

12 March 2025

To the Department of Health and Aged Care

New Aged Care Act Rules consultation – Release 3 – Provider obligations

Ageing Australia welcomes the opportunity to provide feedback on the rules relating to provider obligations included in Release 3.

Ageing Australia is the national peak body for aged care, representing providers of retirement living, seniors housing, residential care, home care and community services. We advocate for our members, providing expert advice, resources and tailored services to ensure they deliver exceptional care to older Australians.

Ageing Australia's recommendations and key messages are provided below. Specific comments on the Release 3 rules are contained in **Appendix 1**.

Recommendations

- R1 Clarify language used in the rules to ensure they are easy to understand and reduce room for misinterpretation.**
- R2 The Department of Health and Aged Care or Aged Care Quality and Safety Commission (as appropriate) should produce resources which:**
 - a) map existing requirements to new requirements, clearly identifying any changes.**
 - b) summarise what kinds of providers need to meet which obligations.**
 - c) identify all changes made to the strengthened Quality Standards since the November 2023 final draft.**
- R3 That Government increase funding for providers to ensure they are adequately funded to meet any new requirements from the commencement of the new Aged Care Act, in addition to the prices recommended by the Independent Health and Aged Care Pricing Authority from 2025-26.**
- R4 Amend the wording of obligations that use the word 'ensure' where the outcome cannot be guaranteed.**
- R5 Address the comments included in Appendix 1.**

Overall

Based on sector feedback, we believe that some of the current language is unclear, making it difficult for providers to be certain of meaning. As a result, there may be significant unintended consequences and unintentional non-compliance if the wording is not clarified. For example, while we note fact sheets are available that provide an overview of the worker screening requirements, the relevant rules could be clearer (Part 6, Division 1, Subdivision B) including to make it clear that an aged care clearance decision or an NDIS clearance decision in one State or Territory applies Australia-wide.

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We also note there are many sections of the rules that are yet to be drafted. A lack of clarity is adding to the pressures providers already face when preparing for the commencement of the new Aged Care Act on 1 July 2025. Indeed, providers require the certainty of 'final' rules to enable their preparations (particularly training of staff and amending policies and procedures) – and this is particularly relevant for this release, given its focus on provider obligations.

While components of the rules are the same or similar to current obligations, providers will need to consider what requirements apply to them and whether they need to make any changes to their current policies, systems and practices. Where there are interactions between the strengthened Quality Standards (Standards) and other obligations, providers will also need to review these – and may impact the work they have done to date to prepare for the Standards.

To support providers to prepare, the Department should release resources which map existing requirements to new requirements, clearly identifying any changes, and summarising what kinds of providers need to meet which requirements. This would help to increase providers' confidence in meeting the relevant obligations.

We also recommend that any new requirements must be adequately costed and funded from commencement of the new Aged Care Act. This includes, for example, those contained within the Standards (for which 13% of the expectations are new¹) and the requirement to provide a care minutes performance statement (which will require providers to incur the cost of getting an audited statement). To not adequately cost and fund new requirements from commencement of the new Aged Care Act will put a sector already experiencing significant financial sustainability challenges further behind.

Compliance burden

The overall scope of requirements represents a significant compliance burden for providers. One example is the complaints reporting requirements, specifically the requirement to report information about 'each complaint and feedback', as well as an evaluation of the effectiveness of actions taken, and education and training delivered to staff in relation to 'each complaint and feedback' (subsection 166-210(4)). While we agree that quality improvement is critical to aged care, overly prescriptive and/or onerous requirements impacts on the capacity of the workforce to provide direct care and inhibits continuous improvement and innovation.

We also note that the [*Impact Analysis on the Aged Care Bill 2024*](#) stated that '*The Department will remain alert to opportunities to further reduce the regulatory burden for affected stakeholders. The new Act would impose additional requirements on aged care providers, potentially increasing costs and pressure on the sector.*' This was quantified at \$751,000 with the Department to '*remain alert to opportunities to further reduce the regulatory burden for affected stakeholders*'. Ageing Australia is aware of individual providers who have already spent more than \$1 million preparing for the changed/new requirements under the new Act, let alone the sector wide costs.

The Department should consider what requirements can be streamlined – in the context of reform of this magnitude in the timeframe required and the pressures associated with preparing for the new Act.

¹ [*What's different in the strengthened Quality Standards*](#), Department of Health and Aged Care.

Strengthened Quality Standards

Appendix 1 identifies a range of examples in the Standards where clarification is needed (including in guidance materials) or where there may be barriers to achieving certain outcomes, including in the home care context.

Some issues have emerged as a result of the wording changes made to the Standards since the November 2023 version (with some of these changes identified in the supporting consultation document). We agree that some of the changes made were necessary to align terminology with the new Act.

We also note language changes designed to make requirements for providers clearer, such as through introducing the word 'must'. In Appendix 1 we have identified examples where 'must' is paired with the word 'ensure' and creates unreasonable expectations (note in Appendix 1 we have also identified other examples outside of the Standards where the word 'ensure' is problematic). For example, under Standard 7, residential care providers 'must ensure' that individuals feel safe in their residential care home. Providers cannot ensure or guarantee a person feels a certain way. It is important that the Standards are achievable and that the Commission adopts a proportionate approach to regulating the Standards.

We also note some other changes to the Standards made since the November 2023 version of the draft standards, in particular changing the word 'managed' to 'controlled' for Standard 5(4) (Preventing and controlling infections in delivering clinical care services). Members have raised concerns about this change in language, as controlling infection risks may not be achievable at all times and in all circumstances e.g. where there is overcrowding in an individual's home.

As providers are under significant pressure to prepare for the commencement of the new Act on 1 July 2025, we also recommend a resource be released after the rules are made identifying every change made to the Standards since the November 2023 version, for transparency and to support providers with their preparations.

For further feedback on the Release 3 rules, please see **Appendix 1**.

Thank you again for the opportunity to provide feedback on rules relating to provider obligations included in release 3. Please contact Anne Liddell, Head of Policy, at anne.liddell@ageingaustralia.asn.au if you have any questions or would like to discuss this submission.

Yours sincerely,

Roald Versteeg
General Manager Policy & Advocacy

Attachments Appendix 1: Feedback on consultation draft rules – Release 3

CONSULTATION DRAFT

Appendix 1: Feedback on consultation draft rules – Release 3



CONSULTATION DRAFT

Aged Care Rules 2025

I, Anika Wells, Minister for Aged Care, make the following rules.

Dated 2025

Anika Wells [**DRAFT ONLY—NOT FOR SIGNATURE**]
Minister for Aged Care

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

Section 1-5

Chapter 1—Introduction

Part 1—Preliminary

1-5 Name

This instrument is the *Aged Care Rules 2025*.

2-5 Commencement

- (1) Each provision of this instrument 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 instrument	At the same time as the <i>Aged Care Act 2024</i> commences.	

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

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

3-5 Authority

This instrument is made under the *Aged Care Act 2024*.

4-5 Simplified outline of this instrument

[To be drafted.]

[Amounts in this draft are approximate and subject to change before 1 July 2025.]

CONSULTATION DRAFT

Chapter 1 Introduction

Part 2 Definitions

Section 5-5

Part 2—Definitions

5-5 Definitions

Note: The following expressions used in this instrument are defined in the Act:

- (a) care and services plan;
- (b) enrolled nurse;
- (c) health service;
- (d) means testing category;
- (e) Multi-Purpose Service Program;
- (f) National Law;
- (g) nursing;
- (h) nursing assistant;
- (i) registered nurse;
- (j) service agreement;
- (k) specialist aged care program;
- (l) subsidy basis;
- (m) Transition Care Program;
- (n) transition time.

In this instrument:

2017 MM category means a category for an area provided for by the Modified Monash Model, as the model existed on 1 January 2017.

2019 MM category means a category for an area provided for by the Modified Monash Model, as the model existed on 1 October 2022.

accepted mental health condition means a mental health condition for which:

- (a) the Repatriation Commission has accepted liability to pay a pension under the Veterans' Entitlements Act; or
- (b) the Military Rehabilitation and Compensation Commission has accepted liability to pay compensation under the MRC Act or the *Safety, Rehabilitation and Compensation Act 1988*.

accommodation wing, of an approved residential care home, includes any of the following:

- (a) a building;
- (b) a floor or level of a building;
- (c) an annex to a building;

that is used to provide accommodation for an individual to whom funded aged care services are being delivered in the home.

Act means the *Aged Care Act 2024*.

additional service fee: see section 285-20.

aged care financial report, for a registered provider, means the report required by section 166-310.

Commented [A1]: This should also include a part of a building, part of a floor, part of a level or part of an annex.

CONSULTATION DRAFT

Introduction **Chapter 1**

Definitions **Part 2**

Section 5-5

aged care interim bar means an interim decision (however described) made under an aged care worker screening law, being a decision made:

- (a) after an aged care screening applicant has made an aged care screening application; and
- (b) before a decision has been made to issue an aged care exclusion decision or an aged care clearance decision in response to that application;

having the effect that the applicant is barred from working, or seeking to work, with individuals accessing funded aged care services while the application is determined.

aged care screening applicant means a screening applicant within the meaning of paragraph 379(5)(a) of the Act.

aged care screening application means a screening application within the meaning of paragraph 379(5)(a) of the Act.

aged care worker screening unit means the person or body which is responsible for conducting aged care worker screening checks under an aged care worker screening law of a State or Territory.

age pension means age pension under Part 2.2 of the Social Security Act.

annual prudential compliance statement, for a registered provider, means the statement required by section 166-360.

approved health practitioner means a medical practitioner, nurse practitioner or registered nurse.

ARIA value, for a location, means the value given to that location in accordance with the methodology set out in the document titled *Measuring Remoteness: Accessibility/Remoteness Index of Australia (ARIA)*, Occasional Papers: New Series Number 14, published by the Department in October 2001, as the document existed on 1 July 2013.

Note: The *Measuring Remoteness: Accessibility/Remoteness Index of Australia (ARIA)* could in 2025 be viewed on the Department's website (<https://www.health.gov.au>).

AT-HM List means the Assistive Technology and Home Modifications List published by the Department, as existing on [date of commencement of this instrument].

Australian accounting standards means the accounting standards in force under section 334 of the *Corporations Act 2001*.

base efficient price, for a funded aged care service: see Part 4.

base unit price, for a funded aged care service: see Part 4.

building status amount for an individual for a day: see subsection 230-15(1).

calculation day, for a quarter, means the 15th day of the calendar month before the calendar month in which the quarter begins.

care minutes performance statement, for a registered provider, means the statement required by section 166-335.

CONSULTATION DRAFT

Chapter 1 Introduction

Part 2 Definitions

Section 5-5

Category A residential care home means an approved residential care home that, immediately before the transition time, was a multi-purpose service (within the meaning of section 104 of the *Subsidy Principles 2014*) that was a Category A service within the meaning of section 88 of the *Aged Care (Subsidy, Fees and Payments) Determination 2014*.

Category B residential care home means an approved residential care home that, immediately before the transition time, was a multi-purpose service (within the meaning of section 104 of the *Subsidy Principles 2014*) that was a Category B service within the meaning of section 89 of the *Aged Care (Subsidy, Fees and Payments) Determination 2014*.

Category C residential care home means an approved residential care home that, immediately before the transition time, was a multi-purpose service (within the meaning of section 104 of the *Subsidy Principles 2014*) that was a Category C service within the meaning of section 90 of the *Aged Care (Subsidy, Fees and Payments) Determination 2014*.

Category D residential care home means an approved residential care home that is not a Category A residential care home, Category B residential care home or Category C residential care home.

chemical restraint: see subsection 17-5(2).

CHSP is short for the program known as the Commonwealth Home Support Program.

CHSP contribution: see subsection 286-15(1).

compensation has the same meaning as in the *Health and Other Services (Compensation) Act 1995*.

compensation payer has the same meaning as in the *Health and Other Services (Compensation) Act 1995*.

confirmed screening applicant: a person is a **confirmed screening applicant** if:

- (a) the person has made an aged care screening application or NDIS screening application; and
- (b) an aged care worker screening unit or NDIS worker screening unit has issued a notice in writing to the person confirming that the application has been made; and
- (c) a registered provider has confirmed to the unit that the person is, or intends to be, a responsible person or an aged care worker of the provider; and
- (d) the registered provider has seen the notice mentioned in paragraph (b) and has made a record of the application number (see section [to be drafted] of this instrument).

contact includes physical contact, face-to-face contact, oral communication, written communication and electronic communication.

Co-operatives National Law means the Law set out in the appendix to the *Co-operatives (Adoption of National Law) Act 2012* (NSW), and applying in a State or Territory under the following:

CONSULTATION DRAFT

Introduction **Chapter 1**

Definitions **Part 2**

Section 5-5

- (a) *Co-operatives (Adoption of National Law) Act 2012* (NSW);
- (b) *Co-operatives National Law Application Act 2013* (Vic);
- (c) *Co-operatives National Law Act 2020* (Qld);
- (d) *Co-operatives National Law (South Australia) Act 2013* (SA);
- (e) *Co-operatives National Law (Tasmania) Act 2015* (Tas);
- (f) *Co-operatives National Law (ACT) Act 2017* (ACT);
- (g) *Co-operatives (National Uniform Legislation) Act 2015* (NT).

counted mainstream individual has the meaning given by subsection 176-15(5).

counted NATSIFACP individual has the meaning given by subsection 176-35(5).

day of eligible residential funded aged care services: see subsection 239-15(4).

day of recognised residential care: see subsections 176-20(4) and (5).

diverse cultural activities includes cultural activities for the following:

- (a) Aboriginal or Torres Strait Islander persons;
- (b) individuals from culturally, ethnically and linguistically diverse backgrounds;
- (c) individuals who are lesbian, gay, bisexual, trans/transgender or intersex or other sexual orientations, gender diverse or bodily diverse.

diverse individual, means an individual who is:

- (a) an Aboriginal or Torres Strait Islander person, including an Aboriginal or Torres Strait Islander person from the stolen generations; or
- (b) a veteran or war widow; or
- (c) from a culturally, ethnically and linguistically diverse background; or
- (d) experiencing homelessness or at risk of experiencing homelessness; or
- (e) a parent or child who is or was separated by forced adoption or removal; or
- (f) an adult survivor of institutional child sexual abuse; or
- (g) a care-leaver, including a Forgotten Australian or former child migrant placed in out of home care; or
- (h) lesbian, gay, bisexual, trans/transgender or intersex or other sexual orientations or is gender diverse or bodily diverse; or
- (i) an individual with disability or mental ill-health; or
- (j) neurodivergent; or
- (k) deaf, deafblind, vision impaired or hard of hearing.

environmental restraint: see subsection 17-5(3).

extra service fee: see section 285-15.

financial support statement, for a registered provider, means the statement required by section 166-315.

first asset threshold means \$206,039.

first income threshold means \$83,324.

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fourth asset threshold means \$502,981.

fourth income threshold means \$131,279.

giving day, for a financial support statement, has the meaning given by subsection 166-320(3).

grant agreement means one or more grants of financial assistance to a registered provider for the delivery of funded aged care services entered into by the System Governor on behalf of the Commonwealth under section 264 of the Act.

group A residential care home, for a payment period: see subsection 239-15(2).

group B residential care home, for a payment period: see subsection 239-15(3).

has specialised Aboriginal or Torres Strait Islander status: an approved residential care home **has specialised Aboriginal or Torres Strait Islander status** on a day if a determination that the home has specialised Aboriginal or Torres Strait Islander status under subsection 243(3) of the Act is in effect on the day.

has specialised homeless status: an approved residential care home **has specialised homeless status** on a day if a determination that the home has specialised homeless status under subsection 243(3) of the Act is in effect on the day.

health profession has the same meaning as in the National Law.

health professional means a person who is registered under the National Law in a health profession.

higher everyday living agreement has the same meaning as in section 284 of the Act.

home or community place, for an approved residential care home of a registered provider in or from which the provider delivers funded aged care services through the service group home support, assistive technology or home modifications under the MPSP, means a place allocated to the registered provider for delivering those services in or from that home.

in a service group: a funded aged care service is **in a service group** if the service is in a service type that is in the service group.

Note: See Part 4.

income tested fee, for an individual in the pre-2014 residential contribution class for a day, means the daily means tested amount for the individual.

Note: For an individual in the pre-2014 residential contribution class, the calculation of the daily means tested amount involves the individual's income but not their assets (see section 319-15).

individual's room, in an approved residential care home:

- (a) means a room, or a part of a room, in the home that:
 - (i) is intended to be occupied as personal space by an individual to whom funded aged care services are delivered in the home; and
 - (ii) contains a bed to be used by the individual; and

Commented [A2]: Are these amounts indexed and, if yes, on what basis?

Commented [A3]: How is a place allocated to the registered provider?

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- (b) includes:
- (i) the areas that are in the immediate vicinity of the bed in the room or the part of the room; and
 - (ii) the contents of the room or the part of the room; and
 - (iii) an ensuite, or a shared bathroom and toilet, that is for the use of the individual.

individual nominee: see subsection 6-15(2).

judgment has the same meaning as in the *Health and Other Services (Compensation) Act 1995*.

loading amount, for a loading type that applies to a funded aged care service, means [to be confirmed].

loading type: see subsection 31(2).

low-means individual: an individual to whom a registered provider is delivering funded aged care services for a classification type for the service group residential care is a **low-means individual** if, on the start day for the individual for the classification type, the individual's means tested amount was less than the maximum accommodation supplement amount for that day.

low means resident: see section 230-13.

major city means one of the major cities of Australia within the meaning of the *Australian Statistical Geography Standard (ASGS) Edition 3*, as existing from time to time, published by the Australian Bureau of Statistics.

Note: The *Australian Statistical Geography Standard (ASGS) Edition 3* could in 2025 be viewed on the Australian Bureau of Statistics website (<https://www.abs.gov.au>).

means tested care fee, for an individual in the post-2014 home contribution class or the post-2014 residential contribution class for a day, means the daily means tested amount for the individual (see section 319-20).

means testing class: each of the following is a **means testing class**:

- (a) full-pensioner;
- (b) part pensioner;
- (c) seniors health card holder;
- (d) self-funded retiree.

mechanical restraint: see subsection 17-5(4).

medical or psychological treatment in relation to a priority 1 reportable incident under section 166-520 means treatment that may only be provided by a medical practitioner, nurse practitioner, registered nurse, psychologist or social worker.

medical practitioner has the same meaning as in the *Health Insurance Act 1973*.

medical treatment authority, for an individual (the **individual concerned**), means an individual or body that, under the law of the State or Territory in which the individual concerned accesses funded aged care services, has been appointed in writing as an individual or body that can give informed consent to the

Commented [A4]: Is it intended that these four classes cover everyone? In which case it should be made clear that the fourth class includes everyone other than a full pensioner, a part pensioner and a seniors health card holder.

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provision of medical treatment (however described) to the individual concerned if the individual concerned lacks capacity to give that consent.

[It is intended that the rules will be amended with effect from 1 December 2026 to repeal the definition of *medical treatment authority*.]

Commented [A5]: What is intended to happen from 1 December 2026?

minimum monetary spend amount, for an approved residential care home that has been, or is proposed to be, significantly refurbished, means the amount worked out by multiplying \$25,000 by 40% of the lower of:

- (a) the total number of individual's rooms in the home before the commencement of the refurbishment; and
- (b) the total number of individual's rooms in the home after the completion of the refurbishment.

Modified Monash Model means the model known as the Modified Monash Model developed by the Department for categorising metropolitan, regional, rural and remote locations according to both geographical remoteness and population size, based on population data published by the Australian Bureau of Statistics, as the model exists from time to time.

Note: The Modified Monash Model could in 2025 be viewed on the Department's website (<https://www.health.gov.au>).

more than incidental contact: without limiting what may constitute *more than incidental contact*, the normal duties of a role of an aged care worker of a registered provider are likely to require *more than incidental contact* with an individual to whom the provider is delivering funded aged care services if those duties include:

- (a) physically touching an individual to whom the provider is delivering funded aged care services; or
- (b) building a rapport with an individual to whom the provider is delivering funded aged care services as an integral and ordinary part of the performance of those duties; or
- (b) having contact with multiple individuals to whom the provider is delivering funded aged care services:
 - (i) as part of the direct delivery of funded aged care services; or
 - (ii) in an approved residential care home.

MPSP is short for Multi-Purpose Service Program.

MPSP provider means a registered provider that, under an agreement with the Commonwealth under paragraph 247(1)(a) of the Act, delivers services under the MPSP.

MRC Act means the *Military Rehabilitation and Compensation Act 2004*.

national efficient price: the *national efficient price* for residential care activity is \$280.01.

National Law has the same meaning as in the *Health Insurance Act 1973*.

NATSIFACP is short for the program known as the National Aboriginal and Torres Strait Islander Flexible Aged Care Program.

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NDIS interim bar means an interim bar within the meaning of the *National Disability Insurance Scheme (Practice Standards—Worker Screening) Rules 2018*.

NDIS screening applicant means a screening applicant within the meaning of paragraph 181Y(5)(a) of the NDIS Act.

NDIS screening application means a screening application within the meaning of paragraph 181Y(5)(a) of the NDIS Act.

NDIS worker screening unit has the same meaning as in the *National Disability Insurance Scheme (Practice Standards—Worker Screening) Rules 2018*.

newly built home: see section 230-20.

nominee group has the meaning given by subsection 6-15(3).

non-clinical wraparound service, for the supply to an individual of a product listed in the AT-HM List, means any of the following:

- (a) setting up, fitting or providing training on the use of the product;
- (b) providing support and troubleshooting to minimise abandonment of the product;
- (c) maintenance and follow-up for the product (including evaluating the effects on functioning);
- (d) for a product for which the supply basis is loan or rental—refurbishment or disposal of the product at the end of its safe working life.

nurse practitioner has the same meaning as in the *Health Insurance Act 1973*.

NWUA (short for National Weighted Activity Unit) means a measure of residential care activity, expressed as a common unit, against which the national efficient price is set.

occupational therapist means a person who is registered under the National Law in the occupational therapy profession.

occupied bed, for an approved residential care home on a day, means an operational bed for the home that is occupied by an individual to whom funded aged care services are delivered on the day.

offline bed, for an approved residential care home, means a bed covered by the approval of the home that is covered by a notice under section 167 of the Act given in accordance with section [to be drafted] of this instrument.

operational bed, for an approved residential care home, means a bed covered by the approval of the home that is not an offline bed for the home.

Pension Rate Calculator A means the Rate Calculator at the end of section 1064 of the Social Security Act.

permitted uses reconciliation has the meaning given by section 166-325.

physical restraint: see subsection 17-5(5).

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police certificate, for a person, means:

- (a) a report about the person's criminal conviction record prepared by:
 - (i) the Australian Federal Police; or
 - (ii) the Australian Criminal Intelligence Commission; or
 - (iii) an agency accredited by the Australian Criminal Intelligence Commission; or
 - (iv) the police force or police service of a State or Territory; or
- (b) for a responsible person of a registered provider that delivers funded aged care services in South Australia, or an aged care worker delivering funded aged care services in South Australia—the screening check known as the Aged Care Sector Employment Check issued to the person by the Department administered by the Minister administering the *Disability Inclusion Act 2018* (SA).

post-2014 home contribution class: an individual is in the **post-2014 home contribution class** if:

- (a) on 12 September 2024, the individual was approved as a recipient of home care (within the meaning of the old Act); and
- (b) the individual has not elected, in the approved form, to cease being a member of the class or of the post-2014 residential contribution class.

post-2014 residential accommodation class: an individual is in the **post-2014 residential accommodation class** if:

- (a) at the transition time, the individual is in the post-2014 residential contribution class; and
- (b) since the transition time, the individual has not:
 - (i) both:
 - (A) elected, in the approved form, to cease being a member of the post-2014 residential contribution class; and
 - (B) ceased accessing funded aged care services in an approved residential care home and started accessing funded aged care services in another approved residential care home; or
 - (ii) ceased accessing funded aged care services in an approved residential care home for a continuous period of more than 28 days.

Commented [A6]: Is this correct? This clause and the following definition for post-2014 residential contribution class appears to be at odds and exclude those people who are residents prior to transition and remain in the home post transition and whose fee and means tested care fee arrangements should be grandfathered (refer section 277 of this instrument)

Commented [A7]: How will this work with leave such as hospital leave and emergency leave?

post-2014 residential contribution class: an individual is in the **post-2014 residential contribution class** if:

- (a) the individual entered residential care (other than as a recipient of respite care) (within the meaning of the old Act) before the transition time; and
- (b) immediately before the transition time, the individual was not a continuing residential care recipient (within the meaning of the old Act); and
- (c) if, at the transition time, the individual is not accessing funded aged care services in an approved residential care home—the sum of the following periods is not more than 28 days:
 - (i) the period (if any) immediately before the transition time during which the individual had ceased to be provided with residential care by a residential care service (other than because the person was on leave (within the meaning of the old Act));

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- (ii) the period beginning at the transition time during which the individual does not access funded aged care services in an approved residential care home; and
- (d) the individual has not elected, in the approved form, to cease being a member of the class or of the post-2014 home contribution class.

pre-2014 accommodation class: an individual is in the ***pre-2014 accommodation class*** if:

- (a) immediately before the transition time, any of the following were in effect for the individual:
 - (i) a formal agreement (within the meaning of the old Act);
 - (ii) an accommodation bond agreement (within the meaning of the *Aged Care (Transitional Provisions) Act 1997*);
 - (iii) an accommodation charge agreement (within the meaning of the *Aged Care (Transitional Provisions) Act 1997*); and
- (b) if, at the transition time, the individual is not accessing funded aged care services in an approved residential care home—the sum of the following periods is not more than 28 days:
 - (i) the period (if any) immediately before the transition time during which the individual had ceased to be provided with residential care by a residential care service (other than because the person was on leave (within the meaning of the old Act));
 - (ii) the period beginning at the transition time during which the individual does not access funded aged care services in an approved residential care home; and
- (c) since the transition time, the individual has not:
 - (i) elected, in the approved form, to cease being a member of the pre-2014 residential contribution class; and
 - (ii) ceased accessing funded aged care services in an approved residential care home and started accessing funded aged care services in another approved residential care home.

pre-2014 residential contribution class: an individual is in the ***pre-2014 residential contribution class*** if:

- (a) immediately before the transition time, the individual was a continuing residential care recipient (within the meaning of the old Act); and
- (b) if, at the transition time, the individual is not accessing funded aged care services in an approved residential care home—the sum of the following periods is not more than 28 days:
 - (i) the period (if any) immediately before the transition time during which the individual had ceased to be provided with residential care by a residential care service (other than because the person was on leave (within the meaning of the old Act));
 - (ii) the period beginning at the transition time during which the individual does not access funded aged care services in an approved residential care home; and
- (c) the individual has not elected, in the approved form, to cease being a member of the class.

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principal home has the meaning given by section 11A of the Social Security Act other than subsections 11A(8) and (9) (which deal with the effect of absences from the principal home).

Note: An individual's principal home may be in a retirement village (see section 12 of the Social Security Act).

qualifying residential care home, for a payment period: see subsection 239-15(1).

quarter means a period of 3 months beginning on 1 January, 1 April, 1 July or 1 October.

quarterly financial report, for a registered provider, means the report required by section 166-340.

rappro means a relationship or understanding, being more than merely polite and functional.

reference period, for a quarter, has the meaning given by subsection 176-20(6).

refurbishment cost, for an approved residential care home that has been, or is proposed to be, significantly refurbished, means:

- (a) unless paragraph (b) applies—the total cost of the refurbishment or proposed refurbishment of the home; or
- (b) if the refurbishment or proposed refurbishment includes fire safety improvements, and the cost of the fire safety improvements is more than 25% of the minimum monetary spend amount for the home—the total cost of the refurbishment or proposed refurbishment, reduced by the amount by which the cost of the fire safety improvements exceeds 25% of the minimum monetary spend amount for the home.

registered nurse staff member means a staff member of a registered provider who is a registered nurse.

reimbursement arrangement has the same meaning as in the *Health and Other Services (Compensation) Act 1995*.

representative, of a consumer: see section 6-10.

residential care place, for an approved residential care home of a registered provider in which the provider delivers funded aged care services through the service group residential care under the MPSP, means a place allocated to the registered provider for delivering those services in that home.

restrictive practices nominee: see subsection 6-15(1).

restrictive practices substitute decision-maker: see section 6-20.

risk assessed role: each of the following roles is a **risk assessed role** of a registered provider:

- (a) a role of a responsible person of the provider;

Commented [A8]: Should this be 'an individual'?

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- (b) a role of an aged care worker of the provider for which the normal duties include the direct delivery to an individual of a funded aged care service specified in [to be drafted];
- (c) a role of an aged care worker of the provider for which the normal duties are likely to require more than incidental contact with an individual to whom the provider is delivering funded aged care services.

RRMA Classification means the *Rural, Remote and Metropolitan Area Classification*, 1991 Census Edition, published by the Australian Government Publishing Service, as in force in November 1994.

seclusion: see subsection 17-5(6).

second asset threshold means \$238,000.

second income threshold means \$95,400.

seniors health card has the same meaning as in the Social Security Act.

settlement has the same meaning as in the *Health and Other Services (Compensation) Act 1995*.

significantly refurbished home means an approved residential care home in relation to which a determination under subsection 230-30(1) or 230-35(1) is in effect.

Social Security Act means the *Social Security Act 1991*.

specialist Aboriginal or Torres Strait Islander programs means specialist programs for Aboriginal or Torres Strait Islander persons and includes, but is not limited to, the following:

- (a) programs to deliver care and services that are culturally safe for, and tailored to meet the particular needs of, the Aboriginal or Torres Strait Islander persons to whom funded aged care services are being delivered in the approved residential care home in question;
- (b) programs to promote social and cultural engagement and participation of Aboriginal or Torres Strait Islander persons;
- (c) any other relevant programs that the System Governor considers appropriate.

specialist aged care program fee: see subsection 286-10(1).

specialist homeless programs means specialist programs for persons with a background as a homeless person and includes, but is not limited to, the following:

- (a) programs and interventions to manage complex behavioural needs of persons with that background;
- (b) programs to promote social engagement and participation of persons with that background;
- (c) any other relevant programs that the System Governor considers appropriate.

Commented [A9]: Are these amounts indexed and, if yes, on what basis?

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Statement of Accounting Concepts SAC 1 means the Statement of Accounting Concepts SAC 1 Definition of Reporting Entity published by the Australian Accounting Standards Board.

supported individual: an individual is a **supported individual** if, immediately before the transition time, the individual was a supported resident within the meaning of the *Aged Care (Transitional Provisions) Act 1997*.

TCP is short for Transition Care Program.

third asset threshold means \$299,480.

third income threshold means \$103,583.

transitional classification level: each of the following is a **transitional classification level**:

- (a) HCP class 1;
- (b) HCP class 2;
- (c) HCP class 3;
- (d) HCP class 4.

unrealisable asset has the meaning given by subsections 11(12) and (13) of the Social Security Act.

veteran means a person:

- (a) who is taken to have rendered eligible war service under section 7 of the Veterans' Entitlements Act; or
- (b) in respect of whom a pension is payable under subsection 13(6) of that Act; or
- (c) who is:
 - (i) a member of the Forces within the meaning of subsection 68(1) of that Act; or
 - (ii) a member of a Peacekeeping Force within the meaning of that subsection; or
- (d) who is:
 - (i) a member within the meaning of the MRC Act; or
 - (ii) a former member within the meaning of that Act; or
- (e) who is an employee within the meaning of the *Safety, Rehabilitation and Compensation Act 1988*.

Note: The Acts mentioned in paragraphs (d) and (e) provide that, in some cases:

- (a) a member of the Forces, or a member of a Peacekeeping Force, includes a person who is no longer serving; and
- (b) an employee includes a person who has ceased to be an employee.

Veterans' Entitlements Act means the *Veterans' Entitlements Act 1986*.

6-5 References to actions or statements by health professionals

In this instrument, a reference to an action taken or a statement given by a health professional is a reference to such actions or statements that are within the health professional's scope of practice.

Commented [A10]: Are these amounts indexed and, if yes, on what basis?

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6-10 Meaning of *representative*

- (1) **Representative**, of an individual accessing funded aged care services, means:
- (a) a person nominated by the individual as a person to be told, by a registered provider delivering funded aged care services to the individual, about matters affecting the individual; or
 - (b) a person:
 - (i) who nominates themselves, to a registered provider delivering funded aged care services to the individual, as a person to be told about matters affecting an individual; and
 - (ii) who the provider is satisfied has a connection with the individual and is concerned for the safety, health and well-being of the individual.
- (2) Without limiting subparagraph (1)(b)(ii), a person has a connection with an individual if:
- (a) the person is a partner, close relation or other relative of the individual; or
 - (b) the person holds an enduring power of attorney given by the individual; or
 - (c) the person has been appointed by a State or Territory guardianship board (however described) to deal with the individual's affairs; or
 - (d) the person represents the individual in dealings with the provider.
- (3) Nothing in this section is intended to affect the powers of a substitute decision-maker appointed for a person under a law of a State or Territory.

Commented [A11]: The purpose of the definition of representative is unclear including how it is intended to interact with the "supporters" regime. It is also unclear if this gives a representative a right to access information they would not otherwise be entitled to. The wording in (b)(i) suggests they do have this right which is problematic for providers seeking to protect privacy.

Commented [A12]: We recommend this be clarified in the event more than one person claims to be the representative.

Commented [A13]: This (d) seems circular - ie the person says they are the representative and purports to be, therefore they have a connection, therefore they *should* be treated as the representative. Recommend deleting (d).

6-15 Nominating restrictive practices nominees

[It is intended that the rules will be amended with effect from 1 December 2026 to repeal section 6-15.]

- (1) **Restrictive practices nominee**, for a restrictive practice in relation to an individual, means:
- (a) if there is only a single individual nominee for the restrictive practice in relation to the individual—that individual nominee; or
 - (b) if there is only a nominee group for the restrictive practice in relation to the individual—that nominee group; or
 - (c) if there is more than one individual nominee, or a nominee group and one or more individual nominees, for the restrictive practice in relation to the individual—the individual nominee or nominee group (as applicable) that takes precedence (see paragraph (9)(a)).
- (2) **Individual nominee**, for a restrictive practice in relation to an individual (the **individual concerned**), means an individual:
- (a) who has been nominated by the individual concerned, in accordance with this section, as an individual who can give informed consent to the use of the restrictive practice in relation to the individual concerned if the individual concerned lacks capacity to give that consent; and
 - (b) who has agreed, in writing, to the nomination (and has not withdrawn that agreement); and
 - (c) who has capacity to give the informed consent mentioned in paragraph (a).

Commented [A14]: What is intended to happen from 1 December 2026?

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- (3) **Nominee group**, for a restrictive practice in relation to an individual (the **individual concerned**), means a group of individuals:
- (a) who have been nominated by the individual concerned, in accordance with this section, as a group of individuals who can jointly give informed consent to the use of the restrictive practice in relation to the individual concerned if the individual concerned lacks capacity to give that consent; and
 - (b) each of whom has agreed, in writing, to the nomination (and has not withdrawn that agreement); and
 - (c) each of whom has capacity to give the informed consent mentioned in paragraph (a).
- (4) An individual may make, vary or revoke a nomination only if the individual concerned has capacity to do so.
- (5) A nomination, or a variation or revocation of a nomination, must be made in writing.
- (6) A nomination (or varied nomination) of a group may nominate not more than 3 individuals as members of the group.
- (7) A nomination (or varied nomination) may include only one nomination of a group.
- (8) An individual may be nominated as an individual, or as a member of a group, but not both.
- (9) If a nomination (or a varied nomination) nominates more than one individual nominee, or both one or more individual nominees and a nominee group, the nomination (or varied nomination) must:
- (a) state the order of precedence in which the individual nominees and nominee group (as applicable) are nominated; and
 - (b) if a nominee group is nominated—state the rules that will apply if the members of the group cannot agree on whether to give informed consent as mentioned in paragraph (3)(a) in a particular case.
- (10) An individual (the **individual concerned**) may nominate, as an individual or a member of a group, an aged care worker of a registered provider that is delivering funded aged care services to the individual concerned only if the aged care worker is the partner or a relative of the individual concerned.

6-20 Meaning of *restrictive practices substitute decision-maker*

- (1) An individual or body is the **restrictive practices substitute-decision maker** for a restrictive practice in relation to an individual (the **individual concerned**) if the individual or body has been appointed, under the law of the State or Territory in which the individual concerned accesses funded aged care services, as an individual or body that can give informed consent to the use of the restrictive practice in relation to the individual concerned if the individual concerned lacks capacity to give that consent.

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[It is intended that the rules will be amended with effect from 1 December 2026 to repeal subsection (2).]

(2) The following table has effect if:

- (a) there is no such individual or body appointed for the restrictive practice in relation to the individual concerned under the law of the State or Territory in which the individual concerned accesses funded aged care services; and
- (b) either:
 - (i) there is no clear mechanism for appointing such an individual or body under the law of the State or Territory; or
 - (ii) an application has been made for an appointment under the law of the State or Territory in relation to the use of the restrictive practice in relation to the individual concerned, but there is a significant delay in deciding the application.

Commented [A15]: What is intended to happen from 1 December 2026?

Meaning of *restrictive practices substitute decision-maker*

Item	Column 1 For a restrictive practice in relation to the individual concerned, if ...	Column 2 the <i>restrictive practices substitute decision-maker</i> for that restrictive practice in relation to the individual concerned is ...
1	there is a restrictive practices nominee for the restrictive practice in relation to the individual concerned	that restrictive practices nominee.
2	item 1 does not apply to the restrictive practice in relation to the individual concerned, but the individual concerned has a partner: <ul style="list-style-type: none">(a) with whom the individual concerned has a close continuing relationship; and(b) who has agreed, in writing, to act as a restrictive practices substitute decision-maker for the restrictive practice in relation to the individual concerned (and has not withdrawn that agreement); and(c) who has capacity to act as a restrictive practices substitute decision-maker for the restrictive practice in relation to the individual concerned	that partner.
3	items 1 and 2 do not apply to the restrictive practice in relation to the individual concerned, but the individual concerned has a relative or friend: <ul style="list-style-type: none">(a) who, immediately before the individual concerned entered an approved residential care home, was an unpaid carer for the individual; and	<ul style="list-style-type: none">(a) if there is one such relative or friend—that relative or friend; or(b) if there are 2 or more such relatives or friends—the eldest of those relatives or friends.

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Meaning of <i>restrictive practices substitute decision-maker</i>		
Item	Column 1 For a restrictive practice in relation to the individual concerned, if ...	Column 2 the <i>restrictive practices substitute decision-maker</i> for that restrictive practice in relation to the individual concerned is ...
	(b) who has a personal interest in the welfare of the individual concerned on an unpaid basis; and (c) with whom the individual concerned has a close continuing relationship; and (d) who has agreed, in writing, to act as a restrictive practices substitute decision-maker for the restrictive practice in relation to the individual concerned (and has not withdrawn that agreement); and (e) who has capacity to act as a restrictive practices substitute decision-maker for the restrictive practice in relation to the individual concerned	
4	items 1, 2 and 3 do not apply to the restrictive practice in relation to the individual concerned, but the individual concerned has a relative or friend: (a) who has a personal interest in the welfare of the individual concerned on an unpaid basis; and (b) with whom the individual concerned has a close continuing relationship; and (c) who has agreed, in writing, to act as a restrictive practices substitute decision-maker for the restrictive practice in relation to the individual concerned (and has not withdrawn that agreement); and (d) who has capacity to act as a restrictive practices substitute decision-maker for the restrictive practice in relation to the individual concerned	(a) if there is one such relative or friend—that relative or friend; or (b) if there are 2 or more such relatives or friends—the eldest of those relatives or friends.
5	items 1, 2, 3 and 4 do not apply to the restrictive practice in relation to the individual concerned, but there is a medical treatment authority for the individual concerned	(a) if there is one such medical treatment authority—that medical treatment authority; or (b) if there are 2 or more such medical treatment authorities and the law of the State or Territory in which the individual concerned accesses funded aged care services provides for the order of

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Meaning of *restrictive practices substitute decision-maker*

Item	Column 1 For a restrictive practice in relation to the individual concerned, if ...	Column 2 the <i>restrictive practices substitute decision-maker</i> for that restrictive practice in relation to the individual concerned is ...
		precedence of the medical treatment authorities—the medical treatment authority that takes precedence under that law; or
		(c) if:
		(i) there are 2 or more medical treatment authorities; and
		(ii) the law of the State or Territory in which the individual concerned accesses funded aged care services does not provide for the order of precedence of the medical treatment authorities; and
		(iii) one of the medical treatment authorities is an individual;
		that individual; or
		(d) if:
		(i) there are 2 or more medical treatment authorities; and
		(ii) the law of the State or Territory in which the individual concerned accesses funded aged care services does not provide for the order of precedence of the medical treatment authorities; and
		(iii) one or more of the medical treatment authorities are individuals;
		the eldest of those individuals.

- (3) For the purposes of paragraph (a) of column 1 of item 3 of the table in subsection (2), a person was an unpaid carer for the individual concerned if:
- (a) the person was not employed, hired, retained or contracted (whether directly or through an employment or recruiting agency) as a carer for the individual concerned; and
 - (b) no payment or benefit other than one or more of the following was or will be made or given to the person for being a carer for the individual concerned:
 - (i) a carer payment or equivalent benefit;
 - (ii) payment in kind;
 - (iii) a payment or benefit as a beneficiary under the will of the individual concerned.
- (4) For the purposes of paragraph (b) of column 1 of item 3 of the table and paragraph (a) of column 1 of item 4 of the table in subsection (2), a person has a personal interest in the welfare of the individual concerned on an unpaid basis if:

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- (a) the person is not employed, hired, retained or contracted (whether directly or through an employment or recruiting agency) to have that interest; and
- (b) no payment or benefit other than one or more of the following is or will be made or given to the person for having that interest:
 - (i) a carer payment or equivalent benefit;
 - (ii) payment in kind;
 - (iii) a payment or benefit as a beneficiary under the individual's will.

7-5 Aged care worker screening laws [transitional and full implementation periods]

For the purposes of the definition of *aged care worker screening law* in section 7 of the Act, the following laws are prescribed:

- (a) [to be drafted];
- (b) [to be drafted];
- (c) [to be drafted];
- (d)

7-11 Cost

For the purposes of the definition of *cost* in section 7 of the Act, the cost for the delivery by a registered provider of a funded aged care service for which the subsidy basis is cost means the amount charged by the provider for the delivery of the service.

7-12 Direct care

For the purposes of the definition of *direct care* in section 7 of the Act, the following funded aged care services are prescribed:

- (a) the funded aged care services mentioned in items 2, 3, 4, 5(a), (b), (c), (f), (g), (h), 6(a) and 7 of the table in section 59 of this instrument;
- (b) the funded aged care services mentioned in items 3, 4, 5, 6(a), (b) and 7(a) of the table in section 60 of this instrument.

7-17 Entry day

- (1) This section is made for the purposes of the definition of *entry day* in section 7 of the Act.

Classification type ongoing

- (2) The first day an individual accesses a funded aged care service for the classification type ongoing through a service group is the entry day for the individual for that classification type for that service group.

Classification type short-term for the service groups home support, assistive technology and home modifications

- (3) The first day an individual accesses a funded aged care service for a classification level for the classification type short-term for the service group home support, assistive

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technology or home modifications is the entry day for the individual for the period of effect for that classification level.

Classification type short-term for the service group residential care

- (4) The first day an individual accesses a funded aged care service for the classification type short-term for the service group residential care is the entry day for the individual for that classification type for that service group.

Classification type hospital transition

- (5) The first day an individual accesses a funded aged care service for a classification level for the classification type hospital transition for a service group is the entry day for the individual for the period of effect for that classification level.

7-18 Final efficient price

- (1) This section is made for the purposes of the definition of **final efficient price** in section 7 of the Act.

Services for which subsidy basis is efficient price

- (2) The final efficient price for the delivery of a funded aged care service for which the subsidy basis is efficient price to an individual on a day is the sum of:
- (a) the base efficient price for an hour of the service on the day; and
 - (b) the loading amount for each loading type that applies to the service on the day.

Services for which subsidy basis is unit price

- (3) The final efficient price for the delivery of a funded aged care service for which the subsidy basis is unit price to an individual on a day is the sum of:
- (a) the base unit price for a unit of the service on the day; and
 - (b) the loading amount for each loading type that applies to the service on the day.

7-21 Price charged

For the purposes of the definition of **price charged** in section 7 of the Act, the price charged for the delivery by a registered provider of a funded aged care service for which the subsidy basis is efficient price or unit price means the amount charged by the provider for an hour or unit of the service (whichever is applicable).

7-22 Serious injury or illness

For the purposes of the definition of **serious injury or illness** in section 7 of the Act, each of the following is a serious injury or illness:

- (a) malnutrition;
- (b) dehydration.

Commented [A16]: Confirmation is required that the entry day for assistive technology or home modifications could be the day that service type of care management is delivered for that short-term program

Commented [A17]: Confirmation is required that the entry date will not be prior to the individual consenting to access services through that registered provider

Commented [A18]: This should be clarified to make clear that it is only if the person receives treatment for these conditions - similar to the definition in the Act.

Otherwise, it could be alleged that a person has suffered one of these outcomes without any evidence. For example, if a home care worker is late to attend a shift, a family member could allege the care recipient has been "seriously injured" because they were dehydrated.

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Part 3 Key concepts

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Part 3—Key concepts

8-5 Service types

For the purposes of subsection 8(2) of the Act, the following service types are prescribed:

- (a) allied health and therapy;
- (b) assistance with transition care;
- (c) care management;
- (d) community cottage respite;
- (e) domestic assistance;
- (f) equipment and products;
- (g) hoarding and squalor assistance;
- (h) home adjustments;
- (i) home maintenance and repairs;
- (j) home or community general respite;
- (k) meals;
- (l) nursing care;
- (m) nutrition;
- (n) personal care;
- (o) residential accommodation;
- (p) residential clinical care;
- (q) residential everyday living;
- (r) residential non-clinical care;
- (s) restorative care management;
- (t) social support and community engagement;
- (u) therapeutic services for independent living;
- (v) transport.

11-5 Provider registration categories

For the purposes of paragraph 11(3)(b) of the Act, the following categories are prescribed:

- (a) home and community services;
- (b) assistive technology and home modifications;
- (c) advisory and support services;
- (d) personal and care support in the home or community;
- (e) nursing and transition care.

Note: The category residential care is a provider registration category (see paragraph 11(3)(a) of the Act).

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Introduction **Chapter 1**
Aged care service list [released in Stage 1] **Part 4**

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Part 4—Aged care service list [released in Stage 1]

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Chapter 1 Introduction

Part 5 Aged Care Code of Conduct

Section 14-1

Part 5—Aged Care Code of Conduct

14-1 Purpose of this Part

For the purposes of section 14 of the Act, this Part prescribes requirements relating to the conduct of the following:

- (a) registered providers;
- (b) aged care workers of registered providers;
- (c) responsible persons of registered providers.

Note: These requirements are the *Aged Care Code of Conduct*: see section 7 of the Act.

14-5 Requirements

When delivering funded aged care services to individuals, I must:

- (a) act with respect for individuals' rights to freedom of expression, self-determination and decision-making in accordance with applicable laws and conventions; and
- (b) act in a way that treats individuals with dignity and respect, and values their diversity; and
- (c) act with respect for the privacy of individuals; and
- (d) deliver funded aged care services in a safe and competent manner, with care and skill; and
- (e) act with integrity, honesty and transparency; and
- (f) promptly take steps to raise and act on concerns about matters that may impact the quality and safety of funded aged care services; and
- (g) deliver funded aged care services free from:
 - (i) all forms of violence, discrimination, exploitation, neglect and abuse; and
 - (ii) sexual misconduct; and
- (h) take all reasonable steps to prevent and respond to:
 - (i) all forms of violence, discrimination, exploitation, neglect and abuse; and
 - (ii) sexual misconduct.

14-10 Application of requirements

- (1) The requirements apply to the following in accordance with this section:
 - (a) registered providers;
 - (b) aged care workers of registered providers;
 - (c) responsible persons of registered providers.
- (2) The requirements apply as if the reference to "I" was a reference to all of the following:
 - (a) a registered provider;
 - (b) an aged care worker of a registered provider;

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Aged Care Code of Conduct **Part 5**

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- (c) a responsible person of a registered provider.
- (3) For the purposes of the application of requirements to the delivery of funded aged care services to individuals by a responsible person of a registered provider, the requirements apply to the performance by the responsible person of the responsibilities and functions of the responsible person.

Note: Provisions relevant to compliance with the Aged Care Code of Conduct include the following:

- (a) section 145 of the Act (condition of registration of registered providers);
- (b) section 142 of the Act (civil penalties for non-compliance with conditions of registration of registered providers);
- (c) section 173 of the Act (civil penalties for aged care workers);
- (d) section 174 of the Act (civil penalties for responsible persons);
- (e) subparagraph 498(2)(d)(i) of the Act (grounds for banning orders against individuals who are or were aged care workers or responsible persons of a registered provider).

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Part 6 Aged Care Quality Standards

Division 1 Purpose and application

Section 15-1

Part 6—Aged Care Quality Standards

Division 1—Purpose and application

15-1 Purpose of this Division

For the purposes of subsection 15(1) of the Act, this Division:

- (a) prescribes standards relating to the quality of funded aged care services delivered by a registered provider; and
- (b) provides for the application of the standards to registered providers in specified provider registration categories.

15-5 Application of standards

- (1) Standards 1 to 4 apply to a registered provider in any of the following provider registration categories:
 - (a) personal and care support in the home or community;
 - (b) nursing and transition care;
 - (c) residential care.
- (2) Standard 5 applies to a registered provider in either of the following provider registration categories:
 - (a) nursing and transition care;
 - (b) residential care.
- (3) Subsections 15-30(1) and (2) (Standard 5—*Clinical governance*) apply to a registered provider that delivers, or intends to deliver, the following service types:
 - (a) care management services;
 - (b) restorative care management services.
- (4) Standards 6 and 7 apply to a registered provider in the provider registration category residential care.

Commented [A19]: Please confirm, within guidance materials, the requirements for demonstrating this standard for home care providers that are registered in the nursing and transition care category, but not delivering these services.

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Section 15-10

Division 2—The standards

15-10 Standard 1—The individual

Person-centred care

- (1) The registered provider demonstrates that the provider understands that the safety, health, wellbeing and quality of life of individuals is the primary consideration in the delivery of funded aged care services.

Note: See also subsection 144(2) of the Act (Rights and principles).

- (2) The provider demonstrates that the provider understands and values individuals, including their identity, culture, ability, diversity, beliefs and life experiences.

Note: See also section 23 of the Act (Statement of Rights) and section 144 of the Act (Rights and principles).

- (3) The provider demonstrates that the provider develops funded aged care services with, and tailored to, individuals, taking into account their needs, goals and preferences.

Dignity, respect and privacy

- (4) The provider must deliver funded aged care services to individuals in a way that:
 - (a) is free from all forms of discrimination, abuse and neglect; and
 - (b) treats individuals with dignity and respect; and
 - (c) respects the personal privacy of individuals.

Note: See also section 23 of the Act (Statement of Rights) and section 144 of the Act (Rights and principles).

- (5) The provider:
 - (a) demonstrates that the provider understands the rights of individuals under the Statement of Rights; and
 - (b) must have practices in place to ensure that the provider acts compatibly with the Statement of Rights, in accordance with subsection 24(2) of the Act (acting compatibly with the Statement of Rights).

Note: See also section 144 of the Act (Rights and principles).

Choice, independence and quality of life

- (6) The provider must support individuals to exercise choice and make decisions about their funded aged care services, and provide them with support to exercise choice and make decisions when they want or need it.
- (7) The provider must provide individuals with timely, accurate, tailored and sufficient information about their funded aged care services, in a way they understand.

Note: See also section 29 of the Act (Giving information and documents to supporters).

Commented [A20]: Guidance material should explain what 'values' means as this is subjective / vague.

Commented [A21]: This will not be possible to meet if the commencement date remains 1 July 2025. For example, providers will not be able to inform the individual of their contribution rate if Services Australia has not provided this. Individuals may also require time to choose and confirm their supporter to assist them to understand the information.

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- (8) The provider must support individuals to exercise dignity of risk to achieve their goals and maintain independence and quality of life.

Transparency and agreements

- (9) Before entering into any agreements with individuals about the delivery of funded aged care services, the provider must provide individuals with:
- (a) the opportunity to exercise autonomy; and
 - (b) the time they need to consider the agreement; and
 - (c) an opportunity to seek advice.
- (10) The provider must support individuals to understand and make informed decisions about their agreements, fees and invoices.

Commented [A22]: Guidance material needs to account for an individual's choices needing to be balanced with the rights of others.

Commented [A23]: Guidance material needs to clarify what "the opportunity to exercise autonomy" means beyond what (b) and (c) already provide for.

Commented [A24]: Individuals who are to be transitioned may not have sufficient time to exercise autonomy in considering the agreement. For those choosing to use supporters - time will be required for individuals to organise a supporter, and for the supporter to consider the agreements.

Commented [A25]: If Services Australia has not confirmed the contribution amount, providers are not able to ensure the individual can make an informed decision.

15-15 Standard 2—The organisation

Partnering with individuals

- (1) The registered provider must engage in meaningful and active partnerships with individuals to inform organisational priorities and continuous improvement.

Note: See also section 147 of the Act and Division 2 of Part 4 of Chapter 4 of this instrument (conditions of registration relating to continuous improvement).

Quality, safety and inclusion culture to support workers to deliver quality care

- (2) The governing body must lead a culture of quality, safety and inclusion that supports aged care workers to provide quality funded aged care services by:
- (a) focussing on continuous improvement; and
 - (b) embracing diversity; and
 - (c) prioritising the safety, health and wellbeing of aged care workers.

Note: See also section 147 of the Act and Division 2 of Part 4 of Chapter 4 of this instrument (conditions of registration relating to continuous improvement).

Quality, safety and inclusion culture to support individuals

- (3) The governing body must lead a culture of quality, safety and inclusion that supports individuals receiving quality funded aged care services by:
- (a) focussing on continuous improvement; and
 - (b) embracing diversity; and
 - (c) prioritising the safety, health and wellbeing of individuals.

Note: See also section 147 of the Act and Division 2 of Part 4 of Chapter 4 of this instrument (conditions of registration relating to continuous improvement).

Accountability, quality system and policies and procedures

- (4) The governing body is accountable for the delivery of quality funded aged care services and must maintain oversight of all aspects of the provider's operations.
- (5) The provider must use a quality system to enable and drive continuous improvement of the provider's delivery of funded aged care services.

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Note: See also section 147 of the Act and Division 2 of Part 4 of Chapter 4 of this instrument (conditions of registration relating to continuous improvement).

- (6) The provider must:
- (a) maintain current policies and procedures that guide the way aged care workers undertake their roles; and
 - (b) require aged care workers to follow the policies and procedures.

Risk management

- (7) The provider must use a risk management system to identify, manage and continuously review risks to individuals, aged care workers and the provider's operations.

Note: See also section 147 of the Act and Division 2 of Part 4 of Chapter 4 of this instrument (conditions of registration relating to continuous improvement).

Incident management

- (8) The provider must use an incident management system to:
- (a) safeguard individuals; and
 - (b) acknowledge, respond to, effectively manage and learn from incidents.

Note: See also section 164 of the Act and Division 1 of Part 10 of Chapter 4 of this instrument (conditions of registration relating to incident management).

Complaints and feedback management—workers

- (9) The provider must encourage and support aged care workers to make complaints and give feedback about the provider's delivery of funded aged care services without reprisal.

Note: See also section 165 of the Act and Division 2 of Part 10 of Chapter 4 of this instrument (conditions of registration relating to complaints, feedback and whistleblowers).

Complaints and feedback management—individuals

- (10) The provider must encourage and support individuals and others to make complaints and give feedback about the provider's delivery of funded aged care services without reprisal.

Note: See also section 165 of the Act and Division 2 of Part 10 of Chapter 4 of this instrument (conditions of registration relating to complaints, feedback and whistleblowers).

- (11) The provider must acknowledge and transparently manage all complaints and feedback and use complaints and feedback to contribute to the continuous improvement of funded aged care services.

Note: See also section 165 of the Act and Division 2 of Part 10 of Chapter 4 of this instrument (conditions of registration relating to complaints, feedback and whistleblowers), and section 147 of the Act and Division 2 of Part 4 of Chapter 4 of this instrument (conditions of registration relating to continuous improvement).

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Information management

- (12) The provider must ensure that information recorded about an individual:
- (a) is accurate and current; and
 - (b) is able to be accessed and understood by the individual, supporters of the individual, aged care workers and health professionals involved in the individual's care.

Commented [A26]: Providers cannot 'ensure' that information is understood by individuals etc.

- (13) The provider must ensure that the information of individuals is kept confidential and is managed appropriately, in line with their informed consent.

Commented [A27]: This is inconsistent with other important obligations under other parts of the Act - e.g. obligation to provide information to the Commission as well as other laws (e.g. if the provider receives a Coroner's request or court subpoena). Instead of "in line with their informed consent" it should be "in line with applicable privacy laws".

Workforce planning

- (14) The provider must demonstrate that the provider understands and manages their workforce needs and plans for the future.

Human resource management

- (15) The provider must deliver funded aged care services to individuals by aged care workers who:
- (a) are skilled and competent in their roles; and
 - (b) hold relevant qualifications for their roles; and
 - (c) have expertise and experience relevant to delivering quality funded aged care services.

Commented [A28]: Guidance material needs to address how providers can demonstrate this for new staff and trainees.

- (16) The provider must provide aged care workers with training and supervision to enable them to effectively perform their roles.

Emergency and disaster management

- (17) The provider must demonstrate that emergency and disaster management planning considers and manages risks to the health, safety and wellbeing of individuals and aged care workers.

Commented [A29]: Examples of how this requirement can be 'demonstrated' (particularly in the home care context) should be provided in guidance material.

15-20 Standard 3—The care and services

Assessment and planning

- (1) The registered provider must actively engage with:
- (a) individuals to whom the provider delivers funded aged care services; and
 - (b) supporters of individuals (if any); and
 - (c) any other persons involved in the care of individuals;
- in developing and reviewing the individual's care and services plans through ongoing communication.
- (2) Care and services plans must:
- (a) describe the current care needs, goals and preferences of individuals; and
 - (b) include strategies for risk management and preventative care.
- (3) The provider must ensure that care and services plans are regularly reviewed and are used by aged care workers to guide the delivery of funded aged care services.

Commented [A30]: This will increase administration load and care management utilisation significantly and is likely to lead to a significant amount of documentation. Recommend inserting the words "relating to funded aged care services delivered" after "preventative care".

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Section 15-25

Delivery of funded aged care services

- (4) The provider **must ensure** that individuals receive quality funded aged care services that:
 - (a) meet their care needs, goals and preferences; and
 - (b) optimise their quality of life, reablement and maintenance of function.
- (5) The provider must ensure that funded aged care services are delivered in a way that is culturally safe and culturally appropriate for individuals with specific needs and diverse backgrounds.

Commented [A31]: Providers cannot “ensure” this in all circumstances e.g. a provider cannot make an individual accept services that contribute to the results as outlined in (a) and (b). Recommend change to “The provider must ensure that the delivery of funded aged care services takes into account the care needs, goals and preferences of individuals and optimises their quality of life, reablement and maintenance of function”.

Communicating for safety and quality

- (6) The provider must ensure that critical information relevant to the delivery of funded aged care services to individuals is communicated effectively:
 - (a) to the individuals; and
 - (b) between aged care workers delivering the services; and
 - (c) with supporters of the individuals and other persons supporting the individuals; and
 - (d) with health professionals involved with the individual’s care.
- (7) The provider must ensure that risks to individuals, and changes and deterioration in the condition of individuals, are escalated and communicated as appropriate.

Planning and coordination of funded aged care services

- (8) The provider must ensure that individuals receive funded aged care services that are planned and coordinated, including where multiple health providers and registered providers, supporters of individuals and other persons supporting individuals are involved.

15-25 Standard 4—The environment

Environment—services delivered in the individual’s home

- (1) When delivering funded aged care services to individuals in their homes, the registered provider must support the individuals to mitigate environmental risks relevant to the services.

Commented [A32]: ‘Must support’ is of concern here as home care providers have limited control of an individual’s environment. Challenges arising in the home care service environment include hoarding and squalor, overcrowding, and an inability to control others in the household.

Environment—services delivered other than in the individual’s home

- (2) Where the provider delivers funded aged care services to individuals other than in their homes, the provider must ensure that individuals are able to access funded aged care services in a clean, safe and comfortable environment **that optimises their sense of belonging, interaction and function.**

Commented [A33]: Some individuals may choose or prefer not to interact occasionally or at all. Guidance material needs to explain how providers can meet this requirement.

Equipment

- (3) Where the provider uses equipment in the delivery of any funded aged care services to individuals, or provides equipment to individuals, the equipment must be safe and must meet the needs of the individuals.

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Section 15-30

Infection prevention and control

- (4) The provider must have an appropriate infection prevention and control system.
- (5) The provider must ensure that aged care workers use hygienic practices and take appropriate infection prevention and control precautions when delivering funded aged care services.

Commented [A34]: Providers can encourage and train workers, but cannot ensure that this will be followed by all staff at all times.

15-30 Standard 5—Clinical care

Clinical governance

- (1) The governing body must meet its duty to individuals and continuously improve the safety and quality of clinical care services delivered to individuals.

Note: See also section 147 of the Act and Division 2 of Part 4 of Chapter 4 of this instrument (conditions of registration relating to continuous improvement).

- (2) The registered provider must integrate clinical governance into corporate governance to actively manage and improve the safety and quality of clinical care services delivered to individuals.

Preventing and controlling infections in delivering clinical care services

- (3) The provider must ensure that individuals, aged care workers, health professionals and others are encouraged and supported to use antimicrobials appropriately to reduce risks of increasing resistance.
- (4) The provider must ensure that infection risks are minimised and, if they occur, are controlled effectively.

Commented [A35]: This is a change from the November 2023 Strengthened Standards - used to say 'managed'.

The word 'controlled' (particularly when paired with the word 'ensure') should not be used. For example, in the home care context, controlling infection risks may be unachievable in environments of overcrowding, hoarding and squalor, and in public areas.

Safe and quality use of medicines

- (5) The provider must encourage and support individuals, aged care workers and health professionals to use medicines in a way that maximises benefits and minimises the risks of harm.
- (6) The provider must ensure that:
 - (a) before administering medicine to an individual, the medicine has been prescribed for the individual; and
 - (b) medicines are appropriately and safely administered, monitored and reviewed by health professionals, considering the clinical needs and informed decisions of the individual.
- (7) The provider must ensure that medicines-related adverse events are monitored and reported, and are used to inform safety and quality improvement.

Comprehensive care

- (8) The provider must ensure that individuals receive comprehensive, safe and quality clinical care services that are evidence-based and person-centred and delivered by health professionals.

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- (9) Clinical care delivered by the provider must encompass clinical assessment, prevention, planning, treatment, management and review to minimise harm and optimise quality of life, reablement and maintenance of function.
- (10) The provider must have systems and processes that support coordinated, multidisciplinary clinical care services:
- (a) that are delivered to individuals, in partnership with individuals, supporters of individuals and other persons supporting individuals; and
 - (b) that are aligned with the individuals' needs, goals and preferences.
- (11) The provider must support early identification of, and response to, changing clinical needs.

Safety of clinical care services

- (12) The provider must identify, monitor and manage high impact and high prevalence risks in the delivery of clinical care services:
- (a) to ensure the delivery of safe, quality clinical care services; and
 - (b) to reduce the risk of harm to individuals.

Cognitive impairment

- (13) The provider must ensure that individuals who experience cognitive impairment (whether acute, chronic or transitory) receive comprehensive clinical care services that:
- (a) optimise clinical outcomes; and
 - (b) are aligned with their clinical needs, goals and preferences.
- (14) The provider identifies situations and events that may lead to changes in behaviours.

Palliative care and end-of-life care

- (15) The provider must recognise and address the needs, goals and preferences of individuals for palliative care and end-of-life care, and must preserve the dignity of individuals in those circumstances.
- (16) The provider ensures that the pain and symptoms of individuals are actively managed, with access to specialist palliative and end-of-life care when required.
- (17) The provider must ensure that supporters of individuals and other persons supporting individuals are informed and supported, including during the last days of life.

Note: See also section 29 of the Act (Giving information and documents to supporters).

15-35 Standard 6—Food and nutrition

Partnering with individuals on food and drinks

- (1) The registered provider must partner with individuals to deliver a quality meals and refreshments service that includes appealing and varied food and drinks and an enjoyable dining experience.

Commented [A36]: This is new - having more people involved adds another layer of complexity.

Commented [A37]: An individual's preferences and goals may not align with their actual condition or abilities. When interpreting this requirement, an individual's ability should be considered - this should be reflected in guidance materials.

Commented [A38]: For the Support at Home Program, this should only apply to individuals who have been approved for the clinical support services category.

Commented [A39]: For the Support at Home Program, this should only apply to individuals who have been approved for the clinical support services category.

Commented [A40]: Insert 'support to' in between 'with' and 'access' - a provider cannot force an individual to access specialist palliative and end-of-life care.

Commented [A41]: 'Appealing' is a subjective term - should be unpacked in guidance materials.

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Division 2 The standards

Section 15-40

Note: See also item 9 of section 8-145 of this instrument (Residential everyday living—services relating to meals and refreshments).

Assessment of nutritional needs and preferences

- (2) The provider must demonstrate that the provider understands the specific nutritional needs of individuals and assesses the current needs, abilities and preferences of individuals in relation to what and how they eat and drink.

Provision of food and drink

- (3) The provider must provide individuals with:
 - (a) food and drinks that meet their nutritional needs and are appetising and flavoursome; and
 - (b) variation and choice about what they eat and drink; and
 - (c) choice about how much they eat and drink.

Dining experience

- (4) The provider must support individuals to eat and drink.
- (5) The provider must ensure that the dining experience meets the needs and preferences of individuals to support social engagement, function and quality of life.

15-40 Standard 7—The residential community

Daily living

- (1) The registered provider must ensure that individuals receive funded aged care services that optimise their quality of life, promote use of their skills and strengths and enable them to do the things they want to do.

- (2) The provider must ensure that individuals feel safe in their residential care home.

Transitions

- (3) The provider must ensure that individuals experience a well-coordinated transition, whether planned or unplanned, to or from a provider.

Note: See also section 149 of the Act (Starting and ceasing the provision of funded aged care services and continuity of those services).

- (4) The provider must set out clear responsibility and accountability for the delivery of funded aged care services to individuals between aged care workers, health professionals and across organisations.

Commented [A42]: 'Appetising and flavoursome' are subjective terms - should be unpacked in guidance materials.

Commented [A43]: This should be within reason - guidance material should account for this.

Commented [A44]: This cannot be 'ensured'. To account for people with physical and cognitive limitations, "to the extent possible" should be added to the end of the sentence.

Commented [A45]: Providers cannot ensure/guarantee a feeling. People's feelings can be influenced by many things that a provider may have no control over. Recommend using an alternative word for 'ensure' such as 'support', or reframing the requirement to be less subjective e.g. requirement to provide/create a safe environment in residential aged care homes.

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Division 3—Review of standards

15-45 Review of Aged Care Quality Standards to be conducted every 5 years [to be drafted]

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Chapter 1 Introduction

Part 7 Reportable incidents and restrictive practices

Section 16-5

Part 7—Reportable incidents and restrictive practices

Division 1—Reportable incidents

16-5 Defining and clarifying expressions relating to reportable incidents

- (1) For the purposes of subsection 16(2) of the Act, this section prescribes definitions or clarifications of expressions used in paragraphs 16(1)(a), (b), (c), (d), (e), (f) and (h) of the Act (which deal with incidents that have occurred, are alleged to have occurred, or are suspected of having occurred, in connection with the delivery of funded aged care services to an individual by a registered provider).

Unreasonable use of force

- (2) In paragraph 16(1)(a) of the Act, the expression “unreasonable use of force against the individual” includes conduct ranging from a deliberate and violent physical attack to use of unwarranted physical force.
- (3) To avoid doubt, that expression does not cover gently touching the individual:
- (a) for the purposes of providing a funded aged care service; or
 - (b) to attract the individual’s attention; or
 - (c) to guide the individual; or
 - (d) to comfort the individual when the individual is distressed.

Unlawful sexual contact, or inappropriate sexual conduct

- (4) In paragraph 16(1)(b) of the Act, the expression “unlawful sexual contact, or inappropriate sexual conduct, inflicted on the individual” includes the following:
- (a) if the contact or conduct is inflicted by a person who is an aged care worker of the registered provider—the following:
 - (i) any conduct or contact of a sexual nature inflicted on the individual, including (without limitation) sexual assault, an act of indecency and the sharing of an intimate image of the individual;
 - (ii) any touching of the individual’s genital area, anal area or breast in circumstances where this is not necessary to deliver funded aged care services to the individual;
 - (b) any non-consensual contact or conduct of a sexual nature, including (without limitation) sexual assault, an act of indecency and the sharing of an intimate image of the individual;
 - (c) engaging in conduct relating to the individual with the intention of making it easier to procure the individual to engage in sexual contact or conduct.
- (5) However, that expression does not include consensual contact or conduct of a sexual nature between the individual and a person who is not an aged care worker of the registered provider, including another individual to whom the registered provider delivers funded aged care services.

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- (6) That expression also does not include consensual contact or conduct of a sexual nature between the individual and a person who is a volunteer aged care worker of the registered provider, if the contact or conduct occurs other than while that person is delivering funded aged care services to the individual.

Psychological or emotional abuse

- (7) In paragraph 16(1)(c) of the Act the expression “psychological or emotional abuse of the individual” includes conduct that:
- (a) has caused the individual psychological or emotional distress; or
 - (b) could reasonably have been expected to have caused an individual psychological or emotional distress.
- (8) Conduct covered by subsection (7) includes (without limitation) the following:
- (a) taunting, bullying, harassment or intimidation;
 - (b) threats of maltreatment;
 - (c) humiliation;
 - (d) unreasonable refusal to interact with the individual or acknowledge the individual’s presence;
 - (e) unreasonable restriction of the individual’s ability to engage socially or otherwise interact with people;
 - (f) repetitive conduct or contact which does not constitute unreasonable use of force but the repetition of which:
 - (i) has caused the individual psychological or emotional distress; or
 - (ii) could reasonably have been expected to have caused an individual psychological or emotional distress.

Commented [A46]: Guidance materials should elaborate on how “could reasonably have been expected to have caused” is determined.

Commented [A47]: Guidance materials should elaborate on how “could reasonably have been expected to have caused” is determined.

Unexpected death

- (9) In paragraph 16(1)(d) of the Act the expression “unexpected death of the individual” includes death in circumstances where:
- (a) the individual was accessing funded aged care services in an approved residential care home of a registered provider and reasonable steps were not taken by the registered provider to prevent the death; or
 - (b) the death was a result of:
 - (i) funded aged care services delivered by the registered provider; or
 - (ii) a failure of the registered provider to deliver funded aged care services.

Commented [A48]: ‘Reasonable steps’ should be elaborated on in guidance materials.

Stealing or financial coercion

- (10) In paragraph 16(1)(e) of the Act the expression “stealing from, or financial coercion of, the individual by an aged care worker of the provider” includes the following:
- (a) stealing from the individual by an aged care worker of the registered provider;
 - (b) conduct by an aged care worker of the registered provider that:
 - (i) is coercive or deceptive in relation to the individual’s financial affairs; or

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- (ii) unreasonably controls the individual's financial affairs.

Neglect

- (11) In paragraph 16(1)(f) of the Act the expression “neglect of the individual” means circumstances in which a registered provider, aged care worker, or responsible person of the registered provider:
 - (a) has been reckless or intentionally negligent in delivering a funded aged care service to the individual; or
 - (b) has caused or contributed (including through reckless or intentional behaviour) to:
 - (i) a significant failure to deliver a funded aged care service to the individual; or
 - (ii) a systematic pattern of conduct; or
 - (c) has delivered a grossly inadequate funded aged care service to the individual; or
 - (d) has delivered a funded aged care service to the individual that exposes the individual to the risk of serious injury or illness.

Unexplained absence

- (12) In paragraph 16(1)(h) of the Act the expression “unexplained absence of the individual in the course of the delivery of funded aged care services to the individual” means:
 - (a) for an individual accessing funded aged care services in an approved residential care home—an absence of the individual from the home in circumstances where there are reasonable grounds to report the absence to police; or
 - (b) for an individual accessing funded aged care services in a home or community setting—an absence of the individual from the setting during the delivery of a funded aged care service to the individual in circumstances where there are reasonable grounds to report the absence to police.

16-10 Acts, omissions and events that are not reportable incidents—general

- (1) For the purposes of paragraph 16(3)(b) of the Act, an act, omission or event covered by one of the following subsections is not a **reportable incident**.

Approved residential care homes—incidents resulting from refusal by individuals of delivery of services

- (2) This subsection covers an incident if the incident results from an individual accessing funded aged care services in an approved residential care home deciding to refuse the delivery of funded aged care services.

Home or community settings—incidents resulting from choices made by individuals about services to be delivered

- (3) This subsection covers an incident if:

Commented [A49]: This definition has changed and SIRS guidance material will need to be updated accordingly. This should include explanation or examples of ‘systematic failures’ and ‘systematic patterns of conduct’, as well as what constitutes *exposures* to risk of serious injury or illness.

Commented [A50]: Guidance material should elaborate on ‘reasonable grounds’ and the assessment of risk required to determine this.

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- (a) the incident occurred, is alleged to have occurred, or is suspected of having occurred, in connection with the delivery of funded aged care services in a home or community setting to an individual by a registered provider; and
- (b) apart from this subsection, the incident would be a reportable incident under paragraph 16(1)(f) of the Act (neglect of the individual), but would not otherwise be a reportable incident; and
- (c) the incident results from a choice made by the individual about the funded aged care services the registered provider is to deliver to the individual, or how the services are to be delivered by the provider; and
- (d) before the incident occurred, is alleged to have occurred, or is suspected of having occurred, the individual had communicated the individual's choice to the provider, and the provider had recorded the individual's choice in writing.

16-15 Acts, omissions and events that are not reportable incidents—use of restrictive practices in a home or community setting

For the purposes of paragraph 16(3)(b) of the Act, the use of a restrictive practice in relation to an individual is not a *reportable incident* if:

- (a) the restrictive practice is used in connection with the delivery of funded aged care services to the individual in a home or community setting; and
- (b) before the restrictive practice is used, the following matters were set out in the care and services plan for the individual:
 - (i) the circumstances in which the restrictive practice may be used in relation to the individual, including the individual's behaviours of concern that are relevant to the need for the use;
 - (ii) the manner in which the restrictive practice is to be used, including its duration, frequency and intended outcome; and
- (c) the restrictive practice is used:
 - (i) in the circumstances set out in the plan; and
 - (ii) in the manner set out in the plan; and
 - (iii) in accordance with any other provisions of the plan that relate to the use; and
- (d) details about the use of the restrictive practice are documented as soon as practicable after the restrictive practice is used.

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Division 2 Restrictive practices

Section 17-5

Division 2—Restrictive practices

17-5 Practices and interventions that are restrictive practices in relation to individuals

- (1) For the purposes of subsection 17(2) of the Act, each of the following is a restrictive practice in relation to an individual:
 - (a) chemical restraint;
 - (b) environmental restraint;
 - (c) mechanical restraint;
 - (d) physical restraint;
 - (e) seclusion.
- (2) **Chemical restraint** is a practice or intervention that is, or that involves, the use of medication or a chemical substance for the primary purpose of influencing an individual's behaviour, but does not include the use of medication prescribed for:
 - (a) the treatment of, or to enable treatment of, the individual for:
 - (i) a diagnosed mental disorder; or
 - (ii) a physical illness; or
 - (iii) a physical condition; or
 - (b) end of life care for the individual.
- (3) **Environmental restraint** is a practice or intervention that restricts, or that involves restricting, an individual's free access to all parts of the individual's environment (including items and activities) for the primary purpose of influencing the individual's behaviour.
- (4) **Mechanical restraint** is a practice or intervention that is, or that involves, the use of a device to prevent, restrict or subdue an individual's movement for the primary purpose of influencing the individual's behaviour, but does not include the use of a device for therapeutic or non-behavioural purposes in relation to the individual.
- (5) **Physical restraint** is a practice or intervention that:
 - (a) is or involves the use of physical force to prevent, restrict or subdue movement of an individual's body, or part of an individual's body, for the primary purpose of influencing the individual's behaviour; but
 - (b) does not include the use of a hands-on technique in a reflexive way to guide or redirect the individual away from potential harm or injury if it is consistent with what could reasonably be considered to be the exercise of care towards the individual.
- (6) **Seclusion** is a practice or intervention that is, or that involves, the sole confinement of an individual in a room or a physical space at any hour of the day or night where:
 - (a) voluntary exit is prevented or not facilitated; or
 - (b) it is implied that voluntary exit is not permitted;for the primary purpose of influencing the individual's behaviour.

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Supporters [to be drafted] **Part 8**

Section 17-5

Part 8—Supporters [to be drafted]

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Chapter 4 Conditions on provider registration

Part 1 Introduction

Section 142-1

Chapter 4—Conditions on provider registration

Part 1—Introduction

142-1 Simplified outline of this Chapter

[To be drafted.]

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Conditions on provider registration **Chapter 4**
Other conditions [to be drafted if required] **Part 2**

Section 142-1

Part 2—Other conditions [to be drafted if required]

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Chapter 4 Conditions on provider registration

Part 3 Rights and principles

Section 144-1

Part 3—Rights and principles

144-1 Kinds of providers to which the conditions apply

For the purposes of subsections 144(1) and (2) of the Act, every kind of registered provider is prescribed.

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Conditions on provider registration **Chapter 4**

Delivery of funded aged care services **Part 4**

Aged Care Quality Standards **Division 1**

Section 146-5

Part 4—Delivery of funded aged care services

Division 1—Aged Care Quality Standards

146-5 Kinds of providers to which the condition applies

For the purposes of section 146 of the Act (Compliance with Aged Care Quality Standards), a registered provider registered in any of the following provider registration categories is prescribed:

- (a) personal and care support in the home or community;
- (b) nursing and transition care;
- (c) residential care.

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Chapter 4 Conditions on provider registration

Part 4 Delivery of funded aged care services

Division 2 Continuous improvement

Section 147-5

Division 2—Continuous improvement

147-5 Kinds of providers that must demonstrate capability and commitment

For the purposes of subsection 147(1) of the Act, every kind of registered provider is prescribed.

147-10 Kinds of providers that must have a continuous improvement plan

For the purposes of subsection 147(2) of the Act, a registered provider registered in any of the following provider registration categories is prescribed:

- (a) personal and care support in the home or community;
- (b) nursing and transition care;
- (c) residential care.

Commented [A51]: This is towards the delivery of high quality care which is an aspirational and unfunded definition in the Act that includes subjective elements. Guidance material is needed to explain how providers can demonstrate capability and commitment in these circumstances.

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Conditions on provider registration **Chapter 4**
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Section 147-10

Division 3—Delivery of funded aged care services [to be drafted]

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Chapter 4 Conditions on provider registration

Part 4 Delivery of funded aged care services

Division 4 Starting and ceasing the delivery of funded aged care services and continuity of those services [to be drafted]

Section 147-10

Division 4—Starting and ceasing the delivery of funded aged care services and continuity of those services [to be drafted]

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Conditions on provider registration **Chapter 4**
Conditions relating to financial matters [to be drafted if required] **Part 5**

Section 147-10

Part 5—Conditions relating to financial matters [to be drafted if required]

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Chapter 4 Conditions on provider registration

Part 6 Aged care workers

Division 1 Workforce and aged care worker requirements

Section 152-5

Part 6—Aged care workers

Division 1—Workforce and aged care worker requirements

[Certain provisions in this Division will be implemented during particular periods as follows:

- (a) interim period, which begins on commencement of the Act and runs until the transitional period begins;
- (b) transitional period, which begins on the commencement of rules prescribing aged care worker screening laws for all states and territories and runs for 3 years;
- (c) full implementation period, which begins at the end of the transitional period.]

Subdivision A—Kinds of provider to which the condition applies

152-5 Kinds of provider to which the condition applies

For the purposes of section 152 of the Act, every kind of registered provider is prescribed.

Subdivision B—Worker screening requirements

152-10 Purpose of this Subdivision

For the purposes of paragraphs 152(a) and (b) of the Act, this Subdivision prescribes worker screening requirements.

152-15 Responsible persons [interim period]

Responsible persons of all registered providers

- (1) A registered provider must ensure that each responsible person of the provider is:
 - (a) a person to whom section 152-25 (police certificates) applies; or
 - (b) a person:
 - (i) in respect of whom a police certificate is pending; and
 - (ii) who is subject to appropriate supervision while that certificate is pending; and
 - (iii) who has made, and given to the registered provider, a statutory declaration stating the person has never been convicted of murder or sexual assault, or convicted of, and sentenced to imprisonment for, any other form of assault; or
 - (c) a person in respect of whom an NDIS clearance decision is in force.

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Workforce and aged care worker requirements **Division 1**

Section 152-15

Responsible persons of registered providers other than certain registered providers delivering services under CHSP or NATSIFACP

- (2) A registered provider (other than a registered provider to whom subsection (6) or (7) applies) must take reasonable measures to require each responsible person of the provider to notify the provider if the person has been:
 - (a) convicted of murder or sexual assault; or
 - (b) convicted of, and sentenced to imprisonment for, any other form of assault.
- (3) A registered provider (other than a registered provider to whom subsection (6) or (7) applies) must ensure that a responsible person of the provider is not allowed to continue as a responsible person if the provider is satisfied on reasonable grounds that the person has been:
 - (a) convicted of murder or sexual assault; or
 - (b) convicted of, and sentenced to imprisonment for, any other form of assault.

Responsible persons of certain registered providers delivering services under CHSP or NATSIFACP

- (4) A registered provider to whom subsection (6) or (7) applies must take reasonable measures to require each responsible person of the provider to notify the provider if the responsible person has been:
 - (a) convicted of an offence involving the death of a person; or
 - (b) convicted of, and sentenced to imprisonment for at least one year for, any of the following offences:
 - (i) a sex related offence, including sexual assault (whether against an adult or child), child pornography, or an indecent act involving a child;
 - (ii) an offence involving dishonesty that is not minor.
- (5) A registered provider to whom subsection (6) or (7) applies must ensure that a responsible of the provider is not allowed to continue as a responsible person if the provider is satisfied on reasonable grounds that the responsible person has been:
 - (a) convicted of an offence involving the death of a person; or
 - (b) convicted of, and sentenced to imprisonment for at least one year for, any of the following offences:
 - (i) a sex related offence, including sexual assault (whether against an adult or child), child pornography, or an indecent act involving a child;
 - (ii) an offence involving dishonesty that is not minor.
- (5A) Subsection (4) or (5) only applies in relation to a responsible person of a registered provider delivering funded aged care services under CHSP if the person was engaged as a responsible person of the registered provider on or after the commencement of this section.
- (6) This section applies to a registered provider that:
 - (a) delivers funded aged care services under CHSP; and
 - (b) is registered in any of the following provider registration categories:

Commented [A52]: Should be 'responsible person'.

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Division 1 Workforce and aged care worker requirements

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- (i) home and community services;
- (ii) assistive technology and home modifications;
- (iii) personal and care support in the home or community;
- (iv) nursing and transition care.

(7) This subsection applies to a registered provider that:

- (a) delivers funded aged care services under NATSIFACP; and
- (b) is registered in any of the following provider registration categories:
 - (i) home and community services;
 - (ii) assistive technology and home modifications;
 - (iii) personal and care support in the home or community;
 - (iv) nursing and transition care;
 - (v) residential care.

Commented [A53]: Please clarify why these rules won't apply to a CHSP provider registered in the advisory and support services category

Commented [A54]: Please clarify why these rules won't apply to a NATSIFACP provider registered in the advisory and support services category

152-15 Responsible persons [transitional period]

- (1) A registered provider must ensure that each responsible person of the provider is:
- (a) a person in respect of whom an aged care clearance decision is in force; or
 - (b) a person in respect of whom an NDIS clearance decision is in force; or
 - (c) a health professional:
 - (i) whose health professional registration is not subject to any suspensions or exclusions; and
 - (ii) in respect of whom neither an aged care interim bar nor an NDIS interim bar is in force; and
 - (iii) in respect of whom neither an aged care exclusion decision nor an NDIS exclusion decision is in force; or
 - (d) [for a police certificate issued during the interim period] a person to whom section 152-25 (police certificates) applies, in respect of whom none of the following is in force:
 - (i) an aged care interim bar;
 - (ii) an aged care exclusion decision;
 - (iii) an NDIS interim bar;
 - (iv) an NDIS exclusion decision; or
 - (d) a person to whom all of the following apply:
 - (i) the person is a confirmed screening applicant;
 - (ii) neither an aged care interim bar nor an NDIS interim bar is in force in respect of the person;
 - (iii) neither an aged care exclusion decision nor an NDIS exclusion decision is in force in respect of the person; and
 - (iv) the person is appropriately supervised by a person to whom paragraph (a), (b) or (c) applies;
 - (v) the provider is implementing a risk management plan that covers the person;
 - (vi) no law of any State or Territory in which the provider delivers funded aged care services prohibits a person from engaging in a risk assessed role while the person is a confirmed screening applicant.

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- (2) A registered provider must take reasonable measures to require each responsible person of the provider to notify the provider if:
- (a) any of the following is in force in respect of the person:
 - (i) an aged care interim bar;
 - (ii) an aged care exclusion decision;
 - (iii) an NDIS interim bar;
 - (iv) an NDIS exclusion decision; or
 - (b) an aged care clearance decision or an NDIS clearance decision in respect of the person is suspended; or
 - (c) for a person who is a health professional—their health professional registration is subject to any suspensions or exclusions; or
 - (d) the person has been:
 - (i) convicted of murder or sexual assault; or
 - (ii) convicted of, and sentenced to imprisonment for, any other form of assault.
- (3) A registered provider must ensure that a responsible person of the provider is not allowed to continue as a responsible person if the provider is satisfied on reasonable grounds that the person has been:
- (a) convicted of murder or sexual assault; or
 - (b) convicted of, and sentenced to imprisonment for, any other form of assault.

152-15 Responsible persons [full implementation period]

- (1) A registered provider must ensure that each responsible person of the provider is:
- (a) a person in respect of whom an aged care clearance decision is in force; or
 - (b) a person in respect of whom an NDIS clearance decision is in force; or
 - (c) a health professional:
 - (i) whose health professional registration is not subject to any suspensions or exclusions; and
 - (ii) in respect of whom neither an aged care interim bar nor an NDIS interim bar is in force; and
 - (iii) in respect of whom neither an aged care exclusion decision nor an NDIS exclusion decision is in force; or
 - (d) a person to whom all of the following apply:
 - (i) the person is a confirmed screening applicant;
 - (ii) neither an aged care interim bar nor an NDIS interim bar is in force in respect of the person;
 - (iii) neither an aged care exclusion decision nor an NDIS exclusion decision is in force in respect of the person; and
 - (iv) the person is appropriately supervised by a person to whom paragraph (a), (b) or (c) applies;
 - (v) the provider is implementing a risk management plan that covers the person;
 - (vi) no law of any State or Territory in which the provider delivers funded aged care services prohibits a person from engaging in a risk assessed role while the person is a confirmed screening applicant.

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- (2) A registered provider must take reasonable measures to require each responsible person of the provider to notify the provider if:
- (a) any of the following is in force in respect of the person:
 - (i) an aged care interim bar;
 - (ii) an aged care exclusion decision;
 - (iii) an NDIS interim bar;
 - (iv) an NDIS exclusion decision; or
 - (b) an aged care clearance decision or NDIS clearance decision in respect of the person is suspended; or
 - (c) for a person who is a health professional—their health professional registration is subject to any suspensions or exclusions.

152-20 Aged care workers [interim period]

All aged care workers

- (1) A registered provider must ensure that an aged care worker of the provider does not engage in a risk assessed role of the provider in a State or Territory unless:
- (a) section 152-25 (police certificates) applies to the worker; or
 - (b) the worker:
 - (i) is a person in respect of whom a police certificate is pending; and
 - (ii) is subject to appropriate supervision while that certificate is pending; and
 - (iii) has made, and given to the registered provider, a statutory declaration stating the person has never been convicted of murder or sexual assault, or convicted of, and sentenced to imprisonment for, any other form of assault; or
 - (c) an NDIS clearance decision under the NDIS worker screening law of that State or Territory is in force in respect of the worker; or
 - (d) the worker is a secondary school student on a formal work experience placement with the provider and the worker is directly supervised by a person to whom paragraph (a) or (b) applies.

Commented [A55]: This and paragraph 152-20 (1)(c) reads likes the requirements apply on a State or Territory basis. We assume this is not correct and that an NDIS clearance decision in one State or Territory applies Australia-wide.

Aged care workers of registered providers other than certain providers delivering services under CHSP or NATSIFACP

- (2) A registered provider (other than a registered provider to whom subsection (6) or (7) applies) must take reasonable measures to require each aged care worker of the provider to notify the provider if:
- (a) an NDIS interim bar or NDIS exclusion decision is in force in respect of the worker under the NDIS worker screening law of that State or Territory; or
 - (b) an NDIS clearance decision under the NDIS worker screening law of that State or Territory in respect of the worker is suspended; or
 - (c) the worker has been:
 - (i) convicted of murder or sexual assault; or
 - (ii) convicted of, and sentenced to imprisonment for, any other form of assault.

Commented [A56]: See comment above

Commented [A57]: See comment above

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- (3) A registered provider (other than a registered provider to whom subsection (6) or (7) applies) must ensure that an aged care worker of the provider is not allowed to continue as an aged care worker if the provider is satisfied on reasonable grounds that the worker has been:
- (a) convicted of murder or sexual assault; or
 - (b) convicted of, and sentenced to imprisonment for, any other form of assault.

Aged care workers of certain registered providers delivering services under CHSP or NATSIFACP

- (4) A registered provider to whom subsection (6) or (7) applies must take reasonable measures to require each aged care worker of the provider to notify the provider if the worker has been:
- (a) convicted of an offence involving the death of a person; or
 - (b) convicted of, and sentenced to imprisonment for at least one year for, any of the following offences:
 - (i) a sex related offence, including sexual assault (whether against an adult or child), child pornography, or an indecent act involving a child;
 - (ii) an offence involving dishonesty that is not minor.
- (5) A registered provider to whom subsection (6) or (7) applies must ensure that an aged care worker of the provider is not allowed to continue as an aged care worker if the provider is satisfied on reasonable grounds that the worker has been:
- (a) convicted of an offence involving the death of a person; or
 - (b) convicted of, and sentenced to imprisonment for at least one year for, any of the following offences:
 - (i) a sex related offence, including sexual assault (whether against an adult or child), child pornography, or an indecent act involving a child;
 - (ii) an offence involving dishonesty that is not minor.
- (5A) Subsection (4) or (5) only applies in relation to an aged care worker of a registered provider delivering funded aged care services under CHSP if the person was engaged as an aged care worker of the registered provider on or after the commencement of this section.

- (6) This section applies to a registered provider that:
- (a) delivers funded aged care services under CHSP; and
 - (b) is registered in any of the following provider registration categories:
 - (i) home and community services;
 - (ii) assistive technology and home modifications;
 - (iii) personal and care support in the home or community;
 - (iv) nursing and transition care.

- (7) This subsection applies to a registered provider that:
- (a) delivers funded aged care services under NATSIFACP; and
 - (b) is registered in any of the following provider registration categories:

Commented [A58]: It's unclear what 'minor' means so any conviction for theft (e.g. shoplifting) could be covered. Should there be a time period so that it no longer matters, consistent with the spent convictions laws?

Commented [A59]: It's unclear what 'minor' means so any conviction for theft (e.g. shoplifting) could be covered. Should there be a time period so that it no longer matters, consistent with the spent convictions laws?

Commented [A60]: Please clarify why these rules won't apply to a CHSP provider registered in the advisory and support services category

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- (i) home and community services;
- (ii) assistive technology and home modifications;
- (iii) personal and care support in the home or community;
- (iv) nursing and transition care;
- (v) residential care.

152-20 Aged care workers [transitional period]

Risk assessed roles

- (1) A registered provider must ensure that an aged care worker of the provider does not engage in a risk assessed role of the provider **in a State or Territory** unless:
- (a) an aged care clearance decision under the aged care worker screening law of **that State or Territory** is in force in respect of the worker; or
 - (b) an NDIS clearance decision under the NDIS worker screening law **of that State or Territory** is in force in respect of the worker; or
 - (c) the worker is a health professional:
 - (i) whose health professional registration is not subject to any suspensions or exclusions; and
 - (ii) in respect of whom neither an aged care interim bar nor an aged care exclusion decision under the aged care worker screening law of **that State or Territory** is in force; and
 - (iii) in respect of whom neither an NDIS interim bar nor an NDIS exclusion decision under the NDIS worker screening law of **that State or Territory** is in force; or
 - (d) for a worker to whom a police certificate was issued during the interim period—all of the following apply:
 - (i) section 152-25 (police certificates) applies to the worker;
 - (ii) neither an aged care interim bar nor an aged care exclusion decision under the aged care worker screening law of **that State or Territory** is in force in respect of the worker; and
 - (iii) neither an NDIS interim bar nor an NDIS exclusion decision under the NDIS worker screening law of **that State or Territory** is in force in respect of the worker; or
 - (e) all of the following apply:
 - (i) the worker is a confirmed screening applicant in **that State or Territory**;
 - (ii) neither an aged care interim bar nor an aged care exclusion decision under the aged care worker screening law of **that State or Territory** is in force in respect of the worker;
 - (iii) neither an NDIS interim bar nor an NDIS exclusion decision under the NDIS worker screening law of **that State or Territory** is in force in respect of the worker;
 - (iv) the worker is appropriately supervised by a person to whom paragraph (a), (b) or (c) applies;
 - (v) the provider is implementing a risk management plan that covers the worker;

Commented [A61]: Please clarify why these rules won't apply to a NATSIFACP provider registered in the advisory and support services category

Commented [A62]: There are a number of references in this and the following sections which refer to a State or Territory. Please clarify that an aged care clearance decision or an NDIS clearance decision in one State or Territory applies Australia-wide.

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- (vi) no law of **that State or Territory** prohibits a person from engaging in a risk assessed role while the person is a confirmed screening applicant; or
- (e) all of the following apply:
 - (i) the worker is a secondary school student on a formal work experience placement with the provider;
 - (ii) the worker is directly supervised by a person to whom paragraph (a), (b) or (c) applies;
 - (iii) the provider is implementing a risk management plan that covers the worker.
- (2) A registered provider must take reasonable measures to require each aged care worker of the provider to notify the provider if:
 - (a) an aged care exclusion decision or an aged care interim bar is in force in respect of the worker under the aged care worker screening law of **that State or Territory**; or
 - (b) an NDIS interim bar or an NDIS exclusion decision is in force for the worker under the NDIS worker screening law of **that State or Territory**; or
 - (c) an aged care clearance decision under the aged care worker screening law of **that State or Territory** in respect of the worker is suspended; or
 - (d) an NDIS clearance decision under the NDIS worker screening law of **that State or Territory** in respect of the worker is suspended; or
 - (e) for a worker who is a health professional—their health professional registration is subject to any suspensions or exclusions; or
 - (f) for a worker to whom a police certificate was issued during the interim period—the worker has been:
 - (i) convicted of murder or sexual assault; or
 - (ii) convicted of, and sentenced to imprisonment for, any other form of assault.

Non-risk assessed roles

- (3) A registered provider must ensure that an aged care worker of the provider does not engage in a role of the provider (other than a risk assessed role) **in a State or Territory** unless subsection 152-25(1) (police certificates) applies to the worker.

Commented [A63]: It is unclear why there needs to be a reference to a State or Territory.

152-20 Aged care workers [full implementation period]

Risk assessed roles

- (1) A registered provider must ensure that an aged care worker of the provider does not engage in a risk assessed role of the provider **in a State or Territory** unless:
 - (a) an aged care clearance decision under the aged care worker screening law of **that State or Territory** is in force in respect of the worker; or
 - (b) an NDIS clearance decision under the NDIS worker screening law of **that State or Territory** is in force in respect of the worker; or
 - (c) the worker is a health professional:

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- (i) whose health professional registration is not subject to any suspensions or exclusions; and
 - (ii) in respect of whom neither an aged care interim bar nor an aged care exclusion decision under the aged care worker screening law of **that State or Territory** is in force; and
 - (iii) in respect of whom neither an NDIS interim bar nor an NDIS exclusion decision under the NDIS worker screening law of **that State or Territory** is in force; or
 - (d) all of the following apply:
 - (i) the worker is a confirmed screening applicant;
 - (ii) neither an aged care interim bar nor an aged care exclusion decision under the aged care worker screening law of **that State or Territory** is in force in respect of the worker;
 - (iii) neither an NDIS interim bar nor an NDIS exclusion decision under the NDIS worker screening law of **that State or Territory** is in force in respect of the worker;
 - (iv) the worker is appropriately supervised by a person to whom paragraph (a), (b) or (c) applies;
 - (v) the provider is implementing a risk management plan that covers the worker;
 - (vi) no law of **the State or Territory** prohibits a person from engaging in a risk assessed role while the person is a confirmed screening applicant; or
 - (e) all of the following apply:
 - (i) the worker is a secondary school student on a formal work experience placement with the provider;
 - (ii) the worker is directly supervised by a person to whom paragraph (a), (b) or (c) applies;
 - (iii) the provider is implementing a risk management plan that covers the worker.
- (2) A registered provider must take reasonable measures to require each aged care worker of the provider to notify the provider if:
- (a) an aged care exclusion decision or an aged care interim bar is in force in respect of the worker under the aged care worker screening law of **that State or Territory**; or
 - (b) an NDIS interim bar or an NDIS exclusion decision is in force for the worker under the NDIS worker screening law of **that State or Territory**; or
 - (c) an aged care clearance decision under the aged care worker screening law of **that State or Territory** in respect of the worker is suspended; or
 - (d) an NDIS clearance decision under the NDIS worker screening law of **that State or Territory** in respect of the worker is suspended; or
 - (e) for a worker who is a health professional—their health professional registration is subject to any suspensions or exclusions; or
 - (f) for a worker to whom a police certificate was issued during the interim period—the worker has been:
 - (i) convicted of murder or sexual assault; or

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- (ii) convicted of, and sentenced to imprisonment for, any other form of assault.

Non-risk assessed roles

- (3) A registered provider must ensure that an aged care worker of the provider does not engage in a role of the provider (other than a risk assessed role) **in a State or Territory** unless subsection 152-25(1) (police certificates) applies to the worker.

Commented [A64]: It is unclear why there needs to be a reference to a State or Territory.

152-25 Police certificates [interim period]

General

- (1) This section applies to a person if:
 - (a) there is for the person a police certificate that is not more than 3 years old; and
 - (b) the police certificate does not record that the person has been:
 - (i) convicted of murder or sexual assault; or
 - (ii) convicted of, and sentenced to imprisonment for, any other form of assault; and
 - (c) for a person who has been, at any time after turning 16, a citizen or permanent resident of a country other than Australia—the person has made a statutory declaration stating that the person has never been:
 - (i) convicted of murder or sexual assault; or
 - (ii) convicted of, and sentenced to imprisonment for, any other form of assault.

Responsible persons or aged care workers of certain registered providers delivering services under CHSP

- (1A) This section applies to a person who is a responsible person or aged care worker of a registered provider to which subsection (2) applies if:
 - (a) there is for the person a police certificate that is not more than 3 years old; and
 - (b) the police certificate does not record that the person has been convicted of an offence involving the death of a person; and
 - (c) the police certificate does not record that in the 5 years before the date of the certificate, the person has been convicted of, and sentenced to imprisonment for at least one year for, any of the following offences:
 - (i) a sex related offence, including sexual assault (whether against an adult or child), child pornography, or an indecent act involving a child;
 - (ii) an offence involving dishonesty that is not minor.
- (1B) Subsection (1A) only applies if the person was engaged as a responsible person or aged care worker of the registered provider on or after the commencement of this section.
- (2) This section applies to a registered provider that:
 - (a) delivers funded aged care services under CHSP; and

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(b) is registered in any of the following provider registration categories:

- (i) home and community services;
- (ii) assistive technology and home modifications;
- (iii) personal and care support in the home or community;
- (iv) nursing and transition care.

Responsible persons or aged care workers of certain registered providers delivering services under NATSIFACP

(3) This section applies to a person who is a responsible person or aged care worker of a registered provider to which subsection (4) applies if:

- (a) there is for the person a police certificate that is not more than 3 years old; and
- (b) the police certificate does not record that the person has been convicted of an offence involving the death of a person; and
- (c) the police certificate does not record that in the 5 years before the date of the certificate, the person has been convicted of, and sentenced to imprisonment for at least one year for, any of the following offences:
 - (i) a sex related offence, including sexual assault (whether against an adult or child), child pornography, or an indecent act involving a child;
 - (ii) an offence involving dishonesty that is not minor.

(4) This subsection applies to a registered provider that:

- (a) delivers funded aged care services under NATSIFACP; and
- (b) is registered in any of the following provider registration categories:
 - (i) home and community services;
 - (ii) assistive technology and home modifications;
 - (iii) personal and care support in the home or community;
 - (iv) nursing and transition care;
 - (v) residential care.

Commented [A65]: Please clarify why these rules won't apply to a CHSP provider registered in the advisory and support services category

Commented [A66]: Please clarify why these rules won't apply to a NATSIFACP provider registered in the advisory and support services category

152-25 Police certificates [transitional and full implementation periods]

This section applies to a person if:

- (a) there is for the person a police certificate that is not more than 3 years old; and
- (b) the police certificate does not record that the person has been:
 - (i) convicted of murder or sexual assault; or
 - (ii) convicted of, and sentenced to imprisonment for, any other form of assault; and
- (c) for a person who has been, at any time after turning 16, a citizen or permanent resident of a country other than Australia—the person has made a statutory declaration stating that the person has never been:
 - (i) convicted of murder or sexual assault; or
 - (ii) convicted of, and sentenced to imprisonment for, any other form of assault.

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152-30 Risk management plan [transitional and full implementation periods]

- (1) A registered provider must develop and maintain a written risk management plan for protecting individuals to whom the provider delivers funded aged care services while:
 - (a) paragraph 152-15(1)(d) applies to any responsible person of the provider; or
 - (b) any aged care workers of the provider to whom [paragraph 152-20(1)(e) or (f) transitional] or [152-20(1)(d) or (e) full implementation] applies are engaged in a risk assessed role of the provider.
- (2) The plan must:
 - (a) identify and describe each risk to an individual to whom the provider delivers funded aged care services that arises in the circumstances mentioned in subsection (1); and
 - (b) explain how each of those risks will be managed to protect the safety, health, wellbeing and quality of life of the individual.

Review of plan

- (3) The provider must review the plan if there is a reportable incident involving a responsible person or aged care worker of the provider.

Note: The Commissioner may also require the provider to review the plan by giving the provider a required action notice under Division 1 of Part 10 of Chapter 6 of the Act.

- (4) As part of a review of the plan in relation to an incident, the provider must:
 - (a) record the incident and the circumstances surrounding the incident in the plan, including whether the person or worker was removed from or continued in that role, and if so, the reasons for the decision to remove them from or continue them in that role; and
 - (b) assess, in light of the incident, whether the plan satisfies the requirements in subsection (2); and
 - (c) if the plan is assessed as requiring updates to better satisfy the requirements in subsection (2)—record the updates and reasons why the updates will better satisfy the requirements; and
 - (d) if the plan is assessed as not requiring updates to better satisfy the requirements in subsection (2)—record the reasons for this assessment.

Implementation of plan

- (5) The provider must implement the plan.

Subdivision C—Qualifications and training requirements

152-35 Qualifications and training requirements

For the purposes of paragraph 152(c) of the Act, the requirements are that aged care workers of a registered provider must have appropriate qualifications, skills or experience to provide the funded aged care services that the provider delivers to individuals.

Commented [A67]: We recommend this be clarified to make clear that it is only if the person is somehow alleged to be at fault.

Otherwise, everyone who reports an incident or who, provides care immediately after (e.g. treats a fall) could be arguably captured. Requiring providers to undertake this for every person “involved” could be onerous.

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Division 2 Vaccination

Section 153-5

Division 2—Vaccination

153-5 Kinds of provider to which the condition applies

For the purposes of subsection 153(1) of the Act, a registered provider registered in the registration category residential care is prescribed.

153-10 Requirements for providing access to vaccinations

For the purposes of paragraph 153(1)(a) of the Act, the requirement in accordance with which a registered provider must provide access to the vaccinations mentioned in subsection 153(2) of the Act is that the provider must do so in accordance with the Australian Immunisation Handbook, published by the Department, as existing from time to time.

Note: The Australian Immunisation Handbook could in 2025 be viewed on the Department's website (immunisationhandbook.health.gov.au).

153-15 Other vaccinations

For the purposes of paragraph 153(2)(c) of the Act, the following vaccinations are prescribed:

- (a) a pneumococcal vaccination;
- (b) a shingles vaccination.

Commented [A68]: There needs to be a more precise reference than only to the Australian Immunisation Handbook. We went to the Department's website and could not find, after a decent amount of time spent searching, where a provider was to go to find the access requirements for the four vaccinations. It also needs to be clear what "provide access" to vaccinations means - we understand it is intended to mean how often (e.g. every six months; annually) but this is not clear.

Commented [A69]: Is it intended that residential care providers are required to make available the pneumococcal vaccination and the shingles vaccination to aged care workers? And if so, that the vaccinations will be provided by the Government to providers for this purpose for free?

Please also confirm that these vaccinations will be provided by the Government to providers for this purpose for free for residents?

What transitional arrangements will be put in place to allow providers time to implement these new requirements?

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Section 154-1

Part 7—Information and access

Division 1—Personal information and record keeping

Subdivision A—Purpose of this Division

154-1 Purpose of this Division

For the purposes of paragraph 154(a) of the Act, this Part prescribes:

- (a) the kinds of records that registered providers must keep and retain; and
- (b) requirements for keeping and retaining those records.

Subdivision B—Vaccination

154-5 Application of this Subdivision to certain registered providers

This Subdivision applies to a registered provider registered in the provider registration category residential care.

154-10 Records about service staff—influenza vaccinations

For the purposes of section 154 of the Act, this section prescribes that a registered provider must keep records, for each calendar year, of the following information:

- (a) the total number of service staff in relation to the approved residential care home;
- (b) the number of those service staff who have informed the registered provider, whether voluntarily or as required under a law of a State or Territory, that they have received the annual seasonal influenza vaccination for that year (whether or not under the registered provider's influenza vaccination scheme (if any)).

154-15 Records about service staff—COVID-19 vaccinations

For the purposes of section 154 of the Act, this section prescribes that a registered provider must keep records, for each calendar year, of the following information:

- (a) the total number of service staff in relation to the approved residential care home;
- (b) the number of those service staff who have informed the registered provider that they have received a COVID-19 vaccination in that year.

154-20 Records about individuals receiving residential care—influenza vaccinations

For the purposes of section 154 of the Act, this section prescribes that a registered provider must keep records, for each calendar year, of the following information:

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- (a) the total number of individuals receiving funded aged care services in an approved residential care home;
- (b) the number of those individuals who have received the annual seasonal influenza vaccination for that year.

154-25 Records about individuals receiving residential care—COVID-19 vaccinations

For the purposes of section 154 of the Act, this section prescribes that a registered provider must keep records, for each calendar year, of the following information:

- (a) the total number of individuals receiving funded aged care services in an approved residential care home;
- (b) the number of those individuals who have received one or more COVID-19 vaccinations in that year;
- (c) the number of individuals covered by paragraph (b) who informed the registered provider that they had received only one COVID-19 vaccination;
- (d) the number of individuals covered by paragraph (b) who informed the registered provider that they had received 2 COVID-19 vaccinations.

154-30 Kinds of records that must be retained

For the purposes of paragraph 154(a) of the Act, the requirements prescribed are:

- (a) that a registered provider must keep a record prescribed in section 154-10, 154-15, 154-20 and 154-25 of this instrument for 7 years starting on the day the record is made or received;
- (b) a record must be kept and retained in written or electronic form.

Note: A registered provider may be required to comply with other Commonwealth, State or Territory laws in relation to the retention of records.

Commented [A70]: This is more consistent with the state Health Records laws (eg Health Records and Information Privacy Act (NSW) and Health Records Act (Vic)) however, these laws require that health records be retained for 7 years after cessation of services (not 7 years after the record was created). Is the intention that this overrides state laws, ie records should be destroyed at the end of the 7 years? Or can it be read consistently with that?

Subdivision C—Quality indicators [to be drafted]

Subdivision D—Complaints and feedback

154-200 Application of Subdivision to feedback received

This Subdivision applies to feedback received by a registered provider:

- (a) that is managed in accordance with section 165-30; and
- (b) raises an issue as referred to in subsection 165-30(2).

154-205 Requirements for records of complaints and feedback

- (1) For the purposes of paragraph 154(a) of the Act, each of the following kinds of records are prescribed kinds of records that the registered provider must keep and retain:

- (a) complaints and feedback received each year;
- (b) the nature of complaints and feedback;
- (c) the action taken to resolve complaints and feedback;

Commented [A71]: This wording implies that all feedback is negative when it may not be. Recommend replace 'resolve complaints and feedback' with 'respond to complaints and feedback where required'.

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- (d) responses provided to individuals about their complaints and feedback;
 - (e) any improvements made by a registered provider in relation to complaints and feedback;
 - (f) an evaluation of the effectiveness of the actions taken and their related outcome in relation to each complaint and feedback;
 - (g) a record of the number of days taken to resolve each complaint and feedback;
 - (h) the education and training that has been delivered to the staff of the registered provider in relation to each complaint and feedback.
- (2) For the purposes of paragraph 154(a) of the Act, the requirements prescribed are:
- (a) that a registered provider must keep a record prescribed in subsection (1) for 7 years starting on the day the record is made or received.
 - (b) a record must be kept and retained in written or electronic form.

Note: A registered provider may be required to comply with other Commonwealth, State or Territory laws in relation to the retention of records.

Subdivision E—Prudential and financial

154-315 Requirement to keep and retain financial and prudential reports

- (1) For the purposes of paragraph 154(a) of the Act, each of the following kinds of records are prescribed kinds of records that a registered provider must keep and retain:
- (a) an aged care financial report;
 - (b) a quarterly financial report;
 - (c) a general purpose financial report;
 - (d) an annual prudential compliance statement.

Note: See Subdivision F of Division 1 of Part 2 of Chapter 5 of this instrument for requirements relating to each record prescribed.

- (2) For the purposes of paragraph 154(a) of the Act, the requirements prescribed are:
- (a) that a registered provider must keep a record prescribed under this section for 7 years starting on the day the record is made or received;
 - (b) a record must be kept and retained in written or electronic form.

Note: A registered provider may be required to comply with other Commonwealth, State or Territory laws in relation to the retention of records.

Subdivision F—CHSP

154-600 Application of Subdivision

This Subdivision applies to a registered provider of a kind who is registered in one or more of the following provider registration categories:

- (a) home and community services;
- (b) assistance technology and home modifications;
- (c) personal and care support in the home or community;
- (d) nursing and transition care;

Commented [A72]: Clear documentation required in guidance material on how this information will be used. Speed of resolving a complaint is not an indication of effective resolution or high quality care. Statistics will be skewed for providers that thoroughly investigate and implement structural changes as a mitigation process.

Commented [A73]: “Each complaint and feedback” in (f), (g) and (h) is excessive. Recommend change “each complaint and feedback” to “complaints and feedback”.

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and delivers funded aged care services through the specialist aged care program CHSP.

154-605 Requirements for records

- (1) For the purposes of paragraph 154(a) of the Act, each of the following kinds of records are prescribed kinds of records that the registered provider must keep and retain:
 - (a) the funds the System Governor has provided the registered provider within a particular financial year;
 - (b) any individual contributions collected over the financial year;
 - (c) expenditure by the provider under the grant agreement;
 - (d) any System Governor approved unspent funds from previous financial years;
 - (e) types and duration of services provided;
 - (f) activity and performance data;
 - (g) [to be drafted].
- (2) For the purposes of paragraph 154(a) of the Act, the requirements prescribed are:
 - (a) that a registered provider must keep a record prescribed in subsection (1) for 7 years starting on the day the record is made or received.
 - (b) a record must be kept and retained in written or electronic form.

Note: A registered provider may be required to comply with other Commonwealth, State or Territory laws in relation to the retention of records.

Subdivision G—NATSIFACP

154-610 Application of Subdivision

This Subdivision applies to a registered provider of a kind who is registered in one or more of the following provider registration categories:

- (a) home and community services;
- (b) assistance technology and home modifications;
- (c) personal and care support in the home or community;
- (d) nursing and transition care;
- (e) residential care;

and delivers funded aged care services through the specialist aged care program NATSIFACP.

154-615 Requirements for records

- (1) For the purposes of paragraph 154(a) of the Act, each of the following kinds of records are prescribed kinds of records that the registered provider must keep and retain:
 - (a) the funds the System Governor has provided the registered provider within a particular financial year;
 - (b) any individual contributions collected over the financial year;
 - (c) expenditure by the provider under the grant agreement;

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- (d) any System Governor approved unspent funds from previous financial years;
 - (e) types and duration of services provided;
 - (f) individual care plans;
 - (g) activity and performance data delivered to each individual;
 - (h) progress in embedding a wellness and reablement approach to service delivery;
 - (i) service agreements;
 - (j) [to be drafted].
- (2) For the purposes of paragraph 154(a) of the Act, the requirements prescribed are:
- (a) that a registered provider must keep a record prescribed in subsection (1) for 7 years starting on the day the record is made or received;
 - (b) a record must be kept and retained in written or electronic form.

Note: A registered provider may be required to comply with other Commonwealth, State or Territory laws in relation to the retention of records.

Subdivision H—Governing bodies

154-700 Records about independent non-executive members of a governing body

- (1) If, because of paragraph 157(2)(a) of the Act and section 157-5 of this instrument, a registered provider is required to ensure that a majority of the members of its governing body are independent non-executive members, the registered provider must keep and retain records of:
- (a) the names of the members of its governing body; and
 - (b) which of those members are independent non-executive members.

Retention of records

- (2) A registered provider must keep a record made under subsection (1) for 7 years starting on the day the record is made.
- (3) Despite subsection (2), if a record made under subsection (1) relates to a specific member of the governing body, the registered provider must keep the record for a period of 7 years following the end of that member's engagement with the governing body.

154-705 Records about members of a governing body with clinical care provision experience

- (1) If, because of paragraph 157(2)(b) of the Act and section 157-10 of this instrument, a registered provider is required to ensure that at least one member of its governing body has experience in the provision of clinical care, the registered provider must keep and retain records of:
- (a) the names of the members of its governing body who have experience in the provision of clinical care; and
 - (b) the details of those members' experience.

Commented [A74]: Guidance material will be needed to specify what 'details' are required.

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Chapter 4 Conditions on provider registration

Part 7 Information and access

Division 1 Personal information and record keeping

Section 154-800

Retention of records

- (2) A registered provider must keep a record made under subsection (1) for 7 years starting on the day the record is made.
- (3) Despite subsection (2), if a record made under subsection (1) relates to a specific member of the governing body, the registered provider must keep the record for a period of 7 years following the end of that member's engagement with the governing body.

Subdivision J—Advisory bodies

154-800 Records about the quality care advisory body

- (1) If, because of paragraph 158(2)(a) of the Act and section 158-5 of this instrument, a registered provider is required to establish, and continue in existence, a quality care advisory body, the registered provider must keep and retain the following:
 - (a) records of the names of the members of the quality care advisory body and details of:
 - (i) the date each member was appointed to the quality care advisory body; and
 - (ii) the date (if any) a member resigned from the quality care advisory body;
 - (b) records of how the quality care advisory body satisfies the requirements of section 158-15 of this instrument (requirements for reports of quality care advisory bodies);
 - (c) a copy of the minutes of any meeting held by the quality care advisory body and the date on which the meeting was held;
 - (d) a copy of each written report given to the governing body of the provider by the quality care advisory body under subparagraph 158(2)(a)(ii) of the Act;
 - (e) records of any feedback given to the governing body of the provider by the quality care advisory body under subparagraph 158(2)(a)(iii) of the Act;
 - (f) a copy of any written advice given to the quality care advisory body by the governing body of the provider under subparagraph 158(2)(b)(ii) of the Act advising how the governing body has considered the report and feedback mentioned in paragraphs (d) and (e) of this subsection.

Retention of records

- (2) A registered provider must keep a record made under subsection (1) for 7 years starting on the day the record is made.
- (3) Despite subsection (2), if a record made under subsection (1) relates to a specific member of the quality care advisory body, the registered provider must keep the record for a period of 7 years following the end of that member's engagement with the quality care advisory body.

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Conditions on provider registration **Chapter 4**
Information and access **Part 7**
Personal information and record keeping **Division 1**

Section 154-805

154-805 Records about the consumer advisory body

- (1) If, because of paragraph 158(4)(a) of the Act and section 158-20 of this instrument, a registered provider is required to offer the opportunity to establish one or more consumer advisory bodies, the registered provider must keep and retain the following:
 - (a) a copy of each **written** offer made to individuals to whom the provider delivers funded aged care services and the supporters of those individuals giving them the opportunity to establish a consumer advisory body;
 - (b) records of the date on which each offer was given to those individuals and supporters.
- (2) If one or more consumer advisory bodies are established, the registered provider must also keep and retain the following in relation to each body:
 - (a) a copy of the minutes of each meeting of the consumer advisory body;
 - (b) records of any feedback given to the governing body of the provider by the consumer advisory body;
 - (c) a copy of any written advice given to the consumer advisory body by the governing body under subparagraph 158(4)(b)(ii) of the Act advising how the governing body has considered any such feedback.

Retention of records

- (3) A registered provider must keep a record made under this section for 7 years starting on the day the record is made.

Subdivision K—**Worker screening**

154-1110 Records of responsible persons

A registered provider must keep, and keep up-to-date, a record for each responsible person of the provider that includes the following information and documents:

- (a) the person's full name, date of birth and address;
- (b) [to be drafted - to cover details of the person's aged care decision number, NDIS decision number, health professional registration, police certificate, clearance application number and supervision arrangements (as applicable)].

154-1115 Records of roles of aged care workers [transitional and full implementation periods]

A registered provider must keep, and keep up-to-date, a written record of each role of an aged care worker of the provider that includes the following information:

- (a) the title or other organisational identifier for the role;
- (b) the normal duties of the role;
- (c) the provider's assessment of whether the role is a risk assessed role of the provider;

Commented [A75]: Add 'and documented notes of a verbal offer'

Commented [A76]: These record-keeping requirements are onerous and excessive. Recommend these rules be changed to reduce the amount of records required to be kept and the sector consulted before any additional requirements are imposed.

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Chapter 4 Conditions on provider registration

Part 7 Information and access

Division 1 Personal information and record keeping

Section 154-1120

- (d) the date on which the provider assessed the role;
- (e) the name and title of the person who assessed the role;
- (f) for each role for which the provider's assessment is that the role is a risk assessed role—the provider's assessment of which subparagraph of paragraph (b) of the definition of **risk assessed role** applies to the role.

154-1120 Records of aged care workers

A registered provider must keep, and keep up-to-date, a record for each aged care worker of the provider that includes the following information and documents:

- (a) the worker's full name, date of birth and address;
- (b) [to be drafted - to cover details of the worker's roles, aged care decision number, NDIS decision number, health professional registration, police certificate, clearance application number and supervision arrangements (as applicable)];
- (c) how the provider has ensured that the worker:
 - (i) has appropriate qualifications, skills or experience to provide the funded aged care services that the registered provider delivers to individuals (see section 152-35 of this instrument); and
 - (ii) is given opportunities to develop their capability to provide those services (see paragraph 152(d) of the Act).

154-1125 How long records required by sections 154-1110, 154-1115 and 154-1120 to be kept

A registered provider must keep a record required by section 154-1110, 154-1115 or 154-1120 for 7 years starting on the later of the following:

- (a) the day the record is first made;
- (b) the day the latest update to the record is made.

154-1130 Records of workers engaged in risk assessed roles on each day [transitional and full implementation periods]

- (1) A registered provider must keep records of which aged care workers of the provider were engaged in risk assessed roles of the provider on each day.
- (2) The provider must keep a record relating to a day for 7 years starting on the day the record was created.

154-1135 Copies of records relating to allegations of misconduct

- (1) This section applies if a registered provider has a copy of a record relating to:
 - (a) an allegation of misconduct against a responsible person or aged care worker of the provider; or
 - (b) any action taken, including any investigation, in response to such an allegation.
- (2) The provider must keep the copy for 7 years starting on the first day the provider has the copy.

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Conditions on provider registration **Chapter 4**
Information and access **Part 7**
Personal information and record keeping **Division 1**

Section 154-1140

154-1140 Information to be recorded in the Government Provider Management System [transitional and full implementation periods]

- (1) Subject to subsection (4), the registered provider must record the following information using the Government Provider Management System maintained by the System Governor:
- (a) the information mentioned in paragraphs 154-1110(a) and 154-1120(a);
 - (b) [to be drafted - other information mentioned in paragraphs 154-1110(b) and 154-1120(b)];
 - (c) the other information relating to responsible persons and aged care workers of the provider mentioned in subsections (2) and (3).

Other information relating to responsible persons

- (2) For each responsible person of the provider, the other information is the following:
- (a) if an aged care clearance decision or an NDIS clearance decision in respect of the person is in force—the date of the aged care clearance decision for the person and the date the decision expires;
 - (b) if an aged care clearance decision or an NDIS clearance decision in respect of the person is suspended—the period of the suspension;
 - (c) if an aged care exclusion decision or an NDIS exclusion decision is in force in respect of the person—the period for which the decision is in force;
 - (d) if an aged care interim bar or an NDIS interim bar is in force in respect of the person—the period for which the bar is in force;
 - (e) if a decision to revoke an aged care clearance decision or an NDIS clearance decision in respect of the person is made—the date of the decision;
 - (f) if a police certificate is in force in respect of the person:
 - (i) the reference or identification number of the police certificate; and
 - (ii) the expiry date for the police certificate.

Other information relating to aged care workers

- (3) For each aged care worker of the provider that delivers funded aged care services in a State or Territory, the other information is the following:
- (a) if an aged care clearance decision is in force in respect of the worker under the aged care worker screening law of the State or Territory—the date of the aged care clearance decision for the worker and the date the decision expires;
 - (b) if an aged care clearance decision in respect of the worker is suspended under the aged care worker screening law of the State or Territory—the period of the suspension;
 - (c) if an aged care exclusion decision is in force in respect of the worker under the aged care worker screening law of the State or Territory—the period for which the decision is in force;
 - (d) if an aged care interim bar is in force in respect of the worker under the aged care worker screening law of the State or Territory—the period for which the bar is in force;

Commented [A77]: This has potential to increase administrative burden on providers, particularly if it is expected that information is to be updated on an individual worker basis (e.g. within 14 days of change). Providers should be allowed to upload the required information in a .CSV or similar format and on a periodic basis e.g. quarterly.

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Chapter 4 Conditions on provider registration

Part 7 Information and access

Division 1 Personal information and record keeping

Section 154-3000

- (e) if a decision to revoke an aged care clearance decision for the worker is made under the aged care worker screening law of **the State or Territory**—the date of the decision;
 - (f) if an NDIS clearance decision is in force in respect of the worker under the NDIS worker screening law of **the State or Territory**—the date of the NDIS clearance decision for the worker and the date the decision expires;
 - (g) if an NDIS clearance decision in respect of the worker is suspended under the NDIS worker screening law of **the State or Territory**—the period of the suspension;
 - (h) if an NDIS exclusion decision is in force in respect of the worker under the NDIS worker screening law of **the State or Territory**—the period for which the decision is in force;
 - (i) if an NDIS interim bar is in force in respect of the worker under the NDIS worker screening law of **the State or Territory**—the period for which the bar is in force;
 - (j) if a decision to revoke an NDIS clearance decision for the worker is made under the NDIS worker screening law of **the State or Territory**—the date of the decision;
 - (k) if a police certificate is in force in respect of the worker:
 - (i) the reference or identification number of the police certificate; and
 - (ii) the expiry date for the police certificate.
- (4) If the registered provider is a registered NDIS provider, the provider must record the information mentioned in paragraphs (1)(a) and [to be drafted] using either the Government Provider Management System or the NDIS Worker Screening Database.

Subdivision L—Incidents

154-3000 Requirements for records of system-recording details of incidents

For the purposes of paragraph 154(a) of the Act, a provider must keep and retain the details recorded in relation to an incident under section 164-25(1) for 7 years.

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Conditions on provider registration **Chapter 4**
Information and access **Part 7**
Provision of information to individuals [to be drafted] **Division 2**

Section 154-3000

Division 2—Provision of information to individuals [to be drafted]

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Chapter 4 Conditions on provider registration

Part 7 Information and access

Division 3 Access by supporters etc.

Section 156-5

Division 3—Access by supporters etc.

156-5 Access to individuals

- (1) For the purposes of subsection 156(1) of the Act, every kind of registered provider is prescribed.

Supporters

- (2) For the purposes of subsection 156(1) of the Act, a requirement is that a registered provider must allow and facilitate access (whether physically, by visual link or other reasonable means requested by the individual) by a supporter of an individual to whom the provider delivers funded aged care services to the individual at any time requested, or consented to, by the individual.

Note: See also subsection 156(4) of the Act, which relates to providers delivering services to an individual in a home or community setting, and access requirements only applying in relation to times during which those services are being delivered.

Legal advisors etc.

- (3) For the purposes of subsection 156(1) of the Act, a requirement is that a registered provider must allow and facilitate access (whether physically, by visual link or other reasonable means requested by the individual) to an individual to whom the provider delivers funded aged care services by a relevantly qualified person providing legal advice or another legal service to the individual at any time requested, or consented to, by the individual.

Note: See also subsection 156(4) of the Act, which relates to providers delivering services to an individual in a home or community setting, and access requirements only applying in relation to times during which those services are being delivered.

Independent aged care advocates

- (4) For the purposes of subsection 156(1) of the Act, a requirement is that a registered provider must allow and facilitate access (whether physically, by visual link or other reasonable means requested by the individual) by an independent aged care advocate to an individual to whom the provider delivers funded aged care services:

- (a) unless paragraph (b) applies—at any time requested, or consented to, by the individual; or
(b) if the individual is unable to request or consent to the access—at any time.

Note: See also subsection 156(4) of the Act, which relates to providers delivering services to an individual in a home or community setting, and access requirements only applying in relation to times during which those services are being delivered.

Aged care volunteer visitor

- (5) For the purposes of subsection 156(1) of the Act, a requirement is that a registered provider must allow and facilitate access (whether physically, by visual link or other reasonable means requested by the individual) by an aged

Commented [A78]: Noting 'allow and facilitate' is replicated in the Act, what will it mean to 'facilitate' access (for supporters and other individuals as referenced throughout this section) - at any time requested? What positive steps will providers be expected to take? This could be unreasonable e.g. if any staff member at any time must be equipped, ready and able to set up a video link, even during the night when there may be less staff available.

Commented [A79]: These should be qualified by wording such as 'where reasonable' (including in other parts of this section where this wording is replicated).

Commented [A80]: In this context, to 'facilitate' access, will providers be expected to source legal services at any time, including outside of business hours?

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Conditions on provider registration **Chapter 4**

Information and access **Part 7**

Access by supporters etc. **Division 3**

Section 156-10

care volunteer visitor to an individual to whom the provider delivers funded aged care services at any time requested, or consented to, by the individual.

Note: See also subsection 156(4) of the Act, which relates to providers delivering services to an individual in a home or community setting, and access requirements only applying in relation to times during which those services are being delivered.

156-10 Access to settings

- (1) For the purposes of subsection 156(2) of the Act:
 - (a) every kind of registered provider is prescribed; and
 - (b) it is a prescribed requirement that, if:
 - (i) a registered provider delivers funded aged care services to an individual in a setting; and
 - (ii) the individual requests, or consents to, access by an independent aged care advocate; and
 - (iii) the purpose of the access by the advocate is to provide information and education to the individual;the registered provider must allow and facilitate the access to the individual, and any other individual who requests or consents to the access, in the setting.

Note 1: See also subsection 156(4) of the Act, which relates to providers delivering services to an individual in a home or community setting, and access requirements only applying in relation to times during which those services are being delivered.

Note 2: See also subsections 156(6) and (7) of the Act, which relate to access to settings.

- (2) Without limiting paragraph (1)(b), a setting may include the following:
 - (a) a residential care home;
 - (b) a home or community setting.

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Chapter 4 Conditions on provider registration

Part 8 Governance

Division 1 Membership of governing bodies

Section 157-5

Part 8—Governance

Division 1—Membership of governing bodies

157-5 Kinds of provider to which the independent non-executive members requirement applies

- (1) For the purposes of paragraph 157(2)(a) of the Act, a registered provider registered in any of the following provider registration categories is prescribed, unless the provider is covered by subsection (2):
 - (a) nursing and transition care;
 - (b) residential care.
- (2) This subsection covers a registered provider that is:
 - (a) a kind of body known as an Aboriginal Community Controlled Organisation; or
 - (b) a body that is registered under the Co-Operatives National Law or the *Co-operatives Act 2009* (WA) as a registered co-operative and has clauses in its constitution to the effect that:
 - (i) state an objective of the registered provider is delivering quality funded aged care services to individuals in accordance with the Aged Care Quality Standards; and
 - (ii) distribution of assets to members upon winding-up are limited to the nominal value of the member's contribution to the co-operative, provided that such a limitation complies with the legislation under which the co-operative is registered.

157-10 Kinds of provider to which the clinical care provision experience requirement applies

For the purposes of paragraph 157(2)(b) of the Act, a registered provider is prescribed if the provider:

- (a) is registered in any of the following provider registration categories:
 - (i) nursing and transition care;
 - (ii) residential care; and
- (b) is not a kind of body known as an Aboriginal Community Controlled Organisation.

157-15 Kinds of providers to which other governing body requirements apply

For the purposes of subsection 157(5) of the Act, a registered provider that is covered by paragraph 157-5(2)(b) of this instrument must ensure that the members of the provider's governing body undertake training on governance focused on co-operatives or includes course material on co-operatives within 6 months of the member's appointment as a member of the governing body.

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Conditions on provider registration **Chapter 4**

Governance **Part 8**

Membership of governing bodies **Division 1**

Section 157-20

157-20 Application for determination that certain conditions do not apply— other matters that the Commissioner may take into account

For the purposes of paragraph 159(4)(h) of the Act, the matters are the following:

- (a) subject to paragraph (b), the registered provider's history of compliance with the governance conditions set out in paragraph 157(2)(a) and 157(2)(b) of the Act;
- (b) any circumstances surrounding the registered provider's history of non-compliance with the governance conditions set out in paragraph 157(2)(a) and 157(2)(b) of the Act, including steps (if any) that the provider has taken to become compliant;
- (c) any other matter the Commissioner considers relevant.

Note: For paragraph (b), examples of circumstances include the following:

- (a) where a member of a governing body has unexpectedly resigned, and recruitment of a new member is ongoing, which renders a provider non-compliant with a governance condition;
- (b) where a person has accepted a role as a member of the governing body but is yet to commence in that role.

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Chapter 4 Conditions on provider registration

Part 8 Governance

Division 2 Advisory body requirements

Section 158-5

Division 2—Advisory body requirements

158-5 Kinds of provider to which the quality care advisory body condition applies

For the purposes of subsection 158(2) of the Act, a registered provider registered in any of the following provider registration categories is prescribed:

- (a) nursing and transition care;
- (b) residential care.

158-10 Requirements for membership of quality care advisory body

For the purposes of subparagraph 158(2)(a)(i) of the Act, the requirements are that the membership of the quality care advisory body of a registered provider must include the following:

- (a) a responsible person of the registered provider who has appropriate experience in the delivery of funded aged care services;
- (b) if the registered provider is registered in provider registration category residential care—a person who is directly involved in the provider's delivery of funded aged care services;
- (c) if the registered provider is registered in provider registration category nursing and transition care and delivers funded aged care services in the service type nursing care—a person who is directly involved in the delivery of those services;
- (d) a person who represents the interests of individuals to whom the provider delivers funded aged care services.

Note: For paragraph (d), examples of such persons include the following:

- (a) an individual to whom the provider is delivering funded aged care services;
- (b) a member of a consumer advisory body (if established);
- (c) a member of an organised consumer advisory service;
- (d) an advocate.

158-15 Requirements for reports of quality care advisory body

For the purposes of subparagraph 158(2)(a)(ii) of the Act, the requirements for a written report given by the quality care advisory body of a registered provider to the governing body of the provider are that the report must include any concerns that the body has about the quality of funded aged care services delivered by the provider in the period covered by the report (the **report period**), taking into account the following:

- (a) feedback provided (if any) about the quality of funded aged care services delivered by the provider in the report period by:
 - (i) individuals to whom the provider delivered funded aged care services; and
 - (ii) responsible persons and aged care workers of the provider;
- (b) complaints received (if any) in the report period by the provider about the quality of funded aged care services delivered by the provider and action taken by the provider to address the complaints;

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Conditions on provider registration **Chapter 4**

Governance **Part 8**

Advisory body requirements **Division 2**

Section 158-20

- (c) the use of regulatory mechanisms (if any) under Chapter 6 of the Act by the Commissioner in relation to the quality of funded aged care services delivered by the provider;
- (d) progress made in the report period in relation to the provider's continuous improvement plan, particularly improvements made in the delivery of funded aged care services by the provider;
- (e) the results of any audits performed by the Commissioner [rules dealing with audit requirements to be confirmed];
- (f) staffing arrangements of the provider during the report period, including details of the following, as applicable:
 - (i) the availability of allied health professionals or other health professionals;
 - (ii) the availability of registered nurses;
 - (iii) turnover of the aged care workers of the provider;
- (g) reportable incidents (if any) in connection with the delivery of funded aged care services to an individual by the provider that occurred in the report period and any action taken by the provider in response to the reportable incidents;
- (h) if the provider delivers funded aged care services in an approved residential care home:
 - (i) feedback received (if any) in the report period from individuals to whom the provider delivers funded aged care services about the quality of food provided by the provider;
 - (ii) changes (if any) in the report period in the quality of food provided, and the food preparation model used, by the provider;
 - (iii) menu assessments (if any) conducted by an accredited practicing dietitian in the report period in relation to food and nutrition provided by the provider;
 - (iv) information compiled or derived from a measurement or other assessment made by the provider in the report period in relation to the Quality Indicators [rules dealing with Quality Indicators to be confirmed].

158-20 Kinds of provider to which the consumer advisory bodies condition applies

For the purposes of subsection 158(4) of the Act, a registered provider registered in any of the following provider registration categories is prescribed:

- (a) nursing and transition care;
- (b) residential care.

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Chapter 4 Conditions on provider registration

Part 9 Restrictive practices—approved residential care homes

Division 1 Preliminary

Section 162-5

Part 9—Restrictive practices—approved residential care homes

Division 1—Preliminary

162-5 Kinds of provider to which the condition applies

For the purposes of section 162 of the Act, a registered provider registered in the provider registration category residential care is prescribed.

162-10 Requirements relating to the use of restrictive practices

For the purposes of section 162 of the Act, this Part prescribes requirements relating to the use of restrictive practices in relation to an individual to whom a registered provider is delivering funded aged care services in an approved residential care home.

Note: See also sections 17 and 18 of the Act and Division 2 of Part 7 of Chapter 1 of this instrument.

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Conditions on provider registration **Chapter 4**
Restrictive practices—approved residential care homes **Part 9**
Requirements relating to the use of restrictive practices **Division 2**

Section 162-15

Division 2—Requirements relating to the use of restrictive practices

162-15 Requirements for the use of any restrictive practice

- (1) The following requirements apply to the use of any restrictive practice in relation to an individual:
 - (a) the restrictive practice is used only:
 - (i) as a last resort to prevent harm to the individual or other persons; and
 - (ii) after consideration of the likely impact of the use of the restrictive practice on the individual;
 - (b) to the extent possible, best practice alternative strategies are used before the restrictive practice is used;
 - (c) the alternative strategies that have been considered or used have been documented in the behaviour support plan for the individual;
 - (d) the restrictive practice is used only to the extent that it is necessary and in proportion to the risk of harm to the individual or other persons;
 - (e) the restrictive practice is used in the least restrictive form, and for the shortest time, necessary to prevent harm to the individual or other persons;
 - (f) informed consent to the use of the restrictive practice, and how it is to be used (including its duration, frequency and intended outcome), has been given by:
 - (i) the individual; or
 - (ii) if the individual lacks the capacity to give that consent—the restrictive practices substitute decision-maker for the restrictive practice;
 - (g) the use of the restrictive practice is in accordance with the informed consent mentioned in paragraph (f);
 - (h) the use of the restrictive practice complies with any provisions of the behaviour support plan for the individual that relate to the use of the restrictive practice;
 - (i) the use of the restrictive practice complies with the Aged Care Quality Standards and the Aged Care Code of Conduct;
 - (j) the use of the restrictive practice is not inconsistent with the Statement of Rights;
 - (k) the use of the restrictive practice meets the requirements (if any) of the law of the State or Territory in which the restrictive practice is used.
- (2) However, the requirements set out in paragraphs (1)(a), (b), (c), (f), (g) and (h) do not apply to the use of a restrictive practice in relation to an individual if the use of the restrictive practice in relation to the individual is necessary in an emergency.
- (3) Subsection (2) applies only while the emergency exists.

Note: See section 162-35 for other responsibilities of registered providers that apply if the use of a restrictive practice in relation to an individual is necessary in an emergency.

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Chapter 4 Conditions on provider registration

Part 9 Restrictive practices—approved residential care homes

Division 2 Requirements relating to the use of restrictive practices

Section 162-20

162-20 Additional requirements for the use of restrictive practices other than chemical restraint

- (1) The following requirements apply to the use of a restrictive practice in relation to an individual that is not chemical restraint:
 - (a) an approved health practitioner who has day-to-day knowledge of the individual has:
 - (i) assessed the individual as posing a risk of harm to the individual or any other person; and
 - (ii) assessed that the use of the restrictive practice is necessary;
 - (b) the following matters have been documented in the behaviour support plan for the individual:
 - (i) the assessments;
 - (ii) a description of any engagement with persons other than the approved health practitioner in relation to the assessments;
 - (iii) a description of any engagement with external support services (for example, dementia support specialists) in relation to the assessments.
- (2) However, the requirement set out in paragraph (1)(b) does not apply to the use of a restrictive practice in relation to an individual if the use of the restrictive practice in relation to the individual is necessary in an emergency.
- (3) Subsection (2) applies only while the emergency exists.

Note: See section 162-35 for other responsibilities of registered providers that apply if the use of a restrictive practice in relation to an individual is necessary in an emergency.

162-25 Additional requirements for the use of restrictive practices that are chemical restraint

- (1) The following requirements apply to the use of a restrictive practice in relation to an individual that is chemical restraint:
 - (a) the registered provider is satisfied that a medical practitioner or nurse practitioner has:
 - (i) assessed the individual as posing a risk of harm to the individual or any other person; and
 - (ii) assessed that the use of the chemical restraint is necessary; and
 - (iii) prescribed medication for the purpose of using the chemical restraint; and
 - (iv) obtained informed consent to the prescribing of the medication for the purpose of using the chemical restraint;
 - (b) the following matters have been documented in the behaviour support plan for the individual:
 - (i) the assessments;
 - (ii) the practitioner's decision to use the chemical restraint;
 - (iii) the individual's behaviours that are relevant to the need for the chemical restraint;
 - (iv) the reasons the chemical restraint is necessary;

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Conditions on provider registration **Chapter 4**
Restrictive practices—approved residential care homes **Part 9**
Requirements relating to the use of restrictive practices **Division 2**

Section 162-30

- (v) the information (if any) provided to the practitioner that informed the decision to prescribe the medication for the purpose of using the chemical restraint;
- (vi) that the registered provider is satisfied that the practitioner obtained informed consent to the prescribing of the medication;
- (vii) the details of the prescription for the prescribed medication, including its name, dosage and when it may be used;
- (viii) a description of any engagement with persons other than the practitioner in relation to the use of the chemical restraint;
- (ix) a description of any engagement with external support services (for example, dementia support specialists) in relation to the assessments;
- (c) the use of the medication for the purpose of using the chemical restraint is in accordance with the prescription mentioned in subparagraph (b)(vii).

Note: Codes of appropriate professional practice for medical practitioners and nurse practitioners provide for the practitioners to obtain informed consent before prescribing medications. Those codes are approved under the National Law and are:

- (a) for medical practitioners—*Good medical practice: a code of conduct for doctors in Australia* (which in 2025 could be viewed on the website of the Medical Board of Australia (www.medicalboard.gov.au)); and
- (b) for nurse practitioners—*Code of conduct for nurses* (which in 2025 could be viewed on the website of the Nursing and Midwifery Board of Australia (www.nursingmidwiferyboard.gov.au)).

- (2) However, the requirements set out in subparagraph (1)(a)(iv) and paragraph (1)(b) do not apply to the use of a restrictive practice in relation to an individual if the use of the restrictive practice in relation to the individual is necessary in an emergency.
- (3) Subsection (2) applies only while the emergency exists.

Note: See section 162-35 for other responsibilities of registered providers that apply if the use of a restrictive practice in relation to an individual is necessary in an emergency.

162-30 Requirements while restrictive practice being used

If a registered provider uses a restrictive practice in relation to an individual, the registered provider must ensure that while the restrictive practice is being used:

- (a) the individual is monitored for the following:
 - (i) signs of distress or harm;
 - (ii) side effects and adverse events;
 - (iii) changes in mood or behaviour;
 - (iv) changes in well-being, including the individual's ability to engage in activities that enhance quality of life and are meaningful and pleasurable;
 - (v) changes in the individual's ability to maintain independent function (to the extent possible);
 - (vi) changes in the individual's ability to engage in activities of daily living (to the extent possible); and
- (b) the necessity for the use of the restrictive practice is regularly monitored, reviewed and documented; and

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- (c) the effectiveness of the use of the restrictive practice, and the effect of changes in the use of the restrictive practice, are monitored; and
- (d) to the extent possible, changes are made to the individual's environment to reduce or remove the need for the use of the restrictive practice; and
- (e) if the restrictive practice is chemical restraint—information about the effects and use of the chemical restraint is provided to the medical practitioner or nurse practitioner who prescribed the medication for the purpose of using the chemical restraint as mentioned in paragraph 162-25(1)(a).

162-35 Requirements following emergency use of restrictive practice

If a registered provider uses a restrictive practice in relation to an individual and the use of the restrictive practice in relation to the individual is necessary in an emergency, the registered provider must, as soon as practicable after the restrictive practice starts to be used:

- (a) if the individual lacked capacity to consent to the use of the restrictive practice—inform the restrictive practices substitute decision-maker for the restrictive practice about the use of the restrictive practice; and
- (b) ensure that the following matters are documented in the behaviour support plan for the individual:
 - (i) the individual's behaviours that were relevant to the need for the use of the restrictive practice;
 - (ii) the alternative strategies that were considered or used (if any) before the use of the restrictive practice;
 - (iii) the reasons the use of the restrictive practice was necessary;
 - (iv) the care to be provided to the individual in relation to the individual's behaviour;
 - (v) if the restrictive practices substitute decision-maker for the restrictive practice was informed about the use of the restrictive practice under paragraph (a)—a record of the restrictive practices substitute decision-maker being so informed; and
- (c) if the restrictive practice is not chemical restraint—ensure that the assessments mentioned in paragraph 162-20(1)(a) are documented in the behaviour support plan for the individual; and
- (d) if the restrictive practice is chemical restraint—ensure that the matters mentioned in subparagraphs 162-25(1)(b)(i) to (v) and (vii) to (ix) are documented in the behaviour support plan for the individual.

162-40 Requirements relating to nominations of restrictive practices nominees

[It is intended that the rules will be amended with effect from 1 December 2026 to repeal section 162-40.]

Preventing coercion and duress

- (1) A registered provider must take reasonable steps to ensure that:

Commented [A81]: What is intended to apply from 1 December 2026?

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- (a) an individual to whom the registered provider delivers funded aged care services is not subject to coercion or duress in making, varying or revoking a nomination under section 6-15; and
- (b) an individual nominated under section 6-15 (whether as an individual or as a member of a group) is not subject to coercion or duress in agreeing as mentioned in paragraph 6-15(2)(b) or (3)(b), or in withdrawing that agreement.

Assisting care individuals

- (2) If an individual nominates an individual under section 6-15 (whether as an individual or as a member of a group), the registered provider delivering funded aged care services to the individual must assist the individual to:
 - (a) notify the individual of the nomination; and
 - (b) give the individual a copy of the nomination; and
 - (c) seek the individual's agreement as mentioned in paragraph 6-15(2)(b) or (3)(b).

Keeping records

- (3) If an individual nominates an individual under section 6-15 (whether as an individual or as a member of a group), the registered provider delivering funded aged care services to the individual must keep a record of:
 - (a) the nomination; and
 - (b) whether the individual has agreed as mentioned in paragraph 6-15(2)(b) or (3)(b); and
 - (c) if the individual has agreed as mentioned in paragraph 6-15(2)(b) or (3)(b)—whether the individual has withdrawn that agreement.

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Division 3—Requirements relating to behaviour support

162-45 Requirement for behaviour support plans

(1) If:

(a) a registered provider delivers funded aged care services to an individual; and

(b) behaviour support is needed for the individual;

the registered provider must ensure that a behaviour support plan for the individual is included in the care and services plan for the individual.

(2) The registered provider must ensure that the behaviour support plan:

(a) is prepared, reviewed and revised in accordance with this Division; and

(b) sets out the matters required by this Division and Division 2.

(3) In preparing the behaviour support plan, the registered provider must take into account any previous assessment relating to the individual that is available to the registered provider.

Commented [A82]: We read all provisions in this Part as only applying to residential care context, however when reading this section out of context this is not clear.

162-50 Requirements for behaviour support plans—alternative strategies for addressing behaviours of concern

A behaviour support plan for an individual must set out the following matters:

(a) information about the individual that helps the registered provider to understand the individual and the individual's behaviour (such as information about the individual's past experience and background);

(b) any assessment of the individual that is relevant to understanding the individual's behaviour;

(c) information about behaviours of concern for which the individual may need support;

(d) the following information about each occurrence of behaviours of concern for which the individual has needed support:

(i) the date, time and duration of the occurrence;

(ii) any adverse consequences for the individual or other persons;

(iii) any related incidents;

(iv) any warning signs for, or triggers or causes of, the occurrence (including trauma, injury, illness or unmet needs such as pain, boredom or loneliness);

(e) alternative strategies for addressing the behaviours of concern that:

(i) are best practice alternatives to the use of restrictive practices in relation to the individual; and

(ii) take into account the individual's preferences (including preferences in relation to care delivery) and matters that might be meaningful or of interest to the individual; and

(iii) aim to improve the individual's quality of life and engagement;

(f) any alternative strategies that have been considered for use, or have been used, in relation to the individual;

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- (g) for any alternative strategy that has been used in relation to the individual:
 - (i) the effectiveness of the strategy in addressing the behaviours of concern; and
 - (ii) records of the monitoring and evaluation of the strategies;
- (h) a description of the registered provider's consultation about the use of alternative strategies in relation to the individual with the individual or a supporter of the individual (if any).

162-55 Requirements for behaviour support plans—if use of restrictive practice assessed as necessary

If the use of a restrictive practice in relation to an individual is assessed as necessary as mentioned in section 162-20 or 162-25, the behaviour support plan for the individual must set out the following matters:

- (a) the individual's behaviours of concern that are relevant to the need for the use of the restrictive practice;
- (b) the restrictive practice and how it is to be used, including its duration, frequency and intended outcome;
- (c) the best practice alternative strategies that must be used (to the extent possible) before using the restrictive practice;
- (d) how the use of the restrictive practice is to be monitored, including how the monitoring will be escalated if required, taking into account the nature of the restrictive practice and any care needs that arise from the use of the restrictive practice;
- (e) how the use of the restrictive practice is to be reviewed, including consideration of the following:
 - (i) the outcome of its use and whether the intended outcome was achieved;
 - (ii) whether an alternative strategy could be used to address the individual's behaviours of concern;
 - (iii) whether a less restrictive form of the restrictive practice could be used to address the individual's behaviours of concern;
 - (iv) whether there is an ongoing need for its use;
 - (v) if the restrictive practice is chemical restraint—whether the medication prescribed for the purpose of using the chemical restraint can or should be reduced or stopped;
- (f) if the individual lacks the capacity to give informed consent to the use of the restrictive practice:
 - (i) whether subsection 6-20(1), or an item of the table in subsection 6-20(2), applies for the restrictive practice in relation to the individual, and why that subsection or item applies; and
 - (ii) the name of the restrictive practices substitute decision-maker for the restrictive practice in relation to the individual;
- (g) a description of the registered provider's consultation about the use of the restrictive practice with:
 - (i) the individual; or

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- (ii) if the individual lacks the capacity to give informed consent to the use of the restrictive practice—the restrictive practices substitute decision-maker for the restrictive practice;
- (h) a record of the giving of informed consent to the use of the restrictive practice, and how it is to be used (including its duration, frequency and intended outcome), by:
 - (i) the individual; or
 - (ii) if the individual lacks the capacity to give that consent—the restrictive practices substitute decision-maker for the restrictive practice.

Note: Sections 162-20 and 162-25 also require other matters to be documented in the behaviour support plan.

162-60 Requirements for behaviour support plans—if restrictive practice used

If a restrictive practice in relation to an individual is used in relation to the individual, the behaviour support plan for the individual must set out the following matters:

- (a) the restrictive practice and how it was used, including the following:
 - (i) when it began to be used;
 - (ii) the duration of each use;
 - (iii) the frequency of its use;
 - (iv) the outcome of its use and whether the intended outcome was achieved;
 - (v) whether its use was in accordance with the informed consent set out under paragraph 162-55(h);
- (b) if, under the plan, the restrictive practice is to be used only on an as-needed basis in response to particular behaviour, or in particular circumstances:
 - (i) the individual's behaviours of concern that led to the use of the restrictive practice; and
 - (ii) the actions (if any) taken leading up to the use of the restrictive practice, including any alternative strategies that were used before the restrictive practice was used;
- (c) the details of the persons involved in the use of the restrictive practice;
- (d) a description of any engagement with external support services (for example, dementia support specialists) in relation to the use of the restrictive practice;
- (e) details of the monitoring of the use of the restrictive practice as required by the plan;
- (f) the outcome of the review of the use of the restrictive practice as required by the plan.

Note 1: For paragraphs (e) and (f), see paragraphs 162-55(d) and (e) for the requirements for a behaviour support plan for an individual to require monitoring and review of the use of a restrictive practice in relation to the individual.

Note 2: If the use of a restrictive practice in relation to an individual is necessary in an emergency, other matters must also be documented in the behaviour support plan for the individual (see section 162-35).

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162-65 Requirements for behaviour support plans—if need for ongoing use of restrictive practice indicated

If a review of the use of a restrictive practice in relation to an individual (as required by the behaviour support plan for the individual) indicates a need for the ongoing use of the restrictive practice, the behaviour support plan for the individual must set out the following matters:

- (a) the restrictive practice and how it is to be used, including its duration, frequency and intended outcome;
- (b) how the ongoing use of the restrictive practice is to be monitored, including how the monitoring will be escalated if required, taking into account the nature of the restrictive practice and any care needs that arise from the use of the restrictive practice;
- (c) how the ongoing use of the restrictive practice is to be reviewed, including consideration of the following:
 - (i) the outcome of the ongoing use of the restrictive practice and whether the intended outcome is being achieved;
 - (ii) whether an alternative strategy could be used to address the individual's behaviours of concern;
 - (iii) whether a less restrictive form of the restrictive practice could be used to address the individual's behaviours of concern;
 - (iv) whether there continues to be need for the ongoing use of the restrictive practice;
 - (v) if the restrictive practice is chemical restraint—whether the medication prescribed for the purpose of using the chemical restraint can or should be reduced or stopped;
- (d) a description of the registered provider's consultation about the ongoing use of the restrictive practice, and how it is to be used (including its duration, frequency and intended outcome), with:
 - (i) the individual; or
 - (ii) if the individual lacks the capacity to give informed consent to the ongoing use of the restrictive practice—the restrictive practices substitute decision-maker for the restrictive practice;
- (e) a record of the giving of informed consent to the ongoing use of the restrictive practice by:
 - (i) the individual; or
 - (ii) if the individual lacks capacity to give that consent—the restrictive practices substitute decision-maker for the restrictive practice.

162-70 Requirement to review and revise behaviour support plans

A registered provider must review a behaviour support plan for an individual and make any necessary revisions:

- (a) on a regular basis; and
- (b) as soon as practicable after any change in the individual's circumstances.

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162-75 Requirement to consult on behaviour support plans

- (1) In preparing, reviewing or revising a behaviour support plan for an individual, a registered provider must consult the following:
 - (a) if the individual has the capacity to be consulted—the individual and a supporter of the individual (if any);
 - (b) if the individual lacks the capacity to be consulted—a person or body who, under the law of the State or Territory in which the individual accesses funded aged care services, can make decisions about that care;
 - (c) health practitioners with expertise relevant to the individual’s behaviours of concern.
- (2) If the use of a restrictive practice in relation to the individual is assessed as necessary as mentioned in section 162-20 or 162-25, the registered provider must also consult the following in preparing, reviewing or revising the behaviour support plan:
 - (a) the approved health practitioner who made the assessment;
 - (b) if the individual lacks the capacity to be consulted—the restrictive practices substitute decision-maker for the restrictive practice.
- (3) In consulting under this section, the registered provider must provide the plan or revised plan, and any associated information, in an appropriately accessible format.

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Immunity from civil or criminal liability in relation to the use of a restrictive practice in certain
circumstances **Division 4**

Section 163-5

Division 4—Immunity from civil or criminal liability in relation to the use of a restrictive practice in certain circumstances

163-5 Giving of informed consent by certain persons or bodies

For the purposes of paragraph 163(2)(a) of the Act (which refers to the giving of informed consent to the use of a restrictive practice in relation to an individual), a person or body that is a restrictive practices substitute decision-maker for the restrictive practice in relation to the individual is prescribed.

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Part 10 Management of incidents and complaints
Division 1 Incident management

Section 164-1

Part 10—Management of incidents and complaints

Division 1—Incident management

Subdivision A—Preliminary

164-1 Kinds of provider to which the condition applies

For the purposes of section 164 of the Act, a registered provider registered in any of the following provider registration categories is prescribed:

- (a) home and community services;
- (b) advisory and support services;
- (c) personal and care support in the home or community;
- (d) nursing and transition care;
- (e) residential care.

164-5 Requirements relating to incident management

For the purposes of section 164 of the Act, this Division prescribes:

- (a) requirements for implementing and maintaining an incident management system; and
- (b) requirements for managing, and taking reasonable steps to prevent, incidents.

Note: For requirements for reporting reportable incidents to the Commissioner, see Subdivision G of Division 1 of Part 2 of Chapter 5 of this instrument.

164-10 Incidents to which this Division applies

- (1) This Division applies to incidents that consist of acts, omissions, events or circumstances that:
 - (a) occur, are alleged to have occurred, or are suspected of having occurred, in connection with the delivery of funded aged care services to an individual by a registered provider; and
 - (b) either:
 - (i) have caused harm to the individual or another person; or
 - (ii) **could reasonably have been expected** to have caused harm to an individual or another person.
- (2) This Division also applies to incidents not covered by subsection (1) that consist of acts, omissions, events or circumstances that:
 - (a) a registered provider becomes aware of in connection with the delivery of funded aged care services to an individual in a residential care home of the registered provider; and
 - (b) have caused harm to the individual.

Commented [A83]: Guidance material should elaborate on what 'could reasonably have been expected' means in these circumstances.

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Incident management **Division 1**

Section 164-15

Subdivision B—Implementing and maintaining an incident management system

164-15 Requirements for system—objects

The objects of a registered provider's incident management system must include the following:

- (a) to promote the safety, health, well-being and quality of life of individuals to whom the provider delivers funded aged care services by:
 - (i) detecting, addressing and remediating incidents; and
 - (ii) preventing incidents; and
 - (iii) ensuring the provider's incident management system facilitates the open disclosure and resolution of incidents between individuals and the provider; and
- (b) to promote continuous improvement of:
 - (i) the provider's management and prevention of incidents; and
 - (ii) the provider's delivery of funded aged care services.

164-20 Requirements for system—general

A registered provider's incident management system must:

- (a) be able to identify, record, assess, respond to and report on incidents; and
- (b) specify procedures for identifying, recording, assessing, responding to and reporting on incidents; and
- (c) require that appropriate support and assistance (including access to advocates and language services) is provided to persons affected by an incident to ensure their safety, health, well-being and quality of life; and
- (d) specify how persons affected by an incident will be appropriately involved in the management and resolution of the incident; and
- (e) specify the roles and responsibilities of aged care workers and responsible persons of the provider in managing and responding to incidents; and
- (f) specify the roles and responsibilities of aged care workers and responsible persons of the provider in notifying reportable incidents to the Commissioner; and
- (g) require an aged care worker of the provider who becomes aware of a reportable incident to notify one of the following of that fact as soon as possible:
 - (i) a responsible person of the provider;
 - (ii) a supervisor or manager of the aged care worker;
 - (iii) a person specified for the purposes of paragraph (e) or (f); and
- (h) require reportable incidents to be reported to the Commissioner in accordance with Subdivision G of Division 1 of Part 2 of Chapter 5 of this instrument; and
- (i) specify when an investigation by the provider is required to establish:
 - (i) the causes of a particular incident; and
 - (ii) the harm caused by the incident; and

Commented [A84]: Delete "to ensure their safety, health, well-being and quality of life" as it's not possible to ensure these things.

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- (iii) any operational issues that may have contributed to the incident occurring; and
- (j) specify the nature of investigations mentioned in paragraph (i); and
- (k) specify when remedial action is required and the nature of that action; and
- (l) set out procedures for ensuring that the requirements of sections 164-40 and 164-45 are complied with.

164-25 Requirements for system—recording details of incidents

- (1) A registered provider's incident management system must require the following details, as a minimum, to be recorded in relation to each incident:
 - (a) a description of the incident, including:
 - (i) the harm that was caused, or that could reasonably have been expected to have been caused, to each person affected by the incident; and
 - (ii) if known—the consequences of that harm;
 - (b) whether the incident is a reportable incident;
 - (c) if known—the time, date and place at which the incident occurred or was alleged or suspected to have occurred;
 - (d) the time and date the incident was identified;
 - (e) the names and contact details of the persons directly involved in the incident;
 - (f) the names and contact details of any witnesses to the incident;
 - (g) details of the assessments undertaken in accordance with subparagraph 164-40(1)(b)(i) and subsection 164-45(1);
 - (h) the actions taken in response to the incident, including actions taken under sections 164-40 or 164-45;
 - (i) any consultations undertaken with the persons affected by the incident;
 - (j) whether persons affected by the incident have been provided with any reports or findings regarding the incident;
 - (k) if an investigation is undertaken by the provider in relation to the incident—the details and outcomes of the investigation;
 - (l) the name and contact details of the person recording the details of the incident;
 - (m) if the incident has been reported to the police—the details included in that report.
- (2) A registered provider's incident management system must require details recorded in relation to an incident to be retained for 7 years after the date the incident was identified in accordance with section 154-3000.

164-30 Requirements for system—data collection and analysis

A registered provider's incident management system must:

- (a) require the collection of data relating to incidents that will enable the provider to:
 - (i) identify occurrences, or alleged or suspected occurrences, of similar incidents; and

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- (ii) identify and address systemic issues in the quality of funded aged care services delivered by the provider; and
- (iii) provide feedback and training to the provider's aged care workers and responsible persons about managing and preventing incidents; and
- (iv) provide information to the Commissioner, if required or requested to do so by the Commissioner; and
- (v) provide information to the provider's quality care advisory body (if any) and consumer advisory bodies (if any) to assist the body or bodies to prepare reports or feedback about the quality of the funded aged care services delivered by the provider; and
- (vi) continuously improve the provider's management and prevention of incidents; and
- (b) require the regular analysis and review of data mentioned in paragraph (a) to assess:
 - (i) the effectiveness of the provider's management and prevention of incidents; and
 - (ii) what, if any, actions could be taken to improve the provider's management and prevention of incidents.

164-35 Requirements for registered providers

- (1) A registered provider must:
 - (a) prepare and keep up to date documents detailing:
 - (i) the provider's incident management system, including the objects mentioned in section 164-15 and the requirements mentioned in sections 164-20 to 164-30; and
 - (ii) the roles and responsibilities in the system of the provider's aged care workers and responsible persons in identifying, managing and resolving incidents and in preventing incidents from occurring; and
 - (b) give the documents to:
 - (i) the provider's aged care workers and responsible persons; and
 - (ii) to the Commissioner, if required or requested to do so by the Commissioner; and
 - (c) ensure that the provider's aged care workers and responsible persons are aware of, and understand, their roles and responsibilities in the system; and
 - (d) require the provider's aged care workers and responsible persons to comply with the system; and
 - (e) provide appropriate training to the provider's aged care workers and responsible persons on how the system works, including:
 - (i) how to recognise, respond to and report incidents; and
 - (ii) their roles and responsibilities in the system; and
 - (f) make the documents mentioned in paragraph (a) available, in an accessible form, to the following persons:
 - (i) the individuals to whom the provider is delivering funded aged care services;

Commented [A85]: This is new. Recommend using a different word for 'ensure' or removing 'and understand' - as this cannot be ensured.

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- (ii) supporters, family members, carers and advocates of the individuals to whom the provider is delivering funded aged care services, and any other person significant to those individuals; and
 - (g) assist persons referred to in paragraph (f) to understand how the system works.
- (2) Without limiting paragraph (1)(e), a provider provides appropriate training to a person who is an aged care worker or responsible person of the provider if the training is provided:
 - (a) at least annually; and
 - (b) at the following times:
 - (i) when the person becomes an aged care worker or responsible person of the provider;
 - (ii) when there is a change to how the system works that affects the person's roles and responsibilities in the system;
 - (iii) when there is a change to the person's role that affects the person's roles and responsibilities in the system.

Subdivision C—Managing and preventing incidents

164-40 Requirements for managing incidents

General

- (1) A registered provider must manage an incident:
 - (a) in accordance with the provider's incident management system; and
 - (b) by doing the following:
 - (i) assessing the support and assistance required to **ensure** the safety, health, well-being and quality of life of persons affected by the incident;
 - (ii) providing that support and assistance to those persons;
 - (iii) assessing how to appropriately involve each person affected by the incident, or a supporter or advocate of the person, in the management and resolution of the incident;
 - (iv) involving each person or supporter or advocate in that way;
 - (v) using an open disclosure process.

Commented [A86]: Replace 'ensure' with 'support' as it's not possible to ensure these things.

Notifying police of incident where reasonable grounds to do so

- (2) If there are reasonable grounds to report the incident to police, the provider must notify a police officer of the incident within 24 hours of becoming aware of the incident.
- (3) If the provider later becomes aware of reasonable grounds to report the incident to police, the provider must notify a police officer of the incident within 24 hours of becoming aware of those grounds.

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164-45 Requirements for improving management of incidents and taking reasonable steps to prevent incidents

- (1) The provider must assess the incident in relation to the following, taking into account the views of persons affected by the incident:
 - (a) whether the incident could have been prevented;
 - (b) what, if any, remedial action needs to be undertaken to prevent further similar incidents from occurring, or to minimise their harm;
 - (c) how well the incident was managed and resolved;
 - (d) what, if any, actions could be taken to improve the provider's management and resolution of similar incidents;
 - (e) whether other persons or bodies should be notified of the incident.
- (2) The provider must notify the persons and bodies determined under paragraph (1)(e).
- (3) The provider must:
 - (a) take any actions determined under paragraph (1)(b); and
 - (b) take any actions determined under paragraph (1)(d) of this section or subparagraph 164-30(b)(ii) that are reasonable in the circumstances.

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Chapter 4 Conditions on provider registration

Part 10 Management of incidents and complaints

Division 2 Complaints, feedback and whistleblowers

Section 165-5

Division 2—Complaints, feedback and whistleblowers

Subdivision A—Preliminary

165-5 Purpose of this Part

For the purposes of section 165 of the Act, this Part prescribes requirements for the following:

- (a) implementing and maintaining a complaints and feedback management system;
- (b) managing complaints and feedback;
- (c) implementing and maintaining a whistleblower system and maintaining a whistleblower policy;
- (d) managing disclosures that qualify for protection under section 547 of the Act (whistleblower protections).

Subdivision B—Implementing and maintaining a complaints and feedback management system

165-10 Objects of this Subdivision

The objects of this Subdivision are:

- (a) to promote quality care and the safety of individuals to whom a registered provider delivers funded aged care services by ensuring the provider's complaints and feedback management system facilitates the open disclosure and resolution of complaints between individuals and the provider; and
- (b) to ensure that the provider's complaints and feedback management system acknowledges, assesses, manages and resolves matters relating to the provider's delivery of funded aged care services in a fair, transparent, accessible, safe, culturally safe and timely manner; and
- (c) to ensure that:
 - (i) individuals to whom the provider delivers funded aged care services; and
 - (ii) supporters of those individuals, and other persons supporting those individuals; and
 - (iii) the provider's aged care workers; and
 - (iv) any other persons;are encouraged and supported to make complaints and give feedback about the provider's delivery of funded aged care services; and
- (d) to ensure that complaints and feedback contribute to the continuous improvement of the provider's delivery of funded aged care services.

165-15 Requirements for system—general

- (1) A registered provider's complaints and feedback management system must:
 - (a) be able to:

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- (i) receive, record, assess, acknowledge, respond to and report on complaints and feedback; and
 - (ii) securely store information relating to complaints and feedback; and
- (b) enable any person to:
 - (i) make a complaint or give feedback; and
 - (ii) withdraw a complaint or feedback that the person has made or given; and
- (c) enable complaints to be made and withdrawn, and feedback to be given and withdrawn, orally and in writing; and
- (d) enable complaints to be made, and feedback to be given, anonymously; and
- (e) require that there are to be no costs charged by the provider for making, withdrawing or managing a complaint or giving, withdrawing or managing feedback; and
- (f) require that the process for making and resolving complaints and giving and responding to feedback is accessible to any person who wishes to make or give, or has made or given, a complaint or feedback; and
- (g) require that appropriate support and assistance (including access to advocates and language services) is provided to:
 - (i) any person who wishes to make or give, or has made or given, a complaint or feedback; and
 - (ii) each individual to whom the provider delivers funded aged care services who is directly affected by an issue raised in a complaint or feedback; and
- (h) require that the role of the independent aged care advocate is acknowledged and supported; and
- (i) enable cooperation with, and facilitate arrangements for, the independent aged care advocate to support the following persons in making a complaint, giving feedback, or otherwise in relation to a complaint made or feedback given:
 - (i) individuals to whom the provider delivers funded aged care services;
 - (ii) supporters of those individuals, and other persons supporting those individuals; and
- (j) require that, if a person who has made a complaint (other than anonymously), or an individual to whom the provider delivers funded aged care services who is directly affected by an issue raised in the complaint, wishes to be involved in the resolution of the complaint, the person or individual is:
 - (i) involved in an appropriate way in the resolution of the complaint; and
 - (ii) kept informed in an appropriate way of the progress and outcome of the complaint; and
- (k) require that there are no reprisals for a person who makes a complaint or gives feedback; and
- (l) require that information provided in a complaint or feedback is kept confidential and only disclosed if required by law or if the disclosure is otherwise appropriate in the circumstances; and
- (m) require that the provider must, in responding to a complaint or feedback, afford procedural fairness to:

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- (i) the person who made the complaint or gave the feedback (other than anonymously); and
 - (ii) the person (if any) against whom the complaint is made or who is the subject of the feedback; and
 - (n) require that the provider practise open disclosure and prioritise restorative practices; and
 - (o) ensure that any requirements for the referral or notification of complaints under Commonwealth, State or Territory laws (as applicable) are met; and
 - (p) provide for the system to be reviewed as required, and at least annually, to ensure that it is meeting the requirements mentioned in paragraphs (a) to (o).
- (2) Without limiting paragraph (1)(l), a disclosure is appropriate if the person about whom the information relates has consented to the disclosure.

165-20 Requirements for registered providers

- (1) A registered provider must:
- (a) prepare and keep up to date documents detailing:
 - (i) the provider's complaints and feedback management system, including the requirements mentioned in section 165-15; and
 - (ii) the roles and responsibilities in the system of the provider's aged care workers and responsible persons in relation to complaints and feedback; and
 - (b) give the documents to the provider's aged care workers and responsible persons; and
 - (c) ensure that the provider's aged care workers and responsible persons are aware of, and understand, their roles and responsibilities in the system; and
 - (d) require the provider's aged care workers and responsible persons to comply with the system; and
 - (e) provide appropriate training to the provider's aged care workers and responsible persons on how the system works, including:
 - (i) how to handle personal information and data; and
 - (ii) how to recognise and respond to complaints and feedback; and
 - (iii) managing relationships and clearly communicating with persons making complaints or giving feedback; and
 - (iv) when and how to escalate complaints and feedback in the system; and
 - (v) their roles and responsibilities in the system; and
 - (f) publish an accessible document that:
 - (i) describes how a complaint can be made, or feedback can be given, to the provider; and
 - (ii) describes what a person who makes a complaint or gives feedback to the provider can expect in relation to the provider's management of the complaint or feedback; and
 - (iii) includes information about how a complaint can be made, or feedback can be given, to the Complaints Commissioner; and

Commented [A87]: This information should be produced in standardised resources to support providers with this requirement.

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- (iv) explains that the provider will not victimise or discriminate against anyone for making a complaint or giving feedback to the provider or the Complaints Commissioner; and
 - (g) give the document mentioned in paragraph (f) to the following:
 - (i) individuals to whom the provider delivers funded aged care services;
 - (ii) any other person who requests the document; and
 - (h) if it is necessary, to enable a person to whom the document mentioned in paragraph (f) must be given under subparagraph (g)(i) to understand the document, to translate the document into another language or present the document in an alternative appropriate format—translate the document into that language, or present the document in that format, and give the translation or reformatted document to the person; and
 - (i) help the persons mentioned in subparagraph (g)(i) to understand how the provider's complaints and feedback management system works; and
 - (j) communicate regularly, and at least monthly, to the persons mentioned in paragraph (b) and subparagraph (g)(i) that complaints and feedback are welcome; and
 - (k) review the system as mentioned in paragraph 165-15(p).
- (2) Without limiting paragraph (1)(e), the provider provides appropriate training to a person who is an aged care worker or responsible person of the provider if the training is provided:
- (a) at regular intervals, which must be at least annually; and
 - (b) at the following times:
 - (i) when the person becomes an aged care worker or responsible person of the provider;
 - (ii) when there is a change to how the system works that affects the person's roles and responsibilities in the system;
 - (iii) when there is a change to the person's role that affects the person's roles and responsibilities in the system.

Commented [A88]: This seems very prescriptive, unnecessary and unlikely to be welcomed by individuals. Suggest replace monthly with annually. Also, what happens if an individual or staff member is on leave one month?

Subdivision C—Managing complaints and feedback

165-25 Requirements for complaints management and resolution

If a registered provider receives a complaint, the provider must:

- (a) manage the complaint in accordance with the provider's complaints and feedback management system; and
- (b) as soon as practicable after receiving the complaint, resolve each issue raised in the complaint by taking appropriate action in relation to the issue; and
- (c) in resolving each issue raised in the complaint, use a resolution approach that:
 - (i) is appropriate given the nature of the issue; and
 - (ii) is centred around each individual to whom the provider delivers funded aged care services who is directly affected by the issue; and
 - (iii) seeks to address the issue as raised in the complaint; and

Commented [A89]: The requirement to "resolve" should be removed or the term better defined. Some complaints cannot be resolved as some complainants cannot be satisfied or some may stay anonymous in which case it is impossible to tell. Providers should be able to close a complaint despite the fact it has not been "resolved" to the satisfaction of a complainant.

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- (iv) will contribute to the continuous improvement of the provider's delivery of funded aged care services; and
- (d) unless the complaint was made anonymously—take reasonable steps to notify the following persons of the outcome of the complaint, and the reasons for the outcome:
 - (i) the person who made the complaint;
 - (ii) if the complaint was made on behalf of an individual to whom the provider is delivering funded aged care services—the individual;
- (e) unless the complaint was made anonymously—take reasonable steps to tell the following persons how the complaint (the *initial complaint*) can also be made to the Complaints Commissioner:
 - (i) the person who made the complaint;
 - (ii) if the complaint was made on behalf of an individual to whom the provider is delivering funded aged care services—the individual;
- (f) take reasonable steps to tell any other person involved in the resolution of the initial complaint how the complaint can also be made to the Complaints Commissioner; and
- (g) take reasonable steps to tell the persons mentioned in paragraphs (d) and (e) how a new complaint about the resolution of the initial complaint can be made to the Complaints Commissioner.

Note: See section 29 of the Act for provisions relating to giving information and documents to supporters.

Commented [A90]: This information should be produced in standardised resources to support providers with this requirement.

165-30 Requirements for feedback management and resolution

- (1) If a registered provider receives feedback, the provider must manage the feedback in accordance with the provider's complaints and feedback management system.
- (2) In resolving any issues raised in the feedback, the provider must:
 - (a) use a resolution approach that will contribute to the continuous improvement of the provider's delivery of funded aged care services; and
 - (b) unless the feedback was given anonymously—consult with:
 - (i) the person who gave the feedback; and
 - (ii) if the feedback was given on behalf of an individual to whom the provider is delivering funded aged care services—the individual; and
 - (iii) if the person who gave the feedback is an individual to whom the provider is delivering funded aged care services and the individual has consented to the consultation—the individual's supporter (if any); and
 - (iv) if the feedback was given on behalf of an individual to whom the provider is delivering funded aged care services and the individual has consented to the consultation—the individual's supporter (if any).
- (3) The provider must:
 - (a) unless the feedback was given anonymously—take reasonable steps to tell the persons mentioned in paragraph (2)(b) how the feedback (the *initial feedback*) can also be given to the Complaints Commissioner; and

Commented [A91]: This should be subject to the limitations of any privacy/confidentiality requirements. If a complainant does not have a lawful right to access the personal and health information of an individual, the provider may not be able to share some information with that person.

Commented [A92]: This information should be produced in standardised resources to support providers with this requirement.

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- (b) take reasonable steps to tell any other person involved in the resolution of any issue raised by the initial feedback how the feedback can also be given to the Complaints Commissioner; and
- (c) take reasonable steps to tell the persons mentioned in paragraph (2)(b) and paragraph (b) of this subsection how a complaint or new feedback about the resolution of any issue raised by the initial feedback can be made or given to the Complaints Commissioner.

165-35 Other requirements relating to complaints and feedback

- (1) If a registered provider receives a complaint or feedback, the provider must:
 - (a) provide appropriate support and assistance (including access to advocates and language services), in relation to contacting the Complaints Commissioner, to the following persons:
 - (i) the person who made the complaint or gave the feedback (other than anonymously);
 - (ii) each individual to whom the provider delivers funded aged care services who is directly affected by an issue raised in the complaint or feedback; and
 - (b) take reasonable steps to ensure that:
 - (i) the person who made the complaint or gave the feedback, or on whose behalf the complaint was made or the feedback was given, is not adversely affected as a result of the making of the complaint or the giving of the feedback; and
 - (ii) no individual to whom the provider delivers funded aged care services who is affected by an issue raised in the complaint or feedback suffers any detriment, victimisation or reprisal as a result of the making of the complaint or the giving of the feedback.
- (2) A registered provider must use an open disclosure process:
 - (a) in relation to a matter that is the subject of a complaint or feedback; and
 - (b) if things go wrong in managing a complaint or feedback or resolving an issue raised in a complaint or feedback.

Handling whistleblower disclosures as complaints or feedback

- (3) An individual who discloses information that qualifies for protection under section 547 of the Act (whistleblower protections) to a provider may elect to have the disclosure managed as a complaint or feedback under paragraph 165(1)(b) of the Act and this Division of this instrument.
- (4) If an individual makes an election under subsection (3), the provider must manage the disclosure as a complaint or feedback in accordance with this Subdivision rather than in accordance with Subdivision E.

Commented [A93]: While it is important to recognise that there may be overlap between what could be a whistleblowing disclosure and complaints/feedback, this may create difficulties in practice i.e. an individual may not always announce that they are making a complaint or disclosure. Resources should be developed for providers on recognising, and requirements for responding to, complaints/feedback and disclosures, where these may intersect - and what constitutes 'electing' to have a disclosure managed as a complaint or feedback.

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Subdivision D—Implementing and maintaining a whistleblower system and maintaining a whistleblower policy

165-40 Objects of this Subdivision

The objects of this Subdivision are:

- (a) to promote quality care and the safety of individuals to whom a registered provider delivers funded aged care services by ensuring the provider's whistleblower system facilitates certain disclosures of information by individuals without fear of persecution, retribution or personal detriment; and
- (b) to ensure that the confidentiality of such disclosures is maintained and, where relevant, the anonymity of the individual making the disclosure, and any other specified individual, is protected; and
- (c) to ensure that the provider's whistleblower system acknowledges, assesses, manages and responds to concerns raised in such disclosures in a fair, transparent, accessible, safe, culturally safe and timely manner; and
- (d) to ensure that such disclosures contribute to the continuous improvement of the provider's delivery of funded aged care services; and
- (e) to ensure that aged care workers and any other persons are encouraged and supported to raise concerns about the provider's delivery of funded aged care services.

Commented [A94]: Resources should be developed to support providers to meet these requirements.

Commented [A95]: This is confusing - is this referring to consumers or individuals in the broad sense? The intersection between complaints/feedback and whistleblowing disclosures, and who can make complaints/provide feedback and make disclosures, needs to be communicated clearly to providers.

165-45 Requirements for system—general

A registered provider's whistleblower system must:

- (a) support the operation of Part 5 of Chapter 7 of the Act (whistleblower protections); and
- (b) enable individuals to disclose information to the following:
 - (i) the provider;
 - (ii) a responsible person of the provider;
 - (iii) an aged care worker of the provider; and
- (c) enable disclosures of information mentioned in paragraph (b) to be made:
 - (i) orally and in writing; and
 - (ii) anonymously; and
- (d) provide for the system to be reviewed as required, and at least annually, to ensure that it is meeting the requirements mentioned in paragraphs (a) to (c).

165-50 Requirements for registered providers—general

- (1) A registered provider must:
 - (a) prepare and keep up to date documents detailing:
 - (i) the provider's whistleblower system, including the requirements mentioned in section 165-45; and
 - (ii) the roles and responsibilities in the system of the provider's aged care workers and responsible persons; and

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- (b) give the documents to the provider's aged care workers and responsible persons; and
 - (c) ensure that the provider's aged care workers and responsible persons are aware of, and understand, their roles and responsibilities in the system; and
 - (d) require the provider's aged care workers and responsible persons to comply with the system; and
 - (e) provide appropriate training to the provider's aged care workers and responsible persons on how the system works, including:
 - (i) how to handle personal information and data; and
 - (ii) how to recognise and respond to disclosures that qualify for protection under section 547 of the Act; and
 - (iii) managing relationships and communicating with disclosers; and
 - (iv) when and how to escalate disclosures in the system; and
 - (v) their roles and responsibilities in the system; and
 - (vi) the penalties for contravening subsection 550(1) of the Act (confidentiality of identity of disclosers); and
 - (f) communicate regularly, and at least monthly, to the provider's aged care workers and responsible persons that disclosures that qualify for protection under section 547 of the Act are welcome; and
 - (g) review the system as mentioned in paragraph 165-45(d).
- (2) Without limiting paragraph (1)(e), the provider provides appropriate training to a person who is an aged care worker or responsible person of the provider if the training is provided:
- (a) at regular intervals, which must be at least annually; and
 - (b) at the following times:
 - (i) when the person becomes an aged care worker or responsible person of the provider;
 - (ii) when there is a change to how the system works that affects the person's roles and responsibilities in the system;
 - (iii) when there is a change to the person's role that affects the person's roles and responsibilities in the system.

Commented [A96]: Supporting resources will need to explain the legislative references in plain English.

Commented [A97]: Change to annually as monthly is excessive

165-55 Requirements for registered providers—whistleblower policy

A registered provider must:

- (a) prepare and keep up to date a whistleblower policy that sets out the following:
 - (i) the effect of Part 5 of Chapter 7 of the Act;
 - (ii) that individuals may disclose information to the provider or another person mentioned in section 547 of the Act, and how such disclosures may be made;
 - (iii) how the provider will manage disclosures that qualify for protection under section 547 of the Act that are made to the provider or a responsible person or aged care worker of the provider;

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- (iv) that individuals may also disclose information to the entities mentioned in subparagraphs 547(a)(i), (ii), (vi) and (vii) of the Act, and how such disclosures may be made;
- (v) how the provider will investigate disclosures;
- (vi) how the provider will comply with the requirements mentioned in paragraphs 165-60(c) and (d) of this instrument;
- (vii) how the provider will comply with the obligations in section 553 of the Act;
- (viii) what an individual who has made a disclosure that qualifies for protection under section 547 of the Act can do if they suspect that there has been a contravention of a provision of Part 5 of Chapter 7 of the Act; and
- (b) publish the policy in an accessible document; and
- (c) give the policy to the provider's aged care workers and responsible persons; and
- (d) give the policy to the following:
 - (i) individuals to whom the provider delivers funded aged care services;
 - (ii) a person who requests the policy and is a supporter of an individual to whom the provider delivers funded aged care services;
 - (iii) any other person who requests the policy; and
- (e) if it is necessary, to enable a person to whom the policy must be given under subparagraph (d)(i) or (ii) to understand the policy, to translate the policy into another language or present the policy in an alternative appropriate format—translate the policy into that language, or present the policy in that format, and give the translation or reformatted policy to the person; and
- (f) help the persons mentioned in subparagraphs (d)(i) and (ii) to understand how the whistleblower system works; and
- (g) communicate regularly, and at least monthly, to the persons mentioned in paragraph (c) and subparagraphs (d)(i) and (ii) that disclosures that qualify for protection under section 547 of the Act are welcome.

Commented [A98]: Should be annually as monthly is excessive

Subdivision E—Managing disclosures that qualify for protection under section 547 of the Act

165-60 Requirements for managing disclosures

If an individual makes a disclosure that qualifies for protection under section 547 of the Act to a registered provider or a responsible person or aged care worker of the provider, the provider must:

- (a) manage the disclosure in accordance with the provider's whistleblower system; and
- (b) as soon as practicable after the disclosure is made, take appropriate action in relation to the disclosure; and
- (c) support:
 - (i) the individual (the *first individual*) who made the disclosure; and

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- (ii) any other individual, or an entity, that employs or is otherwise associated with the first individual, and to which detriment might be caused, or a threat of detriment might be made, because of the disclosure; and
- (d) ensure fair treatment of any responsible person or aged care worker of the provider who is mentioned in the disclosure or to whom the disclosure relates.

Note: See section 551 of the Act for civil penalties for victimisation relating to a disclosure that qualifies for protection under section 547 of the Act.

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Chapter 5 Registered provider, responsible person and aged care worker obligations

Part 1 Introduction

Section 166-1

Chapter 5—Registered provider, responsible person and aged care worker obligations

Part 1—Introduction

166-1 Simplified outline of this Chapter

[To be drafted]

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Registered provider, responsible person and aged care worker obligations **Chapter 5**
Obligations relating to reporting, notifications and information **Part 2**
Preliminary **Division 1A**

Section 166-2

Part 2—Obligations relating to reporting, notifications and information

Division 1A—Preliminary

166-2 No limitation on other requests

Nothing in this Part limits or affects the System Governor, the Commissioner or the Complaints Commissioner from requesting information from a registered provider under any other provision of the Rules or the Act.

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Chapter 5 Registered provider, responsible person and aged care worker obligations

Part 2 Obligations relating to reporting, notifications and information

Division 1 Provider obligation—reporting to particular persons

Section 166-3

Division 1—Provider obligation—reporting to particular persons

Subdivision AA—Application of Division to feedback received

166-3 Application of Division to feedback received

This Division applies to feedback received by a registered provider:

- (a) that is managed in accordance with section 165-30; and
- (b) raises an issue as referred to in subsection 165-30(2).

Subdivision A—Preliminary

166-4 Reporting to particular persons [to be drafted]

Subdivision B—Vaccinations

166-5 Application of Subdivision to certain registered providers

This Subdivision applies to a registered provider registered in the provider registration category residential care.

166-10 Reports about service staff—influenza vaccinations

- (1) For the purposes of paragraph 166(1)(a) of the Act, this section prescribes that a registered provider must, on request by the System Governor or the Commissioner, give the System Governor or the Commissioner a report, in a form approved by the System Governor, that sets out the following information as at the reporting day specified in the request:
 - (a) the total number of service staff in relation to the approved residential care home;
 - (b) the number of those service staff who have informed the registered provider, whether voluntarily or as required under a law of a State or Territory, that they have received the annual seasonal influenza vaccination for the calendar year that includes the reporting day (whether or not under the registered provider's influenza vaccination scheme (if any)) registered provider.
- (2) The System Governor or the Commissioner may, at any time, request a registered provider to give to the System Governor or the Commissioner a report under subsection (1).
- (3) A request under subsection (2) must:
 - (a) be in writing; and
 - (b) specify a reporting day that is not more than 3 years before the request is made.
- (4) A registered provider must comply with a request under subsection (2) within 7 days after the request is made, or such longer period as is agreed, in writing, between the System Governor or the Commissioner and the registered provider.

Commented [A99]: Should be changed to 28 days as 7 days is unreasonable.

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Registered provider, responsible person and aged care worker obligations **Chapter 5**
Obligations relating to reporting, notifications and information **Part 2**
Provider obligation—reporting to particular persons **Division 1**

Section 166-15

166-15 Reports about service staff—COVID-19 vaccinations

- (1) For the purposes of paragraph 166(1)(a) of the Act, this section prescribes that a registered provider must, on request by the System Governor or the Commissioner, give the System Governor or the Commissioner a report, in a form approved by the System Governor, that sets out the following information as at the reporting day specified in the request:
 - (a) the total number of service staff in relation to the approved residential care home;
 - (b) the number of those service staff who have voluntarily informed the registered provider that they have, in the period specified in the request before the reporting day, received a COVID-19 vaccination.
- (2) The System Governor or the Commissioner may, at any time, request a registered provider to give to the System Governor or the Commissioner a report under subsection (1).
- (3) A request under subsection (2) must:
 - (a) be in writing; and
 - (b) specify a reporting day that is not more than 3 years before the request is made.
- (4) A registered provider must comply with a request under subsection (2) within 7 days after the request is made, or such longer period as is agreed, in writing, between the System Governor or the Commissioner and the registered provider.

Commented [A100]: Should be changed to 28 days as 7 days is unreasonable.

166-20 Reports about individuals receiving residential care—influenza vaccinations

- (1) For the purposes of paragraph 166(1)(a) of the Act, this section prescribes that a registered provider must, on each influenza vaccination reporting day, give the System Governor or the Commissioner a report, in a form approved by the System Governor, that states the number of individuals receiving funded aged care services in an approved residential care home who have voluntarily informed the registered provider that they have received the annual seasonal influenza vaccination for the calendar year that includes the influenza vaccination reporting day.

Meaning of influenza vaccination reporting day

- (2) In this section:
influenza vaccination reporting day means each of the following:
 - (a) 31 July 2025;
 - (b) each subsequent 31 July.

166-25 Reports about individuals receiving residential care—COVID-19 vaccinations

- (1) For the purposes of paragraph 166(1)(a) of the Act, this section prescribes that a registered provider must, on request by the System Governor or the

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Chapter 5 Registered provider, responsible person and aged care worker obligations

Part 2 Obligations relating to reporting, notifications and information

Division 1 Provider obligation—reporting to particular persons

Section 166-205

Commissioner, give the System Governor or the Commissioner a report, in a form approved by the System Governor, that sets out the following information, as at the reporting day specified in the request:

- (a) the total number of individuals receiving funded aged care services in an approved residential care home;
 - (b) the number of those individuals who have, in the period specified in the request before the reporting day, received one or more COVID-19 vaccinations;
 - (c) the number of individuals covered by paragraph (b) who had received only one COVID-19 vaccination;
 - (d) the number of individuals covered by paragraph (b) who had received 2 COVID-19 vaccinations.
- (2) The System Governor or the Commissioner may, at any time, request a registered provider to give to the System Governor or the Commissioner a report under subsection (1).
- (3) A request under subsection (2) must:
- (a) be in writing; and
 - (b) specify a reporting day that is not more than 3 years before the request is made.
- (4) A registered provider must comply with a request under subsection (2) **within 7 days** after the request is made, or such longer period as is agreed, in writing, between the System Governor or the Commissioner and the registered provider.

Commented [A101]: Should be changed to 28 days as 7 days is unreasonable.

Subdivision C—Quality indicators [to be drafted]

Subdivision D—Complaints and feedback management report

166-205 Application of Subdivision to certain registered providers

This Subdivision applies to registered providers registered in one or more of the following provider registration categories:

- (a) personal and care support in the home or community;
- (b) nursing and transition care;
- (c) residential care.

166-210 Requirements for reporting information relating to complaints and feedback management

- (1) For the purposes of paragraph 166(1)(a) of the Act this section prescribes that a registered provider to whom this Subdivision applies must give a report about the management of complaints and feedback (the **complaints and feedback management report**) to the System Governor and the Commissioner within 4 months after the end of the reporting period for the registered provider.
- (2) The reporting period for a registered provider is:
 - (a) the period of 12 months starting on 1 July of a year; or

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Registered provider, responsible person and aged care worker obligations **Chapter 5**
Obligations relating to reporting, notifications and information **Part 2**
Provider obligation—reporting to particular persons **Division 1**

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- (b) another 12 month period that starts on the first day of a month of a year that is determined for the registered provider by the System Governor in accordance with the rules.
- (3) The report must:
 - (a) be in the approved form;
 - (b) be signed by a governing body of the registered provider; and
 - (c) include the information prescribed by subsection (4) of this section.
- (4) For the purposes of paragraph 166(1)(a) of the Act, the following information is prescribed:
 - (a) information about each complaint and feedback received, including the number of complaints and feedback and the nature of the complaints and feedback;
 - (b) information about the action taken to resolve complaints or in response to feedback received, including any subsequent improvements made by the registered provider in relation to complaints and feedback;
 - (c) information about an evaluation of the effectiveness of the actions taken and their related outcome in relation to each complaint and feedback;
 - (d) information about the number of days taken to resolve each complaint and feedback;
 - (e) information about the education and training that has been delivered to the staff of the registered provider in relation to each complaint and feedback;
 - (f) an analysis of the patterns of, and underlying reasons for, complaints.

Commented [A102]: Need to clarify what is meant by a governing body here. Should it instead be a member of the governing body?

Commented [A103]: “Each complaint and feedback” in (a), (c), (d) and (e) is excessive. Recommend change “each complaint and feedback” to “complaints and feedback”.

Subdivision E—Complaints and feedback information on request

166-215 Application of Subdivision to all registered providers

This Subdivision applies to every kind of registered provider.

166-220 Requirements for reporting information on request relating to complaints and feedback management

- (1) For the purposes of paragraph 166(1)(a) of the Act this section prescribes that a registered provider to whom this Subdivision applies must on request by the System Governor or the Commissioner, give a report about the management of complaints and feedback (the *complaints and feedback management report*) to the System Governor and the Commissioner.
- (2) The System Governor or the Commissioner may, at any time, request a registered provider to give the System Governor and the Commissioner a report under subsection (1).
- (3) A registered provider must comply with a request under subsection (1) within 14 days after the request is made, or such longer period as specified in the request.
- (4) The report must:
 - (a) be in the approved form;
 - (b) be signed by a governing body of the registered provider; and

Commented [A104]: This should be at least 28 days as 14 days is unreasonable.

Commented [A105]: Need to clarify what is meant by a governing body here. Should it instead be a member of the governing body?

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- (c) include the information prescribed by subsection (3) of this section.
- (5) For the purposes of paragraph 166(1)(a) of the Act, the following information is prescribed:
- (a) information about each complaint and feedback received, including the number of complaints and feedback and the nature of the complaints and feedback;
 - (b) information about the action taken to resolve complaints or in response to feedback received including any subsequent improvements made by the registered provider in relation to complaints and feedback;
 - (c) information about an evaluation of the effectiveness of the actions taken and their related outcome in relation to each complaint and feedback;
 - (d) information about the number of days taken to resolve each complaint and feedback;
 - (e) information about the education and training that has been delivered to the staff of the registered provider in relation to each complaint and feedback;
 - (f) an analysis of the patterns of, and underlying reasons for, complaints.

Commented [A106]: “Each complaint and feedback” in (a), (c), (d) and (e) is excessive. Recommend change “each complaint and feedback” to “complaints and feedback”.

Subdivision F—Prudential and financial

166-310 Aged care financial report—general

Scope of this section

- (1) Subject to subsection (2), for the purposes of paragraph 166(1)(a) of the Act:
- (a) every kind of registered provider is prescribed; and
 - (b) a registered provider must give a report about financial and prudential matters (the **aged care financial report**) to the System Governor each reporting period for the registered provider.

Note: For the reporting period for an aged care financial report, see section 166-355 of this instrument.

- (2) The requirements of this section do not apply in respect of the delivery of funded aged care services provided under any specialist aged care program.

Note: For requirements relating to an annual prudential compliance statement, see section 166-360 of this instrument.

Requirements for an aged care financial report

- (3) The aged care financial report must:
- (a) be in a form approved in writing by the System Governor relating to the requirements of registered providers in specified provider registration categories or specific kinds of registered providers; and
 - (b) be signed by a governing body of the registered provider; and
 - (c) be given to the System Governor within 4 months after the end of each reporting period for the registered provider; and
 - (d) if section 166-315 of this instrument applies—include a financial support statement; and

Commented [A107]: Should this be a member of a governing body?

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- (e) if section 166-360 of this instrument applies—include an annual prudential compliance statement.
- (4) To avoid doubt, the System Governor may, for the purposes of paragraph (3)(a), approve different forms in relation to specified provider registration categories or specified kinds of registered providers.

Additional requirements if registered in provider registration category residential care

- (5) For a registered provider registered in the provider registration category residential care, in addition to the requirements in subsection (3), an aged care financial report must also include the following:
 - (a) subject to section 166-335 of this instrument, a care minutes performance statement;
 - (b) the amount of accommodation payments and accommodation contributions paid to the registered provider;
 - (c) the amounts of those accommodation payments and accommodation contributions paid as refundable deposits and daily payments;
 - (d) the amounts of accommodation bonds and accommodation charges paid to the registered provider;
 - (e) the extent of building, upgrading and refurbishment of residential care homes.

Requirement to comply with a notice for further information

- (6) A registered provider must comply with a notice under subsection (8) within the period specified in the notice or, if no period is specified in the notice, within 28 days after the day when the notice is given.
- (7) A registered provider complies with a notice under subsection (8) only if the provider gives the information in a form (if any) approved by the System Governor for the purposes of that subsection.

System Governor may request further information

- (8) The System Governor may, by notice in writing, require a registered provider to give the System Governor information about a matter, as specified in the notice, if the information is about a matter required under this section.
- (9) A notice under subsection (8) may require a registered provider to give updated information about a matter in relation to a period that is:
 - (a) the same as the reporting period to which a report under this section relates; or
 - (b) different to the reporting period to which a report under this section relates.

Compliance with this section for part of reporting period

- (10) If the registered provider is registered as a registered provider for part of the reporting period for the registered provider, the registered provider is taken to

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have complied with this section if the registered provider complies with this section for that part of the reporting period.

166-315 Aged care financial report—provision of a financial support statement

Scope of this section

- (1) For the purposes of paragraph 166(1)(a) of the Act, a registered provider is prescribed if the provider:
- (a) is registered in the provider registration category residential care; and
 - (b) is part of or is financially reliant on a related corporate entity; and
 - (c) is not a government entity or a local government authority; and
 - (d) is required under section 166-310 of this instrument to give the System Governor an aged care financial report for the provider for a reporting period.

Financial support statement to be given with aged care financial report

- (2) If a registered provider is required to give the System Governor an aged care financial report for the provider for a reporting period, then the provider must, when giving the report to the System Governor, also give the System Governor a financial support statement for the provider signed within the period of 4 months starting on the day after the end of the reporting period.
- (3) However, subsection (2) does not apply to a registered provider in relation to a reporting period if the aged care financial report for the provider for the year includes an explanation of why the provider has not complied with subsection (2) in relation to that year.

Financial support statement to be given on request

- (4) The System Governor may at any time, by notice in writing, require a registered provider to give the System Governor a financial support statement for the provider signed within the period for signing specified in the notice.

Note: For who must sign a financial support statement, see subsection 166-320(4) of this instrument.

- (5) A registered provider must comply with a notice under subsection (4) within the period for complying specified in the notice or, if no such period is specified in the notice, within 28 days after the day when the notice is given.
- (6) However, subsection (5) does not apply to a registered provider in relation to a notice under subsection (4) if at or before the end of the period within which the provider would (but for this subsection) be required to comply with the notice, the provider gives the System Governor a written explanation of why the provider is not able to comply with the notice.

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System Governor may request further information and documents

- (7) The System Governor may at any time, by notice in writing, require a registered provider to give the System Governor information about a matter, as specified in the notice, if the information is about a matter required under this section.
- (8) A registered provider must comply with a notice under subsection (7) within the period for complying specified in the notice or, if no such period is specified in the notice, within 28 days after the day when the notice is given.

166-320 Aged care financial report—what is a financial support statement

- (1) A **financial support statement**, for a registered provider of a kind prescribed under subsection 166-315(1) of this instrument, is a written statement by the ultimate holding company in relation to the provider that satisfies the requirements in subsections (2), (4) and (5).
- (2) The statement must either:
 - (a) state that the ultimate holding company is willing and able, while the provider remains a registered provider, to provide any financial support to the provider that is needed in order to enable the provider to pay the debts of the provider specified under subsection (3) in relation to the statement; or
 - (b) state that the ultimate holding company is not willing and able, while the provider remains a registered provider, to provide such financial support to the provider.
- (3) For the purposes of paragraph (2)(a), the following debts of the provider are specified in relation to the statement (whether or not the debts relate to the provision of aged care services by the provider):
 - (a) any debts of the provider that are outstanding immediately before the start of the day (the **giving day**) when the statement is given to the System Governor;
 - (b) any debts of the provider that:
 - (i) are debts that become due during the period that starts on the giving day and ends immediately before the start of the first day after the giving day when the provider gives the System Governor another financial support statement for the provider; or
 - (ii) if the provider never gives the System Governor another financial support statement for the provider after the giving day—are debts that become due on or after the giving day.
- (4) A financial support statement must be signed by:
 - (a) if the ultimate holding company is a body corporate that is incorporated, or taken to be incorporated, under the *Corporations Act 2001*—a director of the body corporate for the purposes of that Act; or
 - (b) otherwise—a member of the ultimate holding company's governing body.
- (5) The statement must be in a form (if any) approved by the System Governor for the purposes of this subsection.

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166-325 Aged care financial report—permitted uses reconciliation

- (1) A form approved by the System Governor for an aged care financial report for a registered provider may require such a report to include a statement (a **permitted uses reconciliation**) that sets out information about reportable uses of funds by the registered provider during a reporting period or reporting periods for the registered provider.
- (2) For the purposes of subsection (1), a reportable use of funds is any of the following:
 - (a) a permitted use of refundable deposits or accommodation bonds;
 - (b) a use of funds (other than refundable deposits or accommodation bonds) which was such that, if the funds had been refundable deposits or accommodation bonds, the use would have been a permitted use of refundable deposits or accommodation bonds.

Note: For the permitted uses of refundable deposits, see section 310 of the Act.

- (3) To avoid doubt, the System Governor may, for the purposes of subsection (1), approve different forms in relation to specified provider registration categories or specified kinds of registered providers.

166-335 Aged care financial report—care minutes performance statement

Scope of this section

- (1) For the purposes of paragraph 166(1)(a) of the Act, a registered provider is prescribed if the provider:
 - (a) is registered in the provider registration category residential care; and
 - (b) is required under section 166-310 of this instrument to give the System Governor an aged care financial report for the provider for a reporting period.
- (2) A registered provider of the kind prescribed under this section must provide a written statement that satisfies the requirements in subsections (3), (4) and (5) (a **care minutes performance statement**).

Care minutes performance statement to be given with aged care financial report

- (3) A registered provider must, when giving the aged care financial report to the System Governor, also give the System Governor a care minutes performance statement for the provider in accordance with the requirements prescribed by subsection (4).

Requirements for a care minutes performance statement

- (4) A care minutes performance statement for a reporting period for a registered provider must:
 - (a) be in writing; and
 - (b) be in a form approved by the System Governor; and
 - (c) not contain false or misleading information; and

Commented [A108]: The Department of Health and Aged Care currently has a care time reporting assessments program in place to provide assurance about the accuracy of care time reporting. The requirement in the Rules to provide a care minutes performance statement is new and will require providers to incur the cost of getting an audited statement.

We are concerned that this new requirement will have cost implications for providers, and also appears to be designed to enable the Department to scale back its care time reporting assessment program. Currently under the care time reporting assessment program the Department of Health and Aged Care sends a notice of requirements to give information or documents to approved providers, with an assessment then carried out by the Department. The Department 'aim[s] to do reporting assessments on all residential aged care providers by April 2025, then every 3 years.' However in Senate Estimates on 26 February 2025 a Department representative stated that they will be updating the existing care minutes reporting assessment program, and that once the care minutes performance statement requirement is in place the Department will be checking about 10% of audited reports.

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- (d) include the total eligible direct care hours for each reporting period quarter as delivered by:
 - (i) registered nurses; and
 - (ii) enrolled nurses; and
 - (iii) personal care workers and nursing assistants.
- (e) include the total eligible direct care expenses for each reporting period quarter as delivered by:
 - (i) registered nurses; and
 - (ii) enrolled nurses; and
 - (iii) personal care workers and nursing assistants.
- (f) include 24/7 registered nursing coverage across the reporting period by calendar month and expressed as a percentage; and
- (g) if there is a variance in the data submitted under paragraph (f) throughout the reporting period—the registered provider must include an explanation for the variance; and
- (h) if there is a variance between the care minutes reported in the care minutes performance statement and the care minutes reported in the previous quarterly financial reports—the registered provider must include an explanation for the variance; and
- (i) subject to subsection (5), include a signed audit report for the submitted care minutes performance statement by an independent auditor.

Auditing of care minutes performance statement

- (5) A care minutes performance statement must be audited in accordance with the following requirements:
 - (a) be audited by:
 - (i) a registered company auditor within the meaning of the *Corporations Act 2001*; or
 - (ii) a person approved by the System Governor under subsection (6);
 - (b) be audited in accordance with the Assurance Engagements Other than Audits or Reviews of Historical Financial Information Standard (ASAE 3000).
- Note: For paragraph (b), the Assurance Engagements Other than Audits or Reviews of Historical Financial Information Standard (ASAE 3000) is published by the Australian Auditing and Assurance Standards Board.
- (6) The System Governor may approve a person to audit a care minutes performance statement if the System Governor is satisfied that the person has appropriate qualifications and experience.
 - (7) The System Governor may revoke an approval of a person under subsection (6) if the System Governor is satisfied that the person is no longer a fit and proper person to audit a care minutes performance statement.
 - (8) A decision under subsection (6) is a decision reviewable under section 557 of the Act.

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166-340 Quarterly financial report

Scope of this section

- (1) Subject to subsections (2) and (3), for the purposes of paragraph 166(1)(a) of the Act, every kind of registered provider is prescribed.
- (2) The requirements of this section do not apply to a registered provider if the registered provider:
 - (a) is delivering a specialist aged care program that:
 - (i) is given effect by paragraph 247(1)(a) or subsection 264(2) of the Act; and
 - (ii) the registered provider is not registered in provider registration category residential care; or
 - (b) is only delivering a specialist aged care program given effect by paragraph 247(1)(b) or subsection 264(1) of the Act.
- (3) If the registered provider is delivering a specialist aged care program given effect by paragraph 247(1)(b) of the Act and other funded aged care services—the requirements of this section do not apply to the services delivered under that specialist aged care program.
- (4) A registered provider of the kind prescribed under this section must give a report about matters provided in subsection (5) (the **quarterly financial report**) to the System Governor for each quarter of a reporting period for the registered provider.

Note: For the reporting period for a quarterly financial report, see section 166-355 of this instrument.

Requirements for a quarterly financial report

- (5) The quarterly financial report must:
 - (a) be in a form approved in writing by the System Governor relating to the requirements of registered providers in specified provider registration categories or specific kinds of registered providers; and
 - (b) be signed by a governing body of the registered provider.
- (6) To avoid doubt, the System Governor may, for the purposes of paragraph (5)(a), approve different forms in relation to specified provider registration categories or specified kinds of registered providers.

Timeframes to give System Governor a quarterly financial report

- (7) The quarterly financial report for a quarter of a reporting period for the registered provider must be given to the System Governor:
 - (a) for a quarter ending at the end of 31 December—within 45 days after the end of the quarter; and
 - (b) for any other quarter—within 35 days after the end of the quarter.
- (8) Each of the following is a quarter of a reporting period for the registered provider:

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- (a) the period of 3 months beginning on the first day of the reporting period for the registered provider;
- (b) each successive period of 3 months that occurs during the reporting period for the registered provider after the end of the period mentioned in paragraph (a).

Requirement to comply with a notice for further information

- (9) A registered provider must comply with a notice under subsection (11) within the period specified in the notice or, if no period is specified in the notice, within 28 days after the day when the notice is given.
- (10) A registered provider complies with a notice under subsection (11) only if the provider gives the information in a form (if any) approved by the System Governor for the purposes of that subsection.

System Governor may request further information

- (11) The System Governor may, by notice in writing, require a registered provider to give the System Governor information about a matter, as specified in the notice, if the information is about a matter required under this section.
- (12) A notice under subsection (11) may require a registered provider to give updated information about a matter in relation to a period that is:
 - (a) the same as the reporting period to which a report under this section relates; or
 - (b) different to the reporting period to which a report under this section relates.

Compliance with this section for part of reporting period

- (13) If the registered provider is registered as a registered provider for part of the reporting period for the registered provider, the registered provider is taken to have complied with this section if the registered provider complies with this section for that part of the reporting period.

166-345 General purpose financial report—general

Scope of this section

- (1) Subject to subsection (2), for the purposes of paragraph 166(1)(a) of the Act, a registered provider is prescribed if the provider is registered in provider registration category residential care.
- (2) The requirements of this section do not apply to a registered provider if the registered provider:
 - (a) is a government entity or a local government authority; or
 - (b) is delivering a specialist aged care program.
- (3) A registered provider of a kind prescribed under this section must give a report on matters provided in subsection (4) (the **general purpose financial report**) to the System Governor each reporting period for the registered provider.

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Note: For the reporting period for a general purpose financial report, see section 166-355 of this instrument.

Requirements for a general purpose financial report

- (4) The general purpose financial report must:
- (a) be a general purpose financial report within the meaning given by section 6 of the Statement of Accounting Concepts SAC 1; and
 - (b) be in accordance with the Australian Accounting Standards in force at the time the report is prepared; and
 - (c) give a true and fair view of the financial position and performance of the registered provider for the reporting period for each residential care home approved in relation to the registered provider; and
 - (d) be written as if the registered provider were, so far as it provided those services, a distinct reporting entity within the meaning of the Statement of Accounting Concepts SAC 1; and
 - (e) be given to the System Governor at the same time the registered provider gives an aged care financial report under section 166-310 of this instrument to the System Governor.
- (5) If a general purpose financial report deals with a matter other than funded aged care services delivered through the service group residential care, the report must be prepared as if the funded aged care services delivered through the service group residential care it relates to were a reportable segment for the purposes of the Australian accounting standards related to segment reporting in force at the time the report is prepared.
- (6) Despite subsections (4) and (5), if all the information about each residential care home approved in relation to the registered provider is included in the provider's aged care financial report for the reporting period, none of that information need be included in the general purpose financial report for the reporting period.
- (7) A registered provider must give a copy of its most recently audited general purpose financial report to each person who asks for a copy and is:
- (a) an individual of the approved residential care home; or
 - (b) an individual who has an access approval in effect for a residential care home and is considering receiving funded aged care services through the residential care home; or
 - (c) a supporter of an individual to whom paragraph (a) or (b) applies.

Requirement to comply with a notice for further information

- (8) A registered provider must comply with a notice under subsection (10) within the period specified in the notice or, if no period is specified in the notice, within 28 days after the day when the notice is given.
- (9) A registered provider complies with a notice under subsection (10) only if the provider gives the information in a form (if any) approved by the System Governor for the purposes of that subsection.

Commented [A109]: This implies a statement, at the residential care home level rather than the entity level, which may not be available. Recommend delete "for each residential care home approved in relation to the registered provider".

Commented [A110]: While this reflects the current situation, for some providers reporting this way will not provide the optimal view of the financial performance of the provider. Also affects providers that have a separate entity for each facility for tax or other reasons. Recommend the System Governor has the discretion to approve a different arrangement where appropriate.

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System Governor may request further information

- (10) The System Governor may, by notice in writing, require a registered provider to give the System Governor information about a matter, as specified in the notice, if the information is about a matter required under this section.
- (11) A notice under subsection (10) may require a registered provider to give updated information about a matter in relation to a period that is:
 - (a) the same as the reporting period to which a report under this section relates; or
 - (b) different to the reporting period to which a report under this section relates.

Compliance with this section for part of reporting period

- (12) If the registered provider is registered as a registered provider for part of the reporting period for the registered provider, the registered provider is taken to have complied with this section if the registered provider complies with this section for that part of the reporting period.

166-350 General purpose financial report—audit requirements

- (1) A general purpose financial report must:
 - (a) be audited by:
 - (i) a registered company auditor within the meaning of the *Corporations Act 2001*; or
 - (ii) a person approved by the System Governor under subsection (2);
 - (b) include each of the following:
 - (i) an audit opinion about the general purpose financial report from a registered company auditor or a person approved under subsection (2);
 - (ii) a statement from the registered company auditor or the person approved under subsection (2) as to whether the report complies with paragraphs 166-345(4)(b) and (c) of this instrument.
- (2) The System Governor may approve a person to audit a general purpose financial report if the System Governor is satisfied that the person has appropriate qualifications and experience.
- (3) The System Governor may revoke an approval of a person under subsection (2) if the System Governor is satisfied that the person is no longer a fit and proper person to audit a general purpose financial report.
- (4) A decision under subsection (2) is a decision reviewable under section 557 of the Act.

166-355 Financial and prudential reports—reporting period

- (1) For the purposes of subsection 166(4) of the Act, the reporting period for all reports given to the System Governor by a registered provider under this Subdivision means:

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- (a) the financial year (the 12 month period beginning on 1 July and ending on 30 June); or
 - (b) if under subsection (3), the System Governor determines another period of 12 months (being a period that begins on the first day of a month)—that other period.
- (2) A registered provider may apply to the System Governor to determine a period of 12 months, other than the financial year, to be the registered provider's reporting period.
- (3) If the System Governor receives an application from a registered provider for a determination under subsection (2), the System Governor must:
 - (a) make, or refuse to make, the determination; and
 - (b) notify the registered provider, in writing, of the System Governor's decision:
 - (i) within 28 days; or
 - (ii) if the Secretary has requested further information in relation to the application—within 28 days, excluding the period within which the information is requested and received.
- (4) The System Governor may determine another period to be the registered provider's reporting period under subsection (3) only if the System Governor is satisfied, on reasonable grounds, that it would be impracticable for the registered provider to comply with the requirements of this Subdivision in relation to a financial year.
- (5) If the System Governor refuses to make a determination for the registered provider under subsection (3), the System Governor must also give the registered provider a written statement of the reasons for the decision.
- (6) A decision under subsection (3) is a decision reviewable under section 557 of the Act.

166-360 Annual prudential compliance statement—general

Scope of this section

- (1) For the purposes of paragraph 166(1)(a) of the Act, a registered provider is prescribed if the registered provider:
 - (a) is registered in the provider registration category residential care; and
 - (b) receives or has received payment of any of the following from an individual, wholly or partly as a lump sum:
 - (i) a refundable deposit;
 - (ii) an accommodation bond.
- (2) A registered provider of the kind prescribed under this section must give the System Governor a statement (the **annual prudential compliance statement**) for a reporting period for the registered provider that includes the following:
 - (a) if the lump sum is a refundable deposit—information about refundable deposits and refundable deposit balances referred to in section 166-365 of this instrument;

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- (b) if the lump sum is an accommodation bond—information about accommodation bonds and accommodation bond balances referred to in section 166-365 of this instrument;
- (c) information about other fees referred to in section 166-375 of this instrument;
- (d) the statements and other information referred to in section 166-380 of this instrument.

Requirements for an annual prudential compliance statement

- (3) An annual prudential compliance statement for a reporting period for a registered provider must:
 - (a) be in writing; and
 - (b) be in a form approved by the System Governor; and
 - (c) further to subsection (2), include the information specified in that subsection; and
 - (d) not contain false or misleading information; and
 - (e) include a declaration that the registered provider has only charged the amount of refundable deposit the registered provider is permitted to charge; and
 - (f) if the registered provider has not complied with paragraph (e), include the number of times the provider has not complied with this requirement and the reasons for the non-compliance; and
 - (g) if the registered provider is required to prepare an aged care financial report for the reporting period—be included in the aged care financial report for the registered provider for the reporting period; and
 - (h) if paragraph (g) does not apply to the registered provider:
 - (i) be signed by a person who is one of the registered provider's responsible persons and is authorised by the registered provider to sign the statement; and
 - (ii) be given to the System Governor within 4 months after the end of the reporting period for the registered provider.

Note: The annual prudential compliance statement must be supported by an independent audit (see section 166-385 of this instrument).

166-365 Annual prudential compliance statement—information about refundable deposits and accommodation bonds that must be included

- (1) Further to section 166-360 of this instrument, this section prescribes the information to be included in an annual prudential compliance statement if the registered provider receives a refundable deposit or an accommodation bond from an individual.
- (2) The information about a refundable deposit or accommodation bond and a refundable deposit balance or accommodation bond balance that must be included in a registered provider's annual prudential compliance statement for a reporting period is as follows:

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- (a) the total number of refundable deposit balances or accommodation bond balances held by the registered provider as at the end of the reporting period;
- (b) the total value of refundable deposit balances or accommodation bond balances held by the registered provider as at the end of the reporting period;
- (c) the total value of refundable deposits or accommodation bonds received by the registered provider during the reporting period;
- (d) the total amount deducted by the registered provider during the reporting period from refundable deposit balances or accommodation bond balances, including:
 - (i) for refundable deposit balances or accommodation bond balances—any general deductions under section 307 of the Act; and
 - (ii) for refundable deposit balances only—any retention amounts under section 308 of the Act as separate deductions by the registered provider during the reporting period from refundable deposit balances;
- (e) the total amount deducted by the registered provider during the reporting period from refundable deposits or accommodation bonds that were received during the year, including:
 - (i) for refundable deposit balances or accommodation bond balances—any general deductions under section 307 of the Act; and
 - (ii) for refundable deposit balances only—any retention amounts under section 308 of the Act as separate deductions by the registered provider during the reporting period from refundable deposit balances received during the reporting period;
- (f) the total amount deducted by the registered provider during the reporting period from refundable deposits or accommodation bonds that were received during the year;
- (g) any transfer of a refundable deposit made under section 312 of the Act or a transfer of an accommodation bond, including the amount, the date of transfer and the amount left on retention;
- (h) the total value of refundable deposit balances and accommodation bond balances refunded by the registered provider during the reporting period;
- (i) if, during the reporting period, refundable deposit balances or accommodation bond balances were not refunded in accordance with subsection 311(3) of the Act (other than a refundable deposit balance or accommodation bond balance in relation to which the registered provider has made an agreement as referred to in section [to be drafted] of this instrument)—the following information:
 - (i) the total number of refundable deposit balances or accommodation bond balances that were not refunded in accordance with subsection 311(3) of the Act;
 - (ii) the reason or reasons for the delay in refunding the refundable deposit balances or accommodation bond balances;
 - (iii) in respect of each reason provided—the total number of instances of delay attributable to the reason;

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Section 166-365

- (j) if, for the whole or a part of the reporting period, the registered provider was not permitted to charge a refundable deposit or accommodation bond for entry by an individual that the registered provider is responsible for operating:
 - (i) the period or periods during which the registered provider was not permitted to charge a refundable deposit or accommodation bond; and
 - (ii) the funded aged care service in respect of which each period specified applies;
- (k) the use of refundable deposits and accommodation bonds by the registered provider during the reporting period;
- (l) whether any use of refundable deposits or accommodation bonds by the registered provider during the reporting period was not permitted under section 310 of the Act;
- (m) the total amount expended by the registered provider (whether or not obtained from refundable deposits or accommodation bonds) during the reporting period on capital expenditure for which use of a refundable deposit or an accommodation bond was permitted under section 310 of the Act;
- (n) the total amount expended by the registered provider (whether or not obtained from refundable deposits or accommodation bonds) during the reporting period on investment in financial products for which use of a refundable deposit or an accommodation bond was permitted under section 310 of the Act;
- (o) the total amount expended by the registered provider (whether or not obtained from refundable deposits or accommodation bonds) during the reporting period on loans for which use of a refundable deposit or an accommodation bond was permitted under section 310 of the Act;
- (p) the total amount expended by the registered provider (whether or not obtained from refundable deposits or accommodation bonds) during the reporting period on repaying debt accrued for the purposes of:
 - (i) capital expenditure of the kind described in paragraph (o); or
 - (ii) refunding refundable deposit balances or accommodation bond balances;
- (q) the total amount expended by the registered provider (whether or not obtained from refundable deposits or accommodation bonds) during the reporting period on repaying debt that accrued before 1 October 2011 if the debt was accrued for the purpose of delivering funded aged care services to individuals;
- (r) the total amount expended by the registered provider (whether or not obtained from refundable deposits or accommodation bonds) during the reporting period on each of the uses of refundable deposits or accommodation bonds permitted under section [to be drafted] of this instrument;
- (s) the amount that has been returned to the registered provider during the reporting period from the sale, disposal or redemption of financial products covered by paragraphs 310(3)(b) to (e) of the Act, or section [to be drafted] of this instrument, that the registered provider invested in after 1 October

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Section 166-375

2011, whether or not the investment was obtained from refundable deposits or accommodation bonds.

Note: Paragraph (i) does not apply to a registered provider that has transferred their refundable deposit balance to another registered provider under section 312 of the Act.

166-375 Annual prudential compliance statement—information about other fees that must be included

The information about other fees that must be included in a registered provider's annual prudential compliance statement for a reporting period is as follows:

- (a) the fees (if any) other than resident contributions, accommodation payments and accommodation contributions that the registered provider charged to individuals during the reporting period;
- (b) the total value of each such fee charged by the registered provider during the reporting period;
- (c) what each such fee purports to cover.

166-380 Annual prudential compliance statement—Financial and Prudential Standards

The statements and other information that must be included in a registered provider's annual prudential compliance statement for a reporting period are as follows:

- (a) a statement about whether the registered provider has, during the reporting period, complied with the following:
 - (i) the Financial and Prudential Standards;
 - (ii) section [to be drafted] of this instrument] and subsection 293(1), subsections 311(1) and (2) and section 313 of the Act;
 - (iii) Division 3 of Part 4 of Chapter 4 of the Act;
 - (iv) subsection 310(1) of the Act;
- (b) if the registered provider has not complied with any of the Standards in the Financial and Prudential Standards—a statement about why the registered provider has not complied with the Standard;
- (c) if the registered provider has not complied with the conditions application to disclosure in section [to be drafted] of this instrument—the following information:
 - (i) the total number of occasions on which the registered provider did not comply;
 - (ii) the reason or reasons for the registered provider's failure to comply;
 - (iii) in respect of each reason provided—the total number of occasions of non-compliance attributable to the reason;
- (d) the amount set out in the registered provider's liquidity management strategy under section [to be drafted] of this instrument, as at the end of the reporting period, as the registered provider's minimum liquidity amount for the end of the most recent quarter;
- (e) the date on which the registered provider's liquidity management strategy was last reviewed and assessed;

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- (f) an audit opinion, provided by the person who provides the independent audit referred to in section 166-385 of this instrument, on whether the registered provider has complied with this Subdivision in the reporting period.

Note: The annual prudential compliance statement must be supported by an independent audit (see section 166-385 of this instrument).

166-385 Annual prudential compliance statement—audit requirements

- (1) An annual prudential compliance statement must be supported by an independent audit provided by:
 - (a) a registered company auditor within the meaning of the *Corporations Act 2001*; or
 - (b) a person approved by the System Governor under subsection (2).
- (2) The System Governor may approve a person to audit an annual prudential compliance statement if the System Governor is satisfied that the person has appropriate qualifications and experience.
- (3) The System Governor may revoke an approval of a person under subsection (2) if the System Governor is satisfied that the person is no longer a fit and proper person to audit an annual prudential compliance statement.
- (4) A decision under subsection (2) is a decision reviewable under section 557 of the Act.

Subdivision G—Reportable incidents

166-500 Purpose of this Subdivision

For the purposes of paragraph 166(1)(b) of the Act, this Subdivision prescribes requirements for reporting reportable incidents to the Commissioner.

166-505 Application of Subdivision to registered providers

For the purposes of subsection 166(1) of the Act, every kind of registered provider is prescribed.

166-510 Registered provider must notify reportable incidents in accordance with this Subdivision

A registered provider must take all reasonable steps to ensure that reportable incidents are notified to the Commissioner in accordance with this Subdivision.

166-515 Registered provider must ensure that aged care workers notify reportable incidents

- (1) A registered provider **must ensure** that an aged care worker of the provider who becomes aware of a reportable incident notifies one of the following of that fact as soon as possible:
- (a) one of the provider's responsible persons;

Commented [A111]: Recommend change, as not something anyone can ensure, to 'Registered providers must require aged care workers to notify reportable incidents'.

Commented [A112]: Recommend change, as not something anyone can ensure, to 'A registered provider must require that an aged care worker...'.

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Section 166-520

- (b) a supervisor or manager of the aged care worker;
- (c) a person specified for the purposes of paragraph 164-20(e).

166-520 Priority 1 notice must be given within 24 hours

- (1) If:
- (a) a registered provider becomes aware of a reportable incident; and
 - (b) the provider has reasonable grounds to believe that the incident is a priority 1 reportable incident;

the provider must give the Commissioner a notice (a **priority 1 notice**) in accordance with subsection (3) within 24 hours of becoming aware of the reportable incident.

Note: Notice about certain reportable incidents is not required to be given: see section 166-530.

- (2) A **priority 1 reportable incident** is a reportable incident:
- (a) that has caused an individual physical or psychological injury or discomfort that requires medical or psychological treatment to resolve; or
 - (b) where there are reasonable grounds to report the incident to police; or
 - (c) of the kind covered by paragraph 16(1)(b) of the Act (about unlawful sexual contact or inappropriate sexual conduct, inflicted on an individual); or
 - (d) of the kind covered by paragraph 16(1)(d) or (h) of the Act (about unexpected death or unexplained absence).
- (2A) For the purposes of paragraph (2)(a), in considering whether a reportable incident has caused an individual who has a cognitive impairment physical or psychological injury or discomfort that requires medical or psychological treatment to resolve, a registered provider:
- (a) must not consider the cognitive impairment, or whether the cognitive impairment affects the individual's ability to recognise physical or psychological injury or discomfort, as:
 - (i) preventing the individual from being caused physical or psychological injury or discomfort; or
 - (ii) reducing the degree of physical or psychological injury or discomfort caused; and
 - (b) must consider whether the individual's cognitive impairment has the result that the incident has caused the individual physical or psychological injury or discomfort (for example where the same incident has not caused injury to individuals who do not have cognitive impairment).

Information to be included in notice

- (3) Subject to subsection (4), the priority 1 notice must include the following information about the reportable incident:
- (a) the name and contact details of the registered provider;
 - (b) a description of the reportable incident including:
 - (i) the kind of reportable incident; and

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- (ii) the harm that was caused, or that could reasonably have been expected to have been caused, to each person affected by the incident; and
 - (iii) if known—the consequences of that harm;
 - (c) the immediate actions taken in response to the reportable incident, including:
 - (i) actions taken to ensure the safety, health and well-being of each individual affected or the supporter of the individual by the incident; and
 - (ii) whether the incident has been reported to police or any other body;
 - (d) any further actions proposed to be taken in response to the reportable incident;
 - (e) the name, position and contact details of the person giving the notice;
 - (f) if known—the time, date and place at which the reportable incident occurred or was alleged or suspected to have occurred;
 - (g) the names of the persons directly involved in the reportable incident;
 - (h) if known—the level of cognition of the affected individuals directly involved in the reportable incident.
- (4) The registered provider is not required to include information in the priority 1 notice if that information is not available within the 24 hours.

Additional information

- (5) The registered provider must give the Commissioner a notice including the following information about the reportable incident within 5 days after the start of the 24 hours, or within such other period as the Commissioner determines:
- (a) any information required by subsection (3) not provided in the priority 1 notice;
 - (b) any further information specified by the Commissioner that is required to deal with the reportable incident.
- (6) However, the registered provider is not required to give a notice under subsection (5) if the Commissioner decides otherwise.

Form of notices

- (7) A notice given under this section must:
- (a) be in writing; and
 - (b) be in the approved form.

Note: The Commissioner may approve forms for the purposes of this Division: see section 585 of the Act.

166-525 Priority 2 notice must be given within 30 days

- (1) If:
- (a) a registered provider becomes aware of a reportable incident; and
 - (b) the provider has not given a notice under section 166-520 about the incident;

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Section 166-530

the provider must give the Commissioner a notice (a *priority 2 notice*) in accordance with subsection (2) within 30 days of becoming aware of the incident.

Note: Notice about certain reportable incidents is not required to be given: see section 166-530.

- (2) The priority 2 notice must include the following information about the reportable incident:
- (a) the name and contact details of the registered provider;
 - (b) a description of the reportable incident including:
 - (i) the kind of reportable incident; and
 - (ii) the harm that was caused, or that could reasonably have been expected to have been caused to each person affected by the incident; and
 - (iii) if known—the consequences of that harm;
 - (c) the actions taken in response to the reportable incident, including:
 - (i) actions taken to ensure the safety, health and well-being of each affected individual or the supporter of the individual by the incident; and
 - (ii) whether the incident has been reported to police or any other body;
 - (d) any further actions proposed to be taken in response to the reportable incident;
 - (e) the name, position and contact details of the person giving the notice;
 - (f) if known—the time, date and place at which the reportable incident occurred or was alleged or suspected to have occurred;
 - (g) the names of the persons directly involved in the reportable incident;
 - (h) if known—the level of cognition of the affected individuals directly involved in the reportable incident.

Additional information

- (3) If the Commissioner requires the registered provider to give a notice including specified further information about the reportable incident within a specified period, the provider must give the Commissioner a notice including that information with the specified period.

Form of notices

- (4) A notice given under this section must:
- (a) be in writing; and
 - (b) be in the approved form.

Note: The Commissioner may approve forms for the purposes of this Division: see section 585 of the Act.

166-530 Reporting not required in certain circumstances

The Commissioner may decide that a registered provider is not required to give a notice under section 166-520 or 166-525 about a reportable incident if the Commissioner is satisfied that:

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- (a) the same incident has been repeatedly alleged by an individual accessing funded aged care services to have occurred; and
- (b) the allegation is the result of a delusion of the individual.

166-535 Significant new information must be notified

- (1) A registered provider must notify the Commissioner of significant new information relating to a reportable incident as soon as reasonably practicable after becoming aware of the information if:
 - (a) the provider notifies the Commissioner of the reportable incident under section 166-520 or 166-525; and
 - (b) the provider later becomes aware of the significant new information.
- (2) The notification must:
 - (a) be in writing; and
 - (b) be in the approved form.

Note: The Commissioner may approve forms for the purposes of this Division: see section 585 of the Act.

166-540 Final report about reportable incident must be given if required

- (1) If required by the Commissioner, a registered provider must give the Commissioner a final report that includes specified information about a reportable incident.
- (2) The final report must be given:
 - (a) within 84 days of the day a notice about the incident was first given to the Commissioner under section 166-520 or 166-525; or
 - (b) within such other period as is specified by the Commissioner.
- (3) The final report must:
 - (a) be in writing; and
 - (b) be in the approved form; and
 - (c) contain the information specified by the Commissioner.

Note: The Commissioner may approve forms for the purposes of this Division: see section 585 of the Act.

Subdivision H—CHSP

166-600 Application of Subdivision

This Subdivision applies to a registered provider of a kind who is registered in one or more of the following provider registration categories:

- (a) home and community services;
- (b) assistance technology and home modifications;
- (c) personal and care support in the home or community;
- (d) nursing and transition care;

and delivers funded aged care services through the specialist aged care program CHSP.

Commented [A113]: Is there a reason why advisory and support services are not included in this list?

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Division 1 Provider obligation—reporting to particular persons

Section 166-605

166-605 Annual financial declaration statement

- (1) For the purposes of paragraph 166(1)(a) of the Act, this section prescribes that a registered provider to whom this Subdivision applies must give the System Governor a statement (the annual financial declaration statement) each financial year for the registered provider.
- (2) The annual financial declaration statement for a financial year for the registered provider must be given to the System Governor by 31 August after the end of the financial year.
- (3) The annual financial declaration statement must be in a form approved by the System Governor.
- (4) The annual financial declaration statement must include the following information for the financial year:
 - (a) information about the funds the System Governor has provided the registered provider through the grant agreement;
 - (b) information about the expenditure by the registered provider under the grant agreement;
 - (c) information about any System Governor approved unspent funds from previous financial years.

Statement of compliance to be given with annual financial declaration statement

- (5) If a registered provider is required under subsection 166-605(1) to give the System Governor an annual financial declaration statement for the financial year, then the provider must, when giving the report to the System Governor, also give the System Governor a statement of compliance that the funding received under the grant agreement was only spent on individuals with an assessment approval for funded aged care services in one or more service groups for the individuals and the classification types for the service groups under section 65 of the Act.
- (6) For the purposes of subsection (1), the annual financial declaration statement must not include information about the registered provider's:
 - (a) own funds; or
 - (b) funds from another aged care program.

166-610 Monthly performance report

- (1) For the purposes of paragraph 166(1)(a) of the Act, this section prescribes that a registered provider to whom this Subdivision applies must give the System Governor a report about activity and performance data matters (the monthly performance report) each month.
- (2) The monthly performance report must:
 - (a) be in a form approved by the System Governor; and
 - (b) include information about the services delivered on an individualised level for the service type and the day of which the service was delivered.

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Section 166-615

- (3) The monthly performance report for a registered provider must be given to the System Governor within 14 days after the end of the month.

166-615 Annual wellness and reablement report

- (1) For the purposes of paragraph 166(1)(a) of the Act, this section prescribes that a registered provider to whom this Subdivision applies must give the System Governor a report about the registered provider's progress in embedding wellness and reablement in its service delivery (the annual wellness and reablement report).
- (2) The System Governor may, at any time, request a registered provider to give the System Governor a report under subsection (1).
- (3) A registered provider must comply with a request under subsection (1) within 21 days after the request is made.
- (4) The report must be in a form approved by the System Governor.

166-620 Compliance report

- (1) For the purposes of paragraph 166(1)(a) of the Act, this section prescribes that a registered provider to whom this Subdivision applies must give the System Governor a report about any matters related to the registered provider's management of a grant agreement under section 264 of the Act (the *compliance report*).
- (2) The System Governor may, at any time, request a registered provider to give the System Governor a report under subsection (1).
- (3) The compliance report for a registered provider must be given to the System Governor within 14 days after the request is made.
- (4) The report must be in a form approved by the System Governor.

166-625 Service delivery report

- (1) For the purposes of paragraph 166(1)(a) of the Act, this section prescribes that a registered provider to whom this Subdivision applies must on request by the System Governor, give a report about service delivery (the service delivery report).
- (2) The System Governor may, at any time, request a registered provider to give the System Governor a report under subsection (1).
- (3) A registered provider must comply with a request under subsection (1) within 21 days after the request is made, or such longer period as specified in the request.
- (4) The report must be in a form approved by the System Governor.

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Division 1 Provider obligation—reporting to particular persons

Section 166-627

166-627 Exemption process for certain reports [to be drafted]

Subdivision J—NATSIFACP

166-630 Application of Subdivision

This Subdivision applies to a registered provider of a kind who is registered in one or more of the following provider registration categories:

- (a) home and community services;
- (b) assistance technology and home modifications;
- (c) personal and care support in the home or community;
- (d) nursing and transition care;
- (e) residential care;

and delivers funded aged care services through the specialist aged care program NATSIFACP.

Commented [A114]: Is there a reason why advisory and support services are not included in this list?

166-635 Annual financial declaration statement

- (1) For the purposes of section 166 of the Act, this section prescribes that a registered provider to whom this Subdivision applies must give the System Governor a statement (the annual financial declaration statement) each financial year for the registered provider.
- (2) The annual financial declaration statement for a financial year for the registered provider must be given to the System Governor:
 - (a) annually; or
 - (b) at such other time as agreed between the System Governor and the registered provider.
- (3) The annual financial declaration statement must be in a form approved by the System Governor.
- (4) The annual financial declaration statement must include the following information for the financial year:
 - (a) information about the funds the System Governor has provided the registered provider through the grant agreement;
 - (b) information about the expenditure by the registered provider under the grant agreement;
 - (c) information about any System Governor approved unspent funds from previous financial years;
 - (d) information about any contributions collected by the registered provider over the financial year.

Statement of compliance to be given with annual financial declaration statement

- (5) If a registered provider is required under this section to give the System Governor an annual financial declaration statement for the financial year, then the provider must, when giving the report to the System Governor, also give the System Governor a statement of compliance that the funding received under the grant agreement was appropriately spent on individuals who have been approved

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Section 166-640

for a classification type in one or more service groups and one or more funded aged care services.

166-640 Audited income and expenditure report

- (1) For the purposes of paragraph 166(1)(a) of the Act, this section prescribes that a registered provider to whom this Subdivision applies must give a report about financial matters (the audited income and expenditure report) to the System Governor each financial year for the registered provider.
- (2) The audited income and expenditure report must be prepared by:
 - (a) a Registered Company Auditor under the *Corporations Act 2001*;
 - (b) a member of COPA Australia, the Institute of Public Accounts in Australia; or
 - (c) the Institute of Chartered Accountants in Australia.

Audited income and expenditure statement to be given with audited income and expenditure report

- (3) If a registered provider is required under this section to give the System Governor an audited income and expenditure report for the financial year, then the provider must, when giving the report to the System Governor, also give the System Governor an audited income and expenditure statement.
- (4) The audited income and expenditure statement must:
 - (a) be in accordance with the Australian accounting standards in force at the time the report is prepared; and
 - (b) be based on proper accounts and records of the registered provider; and
 - (c) verify that grant funding was spent to perform the activity as set out in the grant agreement; and
 - (c) include other matters as specified in the grant agreement;
 - (e) include the audit opinion.

166-645 Service activity report

- (1) For the purposes of paragraph 166(1)(a) of the Act, this section prescribes that a registered provider to whom this Subdivision applies must give a report about the registered provider's progress in providing aged care services in accordance with the grant agreement (the service activity report) to the System Governor every 6 months.
- (2) The service activity report must be given to the System Governor:
 - (a) on 27 January for the 6 month period ending on 31 December; and
 - (b) on 27 July for the 6 month period ending on 30 June.
- (3) The service activity report must:
 - (a) be in a form approved by the System Governor; and
 - (b) include information about labour worked hours data for registered nurses, enrolled nurses, personal care workers and allied health workers for the reporting period; and

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Section 166-700

- (c) include information about labour cost for registered nurses, enrolled nurses, personal care workers and allied health workers for the reporting period; and
- (d) include information about the number of occupied beds for the reporting period.

Subdivision K—Governing bodies

166-700 Application of this Subdivision

- (1) This Subdivision applies to registered providers registered in one or more of the following provider registration categories:
 - (a) nursing and transition care;
 - (b) residential care.

166-705 Governing bodies must prepare and provide statements

- (1) For the purposes of paragraph 166(1)(a) of the Act, it is prescribed that a registered provider to whom this Subdivision applies must give a report of a kind referred to in this section to the System Governor within 4 months after the end of the reporting period.
- (2) The reporting period for a registered provider to whom this Subdivision applies is:
 - (a) the period of 12 months starting on 1 July of a year; or
 - (b) another 12 month period that starts on the first day of a month of a year that is determined for the registered provider by the System Governor in accordance with the rules.
- (3) The report must:
 - (a) be in the approved form; and
 - (b) be signed by a member of the provider's governing body on behalf of all members of the governing body; and
 - (c) include the information prescribed by subsection (4) of this section; and
 - (d) include any other statements or information required by the approved form.
- (4) The following information is prescribed:
 - (a) whether the governing body of the provider believes that the provider has complied with the conditions, obligations and requirements of the provider under the Act;
 - (b) if the governing body of the provider believes that the provider has failed to comply with one or more conditions, obligations or requirements of the provider under the Act—the details of:
 - (i) each condition, obligation or requirement that the governing body believes that the provider has failed to comply with; and
 - (ii) the reasons why the provider has failed to comply with the condition, obligation or requirement; and
 - (iii) the actions that the provider has taken, has started to take or will take to rectify the non-compliance.

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Section 166-710

Example: For subparagraph (b)(iii), under Chapter 6 of the Act a registered provider may:

- (a) give an enforceable undertaking about remedying non-compliance (see Part 8 of Chapter 6 of the Act); or
- (b) agree to certain matters if revocation of registration is being considered (see section 133 of the Act).

166-710 Requirements for certain registered providers to give information relating to reporting periods

- (1) For the purposes of paragraph 166(1)(a) of the Act, it is prescribed that a registered provider to whom this Subdivision applies must give the following additional information:
 - (a) information about the kind of feedback and complaints received by the registered provider in the reporting period;
 - (b) information about improvements made by the registered provider in the reporting period in relation to quality of care;
 - (c) information about initiatives that the registered provider has implemented in the reporting period to support a diverse and inclusive environment for individuals accessing funded aged care services and aged care workers;
 - (d) information about the representation of different demographic groups in the membership of the governing body of the provider (but, for any group, only if a member of the governing body who is a member of that group consents to that information being provided);
 - (e) information on whether the registered provider was, in the reporting period, a government entity or a local government authority;
 - (f) for registered providers that are not government entities or local government authorities, whether the registered provider is a registered provider of a kind prescribed by the rules for the purposes of subsection 157(2) of the Act;
 - (g) for registered providers that are subject to the requirements of subsection 157(2) of the Act, whether the registered provider has complied during the reporting period with the requirements of subsection 157(2);
 - (h) whether subsection 157(3) or (4) of the Act applied to the registered provider during the reporting period.
- (2) A registered provider registered in the registration category nursing and transition care must provide the information prescribed in subsections (1)(a) to (c) in respect of each service delivery branch operated by the registered provider.
- (3) A registered provider registered in the registration category residential care must provide the information prescribed in subsections (1)(a) to (c) in respect of each residential care home operated by the registered provider.

Commented [A115]: It would be helpful to define (or for guidance material to elaborate on) what “kind of feedback and complaints” means - eg are complaints about the quality of care sufficient? Or does it need to drill down into complaints about staffing, complaints about food, complaints about call bell response times etc

166-715 Service provided during part only of reporting period

If a registered provider registered in the residential care category was responsible for the operations of a residential care home during part of a reporting period for the registered provider, the registered provider is taken to have complied with sections 166-705 and 166-710 in relation to the home for the reporting period if

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Section 166-715

the registered provider complied with 166-705 and 166-710 in relation to the home and that part of the reporting period.

Subdivision L—Registered nurses [to be drafted]

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Provider obligation—change in circumstances [to be drafted] **Part 3**

Section 166-715

Part 3—Provider obligation—change in circumstances [to be drafted]

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Part 4 Responsible person obligation—change in circumstances relating to suitability [to be drafted]

Section 166-715

**Part 4—Responsible person obligation—change in
circumstances relating to suitability [to be drafted]**

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Registered provider, responsible person and aged care worker obligations **Chapter 5**
Obligations relating to suitability of responsible persons **Part 5**

Section 172-5

Part 5—Obligations relating to suitability of responsible persons

172-5 Kinds of registered provider to which the obligation applies

For the purposes of subsection 172(1) of the Act, every kind of registered provider is prescribed.

172-10 Requirements for records of suitability matters

For the purposes of paragraph 172(1)(b) of the Act, a registered provider must keep a record of its consideration of suitability matters in relation to a person that includes the following:

- (a) the name of the person in relation to whom the suitability matters were considered;
- (b) the date or dates on which the suitability matters were considered in relation to the person;
- (c) the outcome of the provider's consideration of each suitability matter in relation to the person;
- (d) the reasons for reaching that outcome.

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Part 6 Obligations relating to aged care workers etc.

Division 1 Registered nurses [to be drafted]

Section 172-10

Part 6—Obligations relating to aged care workers etc.

Division 1—Registered nurses [to be drafted]

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Delivery of direct care **Division 2**

Section 176-5

Division 2—Delivery of direct care

Subdivision A—Delivery of direct care—mainstream providers

176-5 Kinds of provider to which the obligation applies, and requirements

For the purposes of section 176 of the Act:

- (a) a registered provider registered in the provider registration category residential care is prescribed; and
- (b) this Subdivision sets out the requirements for delivering direct care.

176-10 Application of this Subdivision

The requirements of this Subdivision do not apply in respect to the delivery of funded aged care services provided under any of the following specialist aged care programs:

- (a) TCP;
- (b) MPSP;
- (c) NATSIFACP.

176-15 Amounts of direct care that must be provided

- (1) This section applies if the provider is delivering funded aged care services in an approved residential care home in a quarter.

Requirement—direct care provided by direct care staff members

- (2) The provider must ensure that the average amount of direct care delivered in the home by direct care staff members of the provider per counted mainstream individual per day is at least the required combined staff average amount of direct care per individual per day worked out under subsection 176-20(1) in respect of the home for the quarter.

Note: Direct care staff members of the provider include registered nurse staff members of the provider (see the definition of *direct care staff member* in section D1).

Requirement—direct care provided by registered nurse staff members

- (3) The provider must ensure that the average amount of direct care delivered in the home by registered nurse staff members of the provider per counted mainstream individual per day is at least 90% of the required registered nurse average amount of direct care per individual per day worked out under subsection 176-20(2) in respect of the home for the quarter.

Responsibility—direct care provided by registered nurse staff members and enrolled nurse staff members

- (4) The registered provider must ensure that the average amount of direct care delivered through the home by registered nurse staff members and enrolled nurse staff members of the provider per counted mainstream individual per day is at

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least the required registered nurse average amount of direct care per individual per day worked out under subsection 176-20(2) in respect of the home for the quarter.

Counted individuals

- (5) An individual receiving funded aged care services in an approved residential care home on a day is a **counted mainstream individual** on the day unless:
- (a) the individual receives the funded aged care services through a specialist aged care program referred to in section 176-10; or
 - (b) the individual is on extended hospital leave, and the day is on or after the 29th day of the individual's leave.

176-20 Average amounts of direct care

Required combined staff average amount of direct care

- (1) The required combined staff average amount of direct care per individual per day in respect of an approved residential care home for a quarter is worked out by:
- (a) starting with the sum of the combined staff daily amounts for all of the days of recognised residential care provided in respect of individuals in the home during the reference period for the quarter; and
 - (b) dividing that sum by the total number of days of recognised residential care provided in respect of individuals in the home during the reference period for the quarter; and
 - (c) rounding the result of that division to 2 decimal places (rounding up if the third decimal place is 5 or more).

Required registered nurse average amount of direct care

- (2) The required registered nurse average amount of direct care per individual per day in respect of an approved residential care home for a quarter is worked out by:
- (a) starting with the sum of the registered nurse daily amounts for all of the days of recognised residential care provided in respect of individuals in the home during the reference period for the quarter; and
 - (b) dividing that sum by the total number of days of recognised residential care provided in respect of individuals in the home during the reference period for the quarter; and
 - (c) rounding the result of that division to 2 decimal places (rounding up if the third decimal place is 5 or more).

Daily amounts

- (3) The following table sets out, for a day of recognised residential care provided in respect of an individual in an approved residential care home:
- (a) the combined staff daily amount for the day for the individual; and
 - (b) the registered nurse daily amount for the day for the individual.

Daily amounts

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Item	Column 1 For an individual classified as ...	Column 2 the combined staff daily amount is ... (minutes)	Column 3 and the registered nurse daily amount is ... (minutes)
1	Class 1	281	53
2	Class 2	122	25
3	Class 3	169	35
4	Class 4	138	29
5	Class 5	185	41
6	Class 6	177	37
7	Class 7	215	45
8	Class 8	239	50
9	Class 9	209	42
10	Class 10	254	50
11	Class 11	244	47
12	Class 12	243	46
13	Class 13	281	53
14	Respite Class 1	163	33
15	Respite Class 2	196	42
16	Respite Class 3	252	49

Day of recognised residential care

- (4) A **day of recognised residential care** is provided in respect of an individual in an approved residential care home if funded aged care services are delivered to the individual in the home through the residential care service category on that day.
- (5) Despite subsection (4), a **day of recognised residential care** does not include a day where:
- (a) funded aged care services are delivered through a specialist aged care program referred to in section 176-10; or
 - (b) funded aged care services are provided to an individual classified as:
 - (i) Class 0; or
 - (ii) Respite Class 0.

Reference period

- (6) The **reference period** for a quarter is the period of 3 months beginning on the day that is 4 months before the first day of the quarter.

Information to be disregarded for calculations

- (7) For the purposes of a calculation under this section for a quarter:
- (a) information about an individual entering or exiting an approved residential care home during the reference period for the quarter is to be disregarded if it is given to the System Governor on or after the calculation day for the quarter; and
 - (b) a change to a classification decision for an individual that is made on or after the calculation day for the quarter but takes effect before the calculation day is to be disregarded.

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Calculation if no days of recognised residential care provided during reference period

- (8) If no days of recognised residential care were provided in respect of individuals in an approved residential care home during the reference period for a quarter, the result of the calculations in subsections (1) and (2) in relation to the quarter is taken to be zero minutes per individual per day.

Note: This subsection is to avoid an undefined result when dividing by zero.

Subdivision B—Delivery of direct care—NATSIFACP providers

176-25 Kinds of provider to which the obligation applies, and requirements

For the purposes of section 176 of the Act:

- (a) a registered provider registered in the provider registration category residential care is prescribed; and
- (b) this Subdivision sets out the requirements for delivering direct care.

176-30 Application of this Subdivision

The requirements of this Subdivision do not apply in respect to the delivery of funded aged care services provided under any of the following specialist aged care programs:

- (a) TCP;
- (b) MPSP.

176-35 Amounts of direct care that must be provided—NATSIFACP providers

- (1) This section applies if the registered provider is delivering funded aged care services in an approved residential care home in a quarter through the specialist aged care program NATSIFACP.

Requirement—direct care provided by direct care staff members

- (2) The provider must ensure that the average amount of direct care delivered in the home by direct care staff members of the provider per counted NATSIFACP individual per day is at least 215 minutes per individual per day in respect of the home for the reporting period for the provider.

Note: Direct care staff members of the provider include registered nurse staff members of the provider (see the definition of *direct care staff member* in section D1).

Requirement—direct care provided by registered nurse staff members

- (3) The provider must ensure that the average amount of direct care delivered in the home by registered nurse staff members of the provider per counted NATSIFACP individual per day is at least 39.6 minutes per individual per day in respect of the home for the reporting period for the provider.

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Responsibility—direct care provided by registered nurse staff members and enrolled nurse staff members

- (4) The provider must ensure that the average amount of direct care delivered through the home by registered nurse staff members and enrolled nurse staff members of the provider per counted NATSIFACP individual per day is at least 44 minutes per individual per day in respect of the home for the reporting period for the provider.

Counted individuals

- (5) An individual receiving funded aged care services in an approved residential care home on a day through the specialist aged care program NATSIFACP is a **counted NATSIFACP individual** on the day unless:
- (a) the individual is on extended hospital leave; and
 - (b) the day is on or after the 29th day of the individual's leave.

Reporting period

- (6) The reporting period for the provider is the period specified for a service activity report under section 166-645.

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Chapter 5 Registered provider, responsible person and aged care worker obligations

Part 7 Other obligations [to be drafted]

Section 176-35

Part 7—Other obligations [to be drafted]

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