

Compliance and Enforcement Policy

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Australian Government
Aged Care Quality and Safety Commission

Engage
Empower
Safeguard

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1. Our approach to compliance and enforcement

1.1 Purpose of this policy

This policy explains the Aged Care Quality and Safety Commission's (Commission) principles and how we approach compliance and enforcement.

This policy includes:

- **What we expect of aged care providers** – which explains how we make sure the care older people receive from government-funded aged care services is of a high standard.
- **What we expect of aged care workers and governing persons** – which covers how we make sure individuals working in aged care deliver safe and respectful care. This includes information about the Code of Conduct for Aged Care (Code).
- **Applying our regulatory approach and principles** – explains how we encourage providers to keep improving and deliver high standards in aged care services.
- **How we monitor and manage non-compliance** – explains the processes we use to monitor and reduce non-compliance in aged care. This is specifically for monitoring how providers and workers comply with their obligations. We do this through our Supervision Model and integrated approach to aged care.
- **Compliance and enforcement actions** – describes the regulatory actions we can take to respond to non-compliance. This includes compliance notices, infringement notices and banning orders.
- **Transparency of our enforcement activities** – explains how we encourage the public to trust our work so that people can make informed decisions about aged care services.

Compliance and enforcement activities are the tools we use as part of our Supervision Model (see section 4.1). This model is the main way we regulate and engage with providers and individuals working in aged care.

This policy is for 4 main audiences:

- Older people and their supporters – older people receiving, or looking into, government-funded aged care services, their family and representatives, and the wider community.
- Approved providers of aged care – a provider is a person or organisation that we have approved to provide residential care, home or flexible care.

Some providers do not have to be approved under the aged care legislation because they are providing care under funding agreements with the Department of Health and Aged Care. This includes Commonwealth Home Support Programme (CHSP) providers and providers delivering care under the National Aboriginal and Torres

Strait Islander Flexible Aged Care (NATSIFAC) Program. These providers are regulated differently than approved providers covered in the terms of their funding agreement. However, they must comply with some aged care obligations and deliver high quality care and services to older people.

- Individuals working in aged care (workers) – this includes aged care workers and volunteers, contractors, governing persons and key personnel.
- Staff of the Commission – people who work at the Commission and regulate the aged care sector.

You can find definitions of key terms in the Commission's [Glossary](#).

1.2 Compliance and enforcement outcomes

We want aged care services to be high quality. We want to protect and improve the safety, health, wellbeing and quality of life of older people and protect them from harm. To achieve this, we use our functions under the *Aged Care Quality and Safety Commission Act 2018* (Commission Act). We take compliance and enforcement actions to make sure providers and workers understand and comply with all their obligations.



Compliance

The aim of our compliance activities is to encourage engage with and help providers and workers to understand their obligations and deliver best practice aged care services. Our compliance activities focus on providers and workers taking actions that will:

- remedy non-compliance
- restore trust in the care being delivered
- prevent the non-compliance from reoccurring.

We will tell providers and workers to fix low to medium risk non-compliance. We will also tell them to make changes to protect against further non-compliance. We can take formal compliance action where providers or workers don't respond quickly or appropriately to non-compliance or repeatedly fail to meet their obligations. If we need to, we can escalate these matters for an enforcement response.



Enforcement

The aim of our enforcement activities is to address and discourage serious non-compliance and harm. We hold providers and workers accountable if they refuse to meet or cannot meet their aged care obligations. Our enforcement actions mean there are consequences for not complying with aged care obligations. For example, imposing a penalty on a provider or worker. We will also consider enforcement action for not complying with a regulatory decision we have made.

2. How we regulate

2.1 Overview of the Commission

We are Australia's national aged care regulator. We are focused on safeguarding and protecting older people who receive aged care services. We protect the rights of older people and to make sure all older people who use aged care:

- are treated with dignity and respect
- can use their rights under the [Charter of Aged Care Rights](#).

We are responsible for:

- approving providers to deliver (Commonwealth-subsidised) aged care services
- engaging with and educating key stakeholders in the aged care sector about the Commission's functions
- resolving complaints about aged care services
- accrediting residential aged care services
- monitoring providers' compliance with the Aged Care Quality Standards and other obligations
- administering the Serious Incident Response Scheme
- regulating workers under the Code
- undertaking compliance and enforcement actions
- revoking approval of an organisation to deliver (Commonwealth-subsidised) aged care services.

2.2 Our regulatory approach

Our regulatory approach responds to the level of risk older people face. It focuses on preventing harm and acting quickly to address issues. Our approach recognises the rights of older people and protects and improves their safety, health, wellbeing and quality of life. Our approach combines:

- communicating with the aged care sector to make sure that everyone understands their obligations
- monitoring compliance with provider's and worker's aged care obligations and getting involved in the right way at the right time to get the best result for older people
- recognising providers and workers who are getting it right and exceeding standards in the care they provide.

This makes sure that providers and workers take responsibility for:

- meeting their aged care obligations
- managing the risks to older people in their care
- working openly with us
- improving themselves.

This encourages trust and creates an environment that allows workers and providers to keep improving the aged care they deliver. This improves the experience of people receiving aged care and places them at the centre of how we regulate the sector.

2.3 Legislation

We carry out our compliance and enforcement activities under the:

- *Aged Care Act 1997* (Aged Care Act)
- Commission Act
- *Aged Care Quality and Safety Commission Rules 2018* (Commission Rules)

These laws encourage transparency, accountability and improvement in aged care. They protect and improve the safety, health, wellbeing and quality of life of older people, and they support their rights. They make sure those providing aged care services comply with their obligations. They authorise us to take compliance and enforcement action when needed.

We also make sure that we comply with our obligations. We can also use powers in other laws including the:

- *Regulatory Powers (Standard Provisions) Act 2014* (Regulatory Powers Act)
- *Privacy Act 1988*, including the Australian Privacy Principles (Australian Privacy Principles)
- *Legal Services Directions 2017* (model litigant obligations).

3. What we expect from providers and workers

3.1 Providers

Aged care is delivered by a provider through a service. This can be a residential service, such as an aged care home or a home care service. Both providers and services are responsible for meeting aged care obligations. Providers are also accountable for meeting the obligations and hold the responsibility for managing the risk, so we focus on the providers.

We collect information on risks to people in aged care from a variety of sources. This includes monitoring, assessing performance, complaints, reporting, and the media. We collect this information on individual services and providers. This information helps us to

find non-compliant providers and decide the best way to intervene so a provider can manage the risks identified.

Our intervention is at the provider level, because their board members are responsible for protecting and safeguarding older people in their care and for making sure their services meet their aged care obligations. They are responsible for fixing the root causes of non-compliance and for making ongoing improvements that are sustainable for all services they operate.

We expect providers to:

- understand and comply with all of their aged care obligations. This makes sure they deliver quality services in a way that respects the rights and preferences of the people in their care.
- keep improving by:
 - having strong systems in place to regularly review their performance
 - identifying opportunities and making changes to improve how they deliver care
- remedy non-compliance, prevent non-compliance from re-occurring and restore trust in the care they are delivering
- provide **open disclosure**, this means they need to take responsibility if things go wrong by:
 - having open discussions with older people in their care
 - taking action to restore trust
 - taking steps to stop issues from happening again
- communicate with us about issues they are having. For example, providers should:
 - regularly update us on how they think they are complying
 - engage with us when we identify possible or actual non-compliance and take compliance and enforcement action
 - take part in Commission programs such as provider conferences to share learnings and best practice
 - ask for guidance from us when needed
- have effective governance and leadership with the right knowledge, skills, and understanding of their aged care obligations.

3.2 Workers, governing persons, and key personnel

We use the Code of Conduct and suitability to regulate workers, governing persons and key personnel. We will take action if we are concerned about their behaviour or suitability to be involved in aged care. If needed, we may limit or stop them being involved in the aged care sector.

The Code of Conduct describes how workers need to behave and treat people who are receiving aged care services. Under the Code of Conduct we expect everyone involved in providing aged care to:

- respect people's rights to express themselves, be independent and make decisions, in line with related laws and conventions
- treat people with dignity and respect and value their diversity
- respect people's privacy
- provide care, supports and services safely and with care and skill
- act with integrity, honesty and transparency
- raise and act on concerns that may affect the quality and safety of care, support and services
- provide care, supports and services free from all forms of violence, discrimination, exploitation, neglect, abuse and sexual misconduct
- prevent and respond to all forms of violence, discrimination, exploitation, neglect, abuse and sexual misconduct.

To decide whether a person is suitable to provide aged care we look at suitability matters including:

- their experience providing aged care
- banning orders under the National Disability Insurance Scheme
- criminal proceedings and convictions
- civil proceedings and court orders
- insolvency under administration and bankruptcy
- negative findings from federal and state departments and commissions
- fraud, misrepresentation or dishonesty in any administrative, civil or criminal proceedings
- disqualification from managing corporations
- other matters listed in the Commission Rules.

Key personnel also have an important role supporting the organisation and delivering safe and quality care and services. Key personnel are responsible for the executive decisions of the organisation or are responsible for nursing services or the day-to-day operations of a service. They have influence within the organisation. They need to be suitable and competent. They need to have the experience and skills to be able to lead the organisation.

Before appointing key personnel, providers need to consider their suitability based on the suitability matters. They also need to make a record of the decisions they make about a person's suitability.

Key personnel of providers that are corporations also legally have to tell providers if their circumstances have changed related to their suitability.

You can find more information about key personnel and suitability in our [Provider responsibilities relating to governance guide](#).

4. Applying our regulatory approach and principles

We want to maximise the impact of our regulatory activities as shown in our core regulatory objectives:

- protect and enhance the safety, health, wellbeing and quality of life of older people
- promote older persons' confidence and trust in aged care services
- protect the rights and dignity of older people receiving aged care services
- make sure aged care services meet the Quality Standards
- encourage providers to keep improving, innovate, and deliver high-standard aged care
- encourage providers to engage and work with older people in their care.

Our regulatory approach is fair, balanced and effective. We use the right regulatory tools at the right time to achieve the best outcomes for older people. We are transparent about our activities. We regulate providers and workers in a risk-based, balanced and fair way that responds to the level of risk faced by older people. We also monitor how effective we are by reviewing outcomes for the quality of care received by older people.

4.1 Aged care regulatory diamond

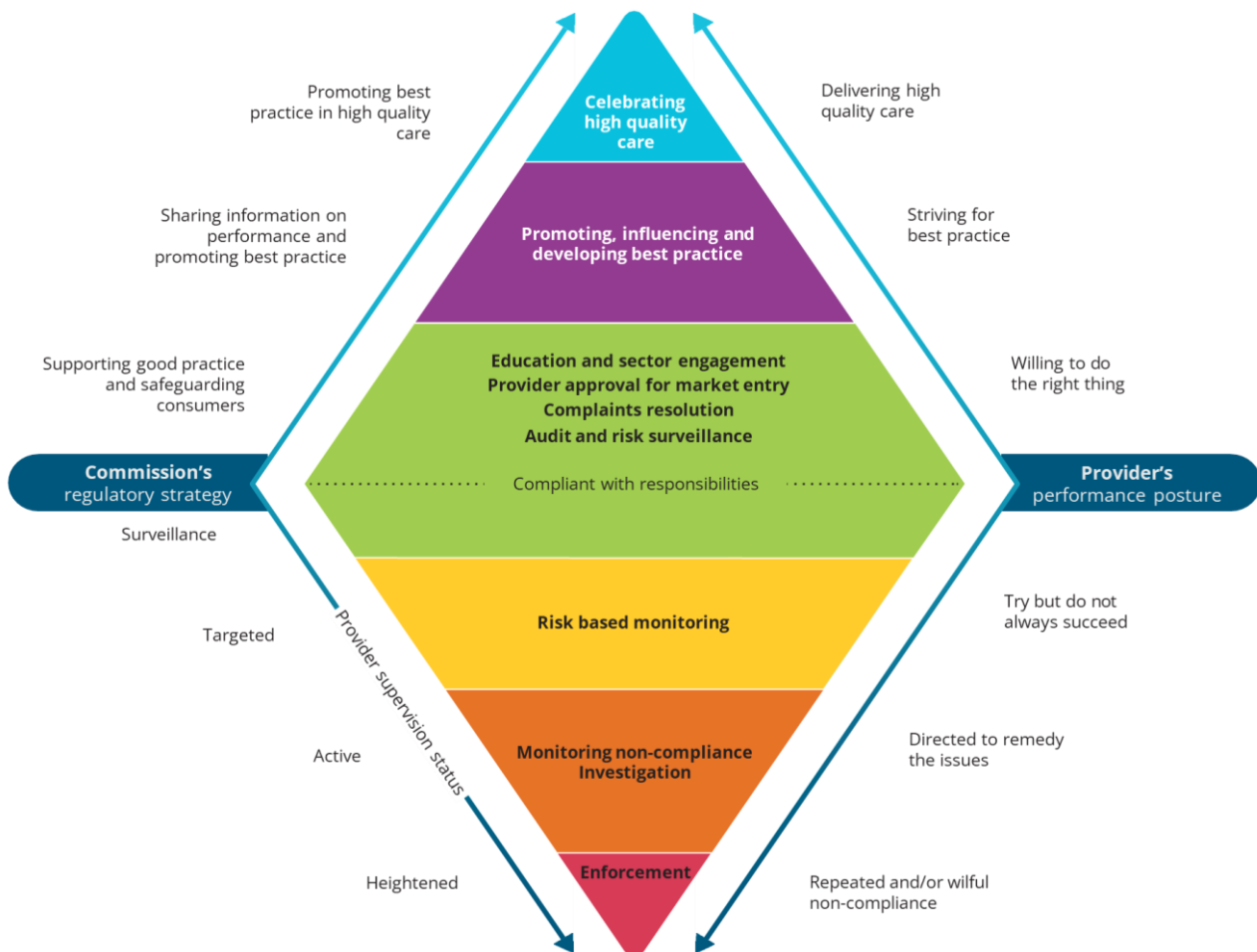


Figure 2: Our aged care regulatory diamond

We want providers to deliver the best possible care for older people.

- The top half of the diamond shows methods that encourage providers to perform above minimum standards and use best practice. We publish information about best practice and performance data to encourage providers to deliver high-quality care.
- The centre of the diamond shows the minimum standards of behaviour we expect from providers and workers providing aged care. A key focus of our regulatory approach is that prevention is better than cure. We provide communications, guidance and education to improve the skills and knowledge of providers and the aged care sector. We also protect older people by:
 - regulating providers when they enter the market
 - doing regular audits
 - supporting them to resolve complaints.

- The bottom half of the diamond explains the methods we use to make sure providers are complying with their obligations. We base our regulatory response to non-compliance on the level of risk to older people and a provider’s ability and willingness to manage that risk.

4.2 Our regulatory principles

Our regulatory principles explain how we make sure that our regulatory approach is fair, balanced and effective. We support these regulatory principles with good regulatory practice. The principles are focused on protecting the rights and safety of older people receiving aged care services.



Figure 3: The key regulatory principles that explain our regulatory approach

5. How we monitor and manage non-compliance

We supervise the aged care sector through risk surveillance activities. These support us to regulate providers, workers and governing persons. We use different sources of information from across the aged care sector to base our strategic priorities on and respond to risks to older people.

Our regulatory activities can include:

- monitoring activities

- audits
- requesting information
- investigations.

We use the information we collect to build a full understanding of the situation or issue before we make a decision or take action.

We analyse and use this information to stop issues from happening where we can. For further information, see the [Regulatory Strategy](#).

5.1 Requests for information and compulsory information gathering powers

We can ask providers, workers other people to provide information or documents about their compliance with their aged care obligations. This can include details about:

- self-assessments
- financial reports
- statements
- aged care qualifications
- evidence of completed training modules
- policies and procedures
- what a provider or worker has done to fix an issue.

We may send a formal written notice asking the provider or worker to give us specific information or documents. We may also ask a provider or worker to attend a particular place at a particular time, to answer questions about an issue.

5.2 Reporting obligations

Providers have obligations under the Aged Care Act and related Principles to accurately report information to us, including:

- statements on financial and prudential issues
- information about quality of care obligations, for example 24/7 registered nurse requirements
- reportable incidents under the Serious Incident Response Scheme
- a change to a provider's circumstances that affect their suitability to provide aged care
- changes or events related to key personnel or their suitability.

We have legislative powers to ask for further information if we are concerned about the accuracy of any information that you have provided to us.

5.3 Regulatory powers

Under the Regulatory Powers Act (as triggered by the Commission Act), we have information and evidence gathering powers.

- **Monitoring powers:** we use these to decide whether providers and workers are complying with an aged care obligation, and to monitor if the information they have given to us is correct.
- **Investigation powers:** we use these to investigate issues and gather evidence about non-compliance that may be a criminal offence or contravene a civil penalty provision.

When using monitoring or investigation powers we can, with consent or with a warrant:

- search the premises and anything on the premises
- examine or observe any activity at the premises
- inspect, examine, take measurements of or do tests on anything on the premises
- make any still or moving image or any recording of the premises or anything on the premises
- inspect any document on the premises
- take excerpts from, or make copies of, any of these documents
- take onto the premises equipment and materials that the authorised person needs to use these powers.

5.4 Supervision model

'Supervision' describes how we make sure our different regulatory functions work together to identify, assess and respond to risk to older people. The level of our supervision of providers increases as our concerns about the level of risk also increases. This helps us to respond to provider risks and hold them accountable for how they manage risk to older people.

Under our Supervision Model, we case manage and regulate providers that pose the greatest risk to older people. These higher risk providers sit at the active supervision and heightened supervision levels of the Supervision Model. The level of a provider's supervision will not automatically mean we will take compliance or enforcement action. However, we may use compliance or enforcement action to:

- get the provider to change their behaviour
- make sure they fix their non-compliance issues
- appropriately manage risk to older people.

Regulatory response tailored to risk

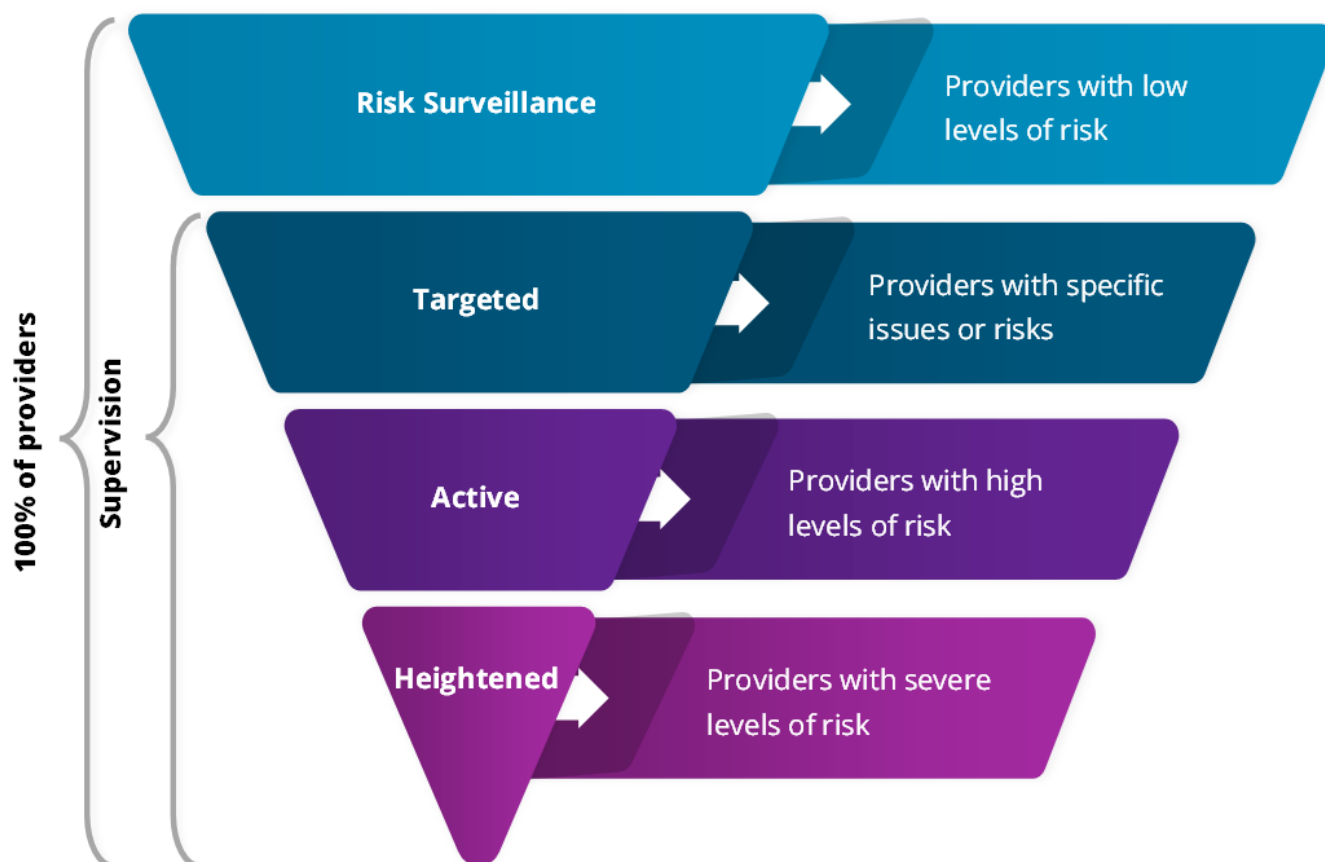


Figure 4: Illustration of each supervision status and level of risk

Active supervision

We will give providers an active supervision status when there is a high level of risk because:

- there is the possibility of harm to older people
- the provider is not able or willing to fix issues.

For these providers, our case management processes include assigning a case manager who regularly communicates with them to make sure they are fixing issues.

Heightened supervision

We will use heightened supervision status for a provider when there are very high levels of risk (including immediate and severe risk) to:

- the safety of older people
- continuity of care
- the public.

When this happens, we work with a range of organisations, including the department, to respond to these complex risks and protect the safety of older people. We also want to make sure they can still receive aged care services.

5.5 Decision making

To make good regulatory decisions we use best practice decision-making procedures. Our decisions follow administrative law principles. We properly consider all related factors before we make a compliance or enforcement decision.

This includes considering:

- the relevant intelligence and evidence
- the level and urgency of the risk to older people and actual or possible harm
- assurance in the provider's or worker's ability and how they responded to the non-compliance, including how willing they are to manage risk and fix non-compliance issues
- a provider or worker's past non-compliance with their aged care obligations.

These key factors and considerations help us choose the most effective compliance or enforcement actions to achieve the right outcome for older people. This makes sure that our regulatory approach is fair, and that our actions are in proportion to the risks to older people in each case we manage.



Figure 5: Key factors and considerations for our compliance and enforcement decisions

We provide procedural fairness to a worker or provider whose rights or interests may be negatively affected by our decisions. Before making a final decision, we will notify providers and workers whose rights or interests may be affected of any issues that may negatively affect them. We will also give them the opportunity to present information and evidence to respond to the concerns we raised. You can find further information on procedural fairness in our [Regulatory Bulletin on Procedural Fairness](#).

5.6 Working together

We work closely with other agencies and regulators to share information, intelligence and best practice in aged care. Where appropriate, and in line with legislation, we will refer information or further action to relevant agencies or regulators.

Some of the agencies we work with:

Relevant agency	Working with them and making referrals for
<p>Department of Health and Aged Care and the Department of Social Services</p>	<p>Regulating:</p> <ul style="list-style-type: none"> - CHSP and NATSIFAC providers - financial viability concerns regarding a provider - 24/7 nursing and care minutes obligations.
<p>Services Australia</p>	<p>Management or regulation of:</p> <ul style="list-style-type: none"> - aged care payments including fraud investigation – compliance officers may identify that a provider has received an overpayment in financial subsidy, and overpayments may reflect fraudulent activity against the aged care program - closure of a service, so that subsidy payments end, and arrangements can be organised for those consumers relocating to other services.
<p>National Disability Insurance Scheme (NDIS) Commission</p>	<p>When older people, workers and providers need Commission and NDIS involvement.</p>
<p>Federal, state or territory police force</p>	<p>Matters involving a possible crime or for performing and coordinating emergency and rescue operations.</p>
<p>Australian Health Professionals Registration Authority (AHPRA)</p>	<p>Concerns about the behaviour of health professionals and any issues about national registration and accreditation.</p>
<p>Australian Competition and Consumer Commission</p>	<p>Overcharging or unlawful charging of aged care fees.</p>
<p>State authorities</p>	<p>The investigation of behaviour of unregistered health care workers.</p>
<p>State Coroners</p>	<p>The investigation of the circumstances surrounding all reportable deaths.</p>

<u>Office of the Inspector-General of Aged Care</u>	Exchanging relevant information and documents. Collaborating, cooperating and providing help to support the performance of respective functions.
<u>Independent Health and Aged Care Pricing Authority</u>	Making sure that pricing, quality, and performance measures for public hospitals are complementary, and support a strong national framework for the delivery of public hospital services.
<u>Commonwealth Ombudsmen</u>	Making sure that we act fairly and follow the proper processes.

Figure 6: Agencies or regulators who we may work with for an integrated approach to aged care

6. Compliance and enforcement actions

We have a range of compliance and enforcement actions which we can use to respond to actual or possible non-compliance with aged care obligations and reduce risks to older people.

We use our compliance powers to guide providers and workers to:

- remedy non-compliance,
- restore trust in the care being delivered
- take steps to prevent risk to older people and the non-compliance from reoccurring.

We use our enforcement actions to hold providers and workers accountable for their non-compliance and their actions that create a higher risk of harm. This discourages them and others from behaving poorly. It protects the long-term safety, health and wellbeing of older people.

We may use more than one compliance or enforcement action at the same time if it is appropriate. For example, in some cases, we may take different types of regulatory actions to respond to urgent safety issues. In some circumstances, using one compliance or enforcement action does not stop us from taking subsequent compliance or enforcement action later if there is evidence the provider or worker has not managed the risk and is still non-compliant.

6.1 Compliance actions

Our core regulatory work is supervising and regulating providers and workers involved in aged care. To do this we will engage with providers and workers and if necessary, intervene when risk levels require us to use our compliance powers to compel them to improve.

Our activities may involve communicating with providers or workers to encourage them to voluntarily return to compliance. We may also take a more targeted approach and ask them to take specific actions that will remedy non-compliance and **manage risks affecting older people in their care.**

No immediate action

We may let a provider or worker know that we have decided not to take immediate action. This may happen when the non-compliance has already been fixed by the time we review the issue. Or it could be that there is a low level of risk, and we are confident that they will fix the non-compliance. We may keep monitoring them based on the risk.

Engagement

We may engage with a provider through an administrative process to address risks and non-compliance. We would do this while following our legislative obligations and operating within our legislative scheme. We will usually use informal engagement with a provider when it is the most appropriate way to respond to risk. The provider also needs to be willing and able to manage that risk and take action quickly to fix the issues. This includes the provider working in a cooperative way with us.

Reminder letters

We may issue a reminder letter to educate and help a provider or worker understand their aged care obligations and let them know what we expect of those obligations.

Caution letters

A caution letter notifies a provider or worker that we have concerns about their compliance with their obligations. We generally use a caution where the risk to older people is low to medium. The regulatory response is usually to educate and guide them on how they can comply with their aged care obligations quickly and efficiently.

Directions

We may give a direction to a provider to do a certain thing to comply with their aged care obligations. There are 2 types of directions that we may give depending on the non-compliance.

- **A direction to revise a plan for continuous improvement:** if we believe a provider needs to revise their plan for continuous improvement to make sure they comply with the Quality Standards, we may issue this direction.
- **Directions for complaints and provider responsibility information:** we may issue directions during the process of resolving a complaint or to respond to concerns about a provider meeting specific obligations. If we suspect that a provider

is not meeting its responsibilities, before issuing this type of direction we will issue a notice of intention to give directions. This will give the provider an opportunity to respond to our concerns. We will consider their response when deciding whether to issue a direction.

Investigations

As well as the powers we might use to investigate an issue, we may also ask a provider to:

- do an internal investigation into a reportable incident or compliance with the Code
- at their own cost, appoint a qualified and independent expert to carry out an investigation into a reportable incident or compliance with the Code.

They must develop a report based on that investigation. The provider will need to give us that report and we may then use it to decide on our response to any non-compliance.

Compliance notices

We may issue a compliance notice to a provider to respond to non-compliance, or possible non-compliance, with specific aged care obligations.

The 4 types of compliance notices are:

- Incident Management Compliance Notice
- Restrictive Practices Compliance Notice
- Code of Conduct Compliance Notice
- Information Relating to Reporting Periods Compliance Notice

We may give a written compliance notice to a provider if we:

- have found that a provider is not complying with their obligations for incident management, restrictive practices, code of conduct and reporting periods
- have information that shows that the provider is not complying with the above obligations.

A compliance notice means the provider must fix the non-compliance, or possible non-compliance. It will explain any action that the provider needs to take, or not take, in a certain time.

The provider may have to provide us with evidence that they are complying. Not complying with the notice in the specific time may result in us taking enforcement action such as:

- seeking a civil penalty order by a court
- issuing an infringement notice
- imposing sanctions.

The Commission may decide to vary or revoke the compliance notice and will consider submissions from the provider to make this decision.

Enforceable undertakings

We may accept an enforceable undertaking from a provider or worker to do or not do certain things, as far as their compliance with specific aged care obligations. This is a positive form of regulatory action because it is entered into voluntarily. It shows that they are committed to complying with their obligations, managing risks to older people, and delivering quality and safe care.

If the provider or worker does not comply with the terms of the enforceable undertaking, we may enforce those through court proceedings and court orders. Or if it is for a provider, we may consider imposing sanctions.

Injunction

We may apply to a court and seek an injunction restraining a provider or worker from certain behaviour or asking them to do a certain thing for their compliance with specific aged care obligations.

We may seek an injunction where immediate action is needed to respond to significant non-compliance or to stop serious non-compliance from happening. For example, where the provider or worker has not responded to other regulatory action we have taken.

6.2 Enforcement actions

Enforcement actions are a stronger form of regulatory action compared to compliance actions. In general, we use our enforcement actions when there is non-compliance that is serious, system wide or has caused serious harm to older people. This may include situations where a provider or worker has not taken actions needed to reduce risks to older people or where they are not suitable to provide aged care services.

We may use more than one of our enforcement actions at the same time if it is appropriate and allowed under our legislative scheme.

Notice of intention to impose sanctions

We may issue a provider with this notice (sometimes referred to as a non-compliance notice) when:

- they have not complied, or are not complying, with their aged care obligations
- that non-compliance is not an immediate and severe risk to the safety, health and wellbeing of people receiving care.

The non-compliance notice:

- lets the provider know that we are considering imposing a sanction on them (and why)
- gives details of the non-compliance
- sets out the things they must do to fix their non-compliance.

The non-compliance notice also asks the provider if they want to make a submission to us about anything related to their non-compliance. They can also include what they will do to fix the non-compliance.

As well as sanctions, we may take other regulatory action after a non-compliance notice. For example, issuing a 'notice requiring an undertaking to remedy non-compliance'.

Notice requiring an undertaking to remedy non-compliance

We may issue a provider with a notice requiring them to give us an undertaking, if they respond to a non-compliance notice by:

- suggesting actions that they can do to fix the issue
- giving acceptable reasons for the non-compliance
- giving us other satisfactory information.

The notice requiring them to give us an undertaking will include how they will fix the non-compliance.

In some cases, we may use other forms of regulatory action after, or instead of, issuing a provider with a notice requiring an undertaking to remedy non-compliance. For example, we may issue a notice of requirement to agree to certain matters or sanctions.

Notice of requirement to agree to certain matters

If we are considering revoking a provider's approval, we may issue them with a notice of requirement to agree to certain matters (notice to agree). The situation will also have to meet other criteria.

Under a notice to agree, the provider needs to do specific things to protect older people and fix the non-compliance. For example, a provider may have to appoint an advisor to help them comply with their aged care obligations. Or they may have to provide specific training for their staff. If the provider does not do what we need them to do, we may impose sanctions. This can include revoking their status as a provider.

Infringement notices

We may issue an infringement notice to a provider or worker to impose a penalty for non-compliance with their aged care obligations. This is if their non-compliance is a criminal offence or contravenes (breaks) a civil penalty provision in aged care law.

An infringement notice will explain the non-compliance and include a penalty amount. The provider or worker can choose to pay the amount in the notice. If they do not pay the amount, we may look at other enforcement action including court proceedings.

You can find more information about infringement notices and criminal offence and civil penalty provisions in our [Regulatory Bulletin on Infringement Notices](#).

Sanctions

If we consider it appropriate, we may issue sanctions on a provider if they have not

complied or are not complying with one or more of their aged care obligations. For example, we may impose a sanction that can restrict their operations or revoke their approval to receive Australian Government funding. Because a sanction can have a significant impact on the provider and the services they provide to older people, we only use sanctions after considering all the issues. We may also consider sanctions if other regulation methods have not worked.

Civil and criminal action

For some types of non-compliance, or if a provider does not comply with an enforceable action, we may apply to the court for:

- a civil penalty order
- an order to enforce an enforceable undertaking
- an order to enforce an injunction
- a remedial order for an unacceptable key personnel situation.

The office of the Commonwealth Director of Public Prosecutions prosecutes the criminal offences that we have under the aged care legislation. We may refer a matter to the Commonwealth Director of Public Prosecutions for prosecution after considering the circumstance, evidence and [Prosecution Policy of the Commonwealth](#).

Revocation

In cases of serious non-compliance, we may revoke the accreditation of a residential aged care service or provider approval to provide aged care. Serious non-compliance includes when:

- the risk to people receiving care is immediate and severe
- a provider has not fixed their non-compliance
- the provider is no longer suitable to provide aged care.

Residential aged care service

For residential aged care services, we can decide to:

- not reaccredit
- reduce an existing period of accreditation
- revoke their accreditation entirely.

Without being accredited, the provider will not be able to receive Australian Government funding for that service.

We may take these actions where we have found non-compliance against the Quality Standards through their performance assessment, and we are not confident that they are able and willing to make improvements.

To become accredited again, we must do an onsite audit of the service. We will consider:

- the site audit and the provider's performance against the Quality Standards
- any relevant information from a resident or the department
- the provider's commitment to keep improving
- any other related information.

Provider approval

For a provider, we can revoke their approval to provide aged care services. This means that they will be removed from the aged care sector and will not be able to receive any Australian Government funding to deliver aged care services.

We may consider revoking a provider's approval by imposing a revocation sanction. The Commission Act lists what we need to consider including:

- if it is serious non-compliance – for example, is it system wide, repeated, wilful or criminal behaviour
- whether the non-compliance has happened before
- whether the non-compliance threatens the health, welfare or interests of older people.

We may also look at the provider's suitability to be an approved provider. The Commission Act lists what we need to consider for a provider's suitability, this includes:

- experience in providing aged care or other relevant forms of care
- understanding aged care obligations related to the aged care service they provide
- financial management and financial systems which make sure there is sound financial management
- conduct and compliance with aged care obligations.

Suitability of key personnel

We may decide that a person who is one of the key personnel of a provider is no longer suitable to be involved in providing aged care services. If we make this decision, the provider must remove that person from the position that they hold. In other words, they need to stop being one of their key personnel.

Before we make this decision, we will consider all the relevant information including the suitability matters under the Commission Act.

If a provider does not remove key personnel after we have said that they are no longer suitable, it is an offence. We may refer the provider to the court to be prosecuted. We may also apply to the court for a remedial order. This will mean the provider must take action to remove the unacceptable key personnel.

Banning order

We can stop or restrict any individual from being involved in aged care. This means that

they can be banned from working in aged care, even if they have never worked in aged care before. We can also stop them from being involved in certain types of aged care or specific activities.

If the individual does not comply with the banning order, or a provider does not make sure they do not take part in activities related to the banning order, we may issue an infringement notice. Or we may start court proceedings for court orders such as a civil penalty and injunction.

You can find more information about infringement notices and criminal offence and civil penalty provisions in our [Regulatory Bulletin on Banning Orders](#).

6.3 Transparency of our activities

We are open about our regulatory activities so that the public can see how we regulate the aged care sector to protect the safety, health, wellbeing and quality of life of older people. We will be transparent about our monitoring activities and responses to non-compliance. We openly share the results of our work to protect older people, where we are allowed to under our legislative scheme. This also helps to prevent poor behaviour and non-compliance in the aged care sector.

We inform the public about our compliance and enforcement actions by publishing our regulatory decisions and the compliance status of providers. This helps people receiving aged care and their supporters to make informed decisions about aged care providers and the aged care services they choose.

Before making and publishing a final decision we will give the provider or worker procedural fairness. The provider or worker can also ask the us to reconsider or review certain decisions that we have made.

You can find further information on procedural fairness in our [Regulatory Bulletin on Procedural Fairness and information on the reconsideration processes](#) in [Regulatory Bulletin Reconsideration of reviewable decisions](#).



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