



Aged care reforms

– a regulatory perspective

October 2022

This fact sheet provides an overview of key aged care reforms from a regulatory perspective to assist you in preparing your service to meet new obligations.

The Australian Government is introducing a range of practical measures to improve accountability and transparency in the aged care sector. The new [Aged Care and Other Legislation Amendment \(Royal Commission Response\) Act 2022](#) establishes new requirements for aged care providers through 9 measures that respond to the Royal Commission into Aged Care Quality and Safety.

Four of these measures directly relate to the regulation of aged care:

- expanding the Serious Incident Response Scheme (SIRS) into home services
- introducing a Code of Conduct for aged care providers, workers and governing persons
- strengthening provider governance
- ensuring consent to the use of restrictive practices.

Further details of the measures will become available through the government's release of subordinate legislation exposure drafts.

The Commission is hosting a series of webinars throughout September and October to provide further detail on the regulatory aspects. Details are available at www.agedcarequality.gov.au/news-centre/national-aged-care-reforms.

SIRS in home services and flexible care

From **1 December 2022** home services providers will need to notify the Aged Care Quality and Safety Commission when reportable incidents occur as part of the Serious Incident Response Scheme (SIRS). Notifications must be made using the SIRS tile on the My Aged Care Service Provider Portal.

Home services providers include providers of Home Care Packages, Commonwealth Home Support Programme services and flexible care services through

which short-term restorative care is provided in a home care setting.

Home services providers have a responsibility to ensure that their staff and subcontractors are aware of their duties around the notification of incidents.

Providers should **review their Incident Management System (IMS) ahead of 1 December 2022** to ensure that it will continue to support them to improve the management and prevention of incidents.

The Commission's resources, '[Effective incident management systems: Best practice guidance](#)' and fact sheet, '[What is an effective incident management system](#)' offer practical information to help providers embed a best-practice IMS within their service.

Introductory online learning modules including 'Elements of Effective Incident Management Systems' are also available within the Aged Care Learning Information Solution – Alis (www.agedcarequality.gov.au/online-learning).

An exposure draft of the subordinate legislation is being developed by the Department of Health and Aged Care.

Code of Conduct

From **1 December 2022**, a national code of conduct will be introduced in approved aged care services to improve safety and wellbeing for consumers and to boost trust in services.

The Code will set out standards of expected behaviours and applies to:

- approved aged care providers
- their governing persons (e.g. board members and Chief Executive Officers)
- aged care workers who are:
 - employed or otherwise engaged (including on a voluntary basis) by the provider
 - employed or otherwise engaged (including on a voluntary basis) by a contractor or subcontractor of the provider to provide care or other services to consumers.

The Code will apply to approved providers of residential, home and flexible care. Flexible care includes the Transition Care Program, Multi-Purpose Services Program and Short-Term Restorative Care Program.

The Code will not apply to providers or workers operating under Commonwealth Home Support Programme and National Aboriginal and Torres Strait Islander Flexible Aged Care Program service delivery.

Approved providers will have a responsibility to take reasonable steps to ensure that their workers and governing persons comply with the Code.

The new Code is based on the National Disability Insurance Scheme (NDIS) Code of Conduct.

You can read the Code on page 8 of the [exposure draft](#) of the Aged Care Quality and Safety Commission Amendment (Code of Conduct and Banning Orders) Rules 2022. The Department of Health and Aged Care is starting a [public consultation on the Code exposure draft](#) on 4 October.

Strengthening of provider governance requirements

From **1 December 2022**, provider governance requirements will be strengthened.

Implementation of new provider governance requirements will occur at different times depending on whether a provider was approved before or after 1 December 2022.

From **1 December 2022**, **all approved providers** will be required to:

- meet reporting requirements for material changes
- assess the suitability of their key personnel at least once a year
- report annually on their operations.

From **1 December 2022**, **all newly approved providers** will be required to:

- ensure their governing body has a majority of independent non-executive members with the skills and experience to deliver safe and high-quality care, and that at least one member has experience in providing clinical care
- establish and continue a quality advisory body
- offer consumers and their representatives the opportunity to establish one or more consumer advisory bodies (every 12 months).

Providers approved prior to 1 December 2022 will have until **1 December 2023** to meet these requirements.

The Commission is delivering the Governing for Reform in Aged Care Program for Board members and Chief Executives of providers to support them in ensuring that they are operating with best-practice governance. Details of the program can be found at [Governing for Reform in Aged Care](#).

Restrictive practices

The new statutory provision will strengthen protections for care recipients from abuse associated with the unregulated use of restrictive practices and reduce the risk of unwarranted use of restrictive practices.

If the care recipient lacks capacity, informed consent must be sought from and given by the “restrictive practices substitute decision-maker” before the restrictive practice can be used.

The [Exposure Draft Quality of Care Amendment \(Restrictive Practices\) Principles 2022](#) changes the Quality of Care Principles 2014 to set out a hierarchy of persons or bodies authorised to give informed consent for a residential aged care consumer.

This hierarchy only applies if the consumer cannot make an informed consent decision.

This change addresses the gap in some states, where laws do not currently allow another person or body to give informed consent to the use of restrictive practices on behalf of the consumer.

This exposure draft is now available for review. Providers are encouraged to provide feedback to agedcareprotections@health.gov.au.

Until the proposed amendments are registered in Parliament, the current regulatory framework regarding use of restrictive practices including provision of consent remains.





Information and a suite of guidance documents, including scenarios and a regulatory bulletin, on minimising the use of restrictive practices under our current regulatory framework is available on the ‘Minimising the use of restrictive practices webpage’ on the Commission’s restrictive practices’ page (www.agedcarequality.gov.au/minimising-restrictive-practices).

Further information

- For further information relating to exposure drafts of legislation, visit the Department of Health and Aged Care [website](#).
- For further information relating to regulatory support and guidance available, refer to the Commission’s [website](#).

Aged care reforms

The table below provides an overview of the service types that will be subject to each of the 4 reforms under the [Aged Care and Other Legislation Amendment \(Royal Commission Response\) Act 2022](#) that are directly relevant to the regulation of aged care.

Reforms from a regulatory perspective	Code of Conduct 	Strengthened Governance 	SIRS in home services 	Restrictive Practices consent provisions 
Residential aged care	✓	✓		✓
Short-term Restorative Care – Residential	✓	✓		
HCP	✓	✓	✓	
Short-term Restorative care – Home Care	✓	✓	✓	
CHSP			✓	
NATSIFACP			✓	
Transition Care	✓	✓	✓	
MPS	✓	✓	✓	
Explanatory Notes	<p>The Code of Conduct responsibilities under the Aged Care Act 1997 will not apply to service providers of CHSP and NATSIFACP or their workforce from 1 December 2022. This is because the responsibilities under the Aged Care Act apply to approved providers. CHSP and NATSIFACP service providers are not approved providers under the Aged Care Act.</p> <p>It is expected that similar provisions will be extended to all Commonwealth-funded aged care services as part of the planned introduction of a new aged care Act.</p> <p>CHSP and NATSIFACP will be considered as part of the Support at Home Reforms.</p> <p>This reform does not apply to approved providers that are Aboriginal Community Controlled Health Organisations or state/territory or local government authorities (which may be some MPS services).</p> <p>The Serious Incident Response Scheme is already in place for residential care services and settings.</p> <p>Applies to residential aged care only.</p>			

HCP: Home Care Package

CHSP: Commonwealth Home Support Programme

NATSIFACP: National Aboriginal and Torres Strait Islander Flexible Aged Care Program

MPS: Multi-Purpose Services



Phone
1800 951 822



Web
agedcarequality.gov.au



Write
Aged Care Quality and Safety Commission
GPO Box 9819, In Your Capital City