



Regulatory Bulletin

Enforceable undertakings

RB 2024-26

This regulatory bulletin explains how a provider or person working in aged care can show that they are committed to improving through an enforceable undertaking.

You should read this regulatory bulletin alongside our [Compliance and Enforcement Policy](#) and our [Regulatory Strategy](#).

You can find definitions for the key terms used in this bulletin in [our glossary](#).

Key points

- Enforceable undertakings mean a provider or person can:
 - be transparent with older people and the community when things go wrong
 - show that they are committed to continuous improvement
 - fix risk and non-compliance issues through targeted prevention and remedies based on outcomes.
- An enforceable undertaking is a written agreement between the Commission and a provider or person. It is legally binding.
- It is up to the provider or person to decide whether they want to give the Commission an enforceable undertaking. The Commission then decides whether to accept that undertaking.
- If it is accepted, the Commission will monitor the provider or person to make sure they are meeting the terms of their enforceable undertaking. We will do this through [active supervision of the provider](#) or by working directly with the person.
- If the provider or person is not following the terms of their undertaking, the Commission can apply to a court to enforce the undertaking. A court can order them to comply or pay money to the Australian government or pay compensation to people impacted.
- The Commission publishes details of any enforceable undertakings on [our website](#).



Enforceable undertaking

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Information in this bulletin applies to: Providers and people (including aged care workers and governing persons of residential aged care, home care and flexible care providers under the *Aged Care Act 1997*) who may be involved in the Commission's regulatory processes.

Attachment: N/A

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Enforceable undertakings

What are enforceable undertakings?

An enforceable undertaking is a written agreement between the Commission and a provider or person that is offered to the Commission by the provider or person. It explains the actions that the provider or person will take (their “undertaking”) to fix risk and non-compliance with their aged care responsibilities.

The Commission can decide to accept an enforceable undertaking from:

- A provider in respect of their non-compliance with aged care responsibilities including:
 - quality of care
 - Code of Conduct for Aged Care (Code)
 - user rights
 - workforce responsibilities
 - accountability
 - the suitability of key personnel
- a person in respect of their responsibilities with the Code.

An enforceable undertaking is legally binding. The Commission can take enforcement action and take it to court if the provider or person does not do what they have committed to doing in the undertaking. Or if appropriate the Commission can consider imposing sanctions on the provider or a banning order on the person.

Benefits of enforceable undertakings

Enforceable undertakings help the provider or person to commit to:

- identifying and agreeing on how and why they are not meeting their obligations
- being transparent and accountable through [open disclosure](#) and communicating with older people when things go wrong
- taking action to prevent and fix risk and fix the issues that caused the non-compliance
- delivering high-quality care and services that protect the safety, health and wellbeing of older people
- encouraging compliance and continuous improvement at provider and service level.

How can a provider or person give an enforceable undertaking?

In most circumstances, the option of an enforceable undertaking is raised during discussions with the Commission about non-compliance.

A provider or person can ask the Commission about this, or the Commission may suggest it.

An enforceable undertaking will include:

- a description of what the provider or person will do, or stop doing, to make sure they meet their aged care obligations
- timeframes for each step the provider or person needs to take



- a statement from the provider or person that they are able to meet the terms of the enforceable undertaking financially and through their operations
- how the provider or person will show that they are complying with the actions in the undertaking.

Accepting an enforceable undertaking

If the Commission accepts the enforceable undertaking, we will sign it. The undertaking starts on the date we sign it.

If the Commission does not accept an undertaking, we will write to the provider or person to let them know. Reasons for not accepting an undertaking can be because the terms:

- do not fix the non-compliance and risk
- deny responsibility or minimise the impact of the non-compliance and risk of harm
- do not demonstrate capability or willingness to comply.

The Commission may then take other compliance and enforcement action to respond to the risk and the non-compliance. Our action will be appropriate to the circumstances and in proportion to the level of risk faced by people receiving care. For example, the Commission may give a provider a non-compliance notice.

You can find information on our other compliance and enforcement actions in our [Compliance and Enforcement Policy](#).

What happens if a provider or person does not comply with an enforceable undertaking?

The Commission will monitor the provider or person to make sure they are meeting the terms of their enforceable undertaking. We do this through active supervision of the provider or working directly with the person. If a provider or person has not complied with the undertaking within the agreed timeframe, the Commission can apply to a court to enforce the undertaking.

Withdrawing or varying an enforceable undertaking

A provider or person can withdraw or vary their undertaking at any time with the Commission's written consent. The Commission will consider requests to vary or withdraw an undertaking on a case-by-case basis.

Publishing an enforceable undertaking

The Commission will publish enforceable undertakings in full on [our website](#). This makes sure that older people and their representatives have information about why the Commission accepted the enforceable undertaking and what the provider or person has to do.

If the Commission agrees to cancel, withdraw or vary an enforceable undertaking, we will also publish this on [our website](#).

Completed undertakings remain published for transparency, but are moved to the 'non-current enforceable undertakings' section on [our website](#).



Frequently asked questions

1. When will the Commission consider an enforceable undertaking?

The Commission will consider enforceable undertakings on a case-by-case basis. The Commission will consider:

- the type of non-compliance
- the provider's or person's non-compliance history
- the actions that the provider or person is suggesting to fix the risk and non-compliance – including if these can be measured and assessed
- if the provider or person can show that the undertaking will mean significant changes to their systems or behaviour, and that they will be able to sustain the changes
- whether the undertaking will achieve the best result for older people.

2. When is an enforceable undertaking not appropriate?

An enforceable undertaking may not be appropriate if:

- the Commission is still investigating the non-compliance
- the non-compliance is immediate and serious and we need urgent action
- the provider or person has already fixed the non-compliance and the risk of it happening again is low
- the provider or person cannot or will not accept their non-compliance
- the provider or person does not show that they are committed to doing what they need to do to fix the risk and non-compliance.

3. When does an enforceable undertaking end?

Generally, the enforceable undertaking will end on an agreed end date or when the Commission is satisfied that all terms have been completed.

When this happens, the Commission will notify the provider or person that the Commission is satisfied the terms have been completed and the enforceable undertaking is no longer in effect.

4. How can the Commission enforce an enforceable undertaking?

The Commission can apply to the relevant court to enforce the undertaking if the provider or person has not complied with the undertaking within the agreed timeframe.

If the court is satisfied that the provider or person has not complied with the enforceable undertaking, then they may make one or more orders. Not complying with the undertaking could be something like not doing a specific action in the agreed timeframe.

The court order might say that the provider or person must:

- comply with the undertaking
- pay the Australian Government an amount from any financial benefit they received – either directly or indirectly - because they did not comply with the undertaking.
- pay compensation for loss or damage to any other person because they did not comply
- anything else the court considers appropriate.



5. What happens if the Commission does not accept an enforceable undertaking?

If the Commission does not accept an enforceable undertaking, we can take further compliance and enforcement action to fix risk and non-compliance.

You can find information on the other compliance and enforcement actions we can take in our [Compliance and Enforcement Policy](#).

References

The Commission Act

Section 74EC of the [Aged Care Quality and Safety Commission Act 2018](#) gives the Commission the ability to use the enforceable undertaking powers under the [Regulatory Powers \(Standard Provisions\) Act 2014](#).

Aged Care Act

Chapter 4 of the [Aged Care Act 1997](#) states what a provider's aged care responsibilities are and their responsibilities in the principles related to the Aged Care Act.

Code of Conduct

The [Code of Conduct for Aged Care](#) describes how providers and people need to behave and treat older people receiving aged care.

The Regulatory Powers Act

Part 6 of the [Regulatory Powers \(Standard Provisions\) Act 2014](#) provides standard powers for monitoring, investigating and enforcing compliance.



Need to know more?

If you have any questions or feedback on this bulletin, send an email to: info@agedcarequality.gov.au.

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

The Aged Care Quality and Safety Commission acknowledges the Traditional Owners of Country throughout Australia, and their continuing connection to land, sea and community. We pay our respects to them and their cultures, and to Elders both past and present.



Phone
1800 951 822



Web
agedcarequality.gov.au



Write
Aged Care Quality and Safety Commission
GPO Box 9819, in your capital city