



AUSTRALIAN
SENATE

**Senate Standing Committee for the
Scrutiny of Delegated Legislation**

Parliament House, Canberra ACT 2600
02 6277 3066 | sdlc.sen@aph.gov.au
www.aph.gov.au/senate_sdlc

13 February 2020

Senator the Hon Richard Colbeck
Minister for Aged Care and Senior Australians
Parliament House
CANBERRA ACT 2600

Via email: Minister.Colbeck.DLO@health.gov.au

CC: parliamentary.committees@health.gov.au

Dear Minister,

**Aged Care Quality and Safety Commission Amendment (Integration of Functions)
Rules 2019 [F2019L01684]**

The Senate Standing Committee for the Scrutiny of Delegated Legislation (the committee) assesses all legislative instruments subject to disallowance, disapproval or affirmative resolution by the Senate against the scrutiny principles outlined in Senate standing order 23. The committee has identified scrutiny concerns in relation to the above instrument, and the committee seeks your advice about this matter.

Scope of administrative powers

Senate standing order 23(3)(c) requires the committee to scrutinise each instrument as to whether it makes rights, liberties, obligations or interests unduly dependent on insufficiently defined administrative powers.

New subsection 53A(1) of the Aged Care Quality and Safety Commission Rules 2018, inserted by item 35 of Schedule 1 to the instrument, provides that the Aged Care Commissioner (the commissioner) may appoint one or more individuals as 'quality assessors' to form a quality assessment team to conduct a quality audit of a home service. Division 3 of Part 8 of the *Aged Care Quality and Safety Commission Act 2018* (Aged Care Commission Act) provides for the conferral of search and entry powers on 'quality assessors'.

Where an instrument provides for the appointment of a person or class of persons to a position in which they may be empowered to exercise search and entry powers, the committee expects those persons to possess the appropriate qualifications or experience necessary to exercise those powers. In this regard, while subsection 53A(2) prohibits the

commissioner from appointing a quality assessor with a conflict of interest in the assessment, the instrument does not appear to require quality assessors to possess any particular qualifications, expertise or experience.

The committee requests your advice as to whether individuals appointed as 'quality assessors' under subsection 53A(1) of the instrument are required to possess any particular qualifications, expertise or experience, noting that the Aged Care Commission Act empowers assessors to exercise search and entry powers for regulatory purposes.

The committee's expectation is to receive a response in time for it to consider and report on the instrument while it is still subject to disallowance. If the committee has not concluded its consideration of an instrument before the expiry of the 15th sitting day after the instrument has been tabled in the Senate, the committee may give notice of a motion to disallow the instrument as a precautionary measure to allow additional time for the committee to consider information received.

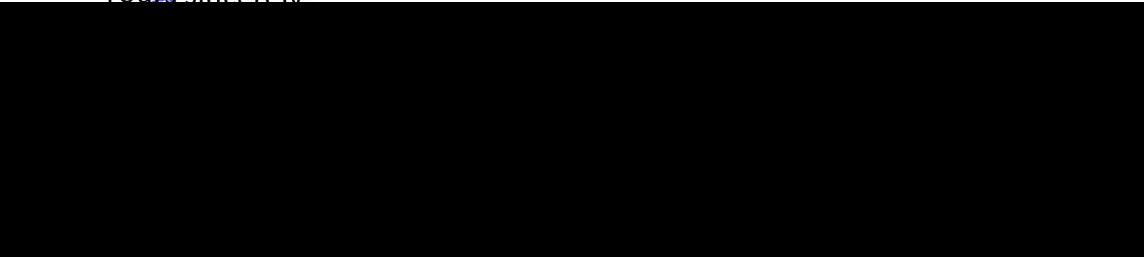
Noting this, and to facilitate the committee's consideration of the matters above, the committee would appreciate your response by **27 February 2020**.

Finally, please note that, in the interests of transparency, this correspondence and your response will be published on the committee's website.

If you have any questions or concerns, please contact the committee's secretariat on (02) 6277 3066, or by email to sdlc.sen@aph.gov.au.

Thank you for your assistance with this matter.

Yours sincerely



Senator the Hon Concetta Fierravanti-Wells
Chair
Senate Standing Committee for the Scrutiny of Delegated Legislation



SENATOR THE HON RICHARD COLBECK

Minister for Aged Care and Senior Australians

Minister for Youth and Sport

Ref No: MC20-002495

Senator the Hon Concetta Fierravanti-Wells
Chair
Senate Standing Committee for the Scrutiny of Delegated Legislation
Parliament House
CANBERRA ACT 2600

28 FEB 2020

Dear Senator *Concetta*,

Thank you for your correspondence of 13 February 2020 concerning an issue from the Committee's assessment of the *Aged Care Quality and Safety Commission Amendment (Integration of Functions) Rules 2019* (amending instrument), against the scrutiny principle outlined in Senate Standing Order 23(3)(c). The amending instrument amends the *Aged Care Quality and Safety Commission Rules 2018* (Commission Rules).

The Committee seeks my advice in relation to 'whether individuals appointed as 'quality assessors' under subsection 53A(1) of the instrument [sic] are required to possess any particular qualifications, expertise or experience'. The Committee states that where an instrument provides for the appointment of a person or class of persons to a position in which they may be empowered to exercise search and entry powers, the Committee expects those persons to possess the appropriate qualifications or experience necessary to exercise those powers.

Division 3 of Part 8 of the *Aged Care Quality and Safety Commission Act 2018* (Commission Act) relevantly empowers a quality assessor, as a regulatory official, to exercise search and entry powers (with consent) for regulatory purposes, including purposes relating to a quality review of an aged care service or a Commonwealth funded aged care service. New paragraph 53A(1)(a) of the Commission Rules provides that 'the Commissioner must appoint one or more quality assessors to form an assessment team to conduct a quality audit of a home service.'

While the amending instrument inserts new paragraph 53A(1)(a) to provide for the appointment of an assessment team (consistent with the conduct of site audits under Part 2 of the Commission Rules), the amending instrument does not provide for the appointment of a quality assessor itself or equivalent arrangements. These matters are dealt with under the existing Commission Rules and not the amending instrument.

Part 6 of the pre-existing Commission Rules establish arrangements for the registration of quality assessors (Section 7 of the Commission Act defines a quality assessor as a person who is registered as a quality assessor under the rules). A person may apply to be registered as a quality assessor under subsection 89(1), or registered as a quality assessor for a further period under subsection 91(1). The Commissioner must not accept an application that does not comply with the requirements for either application as set out under subsections 89(2) or 91(2).

The Commissioner must register an applicant as a quality assessor for a period of one year or for a further period of one year, if the Commissioner is satisfied of certain matters listed under subsection 90(1) or subsection 92(1).

Relevantly, subsection 90(1) of the Commission Rules requires the Commissioner to register a person as a quality assessor for a period of one year, if the Commissioner is (among other matters) satisfied that:

- The applicant has successfully completed any relevant course specified by the Commissioner (with the Quality Assessor Training Program currently specified by the Commissioner) under paragraph 90(1)(a).
- If the applicant was previously registered as a quality assessor—the applicant's performance of the functions, and exercise of the powers, as a quality assessor was satisfactory under paragraph 90(1)(e).
- The applicant meets any other requirements specified by the Commissioner, including for example compliance with the *POL-ACC-0040 Conflict of Interest: Quality Assessor Policy* and the applicant not having any current parallel engagement with the aged care or health care industry.

Subsection 92(1) of the Commission Rules requires the Commissioner to register a person as a quality assessor for a further period of one year, if the Commissioner is (among other matters) satisfied that:

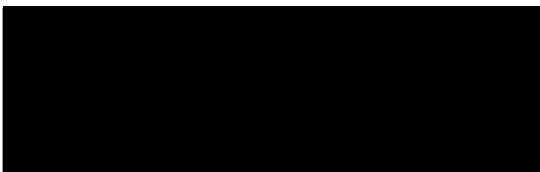
- The applicant has complied with the obligations set out in a notice given to the applicant in accordance with paragraph 92(1)(a), which for example includes compliance with the Quality Assessor Code of Conduct.
- The applicant has completed mandatory training required by the Commissioner and not less than 15 hours of professional development approved by the Commissioner during the applicant's current period of registration under paragraph 92(1)(b).
- The applicant's performance of the functions, and exercise of the powers, as a quality assessor has been satisfactory under paragraph 92(1)(c).

The Commissioner must also refuse to register an applicant as a quality assessor for a period of one year or for a further period of one year if the Commissioner is not satisfied of the requirements under subsection 90(1) or 92(1) of the Commission Rules.

I trust the above will assist the Committee in its consideration of the amending instrument.

Thank you for raising this matter.

Yours sincerely

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Richard Colbeck



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Scrutiny of Delegated Legislation**

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3 April 2020

Senator the Hon Richard Colbeck
Minister for Aged Care and Senior Australians
Parliament House
CANBERRA ACT 2600

Via email: Minister.Colbeck.DLO@health.gov.au

CC: parliamentary.committees@health.gov.au

Dear Minister,

**Aged Care Quality and Safety Commission Amendment (Integration of Functions) Rules
2019 [F2019L01684]**

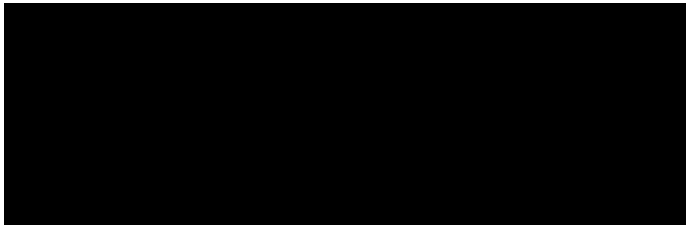
Thank you for your response of 28 February 2020 to the Senate Standing Committee for the Scrutiny of Delegated Legislation, in relation to the above instrument.

The committee considered your response at its private meeting on 1 April 2020. On the basis of your advice, the committee has concluded its examination of the instrument.

In the interests of transparency, I note that this correspondence will be published on the committee's website and recorded in the *Delegated Legislation Monitor*.

Thank you for your assistance with this matter.

Yours sincerely,



Senator the Hon Concetta Fierravanti-Wells
Chair
Senate Standing Committee for the Scrutiny of Delegated Legislation