

Division 3 Authorisation of recording, use or disclosure of protected information

## Section 339

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### 339 Disclosure to receiving Commonwealth body for its functions, duties or powers

- (1) The System Governor or Commissioner may disclose protected information to a receiving Commonwealth body for the purpose of facilitating the performance of the functions or duties, or the exercise of the powers, of the body or a member of the body.
- (2) Each of the following is a *receiving Commonwealth body*:
  - (a) the Office of the Inspector-General of Aged Care;
  - (b) the Department administered by the Minister administering the *Veterans' Entitlements Act 1986*;
  - (c) the Repatriation Commission;
  - (d) the Military Rehabilitation and Compensation Commission;
  - (e) the Department administered by the Minister administering the *Disability Services Act 1986*;
  - (f) the National Disability Insurance Agency;
  - (g) the NDIS Quality and Safeguards Commission;
  - (h) the Department administered by the Minister administering the *Social Security Act 1991*;
  - (i) Services Australia;
  - (j) Safe Work Australia;
  - (k) the Fair Work Commission;
  - (l) the Office of the Fair Work Ombudsman;
  - (m) the Office of the Commonwealth Ombudsman described in section 4A of the *Ombudsman Act 1976*;
  - (n) the Office of the Australian Information Commissioner;
  - (o) the Australian Commission on Safety and Quality in Health Care;
  - (p) the Australian Institute of Health and Welfare;
  - (q) a Department of State, or other authority, of the Commonwealth that is prescribed by the rules and:
    - (i) has regulatory, compliance or enforcement functions relating to the provision of care, support, treatment or other related services or assistance (including care,

# EXPOSURE DRAFT

Information management **Chapter 7**

Confidentiality of information **Part 2**

Authorisation of recording, use or disclosure of protected information **Division 3**

## Section 340

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- 1 support, treatment or other related services or assistance  
2 provided through a contractual or other arrangement); or  
3 (ii) has functions of screening persons for suitability for  
4 work in a particular field or of occupational registration  
5 (however described) of persons.

### 6 **340 Disclosure to representative of individual accessing, or seeking** 7 **to access, funded aged care services**

8 The System Governor or Commissioner may disclose protected  
9 information about an individual accessing, or seeking access, to  
10 funded aged care services to a representative of the individual, if  
11 the information is relevant to anything the representative is  
12 required or permitted to do as a representative of the individual.

### 13 **341 Disclosure for continuation of funded aged care services**

14 The System Governor or Commissioner may disclose protected  
15 information to a person who has temporarily taken over the  
16 delivery of funded aged care services, for the purposes of enabling  
17 the person to deliver those services properly.

### 18 **342 Disclosure for research or policy development**

19 The System Governor or Commissioner may disclose protected  
20 information to a person carrying out research into, or development  
21 of policy about, funded aged care services, if the System Governor  
22 or Commissioner reasonably believes the information is necessary  
23 for the research or development.

24 Note: Disclosure of protected information that is personal information is not  
25 necessary for the research or development if the research or  
26 development could be carried out with de-identified information.

### 27 **343 Disclosure for State or Territory complaints process**

28 The Commissioner may disclose, to a person or body that has  
29 under a law of a State or Territory a function of dealing with  
30 complaints or information about the provision of health or

# EXPOSURE DRAFT

Chapter 7 Information management

Part 2 Confidentiality of information

Division 3 Authorisation of recording, use or disclosure of protected information

## Section 344

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1 community services, protected information for the purpose of  
2 facilitating the performance of the function.

### 3 344 Disclosure prescribed by rules

4 The System Governor or Commissioner may disclose protected  
5 information for a purpose prescribed by the rules to a person  
6 prescribed by the rules.

### 7 Subdivision C—Authorisation of System Governor

### 8 345 Disclosures in public interest identified by System Governor

9 (1) If satisfied that it is necessary in the public interest to do so, the  
10 System Governor may disclose, for a purpose determined by the  
11 System Governor, protected information to a person determined by  
12 the System Governor.

13 (2) Subsection (1) has effect subject to the rules (if any).

14 (3) The System Governor may make a written determination that  
15 specifies a particular purpose for which, and a particular person to  
16 whom, a particular disclosure may be made under subsection (1).

17 (4) A determination made under subsection (3) is not a legislative  
18 instrument.

19 (5) The System Governor may, by legislative instrument, make a  
20 determination that specifies purposes for which, or persons to  
21 whom, disclosures may be made under subsection (1).

22 Note: For specification by class, see subsection 33(3A) of the *Acts*  
23 *Interpretation Act 1901*.

### 24 346 Disclosure to Chief Executive Centrelink or Chief Executive 25 Medicare for certain programs

26 The System Governor may disclose protected information:

27 (a) to the Chief Executive Centrelink for the purposes of a  
28 centrelink program; or

# EXPOSURE DRAFT

Information management **Chapter 7**

Confidentiality of information **Part 2**

Authorisation of recording, use or disclosure of protected information **Division 3**

## Section 347

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(b) to the Chief Executive Medicare for the purposes of a  
medicare program or the *Health and Other Services  
(Compensation) Care Charges Act 1995*.

Note 1: For **centrelink program**, see section 40 of the *Human Services  
(Centrelink) Act 1997*.

Note 2: For **medicare program**, see section 41G of the *Human Services  
(Medicare) Act 1973*.

### 347 Disclosure for grants program

The System Governor may disclose, to a person or body to which a  
grant has been made under section 392, protected information for a  
purpose for which the grant was made.

### 348 Disclosure for star ratings

The System Governor may record, use or disclose protected  
information for the purpose of working out or publishing a star  
rating for a funded aged care service.

### 349 Disclosure to Pricing Authority

The System Governor may disclose protected information to an  
official of the Pricing Authority for the purpose of facilitating the  
performance of the functions that the Pricing Authority has under  
section 131A of the *National Health Reform Act 2011* (which  
relates to aged care).

## Subdivision D—Authorisation of Commissioner

### 350 Disclosures in public interest identified by Commissioner

(1) If satisfied that it is necessary in the public interest to do so, the  
Commissioner may disclose, for a purpose determined by the  
Commissioner, protected information to a person determined by  
the Commissioner.

(2) Subsection (1) has effect subject to the rules (if any).

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Chapter 7 Information management

Part 2 Confidentiality of information

Division 3 Authorisation of recording, use or disclosure of protected information

## Section 351

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1 (3) The Commissioner may make a determination that specifies a  
2 particular purpose for which, and a particular person to whom, a  
3 particular disclosure may be made under subsection (1).

4 (4) A determination made under subsection (3) is not a legislative  
5 instrument.

6 (5) The Commissioner may, by legislative instrument, make a  
7 determination that specifies purposes for which, or persons to  
8 whom, disclosures may be made under subsection (1).

9 Note: For specification by class, see subsection 33(3A) of the *Acts*  
10 *Interpretation Act 1901*.

### 11 351 Disclosure to Pricing Authority

12 The Commissioner may disclose protected information to an  
13 official of the Pricing Authority for the purpose of facilitating the  
14 performance of the functions that the Pricing Authority has under  
15 paragraph 131A(1)(e) of the *National Health Reform Act 2011*  
16 (which relates to aged care).

### 17 352 Disclosure to coroner etc.

18 The Commissioner may disclose protected information for the  
19 purpose of assisting a coronial inquiry, coronial investigation or  
20 coronial inquest under a law of the Commonwealth, a State or a  
21 Territory.

### 22 Subdivision E—Authorisation of Pricing Authority

### 23 353 Disclosure to System Governor or Commissioner

24 An official of the Pricing Authority may disclose protected  
25 information obtained in the performance of a function that the  
26 Pricing Authority has under paragraph 131A(1)(e) of the *National*  
27 *Health Reform Act 2011* (which relates to aged care) to the System  
28 Governor or Commissioner.

# EXPOSURE DRAFT

Information management **Chapter 7**

Confidentiality of information **Part 2**

Limit on powers to require disclosure of protected information **Division 4**

Section 354

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1 **Division 4—Limit on powers to require disclosure of**  
2 **protected information**

3 **354 Limit on requirements to produce documents or answer**  
4 **questions**

5 A court, or any other body or person that has power to require the  
6 production of documents or the answering of questions, may  
7 require a person to disclose protected information only if one of the  
8 following applies:

- 9 (a) the disclosure is required for the purposes of this Act;  
10 (b) the information was originally disclosed to the person under  
11 Division 3 and the disclosure is required for the purpose for  
12 which the information was disclosed under that Division;  
13 (c) the person to whom the information relates has consented, in  
14 writing, to the disclosure.

# EXPOSURE DRAFT

## Section 355

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### Part 5—Whistleblower protections

#### 355 Disclosures qualifying for protection

A disclosure of information by an individual (*the discloser*) qualifies for protection under this section if:

- (a) the disclosure is made to one of the following:
  - (i) the Commissioner or a member of the staff of the Commission;
  - (ii) the System Governor, or an official of the Department;
  - (iii) a registered provider;
  - (iv) a responsible person of the registered provider;
  - (v) an aged care worker of a registered provider;
  - (vi) a police officer; and
- (b) the disclosure is made orally or in writing (and whether made anonymously or not); and
- (c) the discloser has reasonable grounds to suspect that the information indicates that an entity may have contravened a provision of this Act.

#### 356 Protections

- (1) If an individual makes a disclosure that qualifies for protection under section 355:

- (a) the individual is not subject to any civil, criminal or administrative liability (including disciplinary action) for making the disclosure; and
- (b) no contractual or other remedy may be enforced, and no contractual or other right may be exercised, against the individual on the basis of the disclosure.

Note: The individual is still subject to any civil or criminal liability for conduct of the individual that may be revealed by the disclosure.

- (2) Without limiting subsection (1), a contract to which the individual is a party may not be terminated on the basis that the disclosure constitutes a breach of the contract.



1     **357 Confidentiality of identity of disclosers**

- 2             (1) An entity contravenes this subsection if:
- 3                 (a) an individual (the *discloser*) makes a disclosure of
- 4                     information (the *qualifying disclosure*) that qualifies for
- 5                     protection under section 355; and
- 6                 (b) the entity discloses any of the following (the *confidential*
- 7                     *information*):
- 8                     (i) information that identifies, or that could be used to
- 9                     identify, the discloser;
- 10                  (ii) any other information that is likely to lead to the
- 11                     identification of the discloser; and
- 12                 (c) the confidential information is information that the entity
- 13                     obtained directly or indirectly because of the qualifying
- 14                     disclosure; and
- 15                 (d) the disclosure referred to in paragraph (b) is not authorised
- 16                     under subsection (2).
- 17             (2) A disclosure referred to in paragraph (1)(b) is authorised under this
- 18                 subsection if:
- 19                 (a) the disclosure is made to the Commissioner or a member of
- 20                     the staff of the Commission; or
- 21                 (b) the disclosure is made to the System Governor, or an official
- 22                     of the Department; or
- 23                 (c) the disclosure is made to the Inspector-General of Aged
- 24                     Care; or
- 25                 (d) the disclosure is made to any of the following:
- 26                     (i) a member or special member of the Australian Federal
- 27                     Police;
- 28                     (ii) a member of the police force or police service of a State
- 29                     or a Territory; or
- 30                 (e) the disclosure is made to a legal practitioner for the purpose
- 31                     of obtaining legal advice or legal representation in relation to
- 32                     the operation of this Part; or
- 33                 (f) the disclosure is made with the consent of the discloser; or

# EXPOSURE DRAFT

## Chapter 7 Information management

### Part 5 Whistleblower protections

#### Section 358

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- 1 (g) the disclosure is necessary to lessen or prevent a serious  
2 threat to the safety, health or wellbeing of one or more  
3 individuals; or  
4 (h) the disclosure is made to a court, tribunal or a Royal  
5 Commission (within the meaning of the *Royal Commissions*  
6 *Act 1902*).

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

9 Civil penalty: 30 penalty units.

#### 10 **358 Victimisation prohibited**

##### 11 *Actually causing detriment*

- 12 (1) An entity is liable to a civil penalty if:  
13 (a) the entity engages in conduct; and  
14 (b) the entity's conduct causes any detriment to an individual  
15 (the ***first individual***) or to another individual or to another  
16 entity that employs or is otherwise associated with the first  
17 individual; and  
18 (c) the entity engages in the conduct because the entity believes  
19 or suspects that the first individual or another individual has,  
20 may have, or intends to make, a disclosure that qualifies for  
21 protection under section 355.

22 Civil penalty: 500 penalty units.

- 23 (2) In proceedings for a civil penalty order against an entity for a  
24 contravention of subsection (1), it is not necessary to prove that the  
25 first individual or other individual has done, may have done or  
26 intends to do a thing mentioned in paragraph (1)(c).

##### 27 *Threatening to cause detriment*

- 28 (3) An entity is liable to a civil penalty if:  
29 (a) the entity makes to an individual (the ***first individual***) a  
30 threat to cause any detriment to the first individual or to

# EXPOSURE DRAFT

Information management **Chapter 7**  
Whistleblower protections **Part 5**

## Section 358

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another individual or to another entity that employs or is otherwise associated with the first individual; and

(b) the entity:

(i) intends the first individual to fear that the threat will be carried out; or

(ii) is reckless as to causing the first individual to fear that the threat will be carried out; and

(c) the entity engages in the conduct because the entity believes or suspects that the first individual or another individual has, may have, or intends to make, a disclosure that qualifies for protection under section 355.

Civil penalty: 500 penalty units.

### *Threats*

(4) For the purpose of subsection (3), a threat may be:

(a) express or implied; or

(b) conditional or unconditional.

(5) In proceedings for a civil penalty order against an entity for a contravention of subsection (3), it is not necessary to prove:

(a) that the first individual actually feared that the threat would be carried out; or

(b) that an individual has done, may have done or intends to do a thing mentioned in paragraph (3)(c).

### *Exception—reasonable administrative action*

(6) Subsections (1) and (3) do not apply if the conduct engaged in by the entity is administrative action that is reasonable to protect the first individual from detriment.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

## Section 359

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### 359 Court orders

A court may make any order the court considers appropriate if the court is satisfied that an entity has contravened, or proposes to contravene, subsection 358(1) or (3), including any of the following orders:

- (a) an order granting an injunction, or interim injunction, to prevent, stop or remedy the effects of a contravention;
- (b) an order awarding compensation for loss, damage or injury that an entity has suffered because of the contravention;
- (c) an order for reinstatement of an individual;
- (d) an order for exemplary damages.

### 360 Registered providers' obligations in relation to disclosers

#### *Ensuring aged care worker disclosers are not victimised*

- (1) A registered provider must ensure, as far as reasonably practicable, compliance with subsection 357(1) and subsections 358(1) and (3) in relation to an individual who:

- (a) is an aged care worker of the registered provider; and
- (b) makes a disclosure that qualifies for protection under section 355.

Note: The obligation under subsection (1) covers not only compliance by the registered provider with those provisions but extends to the registered provider ensuring as far as reasonably practicable that there is also compliance by others, such as the provider's other aged care workers and associated providers.

#### *Protecting discloser identities*

- (2) If an individual makes a disclosure to a registered provider that qualifies for protection under section 355, the provider must take reasonable measures to ensure that the fact that the individual was the maker of the disclosure is not disclosed, except to one or more of the following:

- (a) the Commissioner;

# EXPOSURE DRAFT

Information management **Chapter 7**  
Whistleblower protections **Part 5**

## Section 361

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- 1 (b) a person, authority or court to which the registered provider  
2 is required by a law of the Commonwealth or a State or  
3 Territory to disclose the fact;  
4 (c) a responsible person of the registered provider;  
5 (d) a police officer.
- 6 (3) If an individual makes a disclosure that qualifies for protection  
7 under section 355 to someone (the *recipient*) who is:  
8 (a) a responsible person of the registered provider; or  
9 (b) another person authorised by the registered provider to  
10 receive disclosures that qualify for protection under that  
11 section;  
12 the provider must take reasonable measures to ensure that the  
13 recipient does not disclose the fact that the individual was the  
14 maker of the disclosure, except to the provider or a person  
15 described in paragraph (2)(a), (b), (c) or (d).

### 16 **361 Concurrent operation of State and Territory laws**

17 This Part does not exclude or limit the operation of a law of a State  
18 or Territory that is capable of operating concurrently with this Part.

# EXPOSURE DRAFT

**Chapter 8** Miscellaneous  
**Part 1** Introduction

Section 362

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## Chapter 8—Miscellaneous

### Part 1—Introduction

#### 362 Simplified outline of this Chapter

This Part deals with the following matters:

- (a) review of decisions;
- (b) delegation of the functions and powers of the System Governor and the Commissioner under this Act;
- (c) the appointment of supporters and representatives of individuals, and the suspension and cancellation of such appointments;
- (d) the application of this Act to partnerships and unincorporated associations;
- (e) grant arrangements that the System Governor may enter into;
- (f) the use of computer programs for making decisions on the classification of individuals;
- (g) processes for applications and requests made to the System Governor and Commissioner;
- (h) fees for applications and for services provided by the System Governor and Commissioner;
- (i) annual reporting on the performance of the System Governor's functions during each financial year;
- (j) the making of rules.

1 **Part 2—Review of decisions**  
2  
3 [To be drafted.]

# EXPOSURE DRAFT

Chapter 8 Miscellaneous

Part 3 Delegation provisions

Division 1 Delegation by System Governor

Section 363

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## Part 3—Delegation provisions

### Division 1—Delegation by System Governor

#### 363 Delegation by System Governor—general

- (1) The System Governor may, in writing, delegate all or any of the System Governor's functions or powers under this Act, other than Chapter 6, to a person engaged (whether as an employee or otherwise) by a Commonwealth entity within the meaning of the *Public Governance, Performance and Accountability Act 2013*.

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

*Delegation to holders of specified non-SES offices or positions*

- (2) Before delegating a function or power under subsection (1) to an APS employee holding, occupying, or performing the duties of a specified office or position that is not an SES office or position, the System Governor must have regard to whether the office or position is sufficiently senior for the employee to perform the function or exercise the power.

*Delegation to persons who are not APS employees*

- (3) Before delegating a function or power under subsection (1) to a person who is not an APS employee, the System Governor must have regard to whether the person has appropriate qualifications or expertise to perform the function or duty or exercise the power.

#### 364 Delegation to Pricing Authority

- (1) The System Governor may, in writing, delegate to the Pricing Authority the powers and functions of the System Governor under this Act that the System Governor considers necessary for the Pricing Authority to perform the Pricing Authority's functions under this Act.



# EXPOSURE DRAFT

Miscellaneous **Chapter 8**  
Delegation provisions **Part 3**  
Delegation by System Governor **Division 1**

## Section 365

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### *Subdelegation*

- (2) If, under subsection (1), the System Governor delegates a power or function to the Pricing Authority, the Pricing Authority may, in writing, subdelegate the power or function to a person covered by paragraph 161(1)(c) or subsection 161(2) of the *National Health Reform Act 2011*.

### **365 Delegation to Chief Executive Centrelink**

- (1) The System Governor may, in writing, delegate to the Chief Executive Centrelink, the System Governor's powers and functions under [to be drafted].

### *Subdelegation*

- (2) If, under subsection (1), the System Governor delegates a power or function to the Chief Executive Centrelink, the Chief Executive Centrelink may, in writing, subdelegate the power or function to a Departmental employee (within the meaning of the *Human Services (Centrelink) Act 1997*) who is an APS employee.

### **366 Delegation to Chief Executive Medicare**

- (1) The System Governor may, in writing, delegate to the Chief Executive Medicare, the System Governor's powers and functions under [to be drafted].

### *Subdelegation*

- (2) If, under subsection (1), the System Governor delegates a power or function to the Chief Executive Medicare, the Chief Executive Medicare may, in writing, subdelegate the power or function to a Departmental employee (within the meaning of the *Human Services (Medicare) Act 1973*) who is an SES employee or acting SES employee.

# EXPOSURE DRAFT

Chapter 8 Miscellaneous

Part 3 Delegation provisions

Division 1 Delegation by System Governor

## Section 367

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### 367 Delegation to Veterans' Affairs Secretary

- (1) The System Governor may, in writing, delegate to the Secretary of the Department administered by the Minister who administers the *Veterans' Entitlements Act 1986*, the System Governor's powers and functions under [to be drafted].

#### *Subdelegation*

- (2) If, under subsection (1), the System Governor delegates a power or function to the Secretary of the Department administered by the Minister who administers the *Veterans' Entitlements Act 1986*, the Secretary of that Department may, in writing, subdelegate the power or function to an SES employee or acting SES employee in that Department.

### 368 Delegation to Repatriation Commission

- (1) The System Governor may, in writing, delegate to the Repatriation Commission, the System Governor's powers and functions under [to be drafted].

#### *Subdelegation*

- (2) If, under subsection (1), the System Governor delegates a power or function to the Repatriation Commission, the Repatriation Commission may, in writing, subdelegate the power or function to a person to whom it may delegate powers under the *Veterans' Entitlements Act 1986* under section 213 of that Act:
- (a) who is an SES employee or acting SES employee; or
  - (b) who holds, occupies, or performs the duties of an office or position that is equivalent to an SES office or position.

### 369 Delegation to Social Services Secretary

- (1) The System Governor may, in writing, delegate to the Secretary of the Department administered by the Minister who administers the *Data-matching Program (Assistance and Tax) Act 1990*, the System Governor's powers and functions under [to be drafted].

# EXPOSURE DRAFT

Miscellaneous **Chapter 8**  
Delegation provisions **Part 3**  
Delegation by System Governor **Division 1**

## Section 369

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### *Subdelegation*

- (2) If, under subsection (1), the System Governor delegates a power or function to the Secretary of the Department administered by the Minister who administers the *Data-matching Program (Assistance and Tax) Act 1990*, the Secretary of that Department may, in writing, subdelegate the power or function to an APS employee in that Department.

# EXPOSURE DRAFT

Chapter 8 Miscellaneous

Part 3 Delegation provisions

Division 2 Delegation by Commissioner

## Section 370

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### Division 2—Delegation by Commissioner

#### 370 Delegation by Commissioner

##### *Functions and powers—other than regulatory mechanisms*

- (1) The Commissioner may, in writing, delegate all or any of the Commissioner's functions or powers under this Act, other than Chapter 6, to:

- (a) a member of the staff of the Commission; or
- (b) a consultant engaged under section 159.

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

##### *Functions and powers—regulatory mechanisms*

- (2) The Commissioner may, in writing, delegate to the following all or any of the Commissioner's functions or powers under Chapter 6:

- (a) a member of the staff of the Commission;
- (b) an APS employee in the Department.

##### *Delegation to holders of specified non-SES offices or positions*

- (3) Before delegating a function or power under subsection (1) or (2) to an APS employee holding, occupying, or performing the duties of a specified office or position that is not an SES office or position, the Commissioner must have regard to whether the office or position is sufficiently senior for the employee to perform the function or exercise the power.

##### *Delegation to persons who are not APS employees*

- (4) Before delegating a function or power under subsection (1) or (2) to a person who is not an APS employee, the Commissioner must have regard to whether the person has appropriate qualifications or expertise to perform the function or duty or exercise the power.

# EXPOSURE DRAFT

Miscellaneous **Chapter 8**  
Delegation provisions **Part 3**  
General **Division 3**

## Section 371

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1     **Division 3—General**

2     **371 Delegations in relation to specified kinds of matters**

3             Without limiting this Part or subsection 33(3A) of the *Acts*  
4             *Interpretation Act 1901*, a power or function may be delegated or  
5             subdelegated generally or only in relation to specified kinds of  
6             matters.

7     **372 Subdelegation**

8             Sections 34AA, 34AB and 34A of the *Acts Interpretation Act 1901*  
9             apply in relation to a subdelegation in the same way to the way in  
10            which they apply to a delegation.

11    **373 Complying with directions**

12            In exercising powers or performing functions delegated or  
13            subdelegated by a person under this Part, the delegate or  
14            subdelegate must comply with any directions of the person.

# EXPOSURE DRAFT

Chapter 8 Miscellaneous

Part 4 Appointment of supporters and representatives

Division 1 Appointment process

Section 374

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## Part 4—Appointment of supporters and representatives

### Division 1—Appointment process

#### 374 Appointment of supporters

(1) The System Governor may decide whether to appoint a person, for the purposes of this Act, to be a supporter of an individual accessing, or seeking to access, funded aged care services.

(2) The appointment may be made on the request of a person (including the individual) or body.

(3) The System Governor may appoint more than one person as a supporter of the individual under subsection (1).

(4) The System Governor must not appoint a person under subsection (1) unless:

(a) the System Governor is satisfied that the person is able to comply with the duties of supporters referred to in subsection 26(1); and

(b) both the person and the individual have given consent to the appointment; and

(c) the System Governor has taken into consideration any other matters prescribed by the rules.

(5) The System Governor must not appoint a person to be a supporter of an individual if an appointment of a representative of the individual is in effect.

Note: If the System Governor intends to appoint a person as a supporter but there is already a representative of the individual, the System Governor must cancel the appointment of the representative: see subsection 388(3).

(6) An appointment under subsection (1) may be made verbally or in writing.

Note: Written notice of the appointment must be given under section 379 as soon as practicable after the appointment is made.

# EXPOSURE DRAFT

Miscellaneous **Chapter 8**  
Appointment of supporters and representatives **Part 4**  
Appointment process **Division 1**

## Section 375

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### 375 Notice of decision not to appoint a person as a supporter

- (1) If the System Governor decides not to appoint a person under subsection 374(1) to be a supporter of an individual, the System Governor must give notice of the decision to:
- (a) any person who, or body which, made a request to the System Governor to appoint the person; and
  - (b) the individual.
- (2) The notice under subsection (1) must:
- (a) be given as soon as practicable after the decision is made; and
  - (b) include the reasons for the decision and how a person may apply for reconsideration of the decision.

### 376 Appointment of representatives

- (1) The System Governor may decide whether to appoint a person, for the purposes of this Act, to be a representative of an individual accessing, or seeking to access, funded aged care services.
- (2) The appointment may be made:
- (a) on the request of a person (including the individual) or body; or
  - (b) on the initiative of the System Governor.
- (3) The System Governor may, under subsection (1):
- (a) appoint one person to be the representative of the individual; or
  - (b) appoint 2 or more individuals, jointly and severally, as representatives of the individual.
- (4) If:
- (a) there is a person referred to in subsection 28(2) (which deals with guardians and persons in other similar positions) in relation to the individual; and
  - (b) the person makes a request to be appointed as a representative of the individual;

# EXPOSURE DRAFT

## Chapter 8 Miscellaneous

### Part 4 Appointment of supporters and representatives

#### Division 1 Appointment process

#### Section 376

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1 the System Governor must, subject to subsections (6) and (7),  
2 appoint the person under subsection (1).

3 Note: Guardians and persons in other similar positions must not make a  
4 decision under, or for the purposes of, this Act on behalf of an  
5 individual unless the person is appointed as a representative of the  
6 individual: see section 28.

7 (5) When considering whether to appoint a person under  
8 subsection (1) who is not a person referred to in paragraph (4)(a),  
9 the System Governor must have regard to whether there is any  
10 person referred to in that paragraph in relation to the individual.

11 (6) The System Governor must not appoint a person under  
12 subsection (1) to be a representative of an individual unless:  
13 (a) the System Governor is satisfied that the person is able to  
14 comply with the duties of representatives referred to in  
15 subsection 30(1); and  
16 (b) the person has given consent to the appointment; and  
17 (c) the System Governor has taken into consideration the wishes  
18 (if any) of the individual regarding the making of the  
19 appointment; and  
20 (d) the System Governor has taken into consideration any other  
21 matters prescribed by the rules.

22 Note: The consent of the individual is not required for the appointment of a  
23 person as a representative of the individual.

24 (7) The System Governor must not appoint a person to be a  
25 representative of an individual if an appointment of a supporter of  
26 the individual is in effect.

27 Note: If the System Governor intends to appoint a person as a representative  
28 but there is already a supporter of the individual, the System Governor  
29 must cancel the appointment of the supporter: see subsection 388(2).

30 (8) An appointment under subsection (1) may be made verbally or in  
31 writing.

32 Note: Written notice of the appointment must be given under section 379 as  
33 soon as practicable after the appointment is made.



# EXPOSURE DRAFT

Miscellaneous **Chapter 8**  
Appointment of supporters and representatives **Part 4**  
Appointment process **Division 1**

## Section 377

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### 377 Effect of appointment as a representative

The appointment of a person as a representative of an individual does not prevent the individual from doing a thing that the individual may otherwise do under, or for the purposes of, this Act.

### 378 Notice of decision not to appoint a person as a representative

- (1) If the System Governor decides not to appoint a person under subsection 376(1) to be a representative of an individual, the System Governor must give notice of the decision to:
  - (a) any person who, or body which, made a request to the System Governor to appoint the person; and
  - (b) the individual.
- (2) The notice under subsection (1) must:
  - (a) be given as soon as practicable after the decision is made; and
  - (b) include the reasons for the decision and how a person may apply for reconsideration of the decision.

### 379 Notification of appointment of supporter or representative

#### *Initial obligation to give notice of appointment*

- (1) The System Governor must give written notice of the appointment of a supporter or representative of an individual to the following:
  - (a) the supporter or representative;
  - (b) the individual;
  - (c) each registered provider that delivers funded aged care services to the individual;
  - (d) for an appointment of a representative—each other representative (if any) of the individual.
- (2) The notice under subsection (1) must:
  - (a) if the notice is to be given to a person referred to in paragraph (1)(a) or (b)—include the information specified in section 380; and

# EXPOSURE DRAFT

## Chapter 8 Miscellaneous

### Part 4 Appointment of supporters and representatives

#### Division 1 Appointment process

#### Section 380

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- 1 (b) if the notice is to be given to a registered provider referred to  
2 in paragraph (1)(c) or another representative referred to in  
3 paragraph (1)(d)—include the information specified in  
4 paragraph 380(1)(a); and  
5 (c) be given as soon as practicable after the System Governor  
6 appoints the supporter or representative.

7 *Ongoing obligation to give notice of appointment*

- 8 (3) The System Governor must, while the appointment remains in  
9 effect, also give written notice of the appointment to any registered  
10 provider that subsequently starts to deliver funded aged care  
11 services to the individual.
- 12 (4) The notice under subsection (3) must:
- 13 (a) include the information specified in paragraph 380(1)(a); and  
14 (b) be given as soon as practicable after the registered provider  
15 starts to deliver funded aged care services to the individual.

16 **380 Content of notice of appointment**

- 17 (1) For the purposes of section 379, the information to be included in a  
18 notice given under that section is as follows:
- 19 (a) the contact details of the supporter or representative  
20 appointed in relation to an individual;
- 21 (b) the reasons for the decision to appoint the supporter or  
22 representative;
- 23 (c) how a person may apply for reconsideration of that decision;
- 24 (d) the period within which the supporter or representative must  
25 inform the System Governor of a matter under subsection  
26 31(1), and how the supporter or representative is to inform  
27 the System Governor of the matter.
- 28 (2) The notice may specify the following:
- 29 (a) that the appointment takes effect on a specified day;
- 30 (b) that the appointment remains in effect until a specified day.

31 Note: A specified day could be the day a specified event occurs.

# EXPOSURE DRAFT

Miscellaneous **Chapter 8**  
Appointment of supporters and representatives **Part 4**  
Appointment process **Division 1**

## Section 381

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- 1 (3) The period specified under paragraph (1)(d) must not be shorter  
2 than 14 days after:  
3 (a) if the supporter or representative is informing the System  
4 Governor under subparagraph 31(1)(a)(i)—the day on which  
5 the event or change of circumstances happens; or  
6 (b) if the supporter or representative is informing the System  
7 Governor under subparagraph 31(1)(a)(ii)—the day on which  
8 the supporter or representative becomes aware that the event  
9 or change of circumstances is likely to happen.

### 10 **381 Period of effect of appointment**

- 11 (1) An appointment of a supporter or representative of an individual  
12 takes effect:  
13 (a) at the time specified by the System Governor in relation to  
14 the appointment; or  
15 (b) if the System Governor does not specify a time for the  
16 purposes of paragraph (a)—at the time the appointment is  
17 made under section 374 or 376.  
18 Note: An appointment may be made verbally or in writing under section 374  
19 or 376.  
20 (2) Subject to subsection 382(6) (which provides that appointments  
21 have no effect while suspended), the appointment remains in effect  
22 until the earliest of the following:  
23 (a) the appointment is cancelled under Division 2;  
24 (b) the individual dies;  
25 (c) the supporter or representative dies;  
26 (d) if the notice of appointment given to the supporter or  
27 representative under section 379 specifies that the  
28 appointment remains in effect until a specified day—that  
29 day.

# EXPOSURE DRAFT

Chapter 8 Miscellaneous

Part 4 Appointment of supporters and representatives

Division 2 Suspensions and cancellations of appointment

## Section 382

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### Division 2—Suspensions and cancellations of appointment

#### 382 Suspension of appointment

*When an appointment may be suspended*

(1) The System Governor may suspend the appointment of a person as a supporter or representative of an individual if a circumstance set out in this section applies.

(2) A circumstance is that the System Governor reasonably believes that the supporter or representative has caused, or is likely to cause, physical, sexual, financial, psychological or emotional abuse or neglect to the individual.

(3) A circumstance is that the System Governor reasonably believes that the supporter or representative has not complied with, or is not able to comply with, a duty of supporters or representatives referred to in subsection 26(1) or 30(1) respectively.

(4) A circumstance is that:

(a) the supporter or representative informs the System Governor under section 31 that:

(i) an event or change of circumstance has happened or is likely to happen; and

(ii) the event or change of circumstances is likely to have an effect as described in paragraph 31(1)(b); and

(b) the System Governor reasonably believes that the event or change of circumstances is likely to affect:

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

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

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Miscellaneous **Chapter 8**  
Appointment of supporters and representatives **Part 4**  
Suspensions and cancellations of appointment **Division 2**

## Section 383

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

- 5 (5) A circumstance is that there is a change in relation to a person  
6 referred to in subsection 28(2) (which deals with guardians and  
7 persons in other similar positions) in relation to the individual.

8 Note: Examples of changes include a change as to whether there is such a  
9 person in relation to the individual, or a change to who the person is.

### 10 *Effect of suspension of appointment*

- 11 (6) While a person's appointment as a supporter or representative of an  
12 individual is suspended, the appointment has no effect for the  
13 purposes of this Act.

## 14 **383 Notice and decisions following suspension of appointment**

- 15 (1) If the System Governor suspends the appointment of a person (the  
16 **suspended person**) as supporter or representative of an individual,  
17 the System Governor must give written notice of the suspension to  
18 the following:

- 19 (a) the suspended person;  
20 (b) the individual;  
21 (c) for the suspension of appointment of a representative—each  
22 other representative (if any) of the individual;  
23 (d) each registered provider that delivers funded aged care  
24 services to the individual.

- 25 (2) The notice under subsection (1) must be given as soon as  
26 practicable after the System Governor suspends the appointment.

- 27 (3) The notice given to the suspended person and the individual under  
28 subsection (1) must:

- 29 (a) include the reasons for the decision to suspend the  
30 appointment; and  
31 (b) provide that the suspended person and individual may give  
32 the System Governor, within 28 days after the day the notice

# EXPOSURE DRAFT

## Chapter 8 Miscellaneous

### Part 4 Appointment of supporters and representatives

#### Division 2 Suspensions and cancellations of appointment

#### Section 384

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1 is given, a statement setting out the reasons why the person's  
2 appointment should not be cancelled.

3 (4) The notice given to a person (other than the suspended person or  
4 individual) under subsection (1) must not include the matters set  
5 out in paragraphs (3)(a) and (b).

#### 6 **384 Cancellation of appointment following suspension, or revoking** 7 **suspension**

8 (1) If the suspended person or individual (or both) gives the System  
9 Governor the statement referred to in paragraph 383(3)(b) within  
10 the 28-day period, the System Governor must, as soon as  
11 practicable after receiving the statement, consider the statement  
12 and decide whether to cancel the suspended person's appointment.

13 Note: For notification requirements relating to cancellation of an  
14 appointment, see section 389.

15 (2) If neither the suspended person nor the individual gives the System  
16 Governor the statement within the 28-day period, the System  
17 Governor must cancel the person's appointment as soon as  
18 practicable after that period ends.

19 Note: For notification requirements relating to cancellation of an  
20 appointment, see section 389.

21 (3) If the System Governor decides not to cancel the appointment  
22 under subsection (1):

23 (a) the System Governor must:

- 24 (i) revoke the suspension of the person's appointment; and  
25 (ii) give written notice of the System Governor's decision  
26 not to cancel the appointment to each person and  
27 registered provider to whom notice was given under  
28 subsection 383(1); and

29 (b) if:

- 30 (i) while the appointment was suspended, the System  
31 Governor made an appointment of another person (the  
32 ***other appointment***) as a supporter or representative of  
33 the individual; and

# EXPOSURE DRAFT

Miscellaneous **Chapter 8**  
Appointment of supporters and representatives **Part 4**  
Suspensions and cancellations of appointment **Division 2**

## Section 385

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(ii) the other appointment being in effect after the suspension is revoked under subparagraph (a)(i) would result in a contravention of subsection 374(5) or 376(6); the System Governor must cancel the other appointment no later than the time the suspension is revoked under subparagraph (a)(i).

Note 1: For notification requirements relating to cancellation of an appointment, see section 389.

Note 2: An example of subparagraph (3)(b)(ii) is where the sole appointment of a supporter of an individual is suspended and a person is appointed as a representative of the individual. The revocation of the suspension would result in appointments of both a supporter and representative being in effect at the same time.

### **385 Cancellation of appointment of supporter on request by supporter or individual**

The System Governor must cancel the appointment of a person as a supporter of an individual as soon as practicable if:

- (a) the supporter makes a written request to the System Governor to cancel the appointment; or
- (b) the individual makes a written or verbal request to the System Governor to cancel the appointment.

Note: For notification requirements relating to cancellation of an appointment, see section 389.

### **386 Cancellation of appointment of representative on request by representative**

The System Governor must cancel the appointment of a person as a representative of an individual as soon as practicable if the representative makes a written request to the System Governor to cancel the appointment.

Note: For notification requirements relating to cancellation of an appointment, see section 389.

# EXPOSURE DRAFT

## Chapter 8 Miscellaneous

### Part 4 Appointment of supporters and representatives

#### Division 2 Suspensions and cancellations of appointment

#### Section 387

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##### **387 Cancellation of appointment of representative on request by individual**

- (1) If an individual makes a written or verbal request to the System Governor to cancel the appointment of a person as a representative of the individual, the System Governor must consider the request and decide whether to cancel the appointment.
- (2) The System Governor must make the decision within:
  - (a) if the System Governor requests further information or a document under subsection (3) in relation to the request—14 days after receiving the further information or document; or
  - (b) otherwise—28 days after receiving the request.
- (3) The System Governor may request further information or a document from any entity in relation to a request under subsection (1) if the System Governor has reason to believe that the entity has information or a document that is relevant to the consideration of that request.
- (4) If the System Governor decides not to cancel the appointment, the System Governor must give written notice of the System Governor's decision to the individual and the representative.

Note: For notification requirements relating to cancellation of an appointment, see section 389.

##### **388 Cancellation of appointment in other circumstances**

- (1) The System Governor must cancel the appointment of a person as a supporter or representative of an individual if a circumstance set out in this section applies.

Note: For notification requirements relating to cancellation of an appointment, see section 389.
- (2) A circumstance is that the System Governor intends to appoint a person as a representative of the individual but there is an appointment in effect of a person as a supporter of the individual.



# EXPOSURE DRAFT

Miscellaneous **Chapter 8**  
Appointment of supporters and representatives **Part 4**  
Suspensions and cancellations of appointment **Division 2**

## Section 389

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- 1 (3) A circumstance is that the System Governor intends to appoint a  
2 person as a supporter of the individual but there is an appointment  
3 in effect of a person as a representative of the individual.
- 4 Note 1: An individual cannot have both a supporter and a representative at the  
5 same time: see subsections 374(5) and 376(6).
- 6 Note 2: A person's appointment as a supporter of an individual can be  
7 cancelled and the same person appointed as a representative of the  
8 individual, and vice versa.

### 9 **389 Notification of cancellation of appointment**

- 10 (1) If the System Governor cancels the appointment of a person as a  
11 supporter or representative of an individual under this Division, the  
12 System Governor must give written notice of the cancellation to  
13 the following:
- 14 (a) the person whose appointment has been cancelled;  
15 (b) the individual;  
16 (c) if the person was a representative—each other representative  
17 (if any) of the individual;  
18 (d) each registered provider that delivers funded aged care  
19 services to the individual.
- 20 (2) The notice under subsection (1) must:
- 21 (a) be given as soon as practicable after the appointment is  
22 cancelled; and  
23 (b) include:
- 24 (i) the reasons for the cancellation; and  
25 (ii) if the appointment was cancelled under subsection  
26 384(1) or section 387—how a person may apply for  
27 reconsideration of the decision to cancel the  
28 appointment.
- 29 (3) The notice under subsection (1) given to a person (other than the  
30 person whose appointment has been cancelled or the individual)  
31 must not include the matters set out in paragraph (2)(b).

# EXPOSURE DRAFT

## Chapter 8 Miscellaneous

### Part 5 Application of this Act to certain entities

#### Section 390

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## Part 5—Application of this Act to certain entities

### 390 Partnerships

- (1) This Act applies to a partnership as if it were a person, but with the changes set out in this section.
- (2) An obligation that would otherwise be imposed on the partnership by this Act is imposed on each partner instead, but may be discharged by any of the partners.
- (3) A civil penalty provision of this Act that would otherwise have been contravened by the partnership is taken to have been contravened by each partner in the partnership, at the time the provision was contravened, who:
  - (a) did the relevant act or made the relevant omission; or
  - (b) aided, abetted, counselled or procured the relevant act or omission; or
  - (c) was in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the partner).
- (4) For the purposes of this Act, a change in the composition of a partnership does not affect the continuity of the partnership.

### 391 Unincorporated associations

- (1) This Act applies to an unincorporated association as if it were a person, but with the changes set out in this section.
- (2) An obligation that would otherwise be imposed on the association by this Act is imposed on each member of the association's committee of management instead, but may be discharged by any of the members.
- (3) A civil penalty provision of this Act that would otherwise have been contravened by the unincorporated association is taken to have been contravened by each member of the committee of

EXPOSURE DRAFT

Section 391

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- management of the association at the time the provision was  
contravened, who:  
(a) did the relevant act or made the relevant omission; or  
(b) aided, abetted, counselled or procured the relevant act or  
omission; or  
(c) was in any way knowingly concerned in, or party to, the  
relevant act or omission (whether directly or indirectly and  
whether by any act or omission of the member).

## Section 392

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### Part 6—Grants

#### 392 Power to enter into arrangements

- (1) The System Governor may, on behalf of the Commonwealth, make, vary or administer a grant of financial assistance to any person or body in relation to the carrying out of activities by the person or body for a purpose referred to in subsection (2).
- (2) The purposes are the following:
  - (a) to initiate, sustain, support or increase the delivery of services to individuals in the aged care system, including during times of emergency;
  - (b) to strengthen the capability of, and raise awareness among, registered providers and aged care workers and responsible persons of registered providers about the specialised complex needs of individuals accessing funded aged care services;
  - (c) to provide additional support to address such specialised complex needs of individuals accessing those services;
  - (d) to support and uphold the rights and entitlements of individuals accessing services in the aged care system;
  - (e) to address aged care worker shortages and retention issues, including addressing capability and qualification gaps in relation to the delivery of funded aged care services;
  - (f) any other purpose prescribed by the rules.

#### 393 Terms and conditions relating to funding arrangements

- (1) The terms and conditions on which financial assistance is granted under section 392 must be set out in a written agreement between the Commonwealth and the grant recipient.

Note: See also section 395 (constitutional limits).
- (2) The grant recipient must comply with the terms and conditions.

## Section 394

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- (3) Without limiting subsection (1), the terms and conditions must provide for the circumstances in which the grant recipient must repay amounts to the Commonwealth.

Note: An amount repayable to the Commonwealth would be a debt due to the Commonwealth.

- (4) An agreement under subsection (1) is to be entered into by the System Governor on behalf of the Commonwealth.

### **394 System Governor has powers etc. of the Commonwealth**

- (1) The System Governor, on behalf of the Commonwealth, has all the rights, responsibilities, duties and powers of the Commonwealth in relation to the Commonwealth's capacity as the grantor of a grant made under section 392.

- (2) Without limiting subsection (1):

- (a) a grant made under section 392 is to be paid by the System Governor on behalf of the Commonwealth; and
- (b) an amount payable to the Commonwealth by way of the repayment of the whole or a part of a grant made under section 392 is to be paid to the System Governor on behalf of the Commonwealth; and
- (c) the System Governor may institute an action or proceeding on behalf of the Commonwealth in relation to a matter that concerns a grant made under section 392.

### **395 Constitutional limits**

The System Governor may exercise a power conferred on the System Governor by section 392 only:

- (a) with respect to the executive power of the Commonwealth; or
- (b) with respect to the provision of unemployment, pharmaceutical, sickness and hospital benefits, medical and dental services and family allowances within the meaning of paragraph 51(xxiiiA) of the Constitution; or

# EXPOSURE DRAFT

## Section 396

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- 1 (c) with respect to the people of any race for whom it is deemed
- 2 necessary to make special laws; or
- 3 (d) with respect to aliens within the meaning of
- 4 paragraph 51(xix) of the Constitution; or
- 5 (e) with respect to the use of a postal, telegraphic, telephonic or
- 6 other like service within the meaning of paragraph 51(v) of
- 7 the Constitution; or
- 8 (f) with respect to the granting of financial assistance to a State
- 9 or Territory; or
- 10 (g) with respect to implementing any of Australia's international
- 11 obligations under any of the following:
- 12 (i) Articles 2, 6 and 12(2) of the Covenant on Economic,
- 13 Social and Cultural Rights;
- 14 (ii) Articles 4, 9, 19, 20, 25, 26 and 27 of the Convention on
- 15 the Rights of Persons with Disabilities;
- 16 (iii) Articles 1 and 2 of the ILO Convention (No. 122)
- 17 concerning Employment Policy; or
- 18 (h) with respect to the granting of financial assistance to a
- 19 constitutional corporation for the purposes of carrying out the
- 20 corporation's activities; or
- 21 (i) with respect to matters incidental to the execution of any of
- 22 the legislative powers of the Parliament or the executive
- 23 power of the Commonwealth.

### 24 **396 Relationship of this Part with *Financial Framework***

### 25 ***(Supplementary Powers) Act 1997***

26 To avoid doubt, the power of the Commonwealth to make, vary or

27 administer a grant under this Part must be disregarded for the

28 purpose of paragraph 32B(1)(a) of the *Financial Framework*

29 *(Supplementary Powers) Act 1997*.

30 Note: The effect of this section is to make clear that this Part does not

31 effectively limit the operation of section 32B of the *Financial*

32 *Framework (Supplementary Powers) Act 1997*. The Commonwealth

33 has the power to make, vary or administer an arrangement or grant

34 under that section whether the Commonwealth also has the power to

35 do so under this Part.

1     **397 Executive power of the Commonwealth**

2                     This Part does not, by implication, limit the executive power of the  
3                     Commonwealth.

# EXPOSURE DRAFT

## Chapter 8 Miscellaneous

### Part 7 Use of computer programs to make decisions

#### Section 398

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## Part 7—Use of computer programs to make decisions

### 398 System Governor

- (1) The System Governor may arrange for the use, under the System Governor's control, of computer programs for making the following decisions:
  - (a) decisions on the classification of individuals under section 59;
  - (b) decisions on the priority of individuals under section [to be drafted].
- (2) A decision made by the operation of a computer program under such an arrangement is taken to be a decision made by the System Governor.
- (3) The System Governor may, under section 59 or [to be drafted], substitute a decision for a decision the System Governor is taken to have made under subsection (2) of this section if the System Governor is satisfied that the decision made by the operation of the computer program is incorrect.
- (4) Subsection (3) does not limit any other provision of this Act that provides for the review or reconsideration of a decision.

### 399 Commissioner

- (1) The Commissioner may arrange for the use, under the Commissioner's control, of computer programs for making the following decisions [to be drafted].
- (2) A decision made by the operation of a computer program under such an arrangement is taken to be a decision made by the Commissioner.
- (3) The Commissioner may, under section [to be drafted], substitute a decision for a decision the Commissioner is taken to have made



# EXPOSURE DRAFT

Miscellaneous **Chapter 8**  
Use of computer programs to make decisions **Part 7**

## Section 399

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- 1                   under subsection (2) of this section if the Commissioner is satisfied  
2                   that the decision made by the operation of the computer program is  
3                   incorrect.
- 4                   (4) Subsection (3) does not limit any other provision of this Act that  
5                   provides for the review or reconsideration of a decision.

# EXPOSURE DRAFT

## Chapter 8 Miscellaneous

### Part 8 Applications, requests and notifications

#### Section 400

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## Part 8—Applications, requests and notifications

### 400 Approved forms—System Governor functions

- (1) An application or a request under this Act that relates to a function of the System Governor is in the approved form if:
  - (a) it is in a form approved in writing by the System Governor for that kind of application or request; and
  - (b) it contains the information that the form requires, and any further information or document as the System Governor requires, whether in the form or otherwise; and
  - (c) for an application or request that is required to be given to the System Governor—it is given in the manner that the System Governor requires (which may include electronically).
- (2) The System Governor may combine in the same approved form more than one application or request.
- (3) The System Governor may approve:
  - (a) more than one approved form for an application or request;
  - (b) a different approved form for different circumstances.
- (4) If the System Governor approves a form under subsection (1), the System Governor must publish the form on the Department's website.

### 401 Approved forms—Commissioner functions

- (1) An application or a request under this Act that relates to a function of the Commissioner is in the approved form if:
  - (a) it is in a form approved in writing by the Commissioner for that kind of application or request; and
  - (b) it contains the information that the form requires, and any further information or document as the Commissioner requires, whether in the form or otherwise; and

# EXPOSURE DRAFT

Miscellaneous **Chapter 8**  
Applications, requests and notifications **Part 8**

## Section 402

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- 1 (c) for an application or request that is required to be given to the  
2 Commissioner—it is given in the manner that the  
3 Commissioner requires (which may include electronically).
- 4 (2) The Commissioner may combine in the same approved form more  
5 than one application or request.
- 6 (3) The Commissioner may approve:  
7 (a) more than one approved form for an application or request;  
8 (b) a different approved form for different circumstances.
- 9 (4) If the Commissioner approves a form under subsection (1), the  
10 Commissioner must publish the form on the Commission's  
11 website.

### 402 Requests for further information by System Governor or Commissioner

- 14 (1) If the System Governor or the Commissioner (the *decision-maker*)  
15 needs further information or a document to make a decision on an  
16 application or request made by an entity under this Act, the  
17 decision-maker may, by written notice, request the entity to give  
18 the further information or document to the decision-maker within a  
19 reasonable period specified in the notice.
- 20 (2) The specified period must not be shorter than:  
21 (a) if paragraph (b) does not apply—28 days after the notice is  
22 given; or  
23 (b) if circumstances prescribed by the rules apply in relation to  
24 the application or request—14 days after the notice is given.
- 25 (3) The decision-maker may, at the entity's request, extend the  
26 specified period.
- 27 (4) If the entity does not give the requested further information or  
28 document within:  
29 (a) if the specified period has been extended under  
30 subsection (3)—the period as so extended; or  
31 (b) otherwise—the specified period;

# EXPOSURE DRAFT

# EXPOSURE DRAFT

## Chapter 8 Miscellaneous

### Part 8 Applications, requests and notifications

#### Section 403

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1 the application or request is taken to be withdrawn at the end of the  
2 period.

3 (5) A notice given under subsection (1) must set out the effect of  
4 subsection (4).

#### 5 **403 When System Governor or Commissioner not required to make** 6 **a decision or do a thing**

##### 7 *Application or request not in approved form*

8 (1) If this Act requires an application or a request made to the System  
9 Governor or the Commissioner (the ***decision-maker***) to be in the  
10 approved form, the decision-maker is not required to make a  
11 decision on the application or request if it is not in that form.

##### 12 *Information or documents not provided*

13 (2) If this Act permits the System Governor or the Commissioner (the  
14 ***decision-maker***) to request or require information or documents for  
15 the purposes of, or for purposes relating to, making a decision or  
16 doing a thing, the decision-maker is not required to make the  
17 decision or do the thing until the information or documents are  
18 provided.

##### 19 *Application fee not paid*

20 (3) If this Act requires a fee to be paid in relation to an application or  
21 request made by an entity to the System Governor or the  
22 Commissioner (the ***decision-maker***), the decision-maker is not  
23 required to make a decision on the application or request if:  
24 (a) the fee has not been paid; and  
25 (b) the entity is not exempt from paying the fee; and  
26 (c) the decision-maker has not waived the fee.

#### 27 **404 Withdrawal of applications and requests**

28 An entity who has made an application or request to the System  
29 Governor or the Commissioner (the ***decision-maker***) under this

1 Act may withdraw the application or request at any time before the  
2 decision-maker makes a decision on the application or request.

3 **405 False or misleading information or documents in applications**  
4 **and requests**

5 An entity contravenes this section if the entity:

- 6 (a) provides information or a document in, or in connection with,  
7 an application or request made under this Act; and  
8 (b) the entity knows the information or document is false or  
9 misleading in a material particular.

10 Civil penalty: 60 penalty units.

11 Note: Part 7.4 of the Criminal Code provides offences in relation to false or  
12 misleading statements, information and documents.

13 **406 Method of notification by System Governor or Commissioner**

14 If this Act requires or permits the System Governor or the  
15 Commissioner (the *notifier*) to notify an entity, the notifier may  
16 notify the entity:

- 17 (a) by sending the notice by prepaid post addressed to the entity  
18 at the entity's postal address last known to the notifier; or  
19 (b) if the entity is an individual—by giving the notice to the  
20 entity personally; or  
21 (c) in any other way the notifier considers appropriate (including  
22 electronically).

# EXPOSURE DRAFT

## Chapter 8 Miscellaneous

### Part 9 Application fees and fees for services provided by the System Governor and Commissioner

#### Section 407

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## Part 9—Application fees and fees for services provided by the System Governor and Commissioner

### 407 Fees for services provided by the System Governor

- (1) The System Governor may, on behalf of the Commonwealth, charge fees prescribed by the rules for services prescribed by the rules that are provided by the System Governor in performing the System Governor's functions.
- (2) However, the System Governor must not charge an individual accessing, or seeking to access, funded aged care services, a supporter or representative of the individual or another person supporting the individual, a fee for a service provided by the System Governor in performing [to be drafted].
- (3) A fee charged under subsection (1):
  - (a) is a debt due to the System Governor, on behalf of the Commonwealth; and
  - (b) is recoverable by the System Governor, on behalf of the Commonwealth, in a court of competent jurisdiction.

### 408 Fees for services provided by the Commissioner

- (1) The Commissioner may, on behalf of the Commonwealth, charge fees prescribed by the rules for services prescribed by the rules that are provided by the Commissioner in performing the Commissioner's functions.
- (2) However, the Commissioner must not charge:
  - (a) an individual accessing, or seeking to access, funded aged care services, a supporter or representative of the individual or another person supporting the individual, a fee for a service provided by the Commissioner in performing the engagement and education functions; or

# EXPOSURE DRAFT

Miscellaneous **Chapter 8**  
Application fees and fees for services provided by the System Governor and  
Commissioner **Part 9**

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## Section 409

- 1 (b) a complainant fees for services provided by the  
2 Commissioner in performing the complaints functions.
- 3 (3) A fee charged under subsection (1):  
4 (a) is a debt due to the Commissioner, on behalf of the  
5 Commonwealth; and  
6 (b) is recoverable by the Commissioner, on behalf of the  
7 Commonwealth, in a court of competent jurisdiction.

### 409 Fees must not amount to taxation

- 8
- 9 (1) This section applies to:  
10 (a) a fee that, under this Act, must accompany an application or  
11 request made to the System Governor or the Commissioner;  
12 and  
13 (b) a fee that may be charged under section 407 or 408.
- 14 (2) The amount of the fee must not be such as to amount to taxation.

### 410 Exemptions from, and waivers and refunds of, fees

- 15 The rules may make provision in relation to the following:  
16  
17 (a) for a fee mentioned in section 407, or an application fee for  
18 an application made to the System Governor—the  
19 circumstances in which the System Governor may waive the  
20 fee;  
21 (b) for a fee mentioned in section 408, or an application fee for  
22 an application made to the Commissioner—the  
23 circumstances in which the Commissioner may waive the  
24 fee;  
25 (c) for a fee that, under this Act, must accompany an application  
26 or request made to the System Governor or the  
27 Commissioner:  
28 (i) the circumstances in which an entity is exempt from  
29 paying the fee; and  
30 (ii) the circumstances in which the fee may be refunded, in  
31 whole or in part.

# EXPOSURE DRAFT

Chapter 8 Miscellaneous

Part 10 Reports on and review of this Act

## Section 411

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### Part 10—Reports on and review of this Act

#### 411 Annual report on the operation of the Act

- (1) The System Governor must give the Minister, for presentation to each House of the Parliament, a report on the performance of the System Governor's functions during each financial year.
- (2) Without limiting subsection (1), the report must include information about the following matters:
  - (a) the extent of unmet demand for funded aged care services;
  - (b) the duration of waiting periods for funded aged care services;
  - (c) the number of registered providers entering and exiting the market for the delivery of funded aged care services;
  - (d) the financial viability of registered providers in that market;
  - (e) usage of the bond guarantee scheme;
  - (f) the amounts of contributions paid;
  - (g) the amounts of those contributions paid as refundable deposits;
  - (h) the amounts of accommodation bonds and accommodation charges charged;
  - (i) the extent of building, upgrading and refurbishment of residential care homes.

Note: For reporting and planning by the Commissioner, see Division 5 of Part 3 of Chapter 5.

#### 412 Review of operation of this Act

- (1) The Minister must cause an independent review of the operation of this Act to be conducted within 6 months after the fifth anniversary of the commencement of this Act.
- (2) The persons who conduct the review must give the Minister a written report of the review.



EXPOSURE DRAFT

Miscellaneous **Chapter 8**  
Reports on and review of this Act **Part 10**

Section 412

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- 1
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- (3) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the report is given to the Minister.

# EXPOSURE DRAFT

Chapter 8 Miscellaneous  
Part 11 Rules

## Section 413

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### Part 11—Rules

#### 413 Rules

- (1) The Minister may, by legislative instrument, make rules prescribing matters:
  - (a) required or permitted by this Act to be prescribed by the rules; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) To avoid doubt, the rules may not do the following:
  - (a) create an offence or civil penalty;
  - (b) provide powers of:
    - (i) arrest or detention; or
    - (ii) entry, search or seizure;
  - (c) impose a tax;
  - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
  - (e) directly amend the text of this Act.
- (3) Without limiting subsection (1), the rules may:
  - (a) make different provision in relation to different classes of registered providers, including by providing for certain matters to apply only to registered providers of a certain class;
  - (b) provide for the making of applications and requests in relation to matters dealt with by the rules and require the payment of fees prescribed by the rules for making such request.
- (4) Subsection (3) of this section does not limit subsection 33(3A) of the *Acts Interpretation Act 1901*.
- (5) Despite subsection 14(2) of the *Legislation Act 2003*, the rules may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained

## Section 413

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1 in any other instrument or other writing as in force or existing from  
2 time to time.

3 *Prerequisites for rules specifying aged care worker screening laws*

- 4 (6) Before the Minister makes rules specifying a law of a State or  
5 Territory for the purposes of the definition of ***aged care worker***  
6 ***screening law*** in section 7, the Minister must be satisfied that:  
7 (a) the law establishes a scheme for the screening of workers for  
8 purposes including the purposes of this Act; and  
9 (b) the State or Territory agrees to the law being specified.

10 *Amounts and methods for working out amounts*

- 11 (7) The rules may prescribe an amount by:  
12 (a) specifying the amount; or  
13 (b) specifying a method for working out the amount.

14