

10 April 2025

Department of Health and Aged Care

To whom it may concern,

**New Aged Care Act Rules consultation – Release 4a – Place allocation, funding and provider obligations**

Ageing Australia welcomes the opportunity to provide feedback on the rules relating to place allocation, funding and provider obligations included in Release 4a.

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 4a rules are contained in **Appendix 1**.

**Recommendations**

- R1 Define the meaning of 'suitable alternative accommodation', including the test and/or criteria to be used to determine whether alternative accommodation is 'suitable'.**
- R2 Remove references to 'alternative registered provider' in the security of tenure provisions, so that providers have the option of finding alternative accommodation which is offered by either the same or an alternative provider.**
- R3 Revise the security of tenure provisions (for residential care) and ceasing delivery of funded aged care services (for home care), to ensure they strike an appropriate balance between the rights of an individual accessing care, other residents, aged care workers and providers. This should include:**
  - a. in the security of tenure provisions – removing the requirement that an alternative registered provider has offered to enter into a service agreement with the individual (section 149-60).**
  - b. in the ceasing delivery of funded aged care services provisions – enabling providers to suspend services on the care plan immediately when the safety of a worker(s) is at risk (section 149-40).**
- R4 Provide clear definitions of key terms such as 'intentionally' and 'within the individual's control', either in the rules or guidance materials.**
- R5 Remove the limitation that an exemption to the 24/7 registered requirement must not be granted for a period longer than 12 months.**
- R6 Address the comments included in Appendix 1.**

**Ageing Australia**

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Page 1 of 4

## **Starting and ceasing the provision of funded aged care services**

Ageing Australia is concerned about the proposed rules for ceasing the delivery of funded aged care services, particularly in relation to aspects of the security of tenure provisions. Several changes to the rules are needed to provide sufficient clarity and to balance the competing rights of different parties, as discussed below.

### The meaning of 'suitable alternative accommodation' must be clarified

It is unclear from the rules what would be considered 'suitable' alternative accommodation. For example, does it mean that the accommodation can meet the resident's care needs (an objective test) or does it mean that the individual and/or their representatives must like the accommodation (a subjective test)? Ageing Australia recommends the former approach – an objective test measured against the resident's care requirements – be adopted.

### References to an 'alternative registered provider' should be removed from subsections 149-60(2) and (3)

Section 149-60(2) requires providers to ensure suitable alternative accommodation is available with an alternative registered provider, while section 149-60(3) specifies that the alternative registered provider must have offered to enter into a service agreement. We recommend that references to an 'alternative registered provider' in both these subsections be removed. It should be sufficient that a place is available for the individual at another residential care home – which may or may not be operated by a different provider. This is because, in some cases, a particular residential aged care home may not be suitable for a resident, but another service operated by the same provider might be (e.g. a residential aged care home with a dedicated Memory Support Unit).

### Challenges finding an alternative provider to enter into a service agreement

The proposed rules state that alternative accommodation will be available if an alternative registered provider has offered to enter into a service agreement with the individual. The requirement for the alternative provider to have offered to enter into a service agreement is not specified under the *User Rights Principles 2014*.

We are highly concerned about this requirement, as in many situations where a provider may seek to ask a person to leave a residential care home, it is likely to be difficult to find another provider willing to enter into a service agreement with them. For example, if an individual has not paid agreed fees or contributions within 42 days after they are payable, other providers will be reluctant to enter into an agreement with them. In such circumstances, the current provider would be required to continue to deliver aged care services to the resident indefinitely, incurring further losses as a result.

Similarly, many providers would be unlikely to enter into a service agreement with an individual who has intentionally caused serious damage to the home or serious injury to an aged care worker or another resident in their current home. Under the proposed rules, a provider in this situation would be required to continue to provide care to the resident and, in doing so, knowingly put the safety of other residents, staff and visitors at risk.

We acknowledge the security of tenure provisions promote the rights of individuals accessing aged care services under the *Aged Care Act 2024* (new Aged Care Act), including the right to choose how, when and by whom services are delivered.<sup>1</sup> We also note that the new Aged Care Act recognises (in relation to the Statement of Rights) that these rights may need to be limited to balance competing or conflicting rights of others (including other individuals accessing aged care services and aged care workers).<sup>2</sup> This is not reflected in the security of tenure provisions, as they do not sufficiently balance and protect the competing rights of others in a residential aged care home. Indeed, in some circumstances, these provisions will require providers to give precedence to one

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<sup>1</sup> *Aged Care Act 2024* (Cth) s 23(1).

<sup>2</sup> *Ibid* s 24(2).

individual's right to access aged care services, over the rights of other residents and aged care workers to a safe environment.

Ageing Australia recommends removing the provision in section 149-60 which states the alternative registered provider must have offered to enter into a service agreement with the individual for alternative accommodation to be available. If a provider has fulfilled its obligations, and the resident still refuses, this additional obligation should not be placed on providers. Subsection (3) should instead state that alternative accommodation will be available if the alternative home has confirmed to the current provider in writing that it has availability.

#### Notice to individuals about cessation of services

For ceasing delivery of funded aged care services (not delivered in an approved residential care home), section 149-40 of the rules prescribes that registered providers must give individuals at least 14 days' notice about their intention to cease services. We recommend that there be provision for services on the care plan to be suspended immediately, if a worker's safety is at risk in delivering the services in accordance with the care plan *and* the service recipient does not consent to a change to the care plan. If this change is not made, a provider will be expected to deliver the agreed care plan – regardless of worker safety – for at least 14 days.

#### Key terms must be defined to ensure common understanding

There are several key terms or phrases used in the rules regarding cessation of aged care services and security of tenure, which need to be defined to ensure consumers, providers, the Department of Health and Aged Care (Department) and the regulator, have a common understanding of their meaning. For example, sections 149-35 and 149-60 outline the circumstances in which a registered provider may cease delivering services or ask an individual to leave an approved residential aged care home. Grounds for doing include where an individual has 'intentionally' caused serious damage to the home, serious injury to an aged care worker or other resident, or infringed the right of an aged care worker to a safe work environment. The meaning of the word 'intentionally' should be defined to avoid uncertainty. For example, if a person with cognitive impairment deliberately caused damage or injury, would this provide grounds for ceasing delivery of services?

Clarity is also needed about what would be considered a reason 'within the individual's control'. It is currently unclear as to what circumstances failure to pay fees or contributions would be considered within (or outside of) a person's control – therefore making it unclear when providers would be able to use this as a ground for ceasing delivery of aged care services.

### **Exemptions to the 24/7 registered nurse (RN) requirement**

The rules include provisions regarding the process for granting exemptions to the 24/7 RN requirement in section 175 of the new Aged Care Act, as well as when and how an exemption may be revoked. They give the System Governor the discretion to determine how long an exemption will be in force, while also specifying that this cannot be longer than 12 months. The effect of these rules is that a provider who is granted an exemption, and wants it to continue for longer than the initial exemption period, will need to do so annually or potentially even more frequently (depending on the exemption period). This is onerous for providers and will create administrative burden for the Department.

The rationale for making services reapply for an exemption at least annually is also unclear. The rules already include several safeguards which enable a service's exemption to be revoked if it is no longer considered appropriate and/or if they no longer meet the eligibility criteria. For example, section 175-25(6) requires providers to notify the System Governor of any material change to the information provided in their exemption application. In addition, under section 175-50(1) the System Governor has the power to

revoke an exemption based on several possible grounds, such as if there are concerns that the clinical care needs of residents are not being met.

Given the administrative burden this requirement will create, as well as the other safeguards in the rules outlined above, we recommend removing the limitation that an exemption to the 24/7 registered requirement must not be granted for longer than 12 months.

For further feedback on the Release 4a rules, please see **Appendix 1**.

Thank you again for the opportunity to provide feedback on rules relating to provider obligations included in Release 4a. Please contact Anne Liddell, Head of Strategic Policy, at [anne.liddell@ageingaustralia.asn.au](mailto:anne.liddell@ageingaustralia.asn.au) and Jennifer Chynoweth, Head of Funding and Reform, at [jennifer.chynoweth@ageingaustralia.asn.au](mailto:jennifer.chynoweth@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 4a

# CONSULTATION DRAFT

Appendix 1: Feedback on consultation draft rules – Release 4a



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

CONSULTATION DRAFT

# CONSULTATION DRAFT

## Contents

<b>Chapter 1—Introduction</b>	<b>1</b>
<b>Part 1—Preliminary</b>	<b>1</b>
1-5 Name.....	1
2-5 Commencement .....	1
3-5 Authority.....	1
4-5 Simplified outline of this instrument .....	1
<b>Part 2—Definitions</b>	<b>2</b>
5-5 Definitions .....	2
7-23 Service delivery branch .....	6
<b>Chapter 2—Entry to the Commonwealth aged care system</b>	<b>7</b>
<b>Part 1—Introduction</b>	<b>7</b>
55-5 Simplified outline of this Chapter .....	7
<b>Part 2—Eligibility for entry [to be drafted]</b>	<b>8</b>
<b>Part 3—Classification [to be drafted]</b>	<b>9</b>
<b>Part 4—Prioritisation [to be drafted]</b>	<b>10</b>
<b>Part 5—Place allocation</b>	<b>11</b>
<b>Division 1—Allocation of places to individuals [to be drafted]</b>	<b>11</b>
<b>Division 2—Allocation of a place to registered providers for certain specialist aged care programs</b>	<b>12</b>
95-5 Allocation of a place—System Governor may invite application for allocation of TCP place.....	12
95-10 Allocation of a place—application for allocation of a TCP place.....	12
95-15 Allocation of a place—matters of which System Governor must be satisfied before allocating TCP place.....	13
97-5 When a place is in effect—basic rules .....	13
97-10 When a place is in effect—temporary cessation .....	14
97-15 When a place is in effect—permanent cessation.....	15
97-25 When a place is in effect—reallocation of TCP place .....	15
99-5 Conditions that apply to an allocated place.....	15
101-5 System Governor decision on whether to vary a condition—matters to which System Governor must have regard .....	16
<b>Chapter 4—Conditions on provider registration</b>	<b>17</b>
<b>Part 4—Conditions relating to delivery of funded aged care services</b>	<b>17</b>
<b>Division 4—Starting and ceasing the provision of funded aged care services and continuity of those services</b>	<b>17</b>
<b>Subdivision A—Preliminary</b>	<b>17</b>
149-5 Requirements relating to starting and ceasing the provision of funded aged care services and continuity of those services .....	17
<b>Subdivision B—Start notifications</b>	<b>17</b>
149-10 Requirements for start notifications—general .....	17
149-15 Requirements for start notifications—provision to System Governor and Commissioner .....	18

# CONSULTATION DRAFT

<b>Subdivision C—Cessation notifications</b>	19
149-20 Requirements for cessation notifications—general.....	19
149-25 Requirements for cessation notifications—provision to System Governor and Commissioner .....	20
<b>Subdivision D—Ceasing delivery of funded aged care services (other than services delivered in an approved residential care home)</b>	20
149-30 Application of this Subdivision .....	20
149-35 Requirements for ceasing delivery of funded aged care services - general .....	20
149-40 Requirements for ceasing delivery of funded aged care services—notice to individual about cessation of services .....	21
149-45 Requirements for ceasing delivery of funded aged care services—notice to individual about unspent portions .....	22
149-46 Requirements for ceasing delivery of funded aged care services—notice to new registered provider about account balances .....	23
<b>Subdivision E—Security of tenure for individuals accessing funded aged care services in an approved residential care home</b>	24
149-50 Application of this subdivision .....	24
149-55 Security of tenure—general .....	24
149-60 Security of tenure—circumstances where registered provider may ask an individual to leave an approved residential care home .....	24
149-65 Security of tenure—notice requirements.....	26
149-70 Security of tenure—movement of individuals .....	26
<b>Subdivision F—Continuity of funded aged care services</b>	27
149-75 Continuity of care plan .....	27
149-80 Transfer of records between registered providers .....	28
<b>Part 7—Information and access</b>	29
<b>Division 1—Personal information and record keeping</b>	29
<b>Subdivision C—Quality indicators</b>	29
154-105 Application of Subdivision to certain registered providers .....	29
154-110 Requirements for records on quality indicators .....	29
<b>Subdivision M—Delivery and continuity of funded aged care services</b>	29
154-3100 Requirement to keep and retain records relating to continuity of funded aged care services .....	29
<b>Subdivision N—Status of service delivery branches</b>	30
154-3200 Requirement to keep and retain records about service delivery branches .....	30
<b>Chapter 5—Registered provider, responsible person and aged care worker obligations</b>	31
<b>Part 2—Obligations relating to reporting, notifications and information</b>	31
<b>Division 1—Provider obligation—reporting to particular persons</b>	31
<b>Subdivision C—Quality indicators</b>	31
166-105 Application of Subdivision to certain registered providers .....	31
166-110 Requirement to provide a quality indicators report.....	31
166-115 Timeframes for reporting under this Subdivision .....	31
166-120 Quality indicator—pressure injuries .....	31
166-125 Quality indicator—restrictive practices .....	32
166-130 Quality indicator—unplanned weight loss.....	33
166-135 Quality indicator—falls and major injury .....	33

## CONSULTATION DRAFT

166-140	Quality indicator—medication management .....	34
166-145	Quality indicator—activities of daily living.....	34
166-150	Quality indicator—incontinence care .....	35
166-155	Quality indicator—hospitalisation .....	35
166-160	Quality indicator—workforce .....	36
166-165	Quality indicator—Consumer Experience Assessment.....	36
166-170	Quality indicator—Quality of Life Assessment .....	37
166-175	Quality indicator—allied health.....	37
166-180	Quality indicator—lifestyle officers .....	38
166-185	Quality indicator—enrolled nursing .....	38
<b>Subdivision M—Status of service delivery branches</b>		39
166-900	Application of this Subdivision .....	39
166-905	Reporting requirements relating to service delivery branches .....	39
166-910	Report for opening of a service delivery branch .....	39
166-915	Report for change to a service delivery branch .....	40
166-920	Report for merging of service delivery branches .....	40
166-925	Report for closure of a service delivery branch .....	41
166-930	Report if provider no longer intends to open, merge or close service delivery branch .....	41
<b>Part 4—Responsible person obligation—change in circumstances relating to suitability</b>		43
169-5	Kinds of registered provider to which the obligation applies.....	43
<b>Part 6—Obligations relating to aged care workers etc.</b>		44
<b>Division 1—Registered nurses</b>		44
<b>Subdivision A—Preliminary</b>		44
175-5	Specialist aged care programs to which the registered nurse obligation does not apply—MPSP and TCP .....	44
175-10	Purpose of this Division.....	44
<b>Subdivision B—Process for granting exemptions</b>		44
175-15	Application for exemption .....	44
175-20	System Governor may request further information or documents .....	44
175-25	Decision whether to grant exemption .....	45
175-30	Notice of decision .....	46
175-35	Reviewable decision—refusal to grant exemption.....	46
<b>Subdivision C—Revocation of exemptions</b>		47
175-45	Revocation on request.....	47
175-50	Revocation on other grounds .....	47
175-55	Notice of decision .....	48
175-60	Reviewable decision—revocation of exemption.....	48
<b>Part 7—Other obligations</b>		49
<b>Division 1—Cooperation with other persons</b>		49
177-10	Giving data or records to the Pricing Authority .....	49
177-15	Allowing access by the Pricing Authority to certain persons.....	50
177-20	Allowing access by the Pricing Authority to residential care homes .....	50



# CONSULTATION DRAFT

---

<b>Chapter 9—Funding of aged care services—accommodation payments and accommodation contributions</b>	52
<b>Part 1—Introduction</b>	52
287-5 Simplified outline of this Chapter .....	52
<b>Part 2—Accommodation bonds and accommodation charges [to be drafted]</b>	53
<b>Part 3—Accommodation payments and accommodation contributions</b>	54
<b>Division 1—Application to specialist aged care programs</b>	54
288-5 Provisions that do not apply in relation to certain specialist aged care programs .....	54
288-10 Specialist aged care programs for which specified provisions do not apply .....	54
288-20 Specialist aged care programs—accommodation agreements.....	54
288-25 Specialist aged care programs—charging of accommodation payments and accommodation contributions .....	55
<b>Division 2—Maximum accommodation payment amounts and publication of certain amounts by the System Governor</b>	56
<b>Subdivision A—Maximum accommodation payment amount</b>	56
289-5 Maximum accommodation payment amount .....	56
289-10 Maximum accommodation payment amount—daily accommodation payment amount .....	56
<b>Subdivision B—Approval of higher maximum accommodation payment amount</b>	56
290-15 Requirements for application .....	56
290-20 Restriction on application period .....	57
290-25 Requirements for approval decision .....	57
290-40 Indexation of higher maximum accommodation payment amount .....	58
<b>Subdivision C—Notification and publication of accommodation payment amounts</b>	59
291-5 Notification .....	59
291-10 Publication of notification.....	60
<b>Division 3—Accommodation agreements</b>	61
292-5 Information to be given before provider enters into an accommodation agreement with an individual—daily accommodation payment amount .....	61
294-5 Accommodation agreements—other matters to be included in accommodation agreement .....	61
294-10 Accommodation agreements—daily accommodation payment amount .....	63
294-15 Accommodation agreements—method for working out amounts payable as a combination of refundable accommodation deposit and daily accommodation payments.....	63
294-20 Accommodation agreements—method for working out amounts payable by refundable accommodation contributions .....	63
294-25 Accommodation agreements—method for working out amounts payable by combination of refundable accommodation contributions and daily accommodation contributions.....	64
<b>Division 4—Charging of accommodation payments</b>	65
296-5 Charging of accommodation payments.....	65

# CONSULTATION DRAFT

---

<b>Division 5—Charging of accommodation contributions</b>	67
298-5 Charging of accommodation contributions .....	67
<b>Division 6—Charging of daily payments</b>	69
301-5 Charging interest.....	69
302-10 Daily payments—indexation .....	69
302-15 Daily payments—DAP index numbers .....	70
302-17 Daily payments—circumstances in which daily accommodation payment is not to be indexed .....	70
<b>Division 7—Refundable deposits</b>	71
307-5 Amounts to be deducted from refundable deposit balances— deductible amount.....	71
308-5 Amounts that must be deducted from refundable deposit balances— retention amounts—rate of retention .....	71
308-10 Amounts that must be deducted from refundable deposit balances— retention amounts—timing of deductions .....	71
308-12 Amounts that must be deducted from refundable deposit balances— retention amounts—classes of individuals for whom amounts must not be deducted .....	71
309-5 Rules about deductions .....	72
310-5 Refundable deposits to be used only for permitted purposes— capital expenditure.....	72
310-15 Refundable deposits to be used only for permitted purposes— capital expenditure debt .....	72
310-20 Refundable deposits to be used only for permitted purposes—other .....	72
310-30 Refundable deposits to be used only for permitted purposes— financial product .....	73
311-15 Refund of refundable deposit balances—death of individual— circumstances and period.....	73
311-20 Refund of refundable deposit balances—registered provider ceases services and has not transferred refundable deposit balance— circumstances and period.....	73
312-5 Transfer of refundable deposit balance to another registered provider— requirements .....	74
313-5 Payment of interest—refundable deposit balances .....	75
313-10 Working out of amount of interest on refundable deposit balance.....	75
313-15 Refund of refundable deposit balances .....	76
<b>Chapter 13—Information management</b>	78
<b>Part 1—Introduction</b>	78
534-5 Simplified outline of this Chapter .....	78
<b>Part 2—Record-keeping</b>	79
543-5 Retention of records by former registered provider .....	79
<b>Part 3—Information sharing [to be drafted]</b>	80

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CONSULTATION DRAFT

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:

***antipsychotic medication***, in relation to medication management, means the prescription of medications to an individual for the purposes of the treatment of a diagnosed condition of psychosis.

***approval year***, for an approved higher maximum accommodation payment amount, means the period of 1 year beginning on:

- (a) the day the Pricing Authority approved the amount under subsection 290(6) of the Act; or
- (b) any later anniversary of that day.

***approved higher maximum accommodation payment amount*** means a higher maximum accommodation payment amount (expressed as a refundable accommodation deposit amount) approved by the Pricing Authority under subsection 290(6) of the Act.

***base interest rate*** means a rate that:

- (a) is the sum of the below threshold rate and 2%, expressed as a percentage; and
- (b) takes effect on the first day of the month following the day when the below threshold rate is determined.

***below threshold rate*** means the below threshold rate determined under subsection 1082(1) of the *Social Security Act 1991*.

***consecutive unplanned weight loss***, in relation to unplanned weight loss, means a decrease in the weight of an individual of any amount, as determined by comparing the weight of an individual from the finishing weight of the previous quarter against the starting weight, middle weight and finishing weight for the current quarter.

# CONSULTATION DRAFT

# CONSULTATION DRAFT

Introduction **Chapter 1**  
Definitions **Part 2**

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## Section 5-5

**Consumer Experience Assessment** means an assessment using the Quality of Care Experience-Aged Care Consumers (QCE-ACC) tool developed by Flinders University.

**continuity of care plan**: see section 149-75.

**DAP index number**, for an indexation day: see section 302-15.

**emergency department presentation** means when an individual presents to an emergency department or an urgent care centre including where that presentation is in person or via a technology enabled platform.

**end-of-life care** means the care provided in what is sometimes referred to as the terminal phase of life, where death is imminent and likely to occur within 3 months.

**fall** means an event that results in an individual coming to rest inadvertently on the ground, floor or other lower level.

**fall resulting in major injury** means a fall that results in one or more of the following:

- (a) bone fracture;
- (b) joint dislocation;
- (c) closed head injury with altered consciousness;
- (d) closed head injury with subdural haematoma.

**finishing weight**, in relation to unplanned weight loss, means the weight of an individual recorded in the third month of a quarter.

**Ghent Global Incontinence Associated Dermatitis Categorisation Tool** means the Ghent Global IAD Categorisation Tool (GLOBIAD) developed by Skin Integrity Research Group, at Ghent University.

**hospital admission** means when an individual is accepted by a hospital inpatient speciality service for ongoing management, whether planned or unplanned and including an admission of any length and occurring in any location.

**ICD-10 Australian Modified Pressure Injury Classification System** means the classification system contained in the *International Statistical Classification of Diseases and Related Health Problems, Tenth Revision, Australian Modification (ICD-10-AM)*, as published by the Independent Hospital and Pricing Authority.

**Incontinence Associated Dermatitis** means a type of irritant contact dermatitis characterised by erythema and oedema of the perianal or genital skin, and may be accompanied by bullae, erosion or secondary cutaneous infection.

Note: This definition is consistent with the Ghent Global Incontinence Associated Dermatitis Categorisation Tool.

**index number**, for a quarter, means the All Groups Consumer Price Index number, being the weighted average of the 8 capital cities, published by the Australian Statistician in respect of that quarter.

# CONSULTATION DRAFT

# CONSULTATION DRAFT

## Chapter 1 Introduction

### Part 2 Definitions

#### Section 5-5

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**maximum permissible interest rate** for a day, means the maximum rate for the day worked out in accordance with section 301-5.

**maximum possible daily accommodation payment amount** for an individual for a day: see step 3 of the method statement in subsection 296-5(3).

**medication**, in relation to medication management, means a chemical substance given with the intention of preventing, diagnosing, curing, controlling or alleviating disease or otherwise enhancing the physical or mental health of an individual.

**middle weight**, in relation to unplanned weight loss, means the weight of an individual recorded in the second month of a quarter.

**MPSP** is short for Multi-Purpose Service Program.

**nominated entity**: see subsection 95-5(1).

**polypharmacy**, in relation to medication management, means the prescription of 9 or more medications to an individual.

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

- (a) the individual entered a flexible care service (within the meaning of the old Act) before the transition time; and
- (b) the approved provider of the service charged the individual an accommodation payment (within the meaning of the old Act); and
- (c) if, at the transition time, the individual is not accessing funded aged care services through the residential care service group under a specialist aged care program—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 flexible care by a flexible care service (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 through the residential care service group under a specialist aged care program; and
- (d) since the transition time, the individual has not ceased accessing funded aged care services through the residential care service group under a specialist aged care program for a continuous period of more than 28 days.

**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

# CONSULTATION DRAFT

# CONSULTATION DRAFT

Introduction **Chapter 1**  
Definitions **Part 2**

---

## Section 5-5

- (ii) ceased accessing funded aged care services in an approved residential care home for a continuous period of more than 28 days.

***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.

***pressure injury*** means a localised injury to the skin or underlying tissue, or both, usually over a bony prominence as a result of pressure, shear or a combination of these factors.

***price agreement day***, for an individual and an approved residential care home, means:

- (a) the day on which the registered provider for the approved residential care home and the individual enter into an accommodation agreement for the approved residential care home in accordance with section 293 of the Act; or
- (b) if the accommodation agreement between the registered provider for the approved residential care home and the individual is varied because the individual proposes to change the individual's room and the proposed move is voluntary—the day on which the accommodation agreement is varied in relation to the individual's room; or
- (c) if the individual is notified by the registered provider for the approved residential care home that the individual's room is to be changed for 28 days or longer, and the proposed move is not voluntary—the day on which the notice is given.

# CONSULTATION DRAFT

# CONSULTATION DRAFT

## Chapter 1 Introduction

## Part 2 Definitions

### Section 7-23

**Pricing Authority advice activity** means an activity mentioned in paragraph 131A(1)(c) of the *National Health Reform Act 2011* conducted for the purpose of performing a function mentioned in paragraph 131A(1)(a) of that Act.

**quality indicators report**, for a registered provider, means the report required by Subdivision C of Division 1 of Part 2 of Chapter 5.

**Quality of Life Assessment** means an assessment using the Quality of Life-Aged Care Consumers (QOL-ACC) tool developed by Flinders University.

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

**refunding event** means an event referred to in paragraph 311(1)(a) or (b) of the Act.

**refund period** means the period specified in paragraph 311(3)(a) or column 2 of the table in subsection 311(4) of the Act, or paragraph 311-15(b) or subsection 311-20(2) of this instrument, within which a refundable deposit balance must be refunded.

**significant unplanned weight loss**, in relation to unplanned weight loss, means a decrease in the weight of an individual that is equal to or greater than 5%, as determined by comparing the finishing weight of the previous quarter against the finishing weight for the current quarter.

**starting weight**, in relation to unplanned weight loss, means the weight of an individual recorded in the first month of a quarter.

**TCP** is short for Transition Care Program.

**unplanned weight loss** means:

- (a) significant unplanned weight loss; or
- (b) consecutive unplanned weight loss.

### 7-23 Service delivery branch

For the purposes of the definition of **service delivery branch** in section 7 of the Act, a **service delivery branch** of a registered provider means a place of business of the registered provider through which the provider delivers funded aged care services to an individual through the service group home support, assistive technology or home modifications.

**Commented [A1]:** This definition should be reviewed - explanation is needed as to what determines a place of business. Further explanation required on the relationship to funding accounts. The current definition could be interpreted as work location of staff.



# CONSULTATION DRAFT

Entry to the Commonwealth aged care system **Chapter 2**  
Introduction **Part 1**

Section 55-5

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

### Part 1—Introduction

#### 55-5 Simplified outline of this Chapter

[To be drafted.]

## CONSULTATION DRAFT

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

**Part 2** Eligibility for entry [to be drafted]

Section 55-5

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**Part 2—Eligibility for entry [to be drafted]**

# CONSULTATION DRAFT

Entry to the Commonwealth aged care system **Chapter 2**  
Classification [to be drafted] **Part 3**

Section 55-5

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## Part 3—Classification [to be drafted]

# CONSULTATION DRAFT

## CONSULTATION DRAFT

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

**Part 4** Prioritisation [to be drafted]

Section 55-5

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**Part 4—Prioritisation [to be drafted]**

CONSULTATION DRAFT

# CONSULTATION DRAFT

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

Place allocation **Part 5**

Allocation of places to individuals [to be drafted] **Division 1**

Section 55-5

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## **Part 5—Place allocation**

### **Division 1—Allocation of places to individuals [to be drafted]**

# CONSULTATION DRAFT

## CONSULTATION DRAFT

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

**Part 5** Place allocation

**Division 2** Allocation of a place to registered providers for certain specialist aged care programs

Section 95-5

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### **Division 2—Allocation of a place to registered providers for certain specialist aged care programs**

#### **95-5 Allocation of a place—System Governor may invite application for allocation of TCP place**

- (1) For the purposes of subsection 95(2) of the Act, the System Governor may invite an entity to apply on its own behalf or on behalf of another entity (the *nominated entity*) for the allocation of a place for the delivery of funded aged care services under the TCP in a State or Territory.
- (2) An application under subsection 95(2) of the Act may only be made in accordance with an invitation under subsection (1).

#### **95-10 Allocation of a place—application for allocation of a TCP place**

- (1) An application under subsection 95(2) of the Act for the allocation of a place for delivering funded aged care services under the TCP in a State or Territory must specify the following:
  - (a) whether the application is being made:
    - (i) on an entity's own behalf; or
    - (ii) on behalf of a nominated entity to which the place is to be allocated;
  - (b) the number of places applied for;
  - (c) the number of those places that will be used to deliver funded aged care services to Aboriginal or Torres Strait Islander persons;
  - (d) the area or areas in which the places will be used to deliver funded aged care services.
- (2) For each area specified under paragraph (1)(d), the application must also specify the following:
  - (a) the number of persons residing in the area or areas who are aged at least 70, other than Aboriginal or Torres Strait Islander persons;
  - (b) the number of Aboriginal or Torres Strait Islander persons residing in the area or areas who are aged at least 50;
  - (c) the number of persons mentioned in paragraph (a) or (b) who are expected to be discharged from hospital;
  - (d) the number of persons expected to be discharged from hospital as mentioned in paragraph (c) who are expected to benefit from funded aged care services delivered under the TCP after discharge;
  - (e) if the application is made on behalf of one or more nominated entities to which the places are to be allocated—the nominated entity or entities that will deliver funded aged care services under each place applied for.
- (3) For the purposes of subsection (2), the number of persons for an area specified in an application is to be expressed as a whole number per thousand of the total number of persons residing in the area.
- (4) To avoid doubt:

## CONSULTATION DRAFT

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

Place allocation **Part 5**

Allocation of a place to registered providers for certain specialist aged care programs **Division 2**

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### Section 95-15

- (a) an area specified under paragraph (1)(d) may be the whole or a part of a State or Territory; and
- (b) an application made on behalf of a nominated entity is made by the nominated entity for the purposes of the Act.

Note: The System Governor may request further information, which must be given within 14 days of the request (see section 588 of the Act and section 588-5 of this instrument).

#### **95-15 Allocation of a place—matters of which System Governor must be satisfied before allocating TCP place**

For the purposes of subparagraph 95(4)(a)(ii) of the Act, the System Governor must be satisfied of the following before allocating a place to an entity for the delivery of funded aged care services under the TCP in a State or Territory:

- (a) that the place, if allocated, will be used by the entity to which the place is allocated to deliver funded aged care services in accordance with an agreement between the Commonwealth and the State or Territory made under paragraph 247(1)(b) of the Act;
- (b) that, if the place is allocated to a nominated entity, the entity was nominated having regard to the community's needs and planning processes.

#### **97-5 When a place is in effect—basic rules**

*When a place comes into effect*

- (1) For the purposes of subsection 97(1) of the Act, a place allocated under subsection 95(1) of the Act to an entity for a specialist aged care program comes into effect on the day after the first day on which the entity satisfies the following conditions:
  - (a) the entity is a registered provider that is registered for a registration category for one or more service groups through which the entity will deliver funded aged care services under the specialist aged care program;
  - (b) if the place is to be used to deliver funded aged care services under the MPSP—an agreement with the entity is in force under paragraph 247(1)(a) of the Act;
  - (c) if the place is to be used to deliver funded aged care services under the TCP in a State or Territory—an agreement with the State or Territory covering the arrangements for the delivery of those services is in force under paragraph 247(1)(b) of the Act;
  - (d) if the place is to be used to deliver funded aged care services in an approved residential care home—the System Governor is satisfied that a bed in the approved residential aged care home is ready to be used for the delivery of funded aged care services under the place.

Note: A place may, in certain circumstances, be allocated a second time under subsection 95(1) of the Act (see section 97-25).

*Period for which a place is in effect*

- (2) A place that comes into effect under subsection (1) is in effect for the period:

## CONSULTATION DRAFT

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

**Part 5** Place allocation

**Division 2** Allocation of a place to registered providers for certain specialist aged care programs

### Section 97-10

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- (a) starting on the day on which the place comes into effect; and
- (b) ending on the day on which the place ceases to be in effect under section 97-15;

but is not in effect for any period for which it is temporarily not in effect under section 97-10.

*Place cannot come into effect if 5 year delay*

- (3) A place allocated under subsection 95(1) of the Act to an entity for a specialist aged care program does not come into effect, and can never come into effect, if the place has not come into effect under subsection (1) of this section within 5 years after the day on which the place was allocated.

*Entity may be required to complete application to confirm that a bed is ready to be used*

- (4) For the purposes of paragraph (1)(d), the System Governor may require an entity to complete an application process published on the Department's website.

#### **97-10 When a place is in effect—temporary cessation**

- (1) For the purposes of subsection 97(1) of the Act, this section prescribes the circumstances in which a place that has been allocated under subsection 95(1) of the Act to an entity, and has come into effect, is temporarily not in effect.

*Entity does not have capacity to deliver funded aged care services*

- (2) The place is not in effect for a period during which the System Governor and the entity agree that the entity does not have the capacity to deliver funded aged care services under the place.

**Note:** Section 167 of the Act, and rules made under that section, require certain registered providers to give notice of certain changes in circumstances to the System Governor.

*Suspension of entity's registration*

- (3) The place is not in effect for any period of suspension, under subsection 129(1) of the Act, of the registration of the entity.

*Condition makes it impracticable to deliver funded aged care services*

- (4) A place is not in effect for a period if:
  - (a) a condition is placed on the entity; and
  - (b) the condition makes it impracticable for the entity to deliver funded aged care services under the place for that period.
- (5) A place that is not in effect for a period comes back into effect immediately after the end of the period.



# CONSULTATION DRAFT

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

Place allocation **Part 5**

Allocation of a place to registered providers for certain specialist aged care programs **Division 2**

Section 97-15

## 97-15 When a place is in effect—permanent cessation

- (1) For the purposes of subsection 97(1) of the Act, a place that has been allocated under subsection 95(1) of the Act to an entity, and has come into effect, ceases to be in effect, and can never resume to have effect, if:
  - (a) the entity ceases to be a registered provider; or
  - (b) the System Governor and the entity agree, in accordance with subsection (2) of this section, that the entity may relinquish the place; or
  - (c) the System Governor revokes the place under subsection (3) of this section.

Note: A place allocated under subsection 95(1) of the Act may be brought back into effect for allocation to another entity in certain circumstances (see section 97-25).

- (2) The System Governor must not agree to the relinquishment of a place under paragraph (1)(b) unless the System Governor is satisfied that the entity to which the place was allocated has complied with the requirements prescribed by Division 4 of Part 4 of Chapter 4 of this instrument (which deals with continuity of delivery of funded aged care services).
- (3) The System Governor may revoke a place if the entity has not used the place to deliver funded aged care services for a period of not less than 12 months.

## 97-25 When a place is in effect—reallocation of TCP place

- (1) For the purposes of subsection 97(1) of the Act, if:
  - (a) the Minister determines under paragraph 94(1)(a) of the Act that a place is available for allocation for use in a specified State or Territory; and
  - (b) the place is allocated to an entity under subsection 95(1) of the Act; and
  - (c) the place would, apart from this section, cease permanently to be in effect under section 97-15;the State or Territory specified in the determination may apply to the System Governor for the place to be allocated to another entity.
- (2) If the State or Territory makes an application to the System Governor under subsection (1):
  - (a) the System Governor may decide to allocate the place to the other entity under subsection 95(1) of the Act; and
  - (b) if the System Governor so decides, the place comes into effect in accordance with section 97-5.

## 99-5 Conditions that apply to an allocated place

For the purposes of paragraph 99(1)(f) of the Act, the following conditions are prescribed in relation to a place allocated by the System Governor to an entity under subsection 95(1) of the Act:

- (a) the entity must notify the System Governor if the entity will not be able to, or does not intend to, use the place to deliver funded aged care services for a period of 12 months or more;
- (b) for a place allocated for the MPSP:

**Commented [A2]:** Recommend inserting the words “reasonably believes it” before “will not be able to...”. An entity might believe it will be able to use a place but then cannot.

## CONSULTATION DRAFT

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

**Part 5** Place allocation

**Division 2** Allocation of a place to registered providers for certain specialist aged care programs

### Section 101-5

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- (i) if the place is used for the delivery of funded aged care services through the service group residential care—the place must only be used by the entity at the approved residential care home specified in the notice given under subsection 96(1) of the Act in relation to the allocation of the place; and
- (ii) if the place is used for the delivery of funded aged care services through a service group that is not the service group residential care—the place must only be used by the entity at a location specified in the notice given under subsection 96(1) of the Act in relation to the allocation of the place.

**Note:** Section 167 of the Act, and rules made under that section, have the effect that this condition of place allocation can be met by giving the Commissioner and the System Governor a notice under that section.

#### **101-5 System Governor decision on whether to vary a condition—matters to which System Governor must have regard**

For the purposes of paragraph 101(2)(a) of the Act, the matters to which the System Governor must have regard in considering whether to vary a condition that applies to a place allocated to an entity under subsection 95(1) of the Act are the following:

- (a) the objectives of the specialist aged care program for which the place is allocated;
- (b) the needs of the communities of which individual members are expected to be able to access funded aged care services delivered under the place;
- (c) the Statement of Principles;
- (d) any information or documents given by the entity in relation to the variation of the condition.

# CONSULTATION DRAFT

Conditions on provider registration **Chapter 4**  
Conditions relating to delivery of funded aged care services **Part 4**  
Starting and ceasing the provision of funded aged care services and continuity of those services **Division 4**

Section 149-5

## Chapter 4—Conditions on provider registration

### Part 4—Conditions relating to delivery of funded aged care services

#### Division 4—Starting and ceasing the provision of funded aged care services and continuity of those services

##### Subdivision A—Preliminary

##### 149-5 Requirements relating to starting and ceasing the provision of funded aged care services and continuity of those services

For the purposes of section 149 of the Act, this Division prescribes requirements for the following:

- (a) providing a start notification to the System Governor and the Commissioner;
- (b) ceasing the delivery of funded aged care services to an individual;
- (c) providing a cessation notification to the System Governor and the Commissioner;
- (d) ceasing to deliver any funded aged care services;
- (e) if the provider delivers funded aged care services in an approved residential care home—security of tenure for individuals accessing those services;
- (f) continuity of funded aged care services for individuals.

Note: For requirements relating to a service agreement between an individual and a registered provider, see [rules to be drafted under paragraph 148(c) of the Act (delivery of funded aged care services)].

##### Subdivision B—Start notifications

##### 149-10 Requirements for start notifications—general

- (1) A registered provider must prepare a start notification for delivering funded aged care services to an individual in accordance with this section.
- (2) Despite subsection (1), a registered provider does not have to prepare a start notification for an individual where the individual will access funded aged care services under a specialist aged care program.
- (3) A start notification must be in an approved form.

*Start notification for an individual accessing funded aged care services through the service groups home support, assistive technology or home modifications*

- (4) A start notification for an individual accessing funded aged care services through the service groups home support, assistive technology or home modifications must specify the following:

# CONSULTATION DRAFT

## CONSULTATION DRAFT

**Chapter 4** Conditions on provider registration

**Part 4** Conditions relating to delivery of funded aged care services

**Division 4** Starting and ceasing the provision of funded aged care services and continuity of those services

### Section 149-15

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- (a) the name of the individual;
- (b) the start day for the individual;
- (c) whether the registered provider has a service agreement with the individual;
- (d) the service groups approved for the individual and the classification types approved for those service groups;
- (e) the classification levels for the classification types for the service groups for the individual;
- (f) the service delivery branch through which funded aged care services will be delivered to the individual.

*Start notification for an individual accessing funded aged care services through the classification type ongoing for the service group residential care*

- (5) A start notification for an individual accessing funded aged care services through the classification type ongoing for the service group residential care must specify the following:
- (a) the name of the individual;
  - (b) the start day for the individual;
  - (c) whether the registered provider has a service agreement with the individual;
  - (d) the service groups approved for the individual and the classification types approved for those service groups;
  - (e) whether the individual has been allocated a place for the classification type for the service group;
  - (f) the approved residential care home at which funded aged care services will be delivered to the individual.

*Start notification for an individual accessing funded aged care services through the classification type short-term for the service group residential care*

- (6) A start notification for an individual accessing funded aged care services through the classification type short-term for the service group residential care must specify the following:
- (a) the name of the individual;
  - (b) the start day for the individual;
  - (c) whether the registered provider has a service agreement with the individual;
  - (d) the approved residential care home at which funded aged care services will be delivered to the individual.

### **149-15 Requirements for start notifications—provision to System Governor and Commissioner**

A registered provider must give a start notification for an individual to the System Governor and the Commissioner:

## CONSULTATION DRAFT

# CONSULTATION DRAFT

Conditions on provider registration **Chapter 4**  
Conditions relating to delivery of funded aged care services **Part 4**  
Starting and ceasing the provision of funded aged care services and continuity of those services **Division 4**

## Section 149-20

- (a) for an individual mentioned in subsections 149-10(4) and (5)—within 28 days after the individual's start day; or
- (b) for an individual mentioned in subsection 149-10(6)—within 14 days after the individual's start day.

### Subdivision C—Cessation notifications

#### 149-20 Requirements for cessation notifications—general

- (1) A registered provider must prepare a cessation notification for ceasing the delivery of funded aged care services to an individual in accordance with this section.
- (2) Despite subsection (1), a registered provider does not have to prepare a cessation notification for an individual where the individual is accessing funded aged care services under a specialist aged care program.
- (3) A cessation notification must be in an approved form.
- (4) A cessation notification for an individual must specify the following:
  - (a) the name of the individual;
  - (b) the day the provider ceased to deliver funded aged care services to the individual;
  - (c) the reason for ceasing the delivery of funded aged care services to the individual, including:
    - (i) if any of the circumstances in subsection 149-35(2) applied—whether the provider has complied with the requirements set out in subsection 149-35(1); or
    - (ii) if any of the circumstances in subsection 149-60(1) applied—whether the provider has complied with the requirements set out in section 149-55;
  - (d) whether the provider has given any records relating to the continuity of funded aged care services for the individual to another registered provider in accordance with section 149-80;
  - (e) whether the individual has not paid any fees or contributions to the provider as required under Part 3 of Chapter 4 of the Act;
  - (f) if a refundable deposit balance was paid by the individual to the provider, whether:
    - (i) the refundable deposit balance has been transferred to another registered provider in accordance with section 312 of the Act; or
    - (ii) the refundable deposit balance has been refunded in accordance with subsection 311(3) of the Act; or
    - (iii) the refundable deposit balance has been refunded in accordance with subsection 311(4) of the Act; or
    - (iv) the provider has entered into an agreement with the individual under [rules to be drafted under s 311(4) of the Act (refund of refundable deposit balances)] to delay the refund of the refundable deposit balance.

**Commented [A3]:** How can the provider state that the RAD has been refunded within 28 days (per section 149-25) if they are waiting for probate under section 311(3)(a) of the Aged Care Act 2024? It is very unlikely for probate to be granted this quickly.

# CONSULTATION DRAFT

## CONSULTATION DRAFT

**Chapter 4** Conditions on provider registration

**Part 4** Conditions relating to delivery of funded aged care services

**Division 4** Starting and ceasing the provision of funded aged care services and continuity of those services

### Section 149-25

#### **149-25 Requirements for cessation notifications—provision to System Governor and Commissioner**

A registered provider must give a cessation notification for an individual to the System Governor and the Commissioner:

- (a) for an individual accessing funded aged care services through the classification type short-term for the service group residential care—within 14 days after the cessation of delivery of services through the approved residential care home of the provider; or
- (b) for all other individuals—within 28 days after the cessation of delivery of services through the approved residential care home or service delivery branch of the provider.

#### **Subdivision D—Ceasing delivery of funded aged care services (other than services delivered in an approved residential care home)**

##### **149-30 Application of this Subdivision**

This Subdivision applies to a registered provider who is delivering funded aged care services to an individual for a classification type for the service groups home support, assistive technology or home modifications.

##### **149-35 Requirements for ceasing delivery of funded aged care services - general**

- (1) A registered provider must not cease to deliver funded aged care services to an individual unless:
  - (a) one of the circumstances in subsection (2) apply; and
  - (b) the provider has given notice to the individual in accordance with section 149-40.

*Circumstances where registered provider may cease delivery of funded aged care services to an individual*

- (2) The circumstances in which a registered provider may cease to deliver funded aged care services to an individual are:
  - (a) the individual cannot be cared for in the home or community with the resources available to the provider; or
  - (b) the individual's condition changes to the extent that:
    - (i) the individual no longer needs the funded aged care services delivered by the provider; or
    - (ii) the individual's needs, as assessed by an approved needs assessor, can be more appropriately met by other types of funded aged care services; or
  - (c) the individual has:
    - (i) intentionally caused serious injury to an aged care worker of the provider; or
    - (ii) intentionally infringed the right of an aged care worker of the provider to work in a safe environment; or

**Commented [A4]:** 'Intentionally' should be defined/clarified (e.g. in guidance material) to ensure consistent interpretation/understanding by providers and the regulator.

## CONSULTATION DRAFT

# CONSULTATION DRAFT

Conditions on provider registration **Chapter 4**  
Conditions relating to delivery of funded aged care services **Part 4**  
Starting and ceasing the provision of funded aged care services and continuity of those services **Division 4**

## Section 149-40

- (d) the individual:
- (i) has not paid to the provider, for a reason within the individual's control, any fee or contribution specified in the service agreement between the individual and the provider; and
  - (ii) has not negotiated an alternative arrangement with the provider for payment of the fee or contribution; or
- (e) the individual notifies the provider, in writing, that the individual wishes to move to a location where funded aged care services are not delivered by the provider; or
- (f) the individual notifies the provider, in writing, that the individual no longer wishes to receive funded aged care services from the provider.

**Note:** The circumstances in which a registered provider may cease delivering funded aged care services to an individual must be specified in a service agreement between the individual and the registered provider (see [rules to be drafted under paragraph 148(c) of the Act (delivery of funded aged care services)]).

### 149-40 Requirements for ceasing delivery of funded aged care services—notice to individual about cessation of services

*Notice to be given if registered provider intends to cease delivery of funded aged care services*

- (1) If a registered provider intends to cease delivery of funded aged care services to an individual, the provider must give the individual a written notice which includes the following:
- (a) the decision;
  - (b) the reasons for the decision;
  - (c) the date the provider intends to cease delivery of funded aged care services to the individual;
  - (d) the individual's rights in relation to cessation of the delivery of funded aged care services, including the right to access:
    - (i) the provider's complaints and feedback management system; and
    - (ii) any other mechanisms available to address complaints; and
    - (iii) independent aged care advocates.

**Note:** For complaints and feedback management systems, see section 165 of the Act and Division 2 of Part 10 of Chapter 4 of this instrument.

- (2) The registered provider must give the notice to the individual at least 14 days before the date the provider ceases delivery of funded aged care services to the individual.

*Notice to be given if registered provider no longer intends to cease delivery of funded aged care services*

- (3) If:
- (a) the decision to cease the delivery of funded aged care services was based on the individual's behaviour; and

**Commented [A5]:** Clarity is needed as to how 'control' is defined, in what circumstances failure to pay fees or contributions would not be considered within an individual's control and what happens if a situation is out of an individual's control. It is essential that providers and the regulator have a consistent understanding/interpretation of this responsibility and what is within an individual's control. For example, whether it is considered within the individual's control if a family member who is responsible for the individual's finances refuses to pay. We recommend "(or the control of the individual's representative)" be added after "... within the individual's control".

**Commented [A6]:** There needs to be provision for services on the care plan to be suspended in less than 14 days, if a worker's safety is at risk in delivering the services in accordance with the care plan. Other provisions do not enable change to the care plan without the service recipient's consent.

## CONSULTATION DRAFT

### Chapter 4 Conditions on provider registration

#### Part 4 Conditions relating to delivery of funded aged care services

#### Division 4 Starting and ceasing the provision of funded aged care services and continuity of those services

##### Section 149-45

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- (b) the registered provider has given the individual a notice under subsection (1); and
  - (c) after giving the notice, the provider has agreed with the individual that, because of a change in the behaviour, the delivery of funded aged care services will not cease;
- then the provider must give the individual a written notice stating that the provider no longer intends to cease delivery of funded aged care services to the individual.

- (1) This section applies if:
  - (a) a registered provider holds an unspent Commonwealth portion or unspent care recipient portion for an individual to whom the provider is delivering funded aged care services; and
  - (b) section 226C or 226D of the Act apply.
- (2) The registered provider must give a notice relating to the individual's unspent Commonwealth portion or unspent care recipient portion in accordance with this section.

Note: See paragraphs 226C(2)(a) and 226D(2)(a) of the Act for requirements to give written notice to the System Governor about the unspent Commonwealth portion.

- (3) The notice must:
  - (a) specify the following:
    - (i) the day the provider ceased to deliver funded aged care services to the individual;
    - (ii) the available balance (including a nil amount) of the unspent Commonwealth portion for the individual;
    - (iii) the balance (including a nil amount) of the unspent care recipient portion for the individual;
    - (iv) if the amount of the unspent care recipient portion for the individual was reduced by the individual contributions charged to the individual by the provider under paragraph 273A-20(a) of this instrument—the amount of those individual contributions; and
  - (b) explain:
    - (i) the effect of paragraphs 226C(2)(b) and 226D(2)(b) of the Act; and
    - (ii) the effect of subsections 226A(7) to (9) and 226E(5) and (6) of the Act; and
    - (iii) the effect of paragraph 273A-20(b) of this instrument.

*When notice must be given*

- (4) [The notice must be given within 28 days after the cessation of delivery of services.]

**Commented [A7]:** We recommend "28 days" be replaced with "56 days". This will enable finalisation of accounts.



# CONSULTATION DRAFT

Conditions on provider registration **Chapter 4**  
Conditions relating to delivery of funded aged care services **Part 4**  
Starting and ceasing the provision of funded aged care services and continuity of those services **Division 4**

## Section 149-46

### *Who notice is given to*

Note: A copy of the notice may also need to be given to another registered provider under section 149-80 or a supporter of the individual under section 29 of the Act.

### **149-46 Requirements for ceasing delivery of funded aged care services—notice to new registered provider about account balances**

- (1) This section applies if:
  - (a) a registered provider has ceased the delivery of funded aged care services to an individual through a service delivery branch of the provider; and
  - (b) within 60 days after the day the registered provider ceased to deliver funded aged care services to the individual, the provider is notified that the individual has entered into a service agreement with a new registered provider; and
  - (c) the new registered provider will deliver funded aged care services to the individual for a classification type for the service groups home support, assistive technology or home modifications through a service delivery branch of the new registered provider.
- (2) The registered provider must give a notice to the individual's new registered provider specifying what the provider estimates will be the available balance of the individual's:
  - (a) notional ongoing home support account (if any); and
  - (b) notional short-term home support account (if any); and
  - (c) notional assistive technology account (if any); and
  - (d) notional home modifications account (if any); and
  - (e) notional home care account (if any);

after the provider gives a claim in accordance with section 251 of the Act for payment of subsidy for the delivery of funded aged care services to the individual for the relevant period where the provider ceased delivering services to the individual.

- (3) The notice must be given within 28 days after the registered provider is notified that the individual has entered into a service agreement with the new registered provider.

**Commented [A8]:** This time period needs to be greater than a monthly billing cycle to enable account processing and reconciliation.

# CONSULTATION DRAFT

# CONSULTATION DRAFT

**Chapter 4** Conditions on provider registration

**Part 4** Conditions relating to delivery of funded aged care services

**Division 4** Starting and ceasing the provision of funded aged care services and continuity of those services

## Section 149-50

### Subdivision E—Security of tenure for individuals accessing funded aged care services in an approved residential care home

#### 149-50 Application of this subdivision

This subdivision applies to a registered provider who is delivering funded aged care services to an individual for a classification type ongoing for the service group residential care in an approved residential care home of the registered provider.

#### 149-55 Security of tenure—general

A registered provider must not take action to make an individual accessing funded aged care services in an approved residential care home of the approved provider leave the home, or imply that the individual must leave the home, unless:

- (a) one of the circumstances in subsection 149-60(1) apply; and
- (b) suitable alternative accommodation is available for the individual with an alternative registered provider that meets the requirements in subsection 149-60(2); and
- (c) the provider has given notice to the individual in accordance with section 149-65.

#### 149-60 Security of tenure—circumstances where registered provider may ask an individual to leave an approved residential care home

- (1) A registered provider may only ask an individual accessing funded aged care services in an approved residential care home of the approved provider to leave the residential care home if:
  - (a) the approved residential care home is closing; or
  - (b) the provider can no longer provide accommodation and funded aged care services through the approved residential care home which are suitable for the individual, having regard to the individual's needs as assessed in accordance with subsection (4) and the provider has not agreed to deliver funded aged care services of the kind that the individual presently needs; or
  - (c) the individual no longer needs the funded aged care services delivered through the approved residential care home, as assessed by an approved needs assessor in accordance with subsection 64(2) of the Act; or
  - (d) the individual has been accessing funded aged care services under a specialist dementia care agreement and a clinical advisory committee constituted in accordance with the agreement has determined that the individual is not suitable to continue receiving those services; or
  - (e) the individual has not paid any agreed fee or contribution to the provider within 42 days after the day when it is payable, for a reason within the individual's control; or
  - (f) the individual has intentionally caused:
    - (i) serious damage to the approved residential care home; or

**Commented [A9]:** (d) should be added to this list which states 'if a resident's assessment approval is revoked'.

**Commented [A10]:** Clarity is needed as to how 'control' is defined, in what circumstances failure to pay fees or contributions would not be considered within a resident's control and what happens if a situation is out of an individual's control. It is essential that providers and the regulator have a consistent understanding/interpretation of this responsibility and what is within an individual's control. Such clarity is needed to explain, for example, what would happen in circumstances where a resident's family member has control of the resident's finances and refuses to pay. In such circumstances, would a provider be able to rely upon this ground?

**Commented [A11]:** 'Intentionally' should be defined/clarified (e.g. in guidance material) to ensure consistent interpretation/understanding by providers and the regulator. For example, clarity is needed about whether a person with a cognitive impairment is capable of forming an intention.

It is our view that providers should be able to ask a resident to leave if a person has caused serious damage to the home or serious injury to another person - even if they may lack cognitive capacity.

**Commented [A12]:** An additional ground should be added for where the individual has intentionally infringed the right of an aged care worker of the provider to a safe environment. This would cover, for example, where a resident has threatened staff, and would replicate the grounds for ceasing delivery of aged care services.

# CONSULTATION DRAFT

# CONSULTATION DRAFT

Conditions on provider registration **Chapter 4**  
Conditions relating to delivery of funded aged care services **Part 4**  
Starting and ceasing the provision of funded aged care services and continuity of those services **Division 4**

## Section 149-60

- (ii) serious injury to an aged care worker of the provider, or to another individual accessing funded aged care services at the approved residential care home; or
- (g) the individual is away from the approved residential care home for a continuous period of at least 7 days for a reason other than:
  - (i) emergency leave; or
  - (ii) hospital leave; or
  - (iii) hospital transition leave; or
  - (iv) extended hospital leave; or
  - (v) social leave.

Note 1: The circumstances in which an individual may be asked to leave an approved residential care home must be specified in a service agreement between the individual and the registered provider of the approved residential care home (see [rules to be drafted under paragraph 148(c) of the Act (delivery of funded aged care services)]).

Note 2: For when an individual is on leave, see section 244 of the Act.

*Suitable accommodation to be available before individual can be required to leave approved residential care home*

- (2) If a registered provider intends to ask an individual to leave the approved residential care home, the provider must ensure suitable alternative accommodation is available with an alternative registered provider that:
  - (a) meets the individual's needs; and
  - (b) is affordable by the individual.
- (3) Without limiting subsection (2), alternative accommodation will be available if the alternative registered provider has offered to enter into a service agreement with the individual under [rules to be drafted under paragraph 148(c) of the Act (delivery of funded aged care services)] for the delivery of funded aged care services to the individual.

Note: A registered provider is required to detail the steps taken to ensure any alternative accommodation meets the needs of the individual in a continuity of care plan for the individual: see paragraph 149-75(3)(b).

*Assessing the individual's needs*

- (4) For the purposes of paragraph (1)(b), the needs of the individual must be assessed by:
  - (a) an approved needs assessor; or
  - (b) at least 2 medical or other health practitioners who meet the following criteria:
    - (i) one must be independent of the registered provider and the approved residential care home, and must be chosen by the individual;
    - (ii) both must be competent to assess the aged care needs of the individual.

**Commented [A13]:** Recommend amending to include others such as visitors.

**Commented [A14]:** The term "suitable" is a major hurdle - it should be made clear that what is or is not suitable is an objective test measured against the resident's care requirements.

**Commented [A15]:** We recommend "with an alternative registered provider" is removed from subsection (2) and (3) as it imposes an unnecessary limitation. The requirement should be that providers must ensure suitable alternative accommodation is available - irrespective of whether this is operated by the same provider or another provider. Sometimes, a particular home may not be suitable for a resident but another site operated by same provider might be (e.g. a site with a dedicated Memory Support Unit).

**Commented [A16]:** An explanation of what constitutes meeting the individual's needs should be provided in guidance materials.

**Commented [A17]:** This is new and could be hard to satisfy as there are residents who will refuse to tour other homes even though places are available, so it would not get to this stage. If a provider has fulfilled its obligations, and the resident still refuses, this additional obligation should not be placed on providers. This should instead state if the alternative home has confirmed to the provider in writing it has availability.

**Commented [A18]:** In practice, in circumstances where 149-60(1)(e) or (f) apply, a provider is likely to have difficulty finding another provider who is willing to enter into a service agreement with the individual. This creates a situation in which a provider would be required to continue to provide aged care services who is refusing to pay their fees and incur financial losses as a result, or must continue to provide care to a resident who has caused damage to the home, another worker or resident - putting the safety of both staff and residents at risk.

# CONSULTATION DRAFT

## CONSULTATION DRAFT

**Chapter 4** Conditions on provider registration

**Part 4** Conditions relating to delivery of funded aged care services

**Division 4** Starting and ceasing the provision of funded aged care services and continuity of those services

### Section 149-65

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#### **149-65 Security of tenure—notice requirements**

*Notice to be given if individual asked to leave residential care service*

- (1) If a registered provider of an approved residential care home decides to ask an individual to leave the approved residential care home, the provider must give the individual a written notice which includes the following:
  - (a) the decision;
  - (b) the reasons for the decision;
  - (c) the date the individual is to leave;
  - (d) the individual's rights in relation to being asked to leave the approved residential care home, including the right to access:
    - (i) the provider's complaints and feedback management system; and
    - (ii) any other mechanisms available to address complaints; and
    - (iii) independent aged care advocates;
  - (e) a copy of the continuity of care plan for the individual.

**Note:** For complaints and feedback management systems, see section 165 of the Act and Division 2 of Part 10 of Chapter 4 of this instrument.

- (2) The registered provider must give the notice to the individual at least 14 days before the individual is to leave.

*Notice to be given if individual no longer required to leave approved residential care home*

- (3) If:
  - (a) the decision to require the individual to leave the approved residential care home was based on the individual's behaviour; and
  - (b) the registered provider has given the individual a notice under subsection (1); and
  - (c) after giving the notice, the provider has agreed with the individual that, because of a change in the behaviour, the individual should not be required to leave the residential care home;then the provider must give the individual a written notice stating that the individual is no longer required to leave the residential care home.

#### **149-70 Security of tenure—movement of individuals**

- (1) A registered provider must not move an individual from a room, or part of a room, in the approved residential care home to another room, or part of a room, in the home unless:
  - (a) the move is at the individual's request; or
  - (b) the individual agrees to the move after being fully consulted and without being subjected to any pressure; or
  - (c) the move is necessary on genuine medical grounds as assessed by one of the following:
    - (i) an approved needs assessor;

## CONSULTATION DRAFT

# CONSULTATION DRAFT

Conditions on provider registration **Chapter 4**  
Conditions relating to delivery of funded aged care services **Part 4**  
Starting and ceasing the provision of funded aged care services and continuity of those services **Division 4**

## Section 149-75

- (ii) at least 2 medical or other health practitioners who meet the criteria in subparagraphs 149-60(4)(b)(i) and (ii); or
- (d) the individual has been accessing funded aged care services under a specialist dementia care agreement and a clinical advisory committee constituted in accordance with the agreement has determined that the individual is not suitable to continue receiving those services in the individual's current room, or part of a room; or
- (e) the move is necessary to carry out repairs or improvements to the home and the individual has the right to return to the room, or the part of the room, if it continues to exist as a room, or part of a room, for individuals when the repairs or improvements are finished.

### Subdivision F—Continuity of funded aged care services

#### 149-75 Continuity of care plan

- (1) A registered provider must prepare a plan for ensuring the continuity of funded aged care services for an individual (a *continuity of care plan*) in accordance with this section if the provider intends to ask an individual to leave an approved residential care home of the provider in any of the circumstances prescribed in subsection 149-60(1).

*Continuity of care plan for individuals accessing funded aged care services in an approved residential care home*

- (2) A continuity of care plan for an individual accessing funded aged care services through the classification type ongoing for the service group residential care in an approved residential care home of a registered provider must specify the following:
  - (a) details of any suitable alternative accommodation that is available with alternative registered providers that meet the requirements in subsection 149-60(2);
  - (b) the steps the registered provider has taken to ensure that any alternative accommodation meets the individual's needs;
  - (c) how any records relating to ensuring the continuity of funded aged care services for the individual will be transferred to a suitable alternative registered provider if required under section 149-80;
  - (d) the intended start date (if any) for the individual with a suitable alternative registered provider;
  - (e) if the individual does not intend to continue accessing funded aged care services with an alternative registered provider, the reason for this;
  - (f) the way in which the registered provider proposes to help the individual move (with their personal possessions);
  - (g) the measures that the registered provider proposes to take to refund any fees or contributions to the individual as required by Part 3 of Chapter 4 of the Act;

# CONSULTATION DRAFT

## CONSULTATION DRAFT

**Chapter 4** Conditions on provider registration

**Part 4** Conditions relating to delivery of funded aged care services

**Division 4** Starting and ceasing the provision of funded aged care services and continuity of those services

### Section 149-80

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- (h) the measures that the registered provider proposes to take to deal with any refundable deposit balance paid by the individual as required by Division 7 of Part 4 of Chapter 4 of the Act.

#### **149-80 Transfer of records between registered providers**

- (1) This section applies if:
  - (a) a registered provider (the *outgoing provider*) ceases to deliver funded aged care services to an individual; and
  - (b) another registered provider (the *incoming provider*) starts the delivery of funded aged care services to the individual.

##### *Records to be given to incoming provider on request*

- (2) The incoming provider may request the outgoing provider give records relating to the individual which are necessary to ensure the continuity of funded aged care services for the individual.
- (3) If a request for records is made under subsection (2), the outgoing provider must give the incoming provider the records, or copies of such records, within 28 days after the request is made.
- (4) Without limiting subsections (2) and (3), the outgoing provider must give the following records:
  - (a) any records relating to the individual the provider is required to keep under section 7 of the *Records Principles 2014*;
  - (b) any records relating to the individual the provider is required to keep under section 154-3100 of this instrument.

# CONSULTATION DRAFT

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

Section 154-105

## Part 7—Information and access

### Division 1—Personal information and record keeping

#### Subdivision C—Quality indicators

##### 154-105 Application of Subdivision to certain registered providers

This Subdivision applies to a registered provider that is required to give a quality indicators report under section 166-110.

##### 154-110 Requirements for records on quality indicators

- (1) For the purposes of paragraph 154(a) of the Act, a registered provider must keep and retain a quality indicators report.
- (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; and
  - (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 M—Delivery and continuity of funded aged care services

##### 154-3100 Requirement to keep and retain records relating to continuity of funded aged care services

- (1) A registered provider must keep the following kinds of records, or copies of such records, for an individual to whom the provider is delivering funded aged care services:
  - (a) any assessment and classification records of the individual that are not transmitted to the System Governor in electronic form;
  - (b) the service agreement between the provider and the individual;
  - (c) the care and services plan for the individual;
  - (d) the medical records, progress notes and other clinical records of the individual;
  - (e) where the provider is delivering funded aged care services to the individual through the service group residential care, the accounts of the individual, including:
    - (i) the entry in the refundable deposit register of the provider that relates to the individual; and
    - (ii) amounts of daily accommodation payments, daily accommodation contributions or accommodation charge paid by the individual; and
    - (iii) entry and leave arrangements for the individual; and
    - (iv) the accommodation agreement between the provider and the individual; and

**Commented [A19]:** Is this *all* versions of the care and services plan? We recommend this be clarified by referring to "all the care and services plans" for the individual.

# CONSULTATION DRAFT

## CONSULTATION DRAFT

**Chapter 4** Conditions on provider registration

**Part 7** Information and access

**Division 1** Personal information and record keeping

### Section 154-3200

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- (f) where the provider is delivering funded aged care services to the individual through the service groups home support, assistive technology or home modifications, the accounts of the individual, including any notices provided to the individual in accordance with section 149-45;
  - (g) applicability of any fee reduction supplements to the individual under sections 197-5, 231-15 or 231-20;
  - (h) the name and contact details of any supporter registered in relation to the individual;
  - (i) measurements, assessments and information about the individual obtained in accordance with section [rules to be drafted under sections 154 and 166 of the Act (reporting and recordkeeping—quality indicators)];
  - (j) [rules to be drafted under section 155 of the Act (provision of information to individuals—monthly statements)].
- (2) A registered provider must keep a record made under this section for 7 years starting on the day the record is made.

Commented [A20]: How is this defined?

### Subdivision N—Status of service delivery branches

#### 154-3200 Requirement to keep and retain records about service delivery branches

- (1) A registered provider must keep records of their compliance with the reporting requirements under Subdivision M of Division 1 of Part 2 of Chapter 5, including records of the following:
- (a) any reports given under section 166-910;
  - (b) any reports given under section 166-915;
  - (c) any reports given under section 166-920;
  - (d) any reports given under section 166-925;
  - (e) any reports given under section 166-930.
- (2) A registered provider must keep a record made under this section for 7 years starting on the day the record is made.



## CONSULTATION DRAFT

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 166-105

### 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

###### Subdivision C—Quality indicators

###### 166-105 Application of Subdivision to certain registered providers

- (1) Subject to subsection (2), this Subdivision applies to a registered provider registered in the provider registration category residential care.
- (2) The requirements of this Subdivision do not apply to a registered provider in respect of the delivery of funded aged care services under a specialist aged care program.

###### 166-110 Requirement to provide a quality indicators report

- (1) For the purposes of paragraph 166(1)(a) of the Act, a registered provider must give a report (the quality indicators report) on the quality indicators provided in this Subdivision to the System Governor each reporting period.

Note: For the reporting period for a quality indicators report, see section 166-115.

- (2) To avoid doubt, if any individuals are excluded for any reason under this Subdivision, a registered provider is required to include information about the exclusion of those individuals in the report where required.

Example: If an individual is absent from the approved residential care home throughout the reporting period, as referred to in paragraph 166-135(b), the relevant registered provider is not required to include that individual in an assessment for falls and falls resulting in major injury, as referred to in paragraph 166-135(a), but must include information about the exclusion of the individual under paragraph 166-135(b).

###### 166-115 Timeframes for reporting under this Subdivision

For the purposes of subsection 166(4) of the Act:

- (a) the reporting period for a quality indicators report given to the System Governor under this Subdivision is a quarter, being a period of 3 months, beginning at the start of a financial year; and
- (b) a registered provider must give a quality indicators report to the System Governor within 21 days after the end of the reporting period.

###### 166-120 Quality indicator—pressure injuries

A quality indicators report must include the following information on pressure injuries and the number of individuals receiving funded aged care services that:

## CONSULTATION DRAFT

**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 166-125

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- (a) were assessed for pressure injuries;
- (b) were excluded because of withholding consent to undergo an observational assessment for pressure injuries throughout the reporting period;
- (c) were excluded because of an absence from receiving funded aged care services throughout the reporting period;
- (d) have one or more pressure injuries;
- (e) have one or more pressure injuries with each injury reported against the following sub-categories:
  - (i) Stage 1 Pressure Injury;
  - (ii) Stage 2 Pressure Injury;
  - (iii) Stage 3 Pressure Injury;
  - (iv) Stage 4 Pressure Injury;
  - (v) Unstageable Pressure Injury;
  - (vi) Suspected Deep Tissue Pressure Injury;
- (f) have one or more pressure injuries acquired outside the approved residential care home during the reporting period with each injury reported against the following sub-categories:
  - (i) Stage 1 Pressure Injury;
  - (ii) Stage 2 Pressure Injury;
  - (iii) Stage 3 Pressure Injury;
  - (iv) Stage 4 Pressure Injury;
  - (v) Unstageable Pressure Injury;
  - (vi) Suspected Deep Tissue Pressure Injury.

**Note:** For paragraphs (e) and (f), the relevant sub-category of pressure injury is determined by reference to the ICD-10 Australian Modified Pressure Injury Classification System.

### 166-125 Quality indicator—restrictive practices

- (1) A quality indicators report must include the following information on restrictive practices:
  - (a) the collection period in the reporting period;
  - (b) the number of individuals assessed for the use of restrictive practices other than chemical restraint throughout the collection period;
  - (c) the number of individuals excluded because of an absence from receiving funded aged care services throughout the collection period;
  - (d) the number of individuals subjected to the use of restrictive practices other than chemical restraint throughout the collection period:
    - (i) on any occasion;
    - (ii) on any occasion only in a secured area.

**Note:** See section 17-5 (Practices and interventions that are restrictive practices in relation to individuals).

- (2) For the purposes of subsection (1), a collection period for this quality indicator is a 3-day period during the reporting period.

## CONSULTATION DRAFT

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 166-130

### 166-130 Quality indicator—unplanned weight loss

- (1) A quality indicators report must include information on unplanned weight loss, with information reported under the following categories:
  - (a) significant unplanned weight loss;
  - (b) consecutive unplanned weight loss.
- (2) For the purposes of paragraph (1)(a), a quality indicators report must include the following information on significant unplanned weight loss and the number of individuals receiving funded aged care services that:
  - (a) were assessed for significant unplanned weight loss;
  - (b) were excluded because of withholding consent to be weighed on the finishing weight collection date;
  - (c) were excluded because of receiving end-of-life care;
  - (d) were excluded because the previous or finishing weights were not recorded, including comments on why any such weights were not recorded;
  - (e) experienced a 5% or higher decrease in weight between the previous weight and the finishing weight.
- (3) For the purposes of paragraph (1)(b), a quality indicators report must include the following information on consecutive unplanned weight loss and the number of individuals receiving funded aged care services that:
  - (a) were assessed for consecutive unplanned weight loss;
  - (b) were excluded because of withholding consent to be weighed on any weight collection date;
  - (c) were excluded because of receiving end-of-life care;
  - (d) were excluded because any of the required weights were not recorded, including comments on why any such weights were not recorded;
  - (e) experienced any decrease in weight between the previous weight, starting weight, middle weight and finishing weight.
- (4) If an individual is assessed under one category of unplanned weight loss, this does not limit the ability to be assessed and reported under the other category.

### 166-135 Quality indicator—falls and major injury

A quality indicators report must include the following information on falls and falls resulting in major injury, and the number of individuals receiving funded aged care services that:

- (a) were assessed for falls and falls resulting in major injury;
- (b) were excluded because of an absence from the approved residential care home throughout the reporting period;
- (c) experienced one or more falls during the reporting period;
- (d) experienced one or more falls resulting in major injury during the reporting period.

## CONSULTATION DRAFT

**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 166-140

### 166-140 Quality indicator—medication management

- (1) A quality indicators report must include information on medication management, with information reported under the following categories:
  - (a) polypharmacy;
  - (b) antipsychotics.
- (2) For the purposes of paragraph (1)(a), a quality indicators report must include the following information on polypharmacy:
  - (a) the collection date in the reporting period;
  - (b) the number of individuals assessed for polypharmacy;
  - (c) the number of individuals excluded because they were admitted in hospital on the collection date;
  - (d) the number of individuals prescribed 9 or more medications based on a review of any of the following taken on the collection date:
    - (i) the individual's medication chart;
    - (ii) the individual's administration record.
- (3) For the purposes of paragraph (1)(b), a quality indicators report must include the following information on antipsychotics:
  - (a) the collection period and collection date in the reporting period;
  - (b) the number of individuals assessed for antipsychotic medications;
  - (c) the number of individuals excluded because of they were admitted in hospital for at least 6 days prior to the collection date;
  - (d) the number of individuals that received an antipsychotic medication based on a review of any of the following taken on the collection date:
    - (i) the individual's medication chart;
    - (ii) the individual's administration record;
  - (e) the number of individuals that received an antipsychotic medication for a medically diagnosed condition of psychosis based on a review of any of the following taken on the collection date:
    - (i) the individual's medication chart;
    - (ii) the individual's administration record.
- (4) For the purposes of paragraph (2)(a), the collection date is any date during the reporting period.
- (5) For the purposes of paragraph (3)(a), the collection date is the final day in the collection period which for that subsection is a 7-day period during the reporting period.

**Commented [A21]:** Wording should be amended to clarify whether this means the number of people who were assessed for polypharmacy (regardless of the outcome of the assessment) or only those who were assessed as actually needing it.

**Commented [A22]:** Wording should be amended to clarify whether this means the number of people who were assessed for antipsychotic medications (regardless of the outcome of the assessment) or only those who were assessed as actually needing it?

### 166-145 Quality indicator—activities of daily living

A quality indicators report must include the following information on activities of daily living and the number of individuals receiving funded aged care services that:

- (a) were assessed for activities of daily living function;
- (b) were assessed for activities of daily living function and received a total score of zero in the previous reporting period;

## CONSULTATION DRAFT

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 166-150

- (c) were assessed for activities of daily living function and experienced a decline in the total score by one or more points;
- (d) were excluded because of receiving end-of-life care;
- (e) were excluded because of an absence from receiving funded aged care services throughout the entire reporting period;
- (f) were excluded because an assessment for activities of daily living function was not recorded for the previous reporting period, including comments on why any such previous assessment was not recorded.

Note: Without limiting this section, activities of daily living includes fundamental skills typically needed to manage basic physical needs in the following areas:

- (a) grooming and personal hygiene, such as oral care;
- (b) dressing;
- (c) toileting and continence;
- (d) ambulating and movement;
- (e) eating.

### 166-150 Quality indicator—incontinence care

A quality indicators report must include the following information on incontinence care and the number of individuals receiving funded aged care services that:

- (a) were assessed for incontinence care;
- (b) have incontinence;
- (c) have incontinence and Incontinence Associated Dermatitis;
- (d) have incontinence and Incontinence Associated Dermatitis reported against the following Ghent Global Incontinence Associated Dermatitis Categorisation Tool sub-categories:
  - (i) 1A: persistent redness without clinical signs of infection;
  - (ii) 1B: persistent redness with clinical signs of infection;
  - (iii) 2A: skin loss without clinical signs of infection;
  - (iv) 2B: skin loss with clinical signs of infection;
- (e) were excluded because of an absence from receiving funded aged care services throughout the reporting period;
- (f) were excluded from an Incontinence Associated Dermatitis assessment because they did not have incontinence.

### 166-155 Quality indicator—hospitalisation

A quality indicators report must include the following information on hospitalisation and the number of individuals receiving funded aged care services that:

- (a) were assessed for hospitalisation;
- (b) had one or more emergency department presentations during the reporting period;
- (c) had one or more emergency department presentations or hospital admissions during the reporting period;
- (d) were excluded because of an absence from receiving funded aged care services throughout the reporting period.

**Commented [A23]:** Wording should be amended to provide greater clarity. For example, does this refer to assessments by aged care workers to determine if a person should go to hospital, assessment by a paramedic or GP or all of the above?

## CONSULTATION DRAFT

## CONSULTATION DRAFT

**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 166-160

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### **166-160 Quality indicator—workforce**

- (1) A quality indicators report must include information on the workforce of a registered provider, reported against the following sub-categories of staff delivering funded aged care services:
  - (a) service managers;
  - (b) nurse practitioners and registered nurses;
  - (c) enrolled nurses;
  - (d) personal care workers and nursing assistants.
- (2) A quality indicators report must include the following information reported against each sub-category specified in subsection (1):
  - (a) on the number of staff that have worked any number of hours in the previous reporting period;
  - (b) on the number of staff that:
    - (i) were employed at the start of the reporting period; and
    - (ii) have worked for at least 120 hours in the previous reporting period;
  - (c) on the number of staff that:
    - (i) were employed at the start of the reporting period; and
    - (ii) did not work for at least 60 consecutive days in the reporting period.

### **166-165 Quality indicator—Consumer Experience Assessment**

A quality indicators report must include the following information on an individual's experience obtained through a Consumer Experience Assessment and the number of individuals receiving funded aged care services that:

- (a) were offered a Consumer Experience Assessment during the reporting period through any of the following means:
  - (i) a self-completion assessment;
  - (ii) an interviewer facilitated assessment;
  - (iii) a proxy assessment;
- (b) undertook the Consumer Experience Assessment during the reporting period and the number of individuals who reported against the following sub-categories:
  - (i) excellent: for individuals who score between 22 and 24;
  - (ii) good: for individuals who score between 19 and 21;
  - (iii) moderate: for individuals who score between 14 and 18;
  - (iv) poor: for individuals who score between 8 and 13;
  - (v) very poor: for individuals who score between 0 and 7;
- (c) were excluded because of an absence from receiving funded aged care services throughout the reporting period;
- (d) were excluded because of opting out of completing the Consumer Experience Assessment in the reporting period.

## CONSULTATION DRAFT

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 166-170

### 166-170 Quality indicator—Quality of Life Assessment

A quality indicators report must include the following information on an individual's quality of life obtained through a Quality of Life Assessment and the number of individuals receiving funded aged care services that:

- (a) were offered a Quality of Life Assessment during the reporting period through any of the following means:
  - (i) a self-completion assessment;
  - (ii) an interviewer facilitated assessment;
  - (iii) a proxy assessment;
- (b) undertook the Quality of Life Assessment and the number of individuals who reported against the following sub-categories:
  - (i) excellent: for individuals who score between 22 and 24;
  - (ii) good: for individuals who score between 19 and 21;
  - (iii) moderate: for individuals who score between 14 and 18;
  - (iv) poor: for individuals who score between 8 and 13;
  - (v) very poor: for individuals who score between 0 and 7;
- (c) were excluded because of an absence from receiving funded aged care services throughout the reporting period;
- (d) were excluded because of opting out of completing the Quality of Life Assessment in the reporting period.

### 166-175 Quality indicator—allied health

A quality indicators report must include the following information on allied health and the number of individuals receiving funded aged care services that:

- (a) were assessed for services delivered by an allied health professional during the reporting period;
- (b) were recommended for services delivered by an allied health professional including through a care and services plan under paragraph 148(e) of the Act;
- (c) were recommended for services delivered by an allied health professional including through a care and services plan under paragraph 148(e) of the Act and reported against the following sub-categories of allied health professional:
  - (i) physiotherapist;
  - (ii) occupational therapist;
  - (iii) speech pathologist;
  - (iv) podiatrist;
  - (v) dietetic care;
  - (vi) allied health assistance;
  - (vii) other allied health;
- (d) were recommended for services delivered by an allied health professional including through a care and services plan under paragraph 148(e) of the Act and received that care;
- (e) were recommended for services delivered by an allied health professional including through a care and services plan under paragraph 148(e) of the

## CONSULTATION DRAFT

## CONSULTATION DRAFT

**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 166-180

---

Act and received that care and reported against the following sub-categories of allied health professional:

- (i) physiotherapist;
  - (ii) occupational therapist;
  - (iii) speech pathologist;
  - (iv) podiatrist;
  - (v) dietetic care;
  - (vi) allied health assistance;
  - (vii) other allied health;
- (f) were excluded because of an absence from receiving funded aged care services throughout the reporting period.

Note: See section 148 of the Act (Delivery of funded aged care services).

- (2) For the purposes of obtaining information required under subsection (1), a registered provider may use the information that provider gives to the System Governor under section 166-340.

#### **166-180 Quality indicator—lifestyle officers**

- (1) A quality indicators report must include the following information on lifestyle officers delivering funded aged care services:
- (a) the total labour hours worked in direct care by lifestyle officers;
  - (b) the total labour hours worked as agency staff by lifestyle officers.

Note: For subsection (1), a lifestyle officer includes any of the following roles:

- (a) diversional officer;
  - (b) recreation officer;
  - (c) activities officer.
- (2) For the purposes of a quality indicators report and the quality indicator on lifestyle officers, a registered provider must also provide information on the number of occupied bed days for a provider for the reporting period.
- (3) For the purposes of obtaining information required under subsections (1) and (2), a registered provider may use the information that provider gives to the System Governor under section 166-335.

#### **166-185 Quality indicator—enrolled nursing**

- (1) A quality indicators report must include the following information on enrolled nursing with respect to direct care staff members that deliver funded aged care services:
- (a) enrolled nursing total eligible direct care hours;
  - (b) registered nursing total eligible direct care hours;
  - (c) personal care workers and nursing assistants total eligible direct care hours.
- (2) For the purposes of subsection (1), direct care staff members covered under this section are those specified in paragraphs (a) to (d) of the definition of direct care staff members under the Act.



## CONSULTATION DRAFT

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 166-900

- (3) For the purposes of obtaining information required under subsection (1), a registered provider may use the information that provider gives to the System Governor under section 166-335.

#### Subdivision M—Status of service delivery branches

##### 166-900 Application of this Subdivision

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

- (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.

##### 166-905 Reporting requirements relating to service delivery branches

For the purposes of paragraph 166(1)(a) of the Act, this Subdivision prescribes:

- (a) the reports a registered provider must give to the System Governor in relation to a service delivery branch of the provider; and
- (b) the requirements relating to those reports.

##### 166-910 Report for opening of a service delivery branch

- (1) A registered provider must give a report, in an approved form, to the System Governor in accordance with this section if:
- (a) the provider intends to begin delivering funded aged care services through a service delivery branch; and
  - (b) either:
    - (i) the provider has not previously delivered any funded aged care services through this service delivery branch; or
    - (ii) the provider has previously given a report to the System Governor in accordance with section 166-925 in relation to closure of the service delivery branch.

Note: A separate notification must be given to the System Governor to establish a service delivery branch account for the service delivery branch: see subsection 203(1) of the Act.

##### *Information to be included in the report*

- (2) The report must include the following information:
- (a) the name of the service delivery branch;
  - (b) the date the provider proposes to begin delivering funded aged care services through the service delivery branch;
  - (c) the address of the service delivery branch;
  - (d) the contact details for the service delivery branch.

## CONSULTATION DRAFT

## CONSULTATION DRAFT

**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 166-915

---

*When report must be given*

- (3) The report must be given no later than the day the provider begins delivering funded aged care services through the service delivery branch.

#### **166-915 Report for change to a service delivery branch**

- (1) A registered provider must give a report, in an approved form, to the System Governor in accordance with this section if:
  - (a) the provider has given a report to the System Governor in accordance with section 166-910 for a service delivery branch of the provider; and
  - (b) there has been a change to any information relating to the service delivery branch that was included in the report given to the System Governor in accordance with section 166-910.

*Information to be included in the report*

- (2) The report must include the following:
  - (a) the name of the service delivery branch;
  - (b) any updated information relating to the service delivery branch that was included in the report given under section 166-910.

*When report must be given*

- (3) The report must be given within 28 days after the day the change in paragraph (1)(b) has occurred.

#### **166-920 Report for merging of service delivery branches**

- (1) A registered provider must give a report, in an approved form, to the System Governor in accordance with this section if:
  - (a) the provider has given a report to the System Governor in accordance with section 166-910 for 2 or more service delivery branches of the provider; and
  - (b) the provider intends to merge 2 or more of these service delivery branches into a single service delivery branch of the provider.

*Information to be included in the report*

- (2) The report must include the following information:
  - (a) the names of the service delivery branches that the provider proposes to merge, specifying:
    - (i) the name of the service delivery branch through which the provider proposes to continue delivering funded aged care services; and
    - (ii) the name of each service delivery branch the provider intends to close;
  - (b) the date the provider proposes to merge the service delivery branches;
  - (c) in relation to the individuals (if any) accessing funded aged care services through the service delivery branches that the provider proposes to merge:
    - (i) whether the provider has notified the individuals of the proposed merge; and

## CONSULTATION DRAFT

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 166-925

- (ii) whether the provider has given a cessation notification to the System Governor and the Commissioner for each individual accessing funded aged care services through each service delivery branch mentioned in subparagraph (a)(ii).

*When report must be given*

- (3) The report must be given at least 28 days before the date of the proposed merge.

#### **166-925 Report for closure of a service delivery branch**

- (1) A registered provider must give a report, in an approved form, to the System Governor in accordance with this section if:
  - (a) the provider has given a report to the System Governor in accordance with section 166-910 for a service delivery branch of the provider; and
  - (b) the provider intends to close the service delivery branch.
- (2) Despite subsection (1), a registered provider does not have to give a report in accordance with this section in relation to a service delivery branch if:
  - (a) the provider intends to merge the service delivery branch with one or more other service delivery branches of the provider; and
  - (b) a report under section 166-920 has been given in relation to the service delivery branch.

*Information to be included in the report*

- (3) The report must include the following information:
  - (a) the name of the service delivery branch;
  - (b) the date the provider proposes to close the service delivery branch;
  - (c) in relation to the individuals (if any) accessing funded aged care services through the service delivery branch:
    - (i) whether the provider has notified the individuals of the proposed closure; and
    - (ii) whether the provider has given a cessation notification to the System Governor and the Commissioner for each individual.

*When report must be given*

- (4) The report must be given at least 28 days before the date of the proposed closure.

#### **166-930 Report if provider no longer intends to open, merge or close service delivery branch**

- (1) A registered provider must give a report, in an approved form, to the System Governor in accordance with this section if:
  - (a) the provider has given a report (the *original report*) to the System Governor in accordance with sections 166-910, 166-920 or 166-925; and
  - (b) the provider no longer intends to proceed with the opening, merging or closure described in the original report.

## CONSULTATION DRAFT

## CONSULTATION DRAFT

**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 166-930

---

### *Information to be included in the report*

- (2) The report must include the following:
- (a) a description of the original report, including:
    - (i) the name of each service delivery branch included in the original report; and
    - (ii) whether the original report was in relation to an opening, merging or closure; and
    - (iii) the proposed date of the opening, merging or closure that was included in the original report;
  - (b) a statement the provider no longer intends to proceed with the opening, merging or closure described in the original report;
  - (c) the reason why the provider no longer intends to proceed with the opening, merging or closure described in the original report.

### *When report must be given*

- (3) The report must be given no later than the date described in subparagraph (2)(a)(iii).

## CONSULTATION DRAFT

Registered provider, responsible person and aged care worker obligations **Chapter 5**  
Responsible person obligation—change in circumstances relating to suitability **Part 4**

---

Section 169-5

### **Part 4—Responsible person obligation—change in circumstances relating to suitability**

#### **169-5 Kinds of registered provider to which the obligation applies**

For the purposes of paragraph 169(1)(a) of the Act, every kind of registered provider is prescribed except a provider that is a sole trader.

## CONSULTATION DRAFT

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

**Part 6** Obligations relating to aged care workers etc.

**Division 1** Registered nurses

Section 175-5

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### **Part 6—Obligations relating to aged care workers etc.**

#### **Division 1—Registered nurses**

##### **Subdivision A—Preliminary**

##### **175-5 Specialist aged care programs to which the registered nurse obligation does not apply—MPSP and TCP**

For the purposes of paragraph 175(2)(b) of the Act, a registered provider delivering funded aged care services at an approved residential care home under any of the following specialist aged care programs is prescribed:

- (a) MPSP;
- (b) TCP.

##### **175-10 Purpose of this Division**

For the purposes of subsection 175(3) of the Act, this Division provides for:

- (a) the circumstances in which an exemption from subsection 175(1) of the Act may be granted to a registered provider in relation to a residential care home; and
- (b) the period for which an exemption may be in force; and
- (c) the conditions that apply to that exemption.

##### **Subdivision B—Process for granting exemptions**

##### **175-15 Application for exemption**

- (1) A registered provider may apply to the System Governor for an exemption from subsection 175(1) of the Act in relation to an approved residential care home at which the provider provides funded aged care services.
- (2) The application must:
  - (a) be in a form approved by the System Governor; and
  - (b) include the following information:
    - (i) the name of the registered provider;
    - (ii) the name of the home through which the provider provides funded aged care services;
    - (iii) the name and street address of the home;
    - (iv) any other information required by the approved form; and
  - (c) be accompanied by any other documents required by the approved form.

##### **175-20 System Governor may request further information or documents**

- (1) If the System Governor receives an application under section 175-15 from a registered provider, the System Governor may, by notice in writing given to the provider, request further information or documents specified in the notice for the purposes of considering the application.

## CONSULTATION DRAFT

Registered provider, responsible person and aged care worker obligations **Chapter 5**  
Obligations relating to aged care workers etc. **Part 6**  
Registered nurses **Division 1**

Section 175-25

- (2) If the registered provider does not provide the requested information or documents within 14 days after the day when the notice is given, or within such longer period specified in the notice, the application is taken to have been withdrawn. The notice must contain a statement setting out the effect of this subsection.

### 175-25 Decision whether to grant exemption

#### *Criteria for granting exemption*

- (1) If the System Governor receives an application under section 175-15 from a registered provider for an exemption from subsection 175(1) of the Act in relation to a residential care home, the System Governor may grant the exemption only if:
- (a) the home is located in the 2019 MM category known as MM 5, MM 6 or MM7; and
  - (b) there are no more than 30 operational beds in the home on the day of the System Governor's decision; and
  - (c) the System Governor is satisfied that the provider has taken reasonable steps to ensure that the clinical care needs of the individuals residing in the home will be met during the period for which the exemption is in force; and
  - (d) the registered provider has given to the System Governor the reports required under section [to be drafted] in relation to the residential care home for each calendar month.
- (2) In deciding whether to grant the exemption, the System Governor must have regard to:
- (a) any variation to the registration of the registered provider by the Commissioner under paragraph 123(1)(a) of the Act to vary a condition to which the registration is subject to under section 143 of the Act; and
  - (b) any variation to the registration of the registered provider by the Commissioner under paragraph 123(1)(b) of the Act; and
  - (c) any notice given to the registered provider by the System Governor or Commissioner under:
    - (i) Part 11 of Chapter 6 of the Act; or
    - (ii) Division 2 of Part 10 of Chapter 6 of the Act; and
  - (d) any notice given to the registered provider under Part 5 of the Regulatory Powers Act (as applied by section 448 of this Act); and
  - (e) if the registered provider has given an undertaking under section 114 of the Regulatory Powers Act (as applied by section 458 of this Act); and
  - (f) if the registered provider has given an undertaking under section 463 of the Act; and
  - (g) whether the registered provider has been convicted of an offence against the Act; and
  - (h) whether the registered provider has been found liable to pay a civil penalty under this Act.

## CONSULTATION DRAFT

## CONSULTATION DRAFT

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

**Part 6** Obligations relating to aged care workers etc.

**Division 1** Registered nurses

### Section 175-30

- (3) The System Governor may grant an exemption to a registered provider in relation to a home for which the registered provider has previously been granted an exemption.

#### *Period of exemption*

- (4) If the System Governor decides to grant an exemption, the System Governor must decide the period for which the exemption is to be in force.
- (5) The period:
- (a) ~~must not be longer than 12 months;~~ and
  - (b) must not begin before the day on which the System Governor grants the exemption.

#### *Conditions that apply to exemption*

- (6) The following conditions apply to an exemption:
- (a) the registered provider must give the System Governor notice in writing of any material change to the information given to the System Governor:
    - (i) in the application for the exemption; or
    - (ii) in response to a request by the System Governor under subsection 175-20(1);
  - (b) any additional conditions that the System Governor decides to impose on the exemption.

### 175-30 Notice of decision

- (1) If the System Governor grants an exemption from subsection 175(1) of the Act to a registered provider in relation to a residential care home, the System Governor must give the provider notice in writing of the decision that:
- (a) states the period for which the exemption is in force; and
  - (b) states the conditions that apply to the exemption.
- (2) If the System Governor refuses to grant an exemption from subsection 175(1) of the Act to a registered provider in relation to a residential care home, the System Governor must give the provider notice in writing of the decision, including:
- (a) the reasons for the decision; and
  - (b) the date of the decision; and
  - (c) a statement of the registered provider's right to review of the decision.

### 175-35 Reviewable decision—refusal to grant exemption

A decision under section 175-25 of this instrument to refuse to grant an exemption from subsection 175(1) of the Act to a registered provider in relation to a residential care home is a reviewable decision under section 557 of the Act.

**Commented [A24]:** We recommend removing this restriction. The impact of this requirement is that a provider who is granted an exemption and wants it to continue for longer than the initial exemption period will need to do so annually or potentially even more frequently depending on the exemption period. This is onerous for providers and creates administrative burden for the Department.

The rationale for making services reapply for an exemption is also unclear as there are other provisions in the Rules which already provide safeguards to ensure a service does not have an exemption where it is no longer appropriate and/or where their circumstances change such that they no longer meet the eligibility criteria for an exemption. For example, there is a requirement that providers must notify the System Governor of any material change to the information provided in their exemption application.

The System Governor also has the power to revoke an exemption at any point in time based on several possible grounds (e.g. if there are concerns that the clinical care needs of residents are not being met or if the service now has more than 30 operational beds).



## CONSULTATION DRAFT

Registered provider, responsible person and aged care worker obligations **Chapter 5**  
Obligations relating to aged care workers etc. **Part 6**  
Registered nurses **Division 1**

Section 175-45

### Subdivision C—Revocation of exemptions

#### 175-45 Revocation on request

- (1) The System Governor must revoke a registered provider's exemption from subsection 175(1) of the Act in relation to a residential care home if the registered provider requests the revocation in writing.
- (2) The System Governor must give the registered provider notice in writing of the date that the exemption ceases to have effect, which may be the date of the notice or a later date.

#### 175-50 Revocation on other grounds

##### *Grounds for revocation*

- (1) The System Governor may revoke a registered provider's exemption from subsection 175(1) of the Act in relation to a residential care home if:
  - (a) the System Governor is satisfied the registered provider has breached a condition of the exemption; or
  - (b) the System Governor is not satisfied that the clinical care needs of the care recipients in the home:
    - (i) are being met; or
    - (ii) will be met during the period the exemption would otherwise be in force; or
  - (c) the registration of the registered provider has been varied by the Commissioner under paragraph 123(1)(a) of the Act to vary a condition to which the registration is subject to under section 143 of the Act; or
  - (d) the registration of the registered provider has been varied by the Commissioner under paragraph 123(1)(b) of the Act; or
  - (e) the System Governor becomes aware there are more than 30 operational beds in the home.

##### *Submissions by registered provider*

- (2) Before the System Governor decides to revoke the exemption, the System Governor must give the registered provider notice in writing that the System Governor is considering revoking the exemption.
- (3) The notice must:
  - (a) set out the reasons why the System Governor is considering revoking the exemption; and
  - (b) invite the provider to make submissions, in writing, to the System Governor in relation to the matter within:
    - (i) 14 days after receiving the notice; or
    - (ii) if a shorter period is specified in the notice—that shorter period.
- (4) The System Governor must consider any submissions made by the registered provider in accordance with the notice.

## CONSULTATION DRAFT

## CONSULTATION DRAFT

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

**Part 6** Obligations relating to aged care workers etc.

**Division 1** Registered nurses

Section 175-55

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### **175-55 Notice of decision**

If the System Governor decides under section 175-50 to revoke a registered provider's exemption from subsection 175(1) of the Act in relation to a residential care home, the System Governor must give the registered provider notice in writing of the decision, including:

- (a) the reasons for the decision; and
- (b) the date that the exemption ceases to have effect, which may be the date of the decision or a later date; and
- (c) a statement of the registered provider's right to review of the decision.

### **175-60 Reviewable decision—revocation of exemption**

A decision under section 175-50 of this instrument to revoke a registered provider's exemption from subsection 175(1) of the Act in relation to a residential care home is a reviewable decision under section 557 of the Act.

# CONSULTATION DRAFT

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

Other obligations **Part 7**

Cooperation with other persons **Division 1**

Section 177-10

## Part 7—Other obligations

### Division 1—Cooperation with other persons

#### 177-10 Giving data or records to the Pricing Authority

##### *Application of this section*

- (1) Subject to subsection (2), this section applies to every kind of registered provider.
- (2) The requirements of this section do not apply to a registered provider in respect of the delivery of funded aged care services under a specialist aged care program.

##### *Requirement to comply with notice*

- (3) For the purposes of subsection 177(2) of the Act, it is a requirement that a registered provider must comply with a request made under subsection (4) or (6).

##### *Notice to provide data or records*

- (4) The Pricing Authority may request, by written notice given to a registered provider, that the provider:
  - (a) give the Pricing Authority data or records held by the provider, or copies of that data or records, that are necessary for the conduct of a Pricing Authority advice activity; and
  - (b) do so in a form and manner specified in the notice; and
  - (c) do so before or on a day specified in the notice.
- (5) A notice given under subsection (4) must:
  - (a) set out that the request is for the purposes of the Pricing Authority performing the function mentioned in paragraph 131A(1)(a) of the *National Health Reform Act 2011*; and
  - (b) specify the details of the data or records that the registered provider is requested to give; and
  - (c) specify a day by which the data or records must be given, which must be at least 14 days after the day on which the notice is given to the provider; and
  - (d) set out the effect of subsection 177(4) of the Act.

##### *Request for further data or records*

- (6) If:
  - (a) a provider responds to a request to provide data or records made under subsection (4); and
  - (b) the Pricing Authority considers that additional data or records are required before the Pricing Authority can carry out a function mentioned in paragraph 131A(1)(a) of the *National Health Reform Act 2011*;

the Pricing Authority may, by written notice given to the applicant, request the provider to give that additional data or records, or copies of that additional data or records, to the Pricing Authority.

**Commented [A25]:** We note that this division gives IHACPA significant powers to gather information, enter aged care homes and have access to registered provider's staff.

**Commented [A26]:** While noting a minimum 14 day timeframe is specified in the Rules, in practice it will be critical that providers are given sufficient time to action a request for data or records, with the amount of time needed depending on the specific request and the amount of time/work involved in responding.

It is also important that there is flexibility (e.g. a longer time period to respond or option for an extension) during periods such as over Christmas/New Year when services may have lower levels of staffing and/or key staff members may be on leave.

## CONSULTATION DRAFT

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

**Part 7** Other obligations

**Division 1** Cooperation with other persons

Section 177-15

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### **177-15 Allowing access by the Pricing Authority to certain persons**

#### *Application of this section*

- (1) Subject to subsection (2), this section applies to every kind of registered provider.
- (2) The requirements of this section do not apply to a registered provider in respect of the delivery of funded aged care services under a specialist aged care program.

#### *Requirement to comply with notice*

- (3) For the purposes of subsection 177(2) of the Act, it is a requirement that a registered provider must comply with a request made under subsection (4).

#### *Notice to allow access to certain persons*

- (4) The Pricing Authority may request, by written notice given to a registered provider, that the provider:
  - (a) allow and facilitate access by an official of the Pricing Authority undertaking a Pricing Authority advice activity to a person referred to in subsection (6); and
  - (b) make arrangements before or on a day specified in the notice to allow and facilitate the access within a reasonable timeframe.
- (5) A notice given under subsection (4) must:
  - (a) be necessary for the conduct of a Pricing Authority advice activity; and
  - (b) specify the form of the access, which may be in person, by audio link, or by audio-visual link; and
  - (c) specify a day by which the provider must make arrangements for the access, which must be at least 14 days after the day on which the notice is given to the provider; and
  - (d) set out the effect of subsection 177(4) of the Act.
- (6) For the purposes of paragraph (4)(a), the persons are the following:
  - (a) a specified responsible person of the provider;
  - (b) any responsible person of the provider who is responsible for a specified matter for the provider;
  - (c) a specified aged care worker of the provider;
  - (d) any aged care worker of the provider who is responsible for a specified matter for the provider.

### **177-20 Allowing access by the Pricing Authority to residential care homes**

#### *Application of this section*

- (1) Subject to subsection (2), this section applies to a registered provider in the provider registration category residential care.
- (2) The requirements of this section do not apply to a registered provider in respect of the delivery of funded aged care services under a specialist aged care program.

## CONSULTATION DRAFT

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

Other obligations **Part 7**

Cooperation with other persons **Division 1**

### Section 177-20

#### *Requirement to comply with notice*

- (3) For the purposes of subsection 177(2) of the Act, it is a requirement that a registered provider must comply with a request made under subsection (4).

#### *Notice to allow access to residential care homes*

- (4) The Pricing Authority may request, by written notice given to a registered provider, that the provider:
- (a) allow and facilitate access by an official of the Pricing Authority who is undertaking a Pricing Authority advice activity to a residential care home of the provider; and
  - (b) do so on a day specified in the notice.
- (5) A notice given under subsection (4) must:
- (a) be for the purposes of conducting a Pricing Authority advice activity; and
  - (b) specify a day on which the access must be facilitated, which must be at least 14 days after the day on which the notice is given to the provider; and
  - (c) set out the effect of subsection 177(4) of the Act.
- (6) For the purposes of subsection 177(2) of the Act, it is a requirement that reasonable facilities and assistance provided by the registered provider to whom a notice has been given under subsection (4) must include:
- (a) providing a site orientation to the official of the Pricing Authority undertaking the Pricing Authority advice activity to which the notice relates, including guidance on how to safely navigate the residential care home; and
  - (b) providing information in relation to the activity to any of the following:
    - (i) aged care workers of the provider;
    - (ii) individuals to whom the provider delivers funded aged care services;
    - (iii) supporters of the individuals; and
  - (c) providing the official with access to aged care workers of the provider who are at the residential care home; and
  - (d) providing the official with access to individuals to whom the provider delivers funded aged care services who have consented to the access; and
  - (e) providing the official with access to all areas of the residential care home, excluding rooms and part rooms of individuals who have not consented to the access and private bathroom facilities; and
  - (f) providing the official with facilities (including a suitable workspace) for the purpose of undertaking the Pricing Authority advice activity; and
  - (g) providing the official with access to records held by the provider; and
  - (h) providing the official with instructions about how to access records held by the provider; and
  - (i) allowing the official to make copies of those records.

**Commented [A27]:** Recommend amending to 'do so on a day specified in the notice or an alternative date agreed by both the Pricing Authority and the registered provider'. Alternatively, it could be replaced with 'make arrangements before or on a day specific in the notice to allow and facilitate the access within a reasonable timeframe' (mirroring the requirement in section 177-15(4)).

This would enable a provider to suggest a more suitable date, in order to avoid a situation, for example, where they are required to facilitate access on a day where several staff members are scheduled to do training or where there would be lower than usual staffing levels because of staff taking leave for a religious holiday.

This flexibility is essential to ensure that facilitating an official's visit will not result in understaffing and/or compromise quality of care.

**Commented [A28]:** It is critical that the requirement to comply with subsection (6), particularly the requirement to "provide the official with access to aged care workers of the provider who are at the residential care home" does not have a detrimental impact on a service's ability to provide care for their residents (e.g. resulting in having insufficient staff on the floor).

## CONSULTATION DRAFT

**Chapter 9** Funding of aged care services—accommodation payments and accommodation contributions

**Part 1** Introduction

Section 287-5

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### **Chapter 9—Funding of aged care services— accommodation payments and accommodation contributions**

#### **Part 1—Introduction**

**287-5** Simplified outline of this Chapter

[to be drafted]
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# CONSULTATION DRAFT

Funding of aged care services—accommodation payments and accommodation contributions **Chapter**  
**9**  
Accommodation bonds and accommodation charges [to be drafted] **Part 2**

Section 287-5

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## **Part 2—Accommodation bonds and accommodation charges [to be drafted]**

# CONSULTATION DRAFT

## CONSULTATION DRAFT

**Chapter 9** Funding of aged care services—accommodation payments and accommodation contributions

**Part 3** Accommodation payments and accommodation contributions

**Division 1** Application to specialist aged care programs

Section 288-5

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### **Part 3—Accommodation payments and accommodation contributions**

#### **Division 1—Application to specialist aged care programs**

##### **288-5 Provisions that do not apply in relation to certain specialist aged care programs**

###### *MPSP*

- (1) For the purposes of paragraph 288(1)(a) of the Act, the following provisions of the Act are prescribed in respect of the delivery of funded aged care services to an individual under the MPSP:
  - (a) paragraph 294(1)(c);
  - (b) paragraph 294(1)(d);
  - (c) subsection 294(3);
  - (d) subsection 294(4) (to the extent that it relates to subsection 294(3));
  - (e) section 298;
  - (f) subsection 307(3);
  - (g) section 309.

###### *NATSIFACP*

- (2) For the purposes of paragraph 288(1)(a) of the Act, the provisions of Part 4 of Chapter 4 of the Act are prescribed in respect of the delivery of funded aged care services to an individual under the NATSIFACP.

##### **288-10 Specialist aged care programs for which specified provisions do not apply**

For the purposes of paragraph 288(1)(c) of the Act, the following specialist aged care programs are prescribed:

- (a) MPSP;
- (b) NATSIFACP.

##### **288-20 Specialist aged care programs—accommodation agreements**

For the purposes of paragraph 288(2)(a) of the Act, an accommodation agreement between a registered provider delivering funded aged care services to an individual under the MPSP and the individual must set out information for the individual about accessing the provider's financial hardship policy.

**Note:** The accommodation agreement also must comply with the requirements in section 294-5.



## CONSULTATION DRAFT

Funding of aged care services—accommodation payments and accommodation contributions **Chapter 9**

Accommodation payments and accommodation contributions **Part 3**

Application to specialist aged care programs **Division 1**

Section 288-25

### **288-25 Specialist aged care programs—charging of accommodation payments and accommodation contributions**

#### *MPSP*

- (1) For the purposes of paragraph 288(2)(b) of the Act, if a registered provider is satisfied that an individual to whom the registered provider is delivering ongoing funded aged care services through the service group residential care in an approved residential care home under the MPSP is experiencing financial hardship, the provider must:
  - (a) provide the individual with a copy of the provider's financial hardship policy referred to in section 286-20; and
  - (b) comply with the policy (including reducing or waiving the accommodation payment in accordance with the terms of the policy).

Note: The registered provider also must comply with section 296-5 (which deals with the charging of accommodation payments).

#### *NATSIFACP*

- (2) For the purposes of paragraph 288(2)(b) of the Act, a registered provider delivering funded aged care services to an individual through the service group residential care in an approved residential care home under the NATSIFACP must not charge the individual an accommodation payment for the delivery of those services.

#### *MPSP and NATSIFACP*

- (3) For the purposes of paragraph 288(2)(c) of the Act, a registered provider delivering funded aged care services to an individual through the service group residential care in an approved residential care home under the MPSP or NATSIFACP must not charge the individual an accommodation contribution for the delivery of those services.

## CONSULTATION DRAFT

**Chapter 9** Funding of aged care services—accommodation payments and accommodation contributions

**Part 3** Accommodation payments and accommodation contributions

**Division 2** Maximum accommodation payment amounts and publication of certain amounts by the System Governor

Section 289-5

### **Division 2—Maximum accommodation payment amounts and publication of certain amounts by the System Governor**

#### **Subdivision A—Maximum accommodation payment amount**

##### **289-5 Maximum accommodation payment amount**

For the purposes of subsection 289(1) of the Act, \$750,000 is prescribed as the maximum amount of accommodation payment (expressed as a refundable accommodation deposit amount).

##### **289-10 Maximum accommodation payment amount—daily accommodation payment amount**

For the purposes of subsection 289(3) of the Act, the method for working out the maximum accommodation payment amount expressed as a daily accommodation payment amount for a day is as follows:

- |  |
|--|
| <p>Step 1. Work out the maximum permissible interest rate for the day.</p> <p>Step 2. Multiply the rate worked out at step 1 by the maximum accommodation payment amount.</p> <p>Step 3. Divide the amount worked out at step 2 by 365 (rounding the result to 2 decimal places, rounding up if the third decimal place is 5 or more).</p> |
|--|

#### **Subdivision B—Approval of higher maximum accommodation payment amount**

##### **290-15 Requirements for application**

For the purposes of paragraph 290(3)(a) of the Act, the application must:

- (a) be in writing; and
- (b) be in a form approved by the Pricing Authority; and
- (c) be accompanied by any information or documents specified by the approved form; and
- (d) relate to only one approved residential care home; and
- (e) specify each room, or each part of a room, in the approved residential care home for which approval is sought to charge a higher maximum accommodation payment amount; and
- (f) specify each of those higher maximum accommodation payment amounts (expressed as a refundable accommodation deposit amount).

# CONSULTATION DRAFT

Funding of aged care services—accommodation payments and accommodation contributions **Chapter 9**

Accommodation payments and accommodation contributions **Part 3**

Maximum accommodation payment amounts and publication of certain amounts by the System

Governor **Division 2**

Section 290-20

## 290-20 Restriction on application period

For the purposes of subparagraph 290(3)(b)(i) of the Act, the period of 4 months is prescribed.

## 290-25 Requirements for approval decision

### *Purpose of this section*

- (1) For the purposes of subsection 290(6) of the Act, this section prescribes requirements for the approval of a higher maximum accommodation payment amount in relation to a room or a part of a room in an approved residential care home.

### *Matters that must be considered*

- (2) In deciding whether to approve the higher maximum accommodation payment amount, the Pricing Authority must consider the following:
  - (a) the proposed higher maximum accommodation payment amount;
  - (b) the location of the approved residential care home;
  - (c) the quality, condition, size and amenity of the room or the part of the room;
  - (d) whether the room has access to a shared bathroom or has a private ensuite;
  - (e) whether the room, or the part of the room, has any specific accommodation or design features;
  - (f) the number of individuals to whom ongoing funded aged care services may be delivered through the service group residential care in the room;
  - (g) the quality, condition, size and amenity of the common areas in the approved residential care home that would be accessible to those individuals;
  - (h) whether the approved residential care home has any specific accommodation or design features that would be accessible to those individuals.
- (3) If the application relates to a proposed room, or a proposed part of a room, in the approved residential care home, the Pricing Authority may approve the higher maximum accommodation payment amount for the room, or the part of the room, subject to the condition that the approval does not take effect unless:
  - (a) the registered provider gives the following information to the Pricing Authority, in writing:
    - (i) information showing that the construction or refurbishment of the room, or the part of the room, has been completed and that the completed or refurbished room, or part of the room, is equivalent to or better than the proposal described in the application;
    - (ii) the total actual cost (the *actual cost*) of the completed construction or refurbishment; and
  - (b) the Pricing Authority notifies the approved provider under subsection (4) that the Pricing Authority is satisfied, having regard to the information

**Commented [A29]:** We recommend that this section be amended to allow more flexibility for higher RAD approvals to better reflect the value of accommodation in more affluent areas with higher house prices. Subsection (2) should be amended to include "median house prices in the area in which a residential care home is located" as a matter that IHACPA must consider when assessing applications for higher RADs.

# CONSULTATION DRAFT

## CONSULTATION DRAFT

**Chapter 9** Funding of aged care services—accommodation payments and accommodation contributions

**Part 3** Accommodation payments and accommodation contributions

**Division 2** Maximum accommodation payment amounts and publication of certain amounts by the System Governor

### Section 290-40

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given under paragraph (a), that the requirements referred to in subparagraph (a)(i) have been met in relation to the room, or the part of the room, and that:

- (i) the actual cost of the completed construction or refurbishment is not significantly lower than the proposed cost of the construction or refurbishment; or
- (ii) if the actual cost of the completed construction or refurbishment is significantly lower than the proposed cost of the construction or refurbishment and if the lower actual cost had been provided to the Pricing Authority with the application as the proposed cost—the Pricing Authority would still have approved the higher maximum accommodation payment amount applied for.

#### *Notification of decision*

- (4) If the Pricing Authority approves the higher maximum accommodation payment amount the Pricing Authority must notify the registered provider for the approved residential care home, in writing, of the decision and include the following in the notice:
  - (a) the unique identification number that corresponds to the registered provider's application;
  - (b) the day on which the approval is to take effect;
  - (c) any conditions to which the approval is subject.

**Note:** An approved higher maximum accommodation payment amount applies only to certain individuals: see subsection 290(8) of the Act.

#### *Period within which decision must be made*

- (5) The notice must be given within 60 days after the Pricing Authority received the application.
- (6) If the registered provider is required to give the Pricing Authority further information for the purposes of determining the application under subsection 290(4) of the Act, the 60 day period referred to in subsection (5) does not include the period beginning on the day the request was made and ending on the day that is 28 days after the day the information was received.

#### *Duration of approval*

- (7) The approval ceases to have effect at the end of 4 years beginning on the day notice of the approval was given by the Pricing Authority.

### **290-40 Indexation of higher maximum accommodation payment amount**

- (1) For the purposes of subsection 290(11) of the Act, a higher maximum accommodation payment amount that may be charged by a registered provider (the **relevant registered provider**) may be indexed by the registered provider on the first day of the second, or a later, approval year (the **current approval year**)

## CONSULTATION DRAFT

## CONSULTATION DRAFT

Funding of aged care services—accommodation payments and accommodation contributions **Chapter**

**9**

Accommodation payments and accommodation contributions **Part 3**

Maximum accommodation payment amounts and publication of certain amounts by the System

Governor **Division 2**

### Section 291-5

for the amount, by multiplying the amount by the amount worked out using the formula:

Most recent index number

Previous index number

where:

**most recent index number** means the index number for the most recent quarter ending before the first day of the current approval year.

**previous index number** means the index number for the most recent quarter ending before the first day of the previous approval year.

- (2) If a higher maximum accommodation payment amount is indexed under this section, the Act and this instrument have effect as if the indexed amount were substituted for the higher maximum accommodation payment amount.
- (3) If a higher maximum accommodation payment amount is indexed on a day under this section, the indexed amount applies only in relation to an individual:
  - (a) who, before that day, has not entered into an accommodation agreement with the relevant registered provider; and
  - (b) to whom the registered provider starts delivering funded aged care services to the individual in the approved residential care home on or after that day.
- (4) If, apart from this subsection, a higher maximum accommodation payment amount indexed under this section would be an amount of dollars and cents:
  - (a) the amount is to be rounded to the nearest whole dollar; and
  - (b) if the amount to be rounded is 50 cents, the amount is to be rounded down.
- (5) If, at any time (whether before or after the commencement of this section), the Australian Statistician publishes an index number for a quarter in substitution for an index number previously published by the Australian Statistician for that quarter, the publication of the later index number is to be disregarded for this section.
- (6) If, at any time (whether before or after the commencement of this section), the Australian Statistician changes the index reference period for the Consumer Price Index, then, in applying this section after the change is made, regard is to be had only to index numbers published in terms of the new index reference period.

### Subdivision C—Notification and publication of accommodation payment amounts

#### 291-5 Notification

- (1) For the purposes of subsection 291(1) of the Act, the requirements are that the registered provider must give the System Governor a notice setting out the following information in relation to an accommodation payment the registered

## CONSULTATION DRAFT

## CONSULTATION DRAFT

**Chapter 9** Funding of aged care services—accommodation payments and accommodation contributions

**Part 3** Accommodation payments and accommodation contributions

**Division 2** Maximum accommodation payment amounts and publication of certain amounts by the System Governor

### Section 291-10

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provider proposes to charge an individual for a room or part of a room in the approved residential care home:

- (a) a statement describing the key accommodation features of the room or the part of the room;
  - (b) the maximum accommodation payment amount (expressed as a refundable accommodation deposit amount, and as a daily accommodation payment amount worked out in accordance with section 294-10) that the provider could charge an individual for the room or the part of the room;
  - (c) if the registered provider proposes to charge an accommodation payment in relation to the room or the part of the room that exceeds the maximum accommodation payment amount—a copy of the notice given to the provider by the Pricing Authority under section 290-25 that covers the charging of the higher amount.
- (2) For the purposes of paragraph (1)(a), the statement describing the key accommodation features of the room or the part of the room must include the following information:
- (a) a description of the quality, condition, size and amenity of the room or the part of the room;
  - (b) whether the room or the part of the room has access to a shared bathroom or has a private ensuite;
  - (c) a description of any specific accommodation or design features in the room or the part of the room;
  - (d) the number of individuals to whom ongoing funded aged care services may be delivered through the service group residential care in the room;
  - (e) a description of the quality, condition, size and amenity of the common areas in the approved residential care home that would be accessible to those individuals;
  - (f) a description of any specific accommodation or design features in the approved residential care home that would be accessible to those individuals.

#### **291-10 Publication of notification**

For the purposes of paragraph 291(4)(d) of the Act, the information is the information in paragraphs 291-5(2)(a) to (f).

# CONSULTATION DRAFT

Funding of aged care services—accommodation payments and accommodation contributions **Chapter 9**

Accommodation payments and accommodation contributions **Part 3**

Accommodation agreements **Division 3**

Section 292-5

## Division 3—Accommodation agreements

### 292-5 Information to be given before provider enters into an accommodation agreement with an individual—daily accommodation payment amount

For the purposes of subparagraph 292(b)(ii) of the Act, the method for working out a daily accommodation payment amount in relation to a published accommodation payment amount (expressed as a refundable accommodation deposit amount) that an individual is informed of is as follows:

- |         |   |
|---------|---|
| Step 1. | Work out the maximum permissible interest rate for the day the individual is informed of the published accommodation payment amount (expressed as a refundable accommodation deposit amount). |
| Step 2. | Multiply the rate worked out at step 1 by the published accommodation payment amount (expressed as a refundable accommodation deposit amount).  |
| Step 3. | Divide the amount worked out at step 2 by 365 (rounding the result to 2 decimal places, rounding up if the third decimal place is 5 or more).   |

### 294-5 Accommodation agreements—other matters to be included in accommodation agreement

- (1) For the purposes of paragraph 294(1)(l) of the Act, this section prescribes other matters that must be set out in an accommodation agreement between a registered provider and an individual.

**Note:** An accommodation agreement between a registered provider and an individual to whom the provider is delivering funded aged care services under the MPSP must also comply with section 288-20.

#### *General matters*

- (2) The accommodation agreement must set out the following in relation to any accommodation payment the individual will pay:
- (a) the individual's room that the accommodation payment entitles the individual to be provided with;
  - (b) any services that the accommodation payment entitles the individual to be provided with;
  - (c) that the accommodation payment for a day is payable unless the fee reduction supplement under section 231 of the Act applies to the individual for the day;
  - (d) that, if the individual changes the individual's room in the approved residential care home, this will not change the individual's start day for the approved residential care home.

# CONSULTATION DRAFT

## CONSULTATION DRAFT

**Chapter 9** Funding of aged care services—accommodation payments and accommodation contributions

**Part 3** Accommodation payments and accommodation contributions

**Division 3** Accommodation agreements

### Section 294-5

*Additional matters in relation to voluntary moves within the approved residential care home*

- (3) The accommodation agreement must set out that, if the individual proposes to change the individual's room in the approved residential care home, and the move is voluntary:
- (a) the accommodation agreement must be varied, before the move occurs, to specify the new room; and
  - (b) the day on which the agreement is varied will become the price agreement day for the individual and the approved residential care home; and
  - (c) the individual may be charged an accommodation payment amount, after the move, that is higher or lower than the accommodation payment amount the individual is paying before the move; and
  - (d) the individual must not be charged an accommodation payment amount that is higher than the published accommodation payment amount for the individual's new room on the day the agreement is varied; and
  - (e) if the individual is to be charged a higher accommodation payment amount for the individual's new room—the individual may choose to pay the additional accommodation payment amount by:
    - (i) daily payments; or
    - (ii) refundable deposit; or
    - (iii) a combination of refundable deposit and daily payments.

*Additional matters in relation to non-voluntary moves within the approved residential care home*

- (4) The accommodation agreement must set out that, if an individual's room in the approved residential care home is to be changed for less than 28 days, and the move is not voluntary:
- (a) the registered provider must, before the move occurs, notify the individual, in writing, of the change to the individual's room; and
  - (b) there will be no change to the individual's price agreement day for the approved residential care home; and
  - (c) the individual will continue to be charged the same accommodation payment amount that the individual is paying before the move.
- (5) The accommodation agreement must set out that, if the individual's room in the approved residential care home is to be changed for 28 days or longer, and the move is not voluntary:
- (a) the registered provider must, before the move occurs, notify the individual, in writing, of the change to the individual's room; and
  - (b) the day on which the notice is given will become the individual's price agreement day for the approved residential care home; and
  - (c) the individual must not be charged:
    - (i) an accommodation payment amount that is higher than the accommodation payment amount the individual is paying before the move; or

**Commented [A30]:** Clarification is needed about whether this is only when the accommodation payment is expressed as a RAD. If the MPIR has changed, this could result in a DAP increase on the same room price.

## CONSULTATION DRAFT



## CONSULTATION DRAFT

Funding of aged care services—accommodation payments and accommodation contributions **Chapter 9**

Accommodation payments and accommodation contributions **Part 3**

Accommodation agreements **Division 3**

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### Section 294-10

- (ii) if the published accommodation payment amount for the individual's new room on the day the notice is given is lower than the amount the individual is paying before the move—an accommodation payment amount that is higher than that published accommodation payment amount.
- (6) For the purposes of subsections (4) and (5), a move by an individual to a new room in an approved residential care home is not voluntary if:
  - (a) the move is necessary on genuine medical grounds as assessed by:
    - (i) an approved needs assessor; or
    - (ii) at least 2 medical or other health practitioners who meet the criteria mentioned in subsection (7); or
  - (b) the move is necessary to carry out repairs or improvements to the premises of the approved residential care home.
- (7) For the purposes of subparagraph (6)(a)(ii), the criteria are:
  - (a) one practitioner must be independent of the registered provider and the approved residential care home, and must be chosen by the individual; and
  - (b) both practitioners must be competent to assess the aged care needs of the individual.

#### **294-10 Accommodation agreements—daily accommodation payment amount**

For the purposes of subparagraph 294(2)(b)(iii) of the Act, the method to work out an individual's daily accommodation payment amount in relation to an agreed accommodation payment amount is the method referred to in subsection 296-5(3).

#### **294-15 Accommodation agreements—method for working out amounts payable as a combination of refundable accommodation deposit and daily accommodation payments**

For the purposes of paragraph 294(2)(d) of the Act, the method for working out amounts that would be payable as a combination of refundable accommodation deposit and daily accommodation payments is the method referred to in subsection 296-5(4).

#### **294-20 Accommodation agreements—method for working out amounts payable by refundable accommodation contributions**

For the purposes of subparagraph 294(3)(c)(i) of the Act, the method for working out an individual's refundable accommodation contribution is the method referred to in subsection 298-5(3).

## CONSULTATION DRAFT

## CONSULTATION DRAFT

**Chapter 9** Funding of aged care services—accommodation payments and accommodation contributions

**Part 3** Accommodation payments and accommodation contributions

**Division 3** Accommodation agreements

Section 294-25

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**294-25 Accommodation agreements—method for working out amounts payable by combination of refundable accommodation contributions and daily accommodation contributions**

For the purposes of subparagraph 294(3)(c)(ii) of the Act, the method for working out amounts payable by a combination of refundable accommodation contribution and daily accommodation contributions is the method referred to in subsection 298-5(4).

# CONSULTATION DRAFT

Funding of aged care services—accommodation payments and accommodation contributions **Chapter 9**

Accommodation payments and accommodation contributions **Part 3**

Charging of accommodation payments **Division 4**

Section 296-5

## Division 4—Charging of accommodation payments

### 296-5 Charging of accommodation payments

- (1) For the purposes of paragraph 296(d) of the Act, this section sets out requirements a registered provider must comply with in relation to the charging of an accommodation payment to an individual.

Note: If the registered provider is delivering funded aged care services to the individual under the MPSP the registered provider must also comply with subsection 288-25(1).

- (2) The registered provider must ensure that there is equivalence between:
- (a) the refundable accommodation deposit amount that the provider could charge the individual for a day (the **relevant day**); and
  - (b) the daily accommodation payment amount that the provider could charge the individual for the relevant day.
- (3) For the purpose of complying with subsection (2), the daily accommodation payment amount that the registered provider could charge the individual for the relevant day if the individual has paid no refundable accommodation deposit on or before that day is worked out as follows:

- Step 1. Work out the maximum permissible interest rate for the individual's price agreement day.

Note: If the individual's accommodation agreement is varied because the individual's room changes, the individual's price agreement day and agreed accommodation payment amount may change for the purposes of this section.

Step 2. Multiply the rate worked out at step 1 by the agreed accommodation payment amount.

Step 3. Work out the individual's **maximum possible daily accommodation payment amount** by dividing the amount worked out at step 2 by 365 (rounding the result to 2 decimal places, rounding up if the third decimal place is 5 or more).

Step 4. Apply any applicable indexation to the step 3 amount in accordance with section 302-10.

Note: Indexation is not applied for certain classes of individuals: see section 302-17.

- (4) For the purposes of complying with subsection (2), the daily accommodation payment amount that the registered provider could charge the individual for the relevant day if the individual has paid a refundable accommodation deposit on or before that day is worked out as follows:

- Step. 1 Work out under subsection (3) the amount the registered provider could charge as a daily accommodation payment amount (as if no refundable accommodation deposit had been made).

# CONSULTATION DRAFT

## CONSULTATION DRAFT

**Chapter 9** Funding of aged care services—accommodation payments and accommodation contributions

**Part 3** Accommodation payments and accommodation contributions

**Division 4** Charging of accommodation payments

### Section 296-5

- |         |  |
|---------|--|
| Step. 2 | Work out the individual's refundable deposit balance for the relevant day (including if this is a zero amount) and add to that amount the sum of any deductions made under section 308 of the Act on or before the relevant day. |
| Step. 3 | Divide the step 2 amount by the accommodation payment amount.  |
| Step. 4 | Subtract the step 3 amount from 1.   |
| Step. 5 | Multiply the step 4 amount by the step 1 amount.   |

# CONSULTATION DRAFT

Funding of aged care services—accommodation payments and accommodation contributions **Chapter 9**

Accommodation payments and accommodation contributions **Part 3**

Charging of accommodation contributions **Division 5**

Section 298-5

## Division 5—Charging of accommodation contributions

### 298-5 Charging of accommodation contributions

- (1) For the purposes of paragraph 298(e) of the Act, this section prescribes requirements a registered provider must comply with in relation to the charging of an accommodation contribution to an individual for the delivery of ongoing funded aged to care services to the individual in an approved residential care home.
- (2) The registered provider must ensure that, for a day (the **relevant day**), there is equivalence between:
  - (a) the individual's daily accommodation contribution amount; and
  - (b) the maximum refundable accommodation contribution amount that the individual may be charged.
- (3) For the purpose of complying with subsection (2), the maximum refundable accommodation contribution amount that the registered provider could charge the individual for the relevant day must be the amount worked out as follows:

- Step 1. Work out the maximum amount of daily accommodation contribution the individual could be charged for the relevant day having regard to paragraphs 298(b) and (c) of the Act.
  - Step 2. Multiply the amount worked out at step 1 by 365 (rounding the result to 2 decimal places, rounding up if the third decimal place is 5 or more).
  - Step 3. Divide the amount worked out at step 2 by the maximum permissible interest rate for the individual's start day for the classification type ongoing for the service group residential care in relation to the approved residential care home.
  - Step 4. Subtract from the amount worked out at Step 3 the sum of any deductions made on or before the relevant day from the refundable accommodation contribution in accordance with section 308 of the Act.

- (4) For the purposes of complying with subsection (2), if the individual has paid part of the accommodation contribution in relation to the approved residential care home by refundable accommodation contribution, the daily accommodation contribution amount that the registered provider could charge the individual for the relevant day must be the amount worked out as follows:

- Step 1. Work out the maximum permissible interest rate for the individual's start day for the classification type ongoing for the service group residential care in relation to the approved residential care home.
  - Step 2. Work out the amount that is the difference between:

# CONSULTATION DRAFT

## CONSULTATION DRAFT

**Chapter 9** Funding of aged care services—accommodation payments and accommodation contributions

**Part 3** Accommodation payments and accommodation contributions

**Division 5** Charging of accommodation contributions

### Section 298-5

<div><div><div>(a) the maximum refundable accommodation contribution amount for the individual for the relevant day worked out under subsection (2); and</div><div>(b) the individual’s refundable deposit balance for the relevant day.</div></div><div>Step 3. Multiply the rate worked out at step 1 by the amount worked out at step 2.</div><div>Step 4. Divide the amount worked out at step 3 by 365 (rounding the result to 2 decimal places, rounding up if the third decimal place is 5 or more).</div></div>
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# CONSULTATION DRAFT

Funding of aged care services—accommodation payments and accommodation contributions **Chapter 9**  
Accommodation payments and accommodation contributions **Part 3**  
Charging of daily payments **Division 6**

Section 301-5

## Division 6—Charging of daily payments

### 301-5 Charging interest

For the purposes of subsection 301(3) of the Act, the maximum rate for a day is worked out as follows:

- |         |   |
|---------|---|
| Step 1. | Work out the general interest charge rate for the day under subsection 8AAD(1) of the <i>Taxation Administration Act 1953</i> . |
| Step 2. | Multiply the rate worked out at step 1 by the number of days in the calendar year in which the day falls.                       |
| Step 3. | Subtract 3 percentage points from the amount worked out at step 2.  |

### 302-10 Daily payments—indexation

- (1) For the purposes of paragraphs 302(b) and (c) of the Act, the maximum possible daily accommodation payment amount for an individual is indexed on an indexation day by replacing the amount with the amount worked out using the following method:

- |         |   |
|---------|---|
| Step 1. | Work out the individual's maximum possible daily accommodation payment amount (disregarding any indexation previously applied to that amount in accordance with this section).  |
| Step 2. | Work out the indexation factor by dividing the DAP index number for the indexation day by the DAP index number for the individual's reference indexation day (rounding the result to 4 decimal places, rounding up if the fifth decimal place is 5 or more).<br><br>Note: For DAP index numbers see section 302-15. |
| Step 3. | Multiply the amount worked out under step 1 by the indexation factor worked out under step 2 (rounding the result to 2 decimal places, rounding up if the third decimal place is 5 or more).  |

- (2) In this section:

**indexation day** means:

- (a) 20 March; and
- (b) 20 September.

**reference indexation day** for an individual and an approved residential care home means the indexation day before the first indexation day that occurs after the later of the following:

- (a) the individual's start day in relation to the approved residential care home;

## CONSULTATION DRAFT

**Chapter 9** Funding of aged care services—accommodation payments and accommodation contributions

**Part 3** Accommodation payments and accommodation contributions

**Division 6** Charging of daily payments

### Section 302-15

- (b) if the individual moves to a new room, or part of a room, in the approved residential care home—the day the individual occupies the new room or the part of the room.

### 302-15 Daily payments—DAP index numbers

For the purposes of step 2 of the method in section 302-10, the *DAP index number* for an indexation day is worked out using the following table:

Indexation factor		
Item	Column 1	Column 2
	For the following indexation day...	the DAP index number is...
1	20 March 2025	1.0

### 302-17 Daily payments—circumstances in which daily accommodation payment is not to be indexed

For the purposes of paragraph 302(ca) of the Act, the circumstance of being an individual in either of the following classes of individuals is prescribed:

- (a) the post-2014 residential accommodation class;  
(b) the post-2014 flexible accommodation class.



# CONSULTATION DRAFT

Funding of aged care services—accommodation payments and accommodation contributions **Chapter 9**  
Accommodation payments and accommodation contributions **Part 3**  
Refundable deposits **Division 7**

Section 307-5

## Division 7—Refundable deposits

### 307-5 Amounts to be deducted from refundable deposit balances—deductible amount

For the purposes of paragraph 307(3)(a) of the Act, any amount of daily payment that is outstanding on the day the registered provider ceases to deliver ongoing funded aged care services to the individual through the service group residential care in an approved residential care home is prescribed.

### 308-5 Amounts that must be deducted from refundable deposit balances—retention amounts—rate of retention

For the purposes of subsection 308(2) of the Act, the rate is 2% per annum.

**Note:** Retention amounts are not deducted in relation to the refundable deposit balances of individuals in certain prescribed classes: see section 308-12.

### 308-10 Amounts that must be deducted from refundable deposit balances—retention amounts—timing of deductions

For the purposes of paragraph 308(3)(a) of the Act, the registered provider may deduct a retention amount from a refundable deposit balance if:

- (a) there is a retention amount outstanding on the day the registered provider ceases to deliver ongoing funded aged care services to the individual through the service group residential care in an approved residential care home; and
- (b) the provider deducts the retention amount prior to:
  - (i) refunding the refundable deposit balance to the individual; or
  - (ii) transferring the refundable deposit balance to another registered provider.

**Note:** Retention amounts must not be deducted more than once in any on month period or in certain other circumstances: see subsections 308(4) and (4A) of the Act.

### 308-12 Amounts that must be deducted from refundable deposit balances—retention amounts—classes of individuals for whom amounts must not be deducted

For the purposes of subsection 308(5) of the Act, the following classes of individuals are prescribed:

- (a) the post-2014 residential accommodation class;
- (b) the post-2014 flexible accommodation class;
- (c) the class of individuals that have ceased to be in the pre-2014 accommodation class.

**Note:** An individual ceases to be in the pre-2014 accommodation class if the 28 day period referred to in paragraph (b) of the definition of *pre-2014 accommodation class* is exceeded, or the individual gives an election in accordance with subparagraph (c)(i) of that definition.

**Commented [A31]:** We note that the limitation that retention amounts must not be deducted more than once a month may create challenges for organisations that invoice on a fortnightly basis. These provisions would require such organisations to run a separate process each month to deduct from the RAD. The rationale for including this limitation is also unclear.

## CONSULTATION DRAFT

**Chapter 9** Funding of aged care services—accommodation payments and accommodation contributions

**Part 3** Accommodation payments and accommodation contributions

**Division 7** Refundable deposits

### Section 309-5

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#### **309-5 Rules about deductions**

For the purposes of section 309 of the Act, deductions are to be made in the following order:

- (a) amounts referred to in subsection 307(2) of the Act;
- (b) amounts referred to in paragraph 307(3)(b) of the Act;
- (c) amounts referred to in section 307-5 of this instrument;
- (d) amounts referred to in section 308 of the Act.

#### **310-5 Refundable deposits to be used only for permitted purposes—capital expenditure**

For the purposes of paragraph 310(2)(a) of the Act, the following kinds of capital expenditure are prescribed:

- (a) expenditure to acquire land on which are, or are to be built, the premises needed for delivering funded aged care services through the service group residential care, but only to the extent that the expenditure relates to those premises;
- (b) expenditure to acquire, erect, extend or significantly alter premises used or proposed to be used for delivering funded aged care services through the service group residential care, but only to the extent that the expenditure relates to the delivery of those funded aged care services;
- (c) expenditure to acquire or install furniture, fittings or equipment for premises used or proposed to be used for delivering funded aged care services through the service group residential care, when those premises are initially erected or following an extension, a significant alteration or a significant refurbishment, but only to the extent that the expenditure relates to the delivery of those funded aged care services;
- (d) expenditure that is directly connected to expenditure covered by paragraph (a), (b) or (c).

#### **310-15 Refundable deposits to be used only for permitted purposes—capital expenditure debt**

For the purposes of paragraph 310(2)(e) of the Act, the kinds of capital expenditure are the kinds referred to in section 310-5.

#### **310-20 Refundable deposits to be used only for permitted purposes—other**

For the purposes of paragraph 310(2)(f) of the Act, the registered provider may use an individual's refundable deposit for the following purposes:

- (a) to meet reasonable business losses that are incurred in the course of delivering funded aged care services within the period of 12 months after the day the registered provider begins to deliver funded aged care services to the individual through the service group residential care;
- (b) to invest in a fund, but not a controlling entity of a fund, listed in item 2 of the first Schedule to *Banking exemption No. 1 of 2021* made under the *Banking Act 1959*.

## CONSULTATION DRAFT

Funding of aged care services—accommodation payments and accommodation contributions **Chapter 9**  
Accommodation payments and accommodation contributions **Part 3**  
Refundable deposits **Division 7**

Section 310-30

### **310-30 Refundable deposits to be used only for permitted purposes—financial product**

For the purposes of paragraph 310(3)(e) of the Act, each of the following financial products is prescribed:

- (a) an interest in a scheme established for the purpose of investment in the delivery of funded aged care services through the service group residential care in an approved residential care home that:
  - (i) is a managed investment scheme within the meaning of the *Corporations Act 2001*; and
  - (ii) is not a registered scheme within the meaning of the *Corporations Act 2001*;
- (b) a legal or equitable right or interest in an interest covered by paragraph (a);
- (c) an option to acquire, by way of issue, an interest or right covered by paragraph (a) or (b).

Note: A registered provider may use a refundable deposit to invest in a financial product specified in this section (see paragraphs 310(2)(b) and (3)(e) of the Act).

### **311-15 Refund of refundable deposit balances—death of individual—circumstances and period**

For the purposes of paragraph 311(3)(b) of the Act:

- (a) the circumstances are that:
  - (i) the registered provider is not shown the probate of the will of the individual or letters of administration of the estate of the individual; and
  - (ii) the registered provider is shown other evidence that satisfies the provider that the refundable deposit balance is to be refunded to a person; and
- (b) the period is 14 days after the day the evidence mentioned in subparagraph (a)(ii) is shown to the provider.

### **311-20 Refund of refundable deposit balances—registered provider ceases services and has not transferred refundable deposit balance—circumstances and period**

- (1) For the purposes of paragraph (b) of the column headed “the refundable deposit balance must be refunded...” in item 4 of the table in subsection 311(4) of the Act, this section prescribes:
  - (a) the circumstances in which a registered provider must refund a refundable deposit balance; and
  - (b) the period within which the refundable deposit balance must be refunded.
- (2) If:
  - (a) the individual has agreed with the registered provider as mentioned in subsection (3); and

## CONSULTATION DRAFT

**Chapter 9** Funding of aged care services—accommodation payments and accommodation contributions

**Part 3** Accommodation payments and accommodation contributions

**Division 7** Refundable deposits

### Section 312-5

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- (b) the individual has notified the registered provider, in writing, that they wish to cease that agreement;  
the registered provider must refund the refundable deposit balance within 14 days after the day on which the individual has notified the provider as mentioned in paragraph (b).
- (3) The agreement is an agreement between the individual and the registered provider to delay refunding the refundable deposit balance on condition that, if the individual requests re-entry to the approved residential care home, the registered provider must allow entry to the individual if:
  - (a) a room, or part of a room, is vacant in the approved residential care home; and
  - (b) the individual has an access approval in effect that includes the classification type ongoing for the service group residential care.

#### **312-5 Transfer of refundable deposit balance to another registered provider—requirements**

- (1) For the purposes of subsection 312(2) of the Act, this section prescribes requirements for the transfer of the individual's refundable deposit balance between the outgoing provider and the incoming provider referred to in subsection 312(1) of the Act.
- (2) The refundable deposit balance must not be transferred to the incoming provider if:
  - (a) the incoming provider delivers ongoing funded aged care services through the service group residential care only under one or more specialist aged care programs; or
  - (b) the registered provider does not deliver any ongoing funded aged care services through the service group residential care.

**Note:** This means the refundable deposit balance is not required to be transferred under section 312 of the Act in these circumstances and instead must be refunded in accordance with section 311 of the Act: see subparagraph 311(1)(b)(ii) of the Act.

- (3) The outgoing provider must, by written notice, give the following information to the incoming provider in relation to the individual's refundable deposit balance:
  - (a) the transfer day (which must be a day that is more than 14 days after the day the notice is given);
  - (b) the refundable accommodation deposit amount and the day it was paid by the individual to the outgoing provider (or another registered provider);
  - (c) any top up amounts (as mentioned in paragraphs 294(2)(g) and (h) and 294(3)(f) and (i) of the Act) that were paid by the individual to the outgoing provider (or another registered provider) on or before the transfer day and the day each such top up amount was paid;
  - (d) if the refundable deposit balance has been previously transferred—the amount of the refundable deposit balance on the transfer day for each such transfer;

## CONSULTATION DRAFT

## CONSULTATION DRAFT

Funding of aged care services—accommodation payments and accommodation contributions **Chapter 9**  
Accommodation payments and accommodation contributions **Part 3**  
Refundable deposits **Division 7**

### Section 313-5

- (e) any amount of interest payable on or before the transfer day under section 313-5 in relation to the refundable deposit balance and the amount of that interest;
  - (f) any amounts deducted under section 308 of the Act on or before the transfer day by the outgoing provider (or another registered provider) and the day the most recent amount was deducted;
  - (g) any retention amounts deducted from an accommodation bond balance on or before the transfer day that have been taken to be applied in relation to the refundable deposit balance.
- (4) The outgoing provider must give written notice to an individual of the proposed transfer of the individual's refundable deposit which includes:
- (a) details of the incoming provider; and
  - (b) the transfer day referred to in paragraph (3)(a).
- (5) A notice under subsection (4) must be given at least 14 days before the transfer day.
- (6) The outgoing provider must transfer a refundable deposit balance on the transfer day for the refundable deposit balance referred to in paragraph (3)(a).

#### 313-5 Payment of interest—refundable deposit balances

For the purposes of subsection 313(1) of the Act, a registered provider must pay an amount of interest relating to a refund of a refundable deposit balance, worked out in accordance with section 313-10, to an individual on the day on which the registered provider refunds the refundable deposit balance to the individual if the registered provider is required under section 311 of the Act to refund the refundable deposit balance to the individual.

#### 313-10 Working out of amount of interest on refundable deposit balance

*Amount of base interest—balance refunded on or before last day of refund period*

- (1) If a registered provider refunds a refundable deposit balance on or before the last day of the refund period, the amount of base interest on the refundable deposit balance is the amount worked out in accordance with the following formula:

$$\frac{BIR \times RDB \times ND}{365}$$

where:

**BIR** is the base interest rate, calculated on the first day of the refund period.

**ND** is the number of days in the period beginning on the day after the day on which the refunding event occurred and ending on the day on which the refundable deposit balance is refunded.

**RDB** is the amount of the refundable deposit balance.

## CONSULTATION DRAFT

## CONSULTATION DRAFT

**Chapter 9** Funding of aged care services—accommodation payments and accommodation contributions

**Part 3** Accommodation payments and accommodation contributions

**Division 7** Refundable deposits

### Section 313-15

**Note:** Subsection (1) does not apply in the situation described in item 1 of the table in subsection 311(4) of the Act because column 2 of item 1 does not specify a refund period.

*Amount of base interest plus maximum permissible interest—balance refunded after last day of refund period*

- (2) If a registered provider refunds a refundable deposit balance after the last day of the refund period, or after the day referred to in column 2 of item 1 of the table in subsection 311(4) of the Act, the amount of interest on the refundable deposit balance is the amount worked out in accordance with the following formula:

$$\left( \frac{BIR \times RDB \times ND(RP)}{365} \right) + \left( \frac{MPIR \times RDB \times ND(PP)}{365} \right)$$

where:

**BIR** is the base interest rate, calculated on the first day of the refund period.

**MPIR** is the maximum permissible interest rate for:

- (a) if item 1 of the table in subsection 311(4) of the Act applies—the day after the day referred to in column 2 of item 1 of that table; or
- (b) if item 2, 3 or 4 of the table in subsection 311(4) of the Act applies—the day after the last day in the refund period.

**ND(PP)** is the number of days in the period:

- (a) beginning on:
  - (i) if item 1 of the table in subsection 311(4) of the Act applies—the day after the day in column 2 of item 1 of that table; or
  - (ii) if item 2, 3 or 4 of the table in subsection 311(4) of the Act applies—the day after the last day of the refund period; and
- (b) ending on the day on which the refundable deposit balance is refunded.

**ND(RP)** is equal to:

- (a) if item 1 of the table in subsection 311(4) of the Act applies—zero; or
- (b) if item 2, 3 or 4 of the table in subsection 311(4) of the Act applies—the number of days in the period beginning on the day after the day on which the refunding event occurred and ending on the last day of the refund period.

**RDB** is the amount of the refundable deposit balance.

### 313-15 Refund of refundable deposit balances

- (1) This section prescribes requirements that apply to registered providers in relation to:
- (a) the refund of an overpaid amount of accommodation payment or accommodation contribution; and
  - (b) the refund of a refundable deposit balance.

## CONSULTATION DRAFT

Funding of aged care services—accommodation payments and accommodation contributions **Chapter 9**  
Accommodation payments and accommodation contributions **Part 3**  
Refundable deposits **Division 7**

### Section 313-15

#### *Overpaid amount of accommodation payment or accommodation contribution*

- (2) This section applies if an individual to whom funded aged care services are, or were, being delivered through the service group residential care in an approved residential care home has paid a higher amount of accommodation payment or accommodation contribution than was properly payable.
- (3) If an individual has paid a higher amount of accommodation payment or accommodation contribution than was properly payable, the registered provider of the approved residential care home must refund to the individual the difference (the **overpaid amount**) between the amount of accommodation payment or accommodation contribution that was properly payable and the amount of accommodation payment or accommodation contribution that was paid.
- (4) The individual may request the registered provider, in writing, to refund the overpaid amount to the individual.
- (5) If the registered provider does not refund the overpaid amount to the individual within 28 days after the earlier of:
  - (a) the day the registered provider becomes aware of the overpaid amount; and
  - (b) if the individual makes a request under subsection (4)—the day the registered provider receives the request;the registered provider must pay an amount of interest relating to the overpaid amount, worked out in accordance with the following formula:

$$\frac{\text{MPIR} \times \text{OA} \times \text{ND(PP)}}{365}$$

where:

**MPIR** is the maximum permissible interest rate for the day that is 28 days after the day referred to in paragraph (a) or (b) (as the case requires) of this subsection.

**ND(PP)** is the number of days in the period:

- (a) beginning on the day that is 28 days after the day referred to in paragraph (a) or (b) (as the case requires) of this subsection; and
- (b) ending on the day on which the overpaid amount is refunded.

**OA** is the overpaid amount.

## CONSULTATION DRAFT

# CONSULTATION DRAFT

**Chapter 13** Information management

**Part 1** Introduction

Section 534-5

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## **Chapter 13—Information management**

### **Part 1—Introduction**

**534-5** Simplified outline of this Chapter

[To be drafted.]
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# CONSULTATION DRAFT

Information management **Chapter 13**  
Record-keeping **Part 2**

Section 543-5

## Part 2—Record-keeping

### 543-5 Retention of records by former registered provider

For the purposes of paragraph 543(1)(a) of the Act, every kind of registered provider is prescribed.

# CONSULTATION DRAFT

## CONSULTATION DRAFT

**Chapter 13** Information management

**Part 3** Information sharing [to be drafted]

Section 543-5

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**Part 3—Information sharing [to be drafted]**

CONSULTATION DRAFT