



# Aged care reforms

## – a regulatory perspective

November 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.

The Commission hosted a series of webinars to provide further detail on the regulatory aspects. The webinar recordings and detailed questions and answers are available at [agedcarequality.gov.au/reforms](https://agedcarequality.gov.au/reforms).

### SIRS in home services

From **1 December 2022** home services providers 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 Notice tile on the My Aged Care Service Provider Portal.

This includes providers of Home Care Package, Short-Term Restorative Care at home, Commonwealth Home Support Programme (CHSP), National Aboriginal and Torres Strait Islander Flexible Aged Care (NATSIFAC), Multi-Purpose Services Program and Transition Care Program services.

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

Commonwealth-subsidised providers of aged care must have an effective incident management system (IMS) in place. Providers must use their IMS to continuously improve their 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 about incident management systems and the SIRS are also available within the [Aged Care Learning Information Solution – Alis](#).

## Code of Conduct for Aged Care

From 1 December 2022, the Code of Conduct for Aged Care will improve safety and wellbeing for consumers and boost trust in services.

The Code sets out standards of expected behaviours and applies equally 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 and detailed guidance for providers, workers and governing persons, and consumers on the Commission's [website](#).

## Strengthening of provider governance requirements

From **1 December 2022**, provider governance requirements have been strengthened for approved providers. This includes providers of residential aged care, home care packages, short-term restorative care both at home and in residential aged care settings, multi-purpose services and transition care.

Existing approved providers are required to:

- assess the suitability of their key personnel at least once a year

- notify the Commission of changes that materially impact the provider's suitability, and any changes to key personnel, within **14 days** of the change
- provide annual information on their operations to the Department of Health and Aged Care.

Existing providers should also commence planning to meet their obligations commencing **1 December 2023**:

- ensuring their governing body is made up of a majority of independent non-executive members that have the mix of skills and experience to deliver safe and high-quality care, and that at least one member has experience in providing clinical care
- setting up and continuing a quality care advisory body
- offering, at least annually, to set up one or more consumer advisory bodies
- requiring the governing body to ensure staff members have the appropriate qualifications, skills or experience to provide relevant care and services and are given opportunities to develop their capability to provide those services.

There are also responsibilities that apply to certain providers and key personnel:

- for certain providers that are a wholly-owned subsidiary of another body corporate that is not an approved provider – the provider must ensure that their constitution does not authorise a director of the provider to act in good faith in the best interests of the holding company
- for key personnel of providers which are corporations – these key personnel must notify the provider if their circumstances related to the 'suitability matters' under the legislation change.

Providers approved after 1 December 2022 are required to meet all the new requirements from the **date they are approved**.

For organisations that applied for approved provider status before 1 December 2022, and where a decision on the application is still pending, the new governing and advisory body responsibilities will not apply until 1 December 2023.

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. The Department’s website provides additional context and information on the proposed amendments.

This hierarchy only applies if the consumer cannot make an informed consent decision, and a restrictive practices substitute decision-maker has not already been appointed on their behalf.

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.

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’ [page](#) on our website

## Further information

- For further information 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 <i>Aged Care Act 1997</i> will not apply to service providers of CHSP and NATSIFACP or their workforce from 1 December 2022. This is because the responsibilities under the <i>Aged Care Act</i> apply to approved providers. CHSP and NATSIFACP service providers are not approved providers under the <i>Aged Care Act</i>.</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>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



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