

Key personnel suitability in aged care

Are you ready for the December deadline?

Providers would now be very aware of the changes to suitability of key personnel requirements which commenced last December. As part of these changes, approved providers are required to undertake an annual assessment of all key personnel, with the first annual assessment to be completed by 1 December this year.

This should be a matter of urgency, because failure to comply with this obligation is an offence which can result in a penalty, and enliven regulatory action which can ultimately result in sanctions (including revocation of approved provider status).

Who are key personnel in aged care?

It is critical providers identify their key personnel, because if you don't apply the requirements to certain personnel who are in fact key personnel, penalties will apply.

Broadly speaking, the key personnel of an entity are those responsible for key aspects of an approved provider's operations, which ultimately underpin the quality of care and services provided to care recipients.

According to the *Aged Care Quality and Safety Commission Act 2018*, key personnel include managers, board members and anyone else with "significant influence over planning, directing or controlling the activities of the approved provider". At a service level, it also includes managers and senior nurses.

What is required by 1 December 2023?

December 2023 marks the end of the first year of operation of the legislation and subsequently the end of the allocated period to complete the annual review of key personnel.

Under the legislation, approved providers are required to, at least every 12 months:

- consider all suitability matters (impending, new or historic) in relation to key personnel
- be reasonably satisfied that key personnel are suitable to be involved in the provision of aged care
- keep a record of those matters in accordance with Accountability Principles requirements.

Some of the key matters to consider include (but are not limited to):

- the individual's experience in providing aged care or other relevant care
- whether the individual has been convicted of an indictable offence or has been the subject of a civil penalty order
- whether the individual is or has been the subject of adverse findings or enforcement action by a regulatory body (for example, for key personnel with nursing or allied health qualifications, this would include adverse findings by a tribunal in relation to the person's conduct as a health professional).

This will require approved providers to undertake and record a comprehensive assessment of suitability for each of their key personnel, which will require contributions from each of these people. As such, we urge providers to start this process immediately if they have not already.

To be clear, if there is a suitability matter identified with someone identified as key personnel, it does not necessarily mean that the person should not be a member of key personnel. Rather, the provider will need to conclude whether it is 'reasonably satisfied' that the individual is suitable having regard to all the suitability matters. However, if a suitability concern does arise, providers will need to carefully consider the implications.



Victor Harcourt and Anita Courtney,
Principals at Russell Kennedy Lawyers.

What are the other obligations in relation to key personnel?

In addition to the annual assessment, providers must also:

- consider the new suitability criteria before engaging the person
- notify the Commission of any changes in key personnel or any suitability matters within 14 days. (This is a shorter timeframe than previously required.)

Failure to notify will result in an offence of strict liability as well as possible sanctions under the *Aged Care Quality and Safety Commission Act 2018*.

Where a provider is a Corporation, its key personnel must also notify the approved provider of any change in circumstances (change in suitability matters) within 14 days of becoming aware of it. Failure to do so will result in a penalty to the key personnel who did not notify the change.

Russell Kennedy key personnel pack

Our team have developed a range of resources that providers can purchase individually or as a pack to assist with your compliance requirements. These include an assessment guide, summary of the requirements, training, policies and clauses for employment agreements. To purchase any of these resources, please get in touch with us.

**Victor Harcourt, Principal,
Russell Kennedy Lawyers
www.russellkennedy.com.au**

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