



New powers and responsibilities under the Code of Conduct for Aged Care - How do they affect providers?

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The introduction of the new Code of Conduct for Aged Care (**Code**) in December 2022 has seen significant changes to the regulation of aged care providers and their governing persons; and aged care workers.

What is the Code?

The Code of Conduct for Aged Care was introduced in direct response to the Final Report of the Aged Care Royal Commission. Currently, the Code sets out eight provisions that approved providers, governing persons and aged care workers must comply with. These provisions set minimum standards of behavior which require care to be provided in a manner that ensures consumers receive safe, respectful and quality care.

The standards set by the Code apply not only to aged care providers, but also to their workers and their governing persons. Importantly, approved providers are responsible for taking reasonable steps to ensure their workers and governing persons are compliant with the Code.

The Code also empowers the Aged Care Quality and Safety Commission (**Commission**) to exercise '*Code functions*' against providers, governing persons and aged care workers. It is essential that providers understand the operation of the Code, and application of the Commission's *Code functions*. This is particularly important given the seriousness of the potential consequences of non-compliance with the Code for providers, governing persons and aged care workers.

How will the Commission find out about breaches of the Code?

The Commission recently published a *Privacy notice: Code of Conduct for Aged Care (Notice)*. This Notice identifies the numerous sources of information from which the Commission can identify behaviours which are non-compliant with the Code. These include:

- Complaints and feedback;
- Reportable incident notifications under the Serious Incident Response Scheme;
- Interviews with consumers and families;
- Documents or information provided about compliance with the

People who can help



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Code;

- Notifications of material changes for aged care providers;
- Financial reports and Annual Prudential Compliance Statements;
- Performance assessments against the Aged Care Quality Standards;
- Investigations;
- Media reports; and
- Referrals from other regulators (e.g. NDIS Quality and Safeguards Commission or Australia Health Practitioner Regulation Agency).

This information can be used in many ways by the Commission. For example, the Commission can use personal information such as birth dates and the names of aged care workers or governing persons for the purpose of identifying patterns, and taking action in relation to non-compliance with the Code. Information may also be disclosed to the relevant aged care provider and/or other regulators where an individual's conduct is inconsistent with the Code.

What can the Commission do if an individual or provider is non-compliant with the Code?

The Commission has significant power to take action if the Code is breached by an approved provider, aged care workers or governing persons. The Commission is empowered to:

- impose a civil penalty against a provider, governing person or aged care worker;
- undertake an investigation;
- request information or documents from any person;
- give an approved provider a written notice if the Commissioner is satisfied the provider is not complying with the Code or if the Commissioner is aware of information that suggests the provider is not complying with the Code;
- arrange for an authorised officer to enter a premises under a warrant or with consent of the occupier and exercise monitoring powers, for the purposes of determining whether the Code has been, or is being, complied with;
- provide a written notice requiring a person to answer questions before an authorised officer or give copies of certain documents in relation to whether a governing person or aged care worker is complying, or has complied, with a provision of the Code that applies or applied to the individual;
- accept an enforceable undertaking in relation to compliance with the Code from an aged care worker, governing person or provider;
- make a banning order against an aged care worker, governing person or approved provider.

How should providers prepare for and respond to non-compliance with the Code?

Providers have a responsibility to take reasonable steps to ensure aged care workers and governing persons comply with the Code. Although there is no legislative definition for the phrase reasonable steps, the Commission considers that examples of reasonable steps include ensuring that aged care workers and governing persons:

- read and understand the Code and relevant guidance including the Code of conduct – Guidance for aged care workers and

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governing persons;

- undergo regular training and professional development that helps them understand, apply and uphold the behaviours expected under the Code; and
- understand the consequences of failing to act in accordance with the Code for the organisation and for them personally.

Providers must ensure they have considered and implemented the above at a minimum.

While these steps assist providers to mitigate non-compliance with the Code, it is important to understand how to respond if an aged care worker or governing person breaches the Code. Specifically, a provider must take reasonable steps to ensure that its aged care workers and governing persons comply with the provisions of the Code which apply to them. Should an aged care worker or governing person fail to comply with the Code, providers should take steps to bring the individual into compliance with the Code.

For example, this could include performance management activities between the provider and the individual. Providers have a responsibility to ensure workers and governing persons are supported to resolve issues where concerns are identified in relation to their compliance with the Code. This might involve providing training, guidance and supervision to build skills and capability. Providers should also consider whether identified breaches of the Code enliven other reporting responsibilities, such as under the Serious Incident Response Scheme.

How can we help?

Providers should be familiar with the Code, and take reasonable steps to ensure that aged care workers and governing persons are aware of the operation of the Code, and consequences for non-compliance.

Russell Kennedy can provide training to your workers and template documents to assist providers to meet their legislative obligations including:

1. Letters to workers and governing persons to notify them of the Code.
2. Code of Conduct policy.
3. Compliance checklists for providers and employees.
4. Live training and pre-recorded training.

To purchase any of these resources or ask any questions, please send an email to rkagedcare@rk.com.au and one of our team members will contact you.

Otherwise, please contact [Victor Harcourt](#) (03) 9609 1639 or [Anita Courtney](#) (03) 8602 7211 if you have any questions about the Code.

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