



# Regulatory Bulletin

## Banning orders

RB 2023-17

**From 1 December 2022, the Aged Care Quality and Safety Commission (the Commission) may make a banning order against an individual to prohibit or restrict them from being involved in the provision of any type of aged care or specified types of aged care, or from engaging in specified activities as an aged care worker or governing person of an approved provider.**

This Regulatory Bulletin provides guidance on banning orders, the circumstances in which the Commission will make a banning order and the approach that will be taken when deciding whether or not to do so. It includes information on the consequences of breaching a banning order, variation and revocation of banning orders and publication of information on banning orders.

The Regulatory Bulletin is a guide only and not prescriptive. Each decision by the Aged Care Quality and Safety Commissioner (the Commissioner) to make, vary or revoke a banning order is made on a case-by-case basis on its particular facts and circumstances.

In this Bulletin:

- **Aged care** has the same meaning as in the *Aged Care Act 1997* (Aged Care Act), being care of one or more of the following types: residential care; home care and flexible care.
- **Aged care worker** has the same meaning as in the *Aged Care Quality and Safety Commission Act 2018* (Commission Act), being an individual who is employed or otherwise engaged (including on a voluntary basis):
  - by an approved provider (including where the individual is an independent contractor of the approved provider)
  - by a contractor or subcontractor of an approved provider; and who provides care or other services to consumers through an aged care service of the approved provider.
- **Approved provider** is a reference to providers of residential care, home care and flexible care under the Aged Care Act.
- **Banning order** means an order made under section 74GB(1) or 74GB(3) of the Commission Act, to prohibit or restrict an individual from being involved in the provision of any type of aged care or specified types of aged care, or from engaging in specified activities as an aged care worker or governing person of an approved provider.



- **Governing person** has the same meaning as in the Commission Act, being an individual who is one of the key personnel of an approved provider. This may include a member of the group of persons who is responsible for the executive decisions of an entity, or other person who has authority or responsibility for, or significant influence over, planning, directing or controlling the activities of the entity.
- **Individual** is a reference to an aged care worker or governing person of an approved provider or a person who has not previously been an aged care worker or governing person of an approved provider.
- **Register of banning orders** means data repository under section 74GI of the Commission Act, which includes information in relation to each individual against whom a banning order has been made at any time. Parts of the register are publicly available via the [Commission's website](#)<sup>1</sup>.
- **Suitability matters** mean the factors listed under section 8C of the Commission Act.

Refer to the [Commission's glossary](#)<sup>2</sup> for definitions of key terms.

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1 <https://www.agedcarequality.gov.au/aged-care-performance/banning-orders-register>

2 <https://www.agedcarequality.gov.au/resources/aged-care-quality-and-safety-commission-glossary>

## Key points

- The Commission may make a banning order on an individual. This may be in serious cases of poor conduct or where the individual is not suitable to be involved or engaged in the provision of aged care.
- The nature of a banning order will depend on particular facts and circumstances. A banning order may be of general or limited application, be permanent or for a specified period, and may be subject to conditions.
- Where there is an immediate and severe risk to consumers if the banning order is not made against the individual, the Commission may respond by making a banning order without notifying the individual that the Commission is considering making the banning order.
- An individual who breaches a banning order or condition of a banning order would contravene a civil penalty provision. The Commission may take enforcement action against individuals for breaching civil penalty provisions.
- An approved provider who fails to take reasonable steps to ensure that their aged care worker or governing person does not engage in conduct that breaches a banning order or a condition of a banning order would also contravene a civil penalty provision.
- A banning order may be varied or revoked on the Commission's own initiative or on written application of an individual who has received the order. This is separate to an individual's right to seek a reconsideration of a reviewable decision relating to banning orders.
- A register of banning orders (banning orders register) is publicly available on the Commission's website, which includes information in relation to individuals against whom the Commission has made a banning order.



## Banning orders

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### Information in this bulletin applies to:

- Aged care workers and governing persons of approved providers of residential aged care, home care and flexible care under the *Aged Care Act 1997*, including individuals who are no longer employed or otherwise engaged (including on a voluntary basis) by the approved provider
  - Individuals who have not previously been an aged care worker or governing person of an approved provider
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# Banning orders

## Requirements for banning orders

### **Aged Care Quality and Safety Commission Act 2018**

Division 4 of Part 8AA of the Commission Act sets out the Commission's powers in relation to banning orders.

Sections 74GB(2) and 74GB(4) set out the grounds on which the Commissioner may make a banning order against a current or former aged care worker or governing person of an approved provider, or an individual who has not previously been an aged care worker or governing person of an approved provider.

The Commission Act also sets out the requirements for making a banning order (including procedural fairness), the consequences for contravening a banning order, review rights, and requirements for establishing and maintaining a banning orders register.

### **Aged Care Quality and Safety Commission Rules 2018**

Part 2C of the Aged Care Quality and Safety Commission Rules 2018 (Commission Rules) sets out further requirements in relation to the banning orders register, including:

- how an individual can access and correct information in the banning orders register
- publication of the banning orders register.

## What is a banning order?

A banning order is the Commission's most serious enforcement action against an individual. The Commission may make a banning order to:

- prohibit an individual from being involved in the provision of any type of aged care or specified types of aged care
- restrict an individual from engaging in specified activities as an aged care worker, or as a governing person, of an approved provider.

The purpose of making a banning order is to ensure the continued safety of aged care consumers, particularly in circumstances where there has been poor conduct by individuals or where individuals are not suitable to provide care or supports to vulnerable people.

## Who can a banning order be made against?

A banning order can be made against a current or former aged care worker or governing person of an approved provider. This includes any individual who is currently or was previously employed or otherwise engaged by an approved provider of residential care, home care and flexible care under the Aged Care Act.



The Commission may also make a banning order against an individual who is not and/or has not previously been an aged care worker or governing person of an approved provider, if the Commission reasonably believes that the individual is not suitable to be involved or engaged in aged care.

## When will the Commission make a banning order?

Every decision to make a banning order will be determined on a case-by-case basis taking into account all relevant considerations in an objective and impartial way.

The Commission may make a banning order following other regulatory actions in response to an individual's non-compliance with the Code of Conduct for Aged Care (the Code). For example, the Commission may issue a caution letter to notify an individual that the Commission is aware of conduct of concern, including any non-compliance, that needs to be addressed by the individual. The Commission may then make a banning order if the conduct continues.

The Commission may also make a banning order without any prior regulatory action if doing so is proportionate to the risk in the circumstance. For example, the Commission may make a banning order to address immediate or severe risk to consumers.

Considering the level of risk, the Commission may decide that a banning order is appropriate in any of the below circumstances:

- where the Commission reasonably believes that the individual did not comply, is not complying or is unlikely to comply with the Code
- where the Commission reasonably believes that the individual is not suitable to be, or not suitable to continue to be:
  - involved in the provision of any type of aged care or specified types of aged care, or
  - engaged in specified activities as an aged care worker or governing person of an approved provider
- if the Commission reasonably believes that there is an immediate or severe risk to the safety, health or well-being (not limited to physical, emotional, psychological and financial well-being) of one or more consumers if the individual is, or continues to be, involved or engaged in the provision of aged care, specified types of aged care, or specified activities as an aged care worker or governing person of an approved provider
- the individual has at any time been convicted of an indictable offence involving fraud or dishonesty
- the individual is an insolvent under administration.

In the most serious cases, the Commission may make a banning order and take another enforcement action on an individual (and/or if applicable, their approved provider) at the same time.

The Commission's [Compliance and Enforcement Policy](#)<sup>3</sup> outlines the approach to compliance and enforcement.

3 <https://www.agedcarequality.gov.au/about-us/corporate-documents#compliance-and-enforcement-policy>



## Giving procedural fairness

The Commission affords procedural fairness to individuals in line with the requirements of the law. The Commission will usually issue a Notice of intention to make a banning order to the individual, setting out the reasons why the Commission is considering making the banning order against the individual; and giving the individual an opportunity to respond within 14 days after receiving the notice.

However, if the Commission is satisfied that there is an immediate and severe risk to the safety, health or well-being of consumers if a banning order is not made against an individual, then the Commission may make a banning order without first affording the individual an opportunity to respond.

An individual who is the subject of a banning order may apply to the Commission to vary or revoke the banning order, or a condition of the banning order. Refer to the [Varying or revoking banning order](#) section of this bulletin for more information.

An individual who is the subject of a banning order may also request the Commission to reconsider certain decisions relating to banning orders. Refer to the [Requesting reconsideration of decisions relating to banning order](#) section of this bulletin for more information about the decisions that are reviewable.

## What are the content and features of a banning order?

In making a banning order against an individual, the Commission will give the individual a written notice that sets out the details of the banning order.

A banning order may be of general or limited application.

In **general application**, the banning order prohibits an individual from being involved in the provision of any type of aged care auspiced by an approved provider. This means that the individual would be prohibited from providing residential aged care, home care, and care and services under the Short-Term Restorative Care, Multi-Purpose Services or Transition Care programs.

In **limited application**, the banning order can prohibit or restrict an individual from being involved in the provision of specified types of aged care or it can prohibit or restrict an individual from engaging in specified activities as an aged care worker or governing person of an approved provider. For example, the individual may be:

- prohibited from providing home care services
- prohibited from providing aged care services to consumers unsupervised
- restricted from transporting consumers in a motor vehicle that they are operating.

A banning order can be permanent or for a specified period.



A banning order can also be subject to conditions, for example the individual may be required to:

- provide a copy of the Notice of banning order to all prospective employees where the banning order restricts the individual from engaging in some but not all activities related to aged care, support and services
- complete specified training and/or skills development by a specified date.

## Contraventions of a banning order

An individual contravenes a civil penalty provision if the individual breaches a banning order or a condition of the banning order when the order is in effect.

An approved provider also contravenes a civil penalty provision if the provider fails to take reasonable steps to ensure that their aged care worker or governing person does not engage in conduct that breaches a banning order or a condition of the banning order when the order is in effect.

The Commission takes risk-proportionate enforcement action against individuals (and/or if applicable, the approved provider) for breaching civil penalty provisions. Depending on the circumstance, the Commission may:

- issue an **infringement notice**, requiring payment of a penalty amount
- seek an **injunction** from a court to compel the individual or approved provider to modify their behaviour or restrain them from undertaking certain actions

- apply to a court to impose a **civil penalty order** on the individual or approved provider to pay the Commonwealth government a penalty amount (maximum 1,000 penalty units for individuals or 5,000 penalty units for a corporation).

For more information about the Commission's compliance and enforcement powers, refer to the [Commission's Compliance and Enforcement Policy](#)<sup>4</sup>.

## Varying or revoking a banning order

The Commission may vary or revoke a banning order following an application by an individual who has received the order, or where there has been no application by an individual (this is referred to as 'on own initiative').

### Variation or revocation on application

An individual may apply to the Commission to vary or revoke a banning order made against them or vary or revoke a condition of the order. Applications must be made using the application forms available on the [Commission website](#)<sup>5</sup>.

If an application is made, the Commission may vary or revoke the order if satisfied that it is appropriate to do so. In deciding whether to vary or revoke a banning order and/or a condition of the order, the Commission will consider<sup>6</sup>:

- the individual's reasons as to why the banning order or a condition of the order should be varied or revoked

<sup>4</sup> <https://www.agedcarequality.gov.au/about-us/corporate-documents#compliance-and-enforcement-policy>

<sup>5</sup> <https://www.agedcarequality.gov.au/aged-care-performance/banning-orders-register>

<sup>6</sup> This is not an exhaustive list



- if the individual is seeking a variation, then the nature of the variation being sought; for example, reducing the banning order period
- any other information, including attachments, provided by the individual with their application
- any other relevant information available to Commission.

The Commission affords procedural fairness to individuals in line with the requirements of the law. The Commission will issue a notice to the individual where:

- the Commissioner proposes not to vary or revoke the banning order. This will set out the reasons why the Commissioner is proposing not to vary or revoke the banning order.
- the Commissioner proposes not to vary or revoke a condition of the banning order. This will set out the reasons why the Commissioner is proposing not to vary or revoke a condition of the banning order.
- the Commissioner proposes to specify a new condition(s) of the banning order. This will set out the reasons why the Commissioner is proposing to specify those conditions.

The individual will be given an opportunity to respond to the notice within a specified timeframe, following which the Commission will give the individual a written notice that sets out the Commission's decision.

## Variation or revocation on Commission's own initiative

In varying a banning order on own initiative, the Commission may:

- vary or revoke a condition of the banning order
- specify one or more new conditions to which the banning order is to be subject.

The Commission will give the individual a written notice that sets out the Commission's decision.

## Requesting reconsideration of decisions relating to banning orders

If a banning order has been made against an individual, and that individual disagrees with the Commission's decision to make the banning order or certain conditions of the banning order, the individual may request that the Commission reconsider the decision.

The following decisions in relation to a banning order are reviewable decisions:

- a decision to make a banning order
- a decision to vary a banning order on the Commission's own initiative
- a decision not to vary or revoke a banning order following an individual's application for variation or revocation
- a decision not to vary or revoke a condition of a banning order following an individual's application for variation or revocation of the condition
- a decision to specify one or more new conditions to which a banning order is to be subject.





If the individual is not satisfied with the decision on reconsideration, the individual may apply to the Administrative Appeals Tribunal (AAT) for review of the decision.

For more information about how to request reconsideration of reviewable decisions and applying to the AAT for review of reconsideration decisions, refer to [Regulatory Bulletin RB 2021-12 Reconsideration of reviewable decisions](#)<sup>7</sup>.

## Publication of information relating to banning orders

The Commission has a banning orders register with information on any individual against whom the Commission has made a banning order. The banning orders register includes at minimum, an individual's name, place of residence (at State/Territory, suburb and postcode level) and details of their banning order.

The Commission updates the banning orders register as banning orders are made, and if the Commission later decides to vary or revoke the banning order, or any conditions of the banning order. The banning orders register is also regularly reviewed to ensure that information is accurate, up-to-date, complete and not misleading (see [frequently asked question 8](#) below for information about how to seek correction of information on the banning orders register).

The banning orders register is available via the [Commission website](#)<sup>8</sup>.

Consumers, their representatives and families, approved providers and other members of the public can use the banning orders register to check whether an individual has had a banning order made against them, whether the order is in effect and the nature of the order.

## Frequently asked questions

### 1. How will I know if I have been banned?

If the Commission makes a banning order against you, then the Commission will give you a written notice with details of the order. The Commission will also give you a written notice if the banning order is varied or revoked.

Generally, you will be made aware by the Commission where the Commission is investigating your compliance with the Code or your suitability, or where the Commission is considering making a banning order against you. During this process, you will be given an appropriate opportunity to provide information to the Commission for consideration. However, if the Commission is satisfied that there is an immediate and severe risk to the safety, health or well-being of consumers if a banning order is not made against an individual, then the Commission may make a banning order without first affording the individual an opportunity to respond.

<sup>7</sup> <https://www.agedcarequality.gov.au/resources/rb2021-12-reconsideration-reviewable-decisions>

<sup>8</sup> <https://www.agedcarequality.gov.au/aged-care-performance/banning-orders-register>



The Commission maintains a banning orders register, containing information relating to individuals against whom the Commission has made a banning order. The banning orders register is publicly available via the [Commission website](#)<sup>9</sup>.

## **2. What will be included in the banning orders register?**

The banning orders register on the Commission's website includes an individual's name, their place of residence (at State/Territory, suburb and postcode level) and details of their banning order.

## **3. Will my approved provider know if I have been given a banning order?**

Yes. The Commission will give approved providers a copy of any Notice of a banning order made against one of their current aged care workers or governing persons.

The Commission will also give the approved provider a copy of any written notice of the Commission's decision to vary or revoke a banning order made against one of their current aged care workers or governing persons, and/or decision to specify one or more new conditions of the banning order.

An approved provider contravenes a civil penalty provision if it fails to take reasonable steps to ensure that their aged care worker or governing person subject to a banning order in force does not engage in conduct that breaches that banning order or a condition of that banning order.

Your approved provider is also expected to ensure that they are aware of, and refer to, the banning orders register for any information about banning orders made by the Commission, including as part of due diligence during recruitment processes.

The banning orders register is regularly reviewed and updated by the Commission to reflect any variation or revocation of banning orders or a condition of banning orders.

## **4. Can the Commission ban me from working for another sector such as in the disability sector?**

No. The Commission can only ban individuals from being involved or engaged in aged care under an approved provider.

However, the Commission may refer information to an external body or other regulator, such as the NDIS Quality and Safeguards Commission and the Australian Health Practitioner Regulation Agency, where the information may be relevant to the regulatory activities of the other body or regulator.

An individual may also be banned by the Commission from the aged care sector and banned by another regulator from another sector at the same time. If this is the case, the Commission will work together with the other regulator to minimise any risks with concurrent regulatory activity.

<sup>9</sup> <https://www.agedcarequality.gov.au/aged-care-performance/banning-orders-register>



## 5. Can the Commission make a banning order against an individual who works for a CHSP or NATSIFACP provider?

Yes. The Commission is able to make a banning order against an individual who is not and/or has not previously been an aged care worker or governing person of an approved provider. This includes individuals who:

- work for a service provider of a Commonwealth Home Support Programme (CHSP) or a National Aboriginal and Torres Strait Islander Flexible Aged Care Program (NATSIFACP) service
- have never worked for, or been engaged by, an approved provider.

However, the banning order does not prohibit or restrict an individual from being involved or engaged in care provided through a CHSP or NATSIFACP service. The Commission may only make a banning order to prohibit or restrict individuals from being involved or engaged in aged care under an approved provider. Approved providers deliver any of residential aged care, home care, and care and services under the Short-Term Restorative Care, Multi-Purpose Services or Transition Care programs.

Individuals who work for a CHSP or NATSIFACP service provider are expected to uphold conduct that is safe and respectful and to behave in a way that aligns with the Code. Concerns about the conduct of individuals within these programs can be raised with the Commission, for actions to be taken under the Commonwealth's funding agreement with the service provider.

## 6. Will the banning orders register retain information relating to banning orders that are no longer in effect?

The Commission will continue to retain in the banning orders register a record of all banning orders that are no longer in force due to the lapsing of the effective period of the orders. However, the Commission will update the banning orders register to reflect banning orders that are no longer in force.

## 7. How can I find what information the Commission has about me on the banning orders register?

You can look up certain information the Commission has in relation to a banning order made against you in the banning orders register published on the [Commission website](#)<sup>10</sup>. The published register includes an individual's name, their place of residence (at State/Territory, suburb and postcode level) and details of their banning order.

If you have been given a banning order by the Commission, you can also make a request to the Commission to access any other information about you in the banning orders register.

There is no cost to you in making a request and you do not have to provide a reason why you are accessing the information.

Requests to access information about you in the banning orders register must:

- be made by you and not a third party, including any legal representative, even if you give consent for the third party to make a request on your behalf

<sup>10</sup> <https://www.agedcarequality.gov.au/aged-care-performance/banning-orders-register>



- be in writing (e.g. via email or mail)
- state your full name
- provide evidence of your identity
- state that the request is being made to access information in relation to yourself in the banning orders register
- provide contact details (e.g. an email address) so the Commission can acknowledge your request, clarify any information and also tell you about our decision in response to the request.

Requests to access your information in the banning orders register should be sent to [WRIIT@agedcarequality.gov.au](mailto:WRIIT@agedcarequality.gov.au).

## **8. What should I do if I believe the Commission has wrong or misleading information about me in relation to a banning order?**

If you believe the Commission has inaccurate, out-of-date, incomplete, irrelevant or misleading information about you in relation to a banning order, you can request that the Commission corrects the information. (This is different from requesting reconsideration of decisions relating to banning orders.)

There is no cost to you in making a request for the Commission to correct information in relation to a banning order.

Requests to correct information in the banning orders register must:

- be made by you and not a third party, including any legal representative, even if you give consent for the third party to make a request on your behalf
- be in writing (e.g. via email or mail)
- state your full name
- provide evidence of your identity
- state that the request is being made to correct information in relation to yourself in the banning orders register
- state why you consider the information to be inaccurate, out-of-date, incomplete, irrelevant or misleading
- describe what correction is being requested (e.g. amend, update, replace or delete existing information), including if relevant, what the information should be corrected
- provide evidence in support of the requested correction
- provide contact details (e.g. an email address) so the Commission can acknowledge your request, clarify any information and also tell you about our decision in response to the request.

Requests to correct your information in the banning orders register should be sent to [WRIIT@agedcarequality.gov.au](mailto:WRIIT@agedcarequality.gov.au).



## 9. Can the Commission publish information about me in relation to a banning order?

The Commissioner has authority, under section 23CG of the Commission Rules, to publish the banning orders register on the Commission's website. The Commission also has authority under both the Commission Act and Commission Rules to maintain specified information in the banning orders register in relation to individuals who have been given a banning order.

For your privacy, individuals may only apply to the Commission to access or correct information about themselves in the banning orders register. The Commission will not accept applications for access to, or correction of information about another person on the banning orders register.

## 10. What should I do if I suspect someone is in breach of their banning order?

Contact the Commission if you are aware of someone on the banning orders register who may be engaging in conduct that breaches the banning order made against them or a condition of the banning order.

The Commission will look into your concerns and take appropriate actions.

## Need to know more?

If you have any questions or feedback on this Bulletin, send an email to: [regulatorybulletin@agedcarequality.gov.au](mailto:regulatorybulletin@agedcarequality.gov.au)

Stay up to date with Regulatory Bulletin releases by [subscribing to the Commission's newsletter](#)<sup>11</sup>.

11 <https://www.agedcarequality.gov.au/subscribe>



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