



# Code of Conduct for Aged Care

Guidance for aged care workers  
and governing persons

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## Acknowledgements

As the Code of Conduct for Aged Care is based on the NDIS Code of Conduct, this guidance has also been developed with reference to the National Disability Insurance Scheme (NDIS) Quality and Safeguards Commission's resources for providers<sup>1</sup> and workers, including to reflect where concepts and interpretation of the Code should be understood consistently.

Illustrative case studies have been developed using the Commission's experience through complaints and reportable incident notifications, submissions to the Royal Commission into Aged Care Quality and Safety and conduct guidance produced by the Australian Health Professionals Registration Authority (Ahpra) for nurses.

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<sup>1</sup> The term 'provider' or 'aged care provider' is used to refer to approved providers of aged care, as defined in the *Aged Care Quality and Safety Commission Act 2018 (Commission Act)*.

# Introduction

## Overview

- The Code of Conduct for Aged Care (the Code) commences on 1 December 2022.
- The Code sets out eight behaviour statements that approved providers, aged care workers and governing persons are expected to comply with.
- Approved providers have responsibilities under the *Aged Care Act 1997* (the Aged Care Act) to comply with the Code and take reasonable steps to ensure that aged care workers and governing persons comply with the Code.
- This guidance describes the responsibilities of aged care workers and governing persons of approved providers under the Code, and the types of conduct covered by the Code, along with information about what the Code means in practice. It also describes the Aged Care Quality and Safety Commission's (the Commission's) powers in relation to monitoring and enforcing the Code.

## The Code of Conduct for Aged Care

The Code includes eight elements that describe behaviours expected of approved providers, aged care workers and governing persons of approved providers.

The elements are broadly expressed to cover a range of behaviours and factors. The elements are consistent with community expectations, consumer rights and existing standards and expectations for how providers should operate (described across a range of provider responsibilities) and reflect similar standards of behaviour to that of the National Disability Insurance Scheme (NDIS) Code of Conduct (the NDIS Code).

The Code does not provide an exhaustive list of all the behaviours that are demonstrative of high-quality care. Instead, the Code presents a broad framework of conduct that approved providers and their aged care workers and governing persons have a responsibility to uphold.

The Code is aimed at ensuring that all consumers can have confidence and trust in the quality and safety of aged care they receive, regardless of who provides that care.

### **The Code of Conduct for Aged Care**

When providing care, supports and services to people, I must:

- a) act with respect for people's rights to freedom of expression, self-determination and decision-making in accordance with applicable laws and conventions
- b) act in a way that treats people with dignity and respect, and values their diversity
- c) act with respect for the privacy of people
- d) provide care, supports and services in a safe and competent manner, with care and skill
- e) act with integrity, honesty and transparency
- f) promptly take steps to raise and act on concerns about matters that may impact the quality and safety of care, supports and services
- g) provide care, supports and services free from:
  - (i) all forms of violence, discrimination, exploitation, neglect and abuse
  - (ii) sexual misconduct
- h) take all reasonable steps to prevent and respond to:
  - (i) all forms of violence, discrimination, exploitation, neglect and abuse
  - (ii) sexual misconduct.

The purpose of the Code is to:

- create expectations of foundational behaviour that all consumers can expect from their approved providers and aged care workers and governing persons of approved providers
- place obligations relating to behaviour on individuals, thereby giving the Commission a mechanism by which to respond to behaviour that falls below what is expected by the Code and to directly engage with aged care workers and governing persons about their conduct.

The Code's expectations on approved providers and their aged care workers and governing persons are reflective of the rights of consumers and how consumers are to engage with people who provide their care and others.

The Code is supported by several complementary requirements, set out in law. Collectively, these requirements are designed to ensure the provision of quality and safe care. For example:

- The Aged Care Quality Standards (the Quality Standards) describe requirements that must be met by approved providers. The requirements detail the standards of care all aged care consumers can expect. Approved providers are assessed against the Quality Standards, and where requirements are not met, the Commission may take action through a range of regulatory responses. These requirements relate to common concepts also used through the Code, including treating consumers with dignity and respect, responding to feedback and complaints and ensuring the delivery of safe and competent care.

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## 1. Introduction

- The Charter of Aged Care Rights (the Charter) sets out 14 rights of aged care consumers. These include the right to high-quality and safe care and services, the right to be treated with dignity and respect and the right to live without abuse and neglect. Consumers also have the right to personal privacy and to have personal information protected. Approved providers are required to uphold these rights and ensure consumers understand these rights. Some elements of the Code reflect the same language of the Charter in describing how a consumer is expected to be treated through the actions or behaviours of providers, aged care workers and governing persons.
- The Quality of Care Principles describe the systems and processes providers must have in place to prevent, respond to and manage incidents that occur in care delivery. In some cases, these incidents will involve the conduct of the provider, an aged care worker or governing person. Approved providers also have responsibilities to report certain incidents through the Serious Incident Response Scheme (SIRS). These responsibilities complement the elements of the Code that require those providing care to prevent, respond to and take reasonable actions to address certain harms (such as discrimination, abuse, violence, etc).

Each of these measures intersect with the Code and are aimed at ensuring consumers are treated well and receive quality and safe care and services.

Aged care workers and governing persons are likely to be familiar with the concepts in the Code as approved providers are already required to have systems and processes in place to ensure consumers are treated well and receive safe and high-quality care. By extending the Code to aged care workers and governing persons of approved providers, the Commission can regulate the conduct of individuals and take compliance and enforcement action directly against individuals who do not comply with the Code.

In severe cases, compliance and enforcement action may result in aged care workers or governing persons being banned from working in the aged care sector or an approved provider being sanctioned or having their approved provider status revoked (see [Chapter 5](#), Role of the Commission). The seriousness of these consequences reflects the importance for approved providers and their aged care workers and governing persons to conduct themselves in a way that complies with the Code.

**Aged care workers and governing persons of approved providers are not expected to be able to quote the Code word for word. But they should understand how important the Code is, know what conduct is (and is not) appropriate and where to find more information about the Code. Aged care workers and governing persons should also know how to raise concerns if they are concerned about another person's conduct.**

### Purpose of this guidance

To support aged care workers and governing persons of approved providers to comply with the Code, this guidance describes:

- the application and operation of the Code
- the elements of the Code and their importance
- examples of behaviours and conduct
- the role of the Commission.

This guidance covers both aged care workers and governing persons of approved providers, as both have individual responsibilities to comply with the Code. Governing persons, while not always directly involved in care delivery, may also be banned from working in the aged care sector if they fail to comply with the Code or if they are not suited to work or otherwise be involved in the aged care sector. See [Chapter 4](#), Practical guidance for governing persons, for expectations of governing persons.

Aged care workers and governing persons should pay close attention to how they conduct themselves, and build appropriate relationships with consumers and their representatives, families and carers.

The Commission expects relevant parties to work together to resolve issues where appropriate, including where there is conduct inconsistent with the Code. Where issues are resolved, an investigation into potential non-compliance with the Code by the Commission may not be needed. For further information see [Chapter 5](#), Role of the Commission.

This guidance cannot cover every situation. Providing high-quality and safe care, supports and services means using good judgement in line with the spirit of the behaviours described in the Code. Individuals should not only avoid the poor behaviours described within this document but should act in a way that supports and promotes the elements of the Code (the 'I must' statements).

This guidance uses examples and case studies to help demonstrate what is expected under the Code, and the types of behaviours that each of the elements of the Code seeks to eliminate, and some of the nuances of the Code. These behaviours are a guide only and individuals will need to use their judgement when considering conduct in relation to the Code. Some of the behaviours described may be inconsistent with more than one element of the Code.

There is separate guidance for approved providers which supports them to understand how the Code applies to them in practice and how it intersects with other existing provider responsibilities.

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### **What does the Code mean for governing persons?**

Governing persons are those key personnel who are a member of the group of persons who are responsible for the executive decisions of the provider or any other person who has authority or responsibility for, or significant influence over, planning, directing or controlling the activities of the provider (e.g. board members, see [Chapter 2](#), Operation of the Code in aged care).

As the leaders of the provider's organisation, governing persons play a central role in directing and controlling the executive decisions and activities of the organisation. This includes ensuring the organisation's systems, practices and culture support compliance with the Code.

Governing persons should be alert to whether the approved provider is complying with the Code and whether reasonable steps are being taken to ensure aged care workers comply with the Code. Governing persons should know when to raise concerns about behaviours and conduct that may be inconsistent with the Code and how to respond to such concerns. Governing persons are also personally responsible for complying with the Code and should be mindful as to whether their conduct is consistent with the Code. See [Chapter 4](#), Practical guidance for governing persons.

Governing persons should therefore be familiar with both sets of guidance, both about what is required of the approved provider, and what is required of individuals.

### **A note about the NDIS Code**

There will be some aged care workers who also provide supports and services to NDIS participants. These workers will already be familiar with the concepts and behaviours set out in the Code, noting the many similarities with the NDIS Code. In most cases, the behaviours described in this guidance document are aligned with the NDIS Code.

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# Operation of the Code in aged care

## Overview

- The Code applies to approved providers of residential care, home care and flexible care, and aged care workers and governing persons of approved providers.
- The Code sits alongside other regulation, including provider responsibilities in relation to the Quality Standards, the Charter, Quality of Care Principles and the Serious Incident Response Scheme (SIRS).

## People required to comply with the Code

The following people are required to comply with the Code:

- approved providers under the Aged Care Act. This includes approved providers of residential care, home care and flexible care (including care delivered under the Multi-Purpose Services, Transition Care and Short-Term Restorative Care programs) under the Aged Care Act.
- governing persons of approved providers, being individuals who are:
  - a member of the group of persons who are responsible for the executive decisions of the organisation, or
  - a person who has authority or responsibility for, or significant influence over, planning, directing or controlling the activities of the organisation.
- aged care workers of approved providers, being individuals who are:
  - employed or otherwise engaged (including on a voluntary basis) by the provider
  - employed or otherwise engaged (including on a voluntary basis) by a contractor or subcontractor of the provider to provide care or other services to consumers.

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## 2. Operation of the Code in aged care

Examples of aged care workers and governing persons of approved providers required to comply with the Code include:

- the executive management team
  - the chief executive officer
  - board members
  - anyone responsible for the day-to-day operations of the service
  - service and facility managers
  - those responsible for the nursing services provided by the service and who hold a recognised qualification in nursing
  - allied health professionals contracted by the provider to provide care to consumers
  - kitchen, laundry, garden, maintenance and office personnel employed or engaged by the provider
  - support workers, personal care workers, lifestyle coordinators and care companions
  - service coordinators and case managers
  - consultants, trainers and advisors for regulatory support or systems improvement who are under the control of the provider
  - independent contractors engaged by the provider (including health professionals)
  - volunteers of the provider who deliver care, supports and services to consumers.
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### What does the Code mean for volunteers?

Volunteers are an integral part of the aged care workforce, supporting the wellbeing of older people. For consumers receiving care in their home, volunteers can reduce social isolation and help with household activities, transport and shopping. Consumers in residential aged care can get help with activities of daily living and companionship.

Approved providers have a responsibility to take reasonable steps to ensure that their aged care workers (including volunteers engaged by the provider) are complying with the Code. In practice, this means ensuring volunteers understand the Code, know what is expected of them and the potential consequences should issues be raised about their conduct.

As volunteers are considered aged care workers, they may also be subject to banning orders for not complying with the Code (see [Chapter 4](#), Practical guidance for governing persons). As such, it is critical that providers support volunteers to understand the scope of their role in the organisation and what appropriate conduct looks like.

Consistent with the recommendations of the Royal Commission into Aged Care Quality and Safety, providers are encouraged to provide training to volunteers and supervise their activities. This may include, for example, induction and ongoing training in caring for and supporting older people, diversity and inclusion, complaints management and identifying and reporting abuse or neglect.

### People not required to comply with the Code

Examples of individuals who are not subject to the Code include:

- visiting medical practitioners, pharmacists and other allied health professionals who have been requested by, or on behalf of, a consumer but are not contracted by the provider
- tradespeople who perform work otherwise than under the control of the provider, for example, those visiting for a one-off maintenance task.

The Code does not apply to service providers that deliver care under grant agreements, such as Commonwealth Home Support Programme (CHSP) and National Aboriginal and Torres Strait Islander Flexible Aged Care Program (NATSIFACP). However, these providers are still required to provide care that is safe and respectful and to behave in a way that aligns with the Code. Concerns about the conduct of providers, aged care workers and governing persons within these programs can still be raised with the Commission (with actions taken under the Commonwealth's funding agreement with the provider).

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### Scope of the Code

The opening statement of the Code sets requirements for approved providers and their aged care workers and governing persons to act in a certain way *during the provision of care, supports and services to consumers*.

There may however be instances where the Commission has regard to conduct that occurs *outside the provision of care, supports and services*, where serious concerns are raised about the ability of an organisation or an individual to deliver high-quality and safe aged care.

For example, the Commission may have regard to conduct:

- carried on outside work hours or the service premises. For example, where an aged care worker inappropriately posts information about a consumer on social media or where an aged care worker disparages a consumer to a friend, who also knows the consumer
- where new consumers are looking to enter a service or engage a provider to deliver services (even if they are not yet residing in a service or have a contract in place with a provider). For example, where a provider or its aged care worker or governing person discriminates against the prospective consumer based on race or religion
- when engaging with the representatives, family members, carers, etc. of consumers. For example, where a provider or its aged care worker or governing person inappropriately denies a family member from visiting a consumer
- when engaging with the Commission. For example, where a provider or its aged care worker or governing person intentionally gives false information to the Commission in respect of a consumer.

### Approved provider responsibilities

Approved providers have many provider responsibilities that regulate how providers are required to act and operate. The Code forms one of these responsibilities.

Approved providers have a responsibility to comply with the Code as well as to take reasonable steps to ensure their aged care workers and governing persons comply with the Code. *The Code of Conduct for Aged Care – Guidance for approved providers* states that approved providers should ensure aged care workers and governing persons:

- read and understand the Code and this guidance
- undergo regular training and professional development that helps them understand, apply and uphold the behaviours expected under the Code
- understand the consequences of failing to comply with the Code for the organisation and for them as individuals
- are supported to resolve issues where concerns are identified about their compliance with the Code (for example, through training, guidance and supervision to build skills and capability).

Approved providers must also have systems in place to ensure their aged care workers and governing persons are adequately trained and supported to understand the Code, systems for monitoring and reviewing the performance of their staff, complaints management systems and incident management systems. These requirements form part of the Quality Standards.

Where aged care workers or governing persons of an approved provider do not comply with the Code, the provider is required to take reasonable steps to ensure those persons are supported to comply with the Code. This may involve performance management activities between a provider and an individual.

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### Role of aged care workers in complying with the Code

As an aged care worker of an approved provider, you have a responsibility to behave consistently with the Code. Your role in the direct delivery of care and services means you will have the most engagement with consumers. Your behaviour towards consumers will impact them in ways beyond the simple delivery of services and will affect how consumers feel about themselves and if they feel safe and supported.

Your conduct and behaviour will also reflect on the provider and its compliance with the Code, as providers are expected to support, equip and prepare you to best carry out your role. This includes, for example, providing training, making sure policies and procedures are easily accessible and taking reasonable action to ensure you comply with the Code.

You are expected to:

- work and be competent within your job description (and scope of practice, where applicable)
- understand what good behaviour looks like and when conduct is not acceptable (including when it is inconsistent with the Code)
- speak with your approved provider about what behaviours are appropriate, particularly if you are not sure or need further guidance.

### Role of governing persons in complying with the Code

As a governing person of an approved provider, you are responsible for complying with the Code. You should consider the Code in performing your role and be alert to whether your conduct is inconsistent with the Code.

You are also responsible for directing and controlling the executive decisions and activities of the organisation to enable it to meet the provider responsibilities. This includes ensuring the organisation's systems, practices and culture support compliance with the Code. You should be cognisant of whether the provider is complying with the Code.

You should also know when to raise concerns about behaviours and conduct that may be inconsistent with the Code. Further information about the expectations on you are set out in [Chapter 4](#), Practical guidance for governing persons.

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# Practical guidance for aged care workers

## Overview

- This chapter details each of the elements of the Code and why they are important. It also describes behaviours that may be of concern or would not be consistent with the Code and offers practical guidance for aged care workers in how they are expected to conduct themselves.
- This guidance is not exhaustive and includes only some examples of the types of behaviours that may give rise to concerns under the Code.

## What does the practical guidance for aged care workers mean for governing persons?

Given the leadership position of governing persons in the provider's organisation, governing persons should be familiar with and conduct themselves in line with the guidance in both [Chapter 3](#) (this chapter) and [Chapter 4](#), Practical guidance for governing persons.

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## Element A

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I must act with respect for people's rights to freedom of expression, self-determination and decision-making in accordance with applicable laws and conventions

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### 3. Practical guidance for aged care workers

#### Context

This element of the Code focuses on ensuring consumers are treated consistently with their fundamental rights to express themselves, determine how they live and to make decisions in accordance with applicable laws and conventions.

This means that aged care workers:

- do not inappropriately stifle a consumer's right to express themselves, noting that a consumer's right to expression does not mean they can impede on the rights of others, or offend or negatively impact others (including by expressing beliefs that are discriminatory)
- support consumers to determine how they live and what happens to them. This involves supporting consumers to exercise choice and control over the care and services they are provided and to exercise dignity of risk where they wish
- support consumers to make decisions, including upholding their right to involve those they want in making decisions and to use supported decision-making (where appropriate).

#### Terms explained

##### What are the 'applicable laws and conventions'?

The applicable laws and conventions are those laws and conventions that describe the human and legal rights afforded to consumers as individuals in the community and as consumers receiving aged care. For the aged care context, this includes

state and territory laws about decision-making, the aged care legislation and relevant human rights conventions, including the [International Covenant on Economic, Social and Cultural Rights](#), [International Covenant on Civil and Political Rights](#) and the [Convention on the Rights of Persons with Disabilities](#). Providers must act with respect for applicable laws and conventions that may impact the rights of consumers.

##### What is the right to freedom of expression?

This means that consumers can form, hold and express their opinions without undue interference. Consumers have the freedom to seek, receive and impart information and ideas of all kinds, including orally, in writing, art or other media. In the care delivery context, this may involve consumers holding religious beliefs, opinions about the world and viewpoints which they seek to express as part of living their life.<sup>1</sup>

##### What is the right to self-determination?<sup>2</sup>

This means that consumers can freely determine their political status and pursue their economic, social and cultural development as part of living their life and have meaningful control over decisions that impact them. This right is about individuals having the autonomy and freedom to make their own choices.

In the aged care context, this may arise where consumers seek to make choices about what activities (including care, supports and services) they engage in, how they spend their money and who they spend time with.

1 Drawn from articles 19 and 20 of the International Covenant on Civil and Political Rights. See The [Attorney General's Department website](#).

2 The right to self-determination is contained in article 1 of the International Covenant on Civil and Political Rights and article 1 of the International Covenant on Economic, Social and Cultural Rights. See The [Attorney General's Department website](#).

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### 3. Practical guidance for aged care workers

#### What is expected of aged care workers?

In upholding this element of the Code, aged care workers are expected to:

- provide person-centred care that values the individual and supports them to express themselves
- communicate in a way that is clear, easy to understand and enables consumers to exercise choice
- where consumers require communication aids or interpreters, support them to use these aids or interpreters
- offer consumers choices and options in day-to-day care delivery
- respect the decisions consumers make
- deliver care in line with consumers' preferences, wherever possible
- support consumers to exercise dignity of risk
- be able to discuss consumers' rights with them
- engage with representatives, families and carers as directed by the consumer
- understand supported decision-making and when it may be needed
- be familiar with how consumers can access other support (from within the organisation and externally) including access to advocates.

**It is acknowledged that a consumer's right to express themselves does not mean they can abuse or discriminate against you or other consumers. You have a right to a safe and respectful work environment. Where you are not experiencing this, speak with your manager.**

#### What types of behaviour would not be consistent with this element of the Code?

You should understand, and be able to recognise, those behaviours that would not be consistent with this element of the Code.

#### Examples of behaviours that are not consistent with the Code

- Ignoring or dismissing consumers when they ask questions about their care delivery
- Telling a consumer their choices don't matter
- Failing to be open to discussing ways a consumer can exercise choice or self-direction
- Restricting the right of consumers to engage in social and cultural activities
- Restricting the right of consumers to engage in economic activities, including to spend their money how they see fit
- Restricting the right of consumers to move around the service
- Telling a consumer what you want them to do, rather than asking the consumer
- Overriding a consumer's wish or desire to do something for themselves in favour of doing something convenient
- Treating consumers as if their age, background or cognitive status means they are incapable of making decisions or doing things independently
- Seeking decisions from representatives rather than from the consumer (despite the consumer having capacity to make these decisions)

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### 3. Practical guidance for aged care workers

- Failing to communicate with the consumer because of any barriers to their communication (which could otherwise be overcome by using assistive tools or interpreters)
- Telling a consumer that they shouldn't socialise with a particular person (even if it is the consumer's wish)
- Withholding information or options from a consumer so they make a decision that is more convenient or easier to achieve
- Making derogatory comments about a consumer's beliefs, choices or opinions.

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#### Case study

Slava lives in a residential aged care service and uses a wheelie walker to move about the service and garden. The service manager believes that Slava is at risk of falling when she uses the wheelie walker by herself and has asked staff to remove the wheelie walker from Slava's room to ensure she doesn't use it without supervision. Slava asks for the wheelie walker to be returned, stating that without it, she feels confined to her room and is not able to enjoy time in the garden. The service manager says no, stating that the provider's policy is to remove falls risk hazards. Making a decision without considering Slava's wishes is not consistent with the Code. In this situation, the service manager is expected to partner with Slava to discuss the risks and identify ways to support her to enjoy time in the garden (consistent with the requirements of the Code to respect her self-determination and decision-making).

#### Case study

Jonathan is an anxious person and does not enjoy engaging with people during his shopping outings, including when he is with his care worker. Jonathan sometimes doesn't follow the care worker through busy parts of the shopping centre and prefers to sit and wait for shoppers to pass by. His care worker Sonny understands how Jonathan needs to be reassured during anxious episodes and in busy environments. Instead of rushing Jonathan or pulling him along to complete the shopping as quickly as possible, Sonny will sit with Jonathan and talk to him about how he is feeling and support him to calmly walk through the shopping centre. Jonathan appreciates the comfort Sonny offers. Delivering care with kindness and appreciation for the person's identity and preferences is consistent with the Code.

#### Case study

Dietrich is receiving respite care. Dietrich has hearing and speaking challenges and Parkinson's disease. The Parkinson's means it's difficult for him to hold his cutlery properly, so he needs to take his time and tends to drop his cutlery frequently. Dietrich's care plan states that he prefers to feed himself with supervision as it helps him to feel independent. At the end of the dinner service, the aged care worker wants to start clearing plates as this is one of the last tasks before his shift is over. To speed the process up, the worker takes Dietrich's spoon and starts feeding him. Dietrich tries to protest but is unable to communicate verbally in the moment. This response does not reflect respect for Dietrich's right to self-determination (as required by the Code) and undermines Dietrich's dignity.



## Element B

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I must act in a way that treats people with dignity and respect, and values their diversity

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### 3. Practical guidance for aged care workers

#### Context

This element of the Code focuses on ensuring consumers are treated with dignity and respect, and that their diversity is valued.

Treating consumers with dignity and respect includes recognising consumers' strengths, empowering them to be independent, communicating respectfully and recognising and appreciating a consumer's individuality.

Each consumer has a different life experience with different social, cultural, language, religious, spiritual, psychological and medical needs. This diversity affects the care, supports and services they need and how those services are provided, but it should not negatively affect how they are treated.

**It is important that you take care with your words and actions to avoid hurting, embarrassing or causing offence to consumers. This includes being mindful and supportive of a consumer's differences, preferences and the way they want to live their life.**

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#### What is expected of aged care workers?

In upholding this element of the Code, aged care workers are expected to:

- listen to consumers and act kindly
- speak to and engage with consumers in a professional and respectful way
- provide care that is free from disrespect, including judgemental, rude, belittling, insulting or dismissive behaviour
- acknowledge consumers' needs and preferences when engaging with them
- ensure consumers' diversity is recognised and valued in care delivery
- consider individual circumstances, diverse needs, values and individual histories when delivering care, supports and services
- work in a way that enables consumers to feel as comfortable and safe as possible in their day-to-day interactions with you
- encourage consumers to communicate their preferences for how their care, supports and services are delivered
- respect consumers' preferences when delivering care, supports and services and speak openly to them when these preferences may not be possible.

#### **What types of behaviour would not be consistent with this element of the Code?**

You should understand, and be able to recognise, those behaviours that would not be consistent with this element of the Code.

#### **Examples of behaviours that are not consistent with the Code**

- Speaking to a consumer in a rude, curt or terse way
- Talking down to a consumer or speaking to them as if they were a child
- Speaking with others (e.g. another worker), when in presence of a consumer, in a language that the consumer cannot understand
- Ordering or directing a consumer to do something rather than asking
- Using language that is demeaning, disrespectful or dismissive
- Making cruel comments or jokes at the expense of a consumer
- Expressing disgust towards a consumer's body or medical conditions
- Referring to a person's culture or diversity in a derogatory way, including racist comments harmful terms or stereotypes
- Discouraging a consumer from expressing who they are
- Making consumers feel uncomfortable or unsafe to disclose their diversity for fear of mistreatment or reprisal
- Telling a consumer their beliefs, opinions or world views are foolish or wrong.

#### **Case study**

Tim is receiving four weeks respite care in a residential aged care service. Tim requires assistance to get out of bed and to walk. While resting after lunch, Tim presses the call button. When the aged care worker attends, Tim requests assistance to the bathroom as a matter of urgency. The worker turns off the call bell and replies, 'I'm sorry, I'm too busy for that, you will have to go in your pad' and quickly leaves. Refusing to help a consumer use the bathroom and telling them to soil themselves is not treating them with dignity or respect and is inconsistent with the Code.

#### **Case study**

Rick has received a Home Care Package and has organised for an aged care worker to attend his home twice a week to assist him with personal care, including showering. On the third visit, the worker learns that Rick is in a same sex relationship and is married to Gary. After discovering this, the worker tells Rick that they do not agree with his life choice, that they will not be able to work with him anymore and will ask the provider to arrange another worker and abruptly leaves. While aged care workers may have personal opinions about lifestyles and preferences, these should not be brought into the workplace and used to humiliate or make consumers feel ashamed. This conduct is disrespectful of Rick and not consistent with the Code.

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### 3. Practical guidance for aged care workers

#### Case study

Carmen loves her job as a personal care worker. She is a friendly person and develops good working relationships with the consumers at the service. Carmen often calls consumers 'love' and 'dear' out of affection. During a lifestyle activity, one of the consumers tells Carmen to stop calling him 'dear' and that he is Mr Carlisle or John. At first Carmen is taken aback by his response, but quickly understands that some people prefer to be addressed by their name and apologises. Moving forward, Carmen makes it a practice when meeting new consumers to check their preferences for how they wish to be referred to and speaks to them in a way that makes them feel respected. Listening to and respecting consumers in this way is consistent with the Code.

#### Case study

While sitting in the staff room, a personal care worker, Tania, overhears the assistant-in-nursing (AIN) speaking about Jane, a consumer in the residential aged care service. Tania overhears the AIN describing in detail a recent medical procedure she had performed on Jane, her prognosis and how 'disgusting' the procedure was. The AIN jokes that she didn't realise 'just how bad Jane smells'. The AIN's conduct is disrespectful of Jane and is inconsistent with the obligation to act with respect for the privacy of consumers. Given that Tania has observed behaviour that is inconsistent with the Code, it is expected that she raises this with the AIN or report this conduct to a manager.

#### Case study

Jing is Chinese born and living in a residential care service where there are few other Chinese speaking residents or staff. An aged care worker teases Jing about the fact that she has lived in Australia for so long but still doesn't have great English. While Jing can't understand everything the worker is saying about her, she finds it hurtful. The aged care worker's conduct is inconsistent with the Code.

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## Element C

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I must act with respect  
for the privacy of people

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### 3. Practical guidance for aged care workers

#### Context

This element of the Code focuses on ensuring consumers have their right to privacy respected and protected.

There is a great deal of personal information shared and made available as part of providing care to consumers, and often this information includes highly sensitive personal and health information.

Privacy also extends beyond a careful approach to handling personal information, ensuring consumers have the personal and physical privacy to feel safe and comfortable and are not unnecessarily subject to embarrassment or discomfort when delivering care.

#### What is expected of aged care workers?

In upholding this element of the Code, aged care workers are expected to:

- respect and protect the privacy of consumers by following the privacy policies and controls the provider has put in place
- be aware of the privacy needs and preferences of consumers
- maintain the confidentiality of consumers' personal information
- deliver care, supports and services in a way that maintains personal dignity
- explain and request permission to touch a consumer or enter their personal space
- provide timely care delivery to prevent embarrassment and discomfort such as toilet breaks or the changing of continence aids
- consider consumers' everyday personal privacy needs such as being able to shower and dress in a private and comfortable space.

#### What types of behaviour would not be consistent with this element of the Code?

You should understand, and be able to recognise, those behaviours that would not be consistent with this element of the Code.

#### Examples of behaviours that are not consistent with the Code

- Inappropriately sharing information about consumers with aged care workers or others who are not involved in their care delivery
- Disclosing personal information to others, including to representatives, families and carers, or other consumers who are not authorised to have that information
- Being careless with personal records such that they are visible to people who should not have access to such personal information
- Instructing consumers to undress, stand naked, wear minimal clothing (e.g. stand in a towel) or receive care in a space visible to others (particularly where such care is intimate or embarrassing for the consumer)
- Providing intimate care to consumers in environments that are not sufficiently private
- Unreasonably telling consumers to wait for care delivery, particularly concerning toileting and showering
- Failing to request permission to touch consumers where required as part of care delivery
- Talking loudly about a consumer or their care delivery within range of other consumers or others which may be embarrassing to the consumer.

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### 3. Practical guidance for aged care workers

#### Case study

Graeme is an administration officer photocopying a new consumer's personal information at the reception area of a residential aged care service. Graeme is called away and leaves the consumer's file open on the front desk next to the visitors sign in book. Upon his return, Graeme discovers another consumer and his visiting relative reading the documents. Graeme has acted inconsistently with the Code and his obligations to respect the privacy of consumers (including by ensuring personal information is managed securely).

#### Case study

Cynthia has recently been diagnosed with an aggressive form of cancer. Cynthia will need increasing care over the coming months, but she has asked that her home care provider not disclose this information to her family. Cynthia explains that she is still processing the information herself. Marie, her personal care worker, is often asked by Cynthia's daughter about any care updates she should know about. Marie, while feeling uncomfortable about not being fully transparent with the daughter, respects Cynthia's right to choose when and who to disclose the information to and does not share this information with the daughter. Marie is acting consistently with the Code by respecting Cynthia's privacy.

#### Case study

Simon receives a Home Care Package and has a nurse help him insert his catheter. While sitting on his bed waiting for the nurse to change his catheter, Simon notices the door between his room and the lounge room is wide open. Simon asks the nurse to close the door, however the nurse says she won't take long and continues with the procedure.

Simon observes his visiting granddaughter walk past his room, accidentally look in and quickly close the door. Simon is embarrassed. By failing to have regard for how Simon may feel about having this intimate procedure conducted with the door open, the nurse hasn't acted with respect for Simon's personal privacy; the nurse's conduct is inconsistent with the Code.

#### Case study

Tabitha enjoys swimming. Her regular care worker Paula transports her to and from the swimming pool and assists her to mobilise while at the pool using her wheelie walker. As Tabitha has difficulty holding onto her wheelie walker and removing her wet bathers after swimming, she needs Paula's assistance to change. Tabitha's last care worker would remove her bathers in full view of the women's locker room without any regard for Tabitha's privacy; it always made her feel exposed and embarrassed. Paula always takes Tabitha into a shower cubicle, helps her sit on the seat and holds up a towel so that Tabitha can remove the top of her bathers while she is covered by the towel. Paula understands that for any adult, personal privacy is important. This thoughtfulness and respect for privacy is consistent with the Code.

#### Case study

While sitting in the lounge room of a residential aged care service with several other consumers, a care worker asks Ramona if she has opened her bowels that morning. Ramona answers the question but is embarrassed that she was asked this in front of people. Sharing private and potentially embarrassing details of a consumer's care in such a way does not respect the consumer's privacy and is inconsistent with the Code.



## Element D

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I must provide care, supports and services in a safe and competent manner, with care and skill

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### 3. Practical guidance for aged care workers

#### Context

This element of the Code focuses on ensuring that care is provided in a safe and competent manner, with care and skill. This involves ensuring that the right people are delivering aged care services to consumers. The intent of this element is to safeguard consumers from incompetent or unqualified care, unsafe practices and equipment and environments that may cause risk to them.

This element also seeks to ensure care, supports and services are provided with attention, kindness and empathy. The way one cares for and interacts with consumers can have a significant impact on the outcomes of their care, supports and services, including their safety, health and wellbeing.

While approved providers have the legislative responsibility to ensure aged care workers and governing persons are competent in their roles, there is also an expectation on individuals to seek out and maintain expertise and competence, and to work in a safe manner.

Part of providing care, supports and services in a safe and competent manner is maintaining accurate records to ensure continuity of care between aged care workers and to inform future care delivery. While it is a provider's responsibility to maintain an effective information management system, aged care workers and governing persons are also expected to ensure the records created and maintained are appropriate and accurate.

#### What is expected of aged care workers?

In upholding this element of the Code, aged care workers are expected to:

- obtain and maintain the relevant competence and qualifications to effectively perform their role
- develop and maintain the knowledge and skills required for their role (for example, through training and supervision given by the provider)
- work within their job description or scope of practice (where relevant to their role)
- perform duties consistent with their qualifications and competencies
- be honest with the provider about their qualifications and ability to provide particular care, supports and services, and disclose the limits of their knowledge, skills and experience
- seek out opportunities to gain further knowledge and stay abreast of current practices
- know how to use equipment safely
- comply with the provider's policies and practices that relate to work health and safety
- where subject to a professional code, be familiar with and comply with the applicable professional code requirements
- deliver care, supports and services in keeping with the needs, goals and preferences of a consumer

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### 3. Practical guidance for aged care workers

- in recording information about consumers:
  - comply with the organisation’s information management system
  - use appropriate, compassionate and respectful language in records
  - keep accurate, up-to-date and legible records that report relevant details of a consumer’s history and care needs
  - include sufficient detail in records to facilitate continuity of care between other aged care workers and to inform future care delivery.

#### **What types of behaviour would not be consistent with this element of the Code?**

You should understand, and be able to recognise, those behaviours that would not be consistent with this element of the Code.

#### **Examples of behaviours that are not consistent with the Code**

- Not attending to consumers or failing to deliver care
- Delivering care, supports and services you do not have the requisite knowledge or experience to deliver, for example, working outside your job description or scope of practice (where relevant to your role)
- Failing to stay up to date with the relevant knowledge required to remain competent
- Using equipment in an unsafe manner or in a way that contravenes the organisation’s policies and practices for safe and quality care delivery

- Delegating clinical activities to a person without the requisite qualifications or supervision, including administration of medication
- Delivering care, supports and services under the influence of alcohol or drugs
- Acting inconsistently with relevant professional codes
- Covering up incidents or failing to record and/or escalate incidents
- Failing to record and/or escalate complaints
- Using rude or unkind language about a consumer in their care plan.

#### **Case study**

Mary is an enrolled nurse working in residential aged care. Mary’s colleagues notice that the consumers in Mary’s wing are often in wet sheets, that urine bottles are not being emptied and that some consumers are not being showered in a day. Mary is also spending a lot of time at the nurses’ station on her phone while consumers are left unattended and call bells are being ignored. Mary’s conduct is not consistent with the Code as she is not carrying out her role in a competent manner. Her colleagues should raise their observations with the service manager so that Mary’s conduct can be addressed, and consumers protected.

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### 3. Practical guidance for aged care workers

#### Case study

Vivian is a Care Coordinator at a regional provider. The provider has used a paper-based care plan system for the past 15 years but has recently upgraded to an electronic system. There was a training session but some of Vivian's colleagues are struggling to understand how to use the system correctly. Vivian has observed incorrect and missed entries in the care plans.

Vivian speaks with her manager about what she has observed and suggests a follow up training session to help embed some of the practices. Identifying potential risks to consumers and raising these with management is consistent with the Code.

#### Case study

Hamilton, a home care consumer, contacts his provider concerned that his aged care worker, Jonathan, has been acting erratically during care delivery, presents as 'wired' and has dilated pupils. Hamilton also mentions that Jonathan appears to want to quickly complete all his tasks so that he can get to his next shift. The provider identifies that Jonathan has been working for both the provider and another local aged care provider. The provider also uncovers in discussion with Jonathan that he has been misusing drugs to stay awake during care delivery. It is not consistent with the Code to be under the influence of non-prescription drugs or alcohol when providing care to consumers. It undermines the safety of care, risks mistakes being made and devalues the relationship of trust an aged care worker has with a consumer.

#### Case study

Lana is receiving a Home Care Package and requires the dressing on her wound to be changed every two days by a registered nurse. Lana's daughter raises a concern with Lana's personal care worker that the wound appears to have worsened. The worker tells the daughter that wounds often look more serious than they are and offers to change the dressing herself. When the daughter questions whether the worker is allowed to change the dressing, the worker snaps back and says that she either does it now or Lana will have to wait until next week when the registered nurse could visit. A week later, Lana is treated in hospital for an infection and the hospital identifies that the wound had not been routinely or properly dressed as directed. Aged care workers should not be providing care, supports or services outside of their delegation, skillset, job description or scope of practice (where applicable). Doing so is inconsistent with the Code and may risk the health and safety of consumers.

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## Element E

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I must act with integrity,  
honesty and transparency

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### 3. Practical guidance for aged care workers

#### Context

Integrity, honesty and transparency are crucial to developing the trust-based relationships that are required for high-quality care delivery. This element of the Code focuses on ensuring consumers are protected from conduct that seeks to treat them unfairly or take advantage of them.

#### What is expected of aged care workers?

In upholding this element of the Code, aged care workers are expected to:

- treat consumers fairly and not take advantage of them
- deal appropriately with consumers' money and belongings
- ensure vulnerable consumers have time to consider options and make decisions (consistent with the behaviours expected through other elements of the Code)
- answer questions about care, supports and services raised by consumers in a responsive, open and timely way
- avoid giving, asking for or accepting any inducements or gifts from other service providers or organisations in exchange for referrals, favourable decisions or any other benefits, particularly where it might impact on the integrity of the information provided to support a consumer's choice
- provide accurate information to consumers about the delivery of care, supports and services, including about fees, timing of care delivery and availability of care, supports and services
- report concerns about the integrity, honesty or transparency of others to the provider.

Aged care workers should be transparent about the qualifications, skills, experience and competencies they possess to deliver care, supports and services, and any of their limitations. Consistent with the expectations that aged care workers act with integrity, honesty and transparency, they should not:

- lie on a resume about their qualifications, skills or experience
- provide false references
- make claims that they are competent in an area of care delivery that they are not able to perform.

**Integrity is being honest even when no one else is looking, doing the right thing even when no one is around to see you do it, and doing things the way they should be done, instead of using shortcuts.**

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### 3. Practical guidance for aged care workers

It is the role of the provider to have sufficient recruitment practices in place to ensure aged care workers engaged are suitable and appropriate for the role. However, aged care workers should give accurate information to the provider about their qualifications, skills, experience and competencies, and notify the provider of information that may hinder their ability to ensure consumers receive safe and competent care.

In particular, aged care workers should tell the provider if they:

- have not obtained clearance from any relevant worker screening checks
- have been subject to an exclusion, revocation or suspension decision under any worker screening law
- have been subject to a banning order
- have been subject to an employment proceeding related to their work in the care and support sector where the findings were substantiated, or an adverse action was taken that relates to their role or integrity
- have been subject to a finding of professional misconduct in a related field or role
- need more experience or training to perform parts of their role.

Aged care workers should ensure information the provider has about them is accurate and helps the provider understand their competency to work with consumers and in the specific role they hold.

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#### **What types of behaviour would not be consistent with this element of the Code?**

You should understand, and be able to recognise, those behaviours that would not be consistent with this element of the Code.

#### **Examples of behaviours that are not consistent with the Code**

- Providing inaccurate information to the provider during recruitment
- Failing to give the provider information that subsequently affects your capacity to work in aged care
- Failing to disclose a conflict of interest
- Lying to consumers to cause distress or deceive them for a benefit or your convenience
- Asking for or accepting any additional payment for care delivery
- Offering inducements or rewards for consumers to ensure they continue to seek you out as their preferred aged care worker or remain with the provider
- Intimidating or applying pressure to influence a consumer to change providers that preference you or another provider
- Applying pressure to consumers to make decisions that advantage you and provide you with a personal gain
- Encouraging consumers to give you gifts or money
- Asking consumers to lend you money (however small the amount)
- Advising or coercing consumers to change their will, including to benefit you
- Making claims about the efficacy of care, supports and services that cannot be substantiated

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### 3. Practical guidance for aged care workers

- Providing consumers with information you know is inaccurate or misleading
- Offering care, supports and services you are not qualified to provide
- Covering up mistakes you have made that impact consumers
- Failing to tell the provider you have evidence another worker is not being honest.

Although some of these behaviours may not necessarily be unlawful, the conduct may be unethical, dishonest and not in the interests of consumers. It may also be a reportable incident under the SIRS, for example, where it amounts to an incident of neglect or financial abuse of a consumer.

Some unethical and unlawful practices, such as misleading or deceptive conduct, and coercive or exploitative conduct, as well as being inconsistent with this Code, may also be a breach of the laws and regulations administered by other regulatory authorities.

#### Case study

Anna receives a Home Care Package. Her personal care worker, Tom, does the shopping every week using cash that Anna gives him. Anna always asks to see the receipts and Tom always shows them to her when she asks. Anna asks Tom if he's offended by her asking to see the receipts and explains that she had an unfortunate experience when her nephew stole money from her. Tom reassures Anna that he is not at all offended and that it is important to him and the provider that Anna feels safe and comfortable. This is consistent with the Code.

#### Case study

While completing her medication round, a registered nurse realised she had mistakenly given one consumer's medication to another. Consequently, both consumers received the wrong medication. Despite being aware of the error, the registered nurse notes on each consumer's medication chart they had received the correct medication and does not alert anyone to the error. Mistakes and near-miss incidents can happen, however acting with integrity means that such errors are recorded and openly disclosed to the provider and consumers. Failing to identify the error and covering it up is inconsistent with the Code.

#### Case study

Louise has been Penny's primary care worker for many years and they have a strong relationship. Penny doesn't have any children and suggests to Louise that she would like to include Louise in her will. Louise explains that she's humbled by Penny's offer but that it wouldn't be appropriate, and that she should consider other ways to pass on her legacy. Louise is right to gently decline, as she understands that to accept money or to become a beneficiary of Penny's will would be gaining a personal benefit as a result of the care she has been providing and be inconsistent with the Code.

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### 3. Practical guidance for aged care workers

#### Case study

A home care consumer, Nico, tells his long time care worker, Natalie, that he doesn't have anyone to help him with shopping and asks if Natalie can help him. Nico doesn't feel comfortable driving to the supermarket anymore and doesn't want anyone to know in case it means he needs more full time care. Rather than raising Nico's changing needs with the provider, Natalie suggests they come to a private arrangement, dishonestly implying that the provider would charge Nico higher fees to expand his services to include shopping. Natalie starts doing the shopping and charging Nico a fee directly. Taking advantage of a consumer to receive a financial benefit is inconsistent with the Code and may also be elder abuse.

#### Case study

Samuel is a student nurse working in a home care service as part of gaining his qualification. While attending a consumer's home with Sally, his supervising registered nurse, he finds it odd that Sally is not taking the consumer's blood pressure, reviewing the consumer's wound or checking to see if the consumer has taken her prescribed medication as detailed in her care plan. Rather, Sally spends an hour sitting in the living room speaking with the consumer and watching television with her before leaving for the next appointment. In the car, Samuel states he thought today was a clinical visit.

Sally explains that a clinical visit was booked but that the agency registered nurse attended yesterday, and the consumer had forgotten to cancel today's visit. Instead of rescheduling the appointment to next week, Sally attended as it meant she could keep her shift. Samuel is concerned and queries it with the provider. Although nervous to raise his concerns, the provider reassures Samuel that raising concerns about the integrity of a practice, or a person is consistent with the Code.

#### Case study

Lillian is a personal care worker in a regional area. She has been delegated tasks from the registered nurses and watched several procedures undertaken. Lillian has seen a new role advertised for an Enrolled Nurse at another service, and believes she has the skillset described in the job description. Lillian copies her nurse colleagues' resumes and takes these home to replicate them in her name. Lillian applies for the role and gets an interview. During the interview, the provider asks some questions about her experience and quickly identifies that Lillian does not have the qualifications she described in her resume. Holding out that you have qualifications or experience that you do not is inconsistent with the Code requirement to act honestly, lawfully and with integrity.

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## Element F

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I must promptly take steps to raise and act on concerns about matters that may impact the quality and safety of care, supports and services

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### 3. Practical guidance for aged care workers

#### Context

This element of the Code focuses on ensuring consumers are safeguarded against unsafe or poor quality care through the early identification of, and response to, concerns and risks that may impact care delivery.

Such concerns may arise as part of complaints or incidents, through observations, internal feedback, or as part of continuous improvement activities. Concerns can relate to a variety of matters that impact quality and safety, including risks in the environment, clinical risks, near misses and incidents (including reportable incidents).

#### What is expected of aged care workers?

Aged care workers of approved providers have a role in contributing to the delivery of quality and safe care, supports and services by taking action when they notice issues, including by raising concerns with the provider. Consumers are entitled to a reasonable expectation that aged care workers will be alert to any issues that may affect the quality and safety of care, supports and services.

When an aged care worker identifies a potential issue, or an issue arises regarding the quality and safety of care, supports and services, they should take immediate action to address it and follow the provider's policies and procedures when doing so.

Issues relating to quality and safety may arise where, for example, the aged care worker:

- notices something in the environment that has the potential to cause harm
- becomes aware of an incident occurring between consumers
- suspects a reportable incident may have occurred
- sees another aged care worker acting inappropriately towards a consumer
- becomes aware of an omission of care that the provider is yet to identify (such as a failure to attend to a service, failure to communicate a change of care delivery to consumers, etc.)
- identifies equipment that is faulty or in need of repair
- recognises a near miss incident
- has a concern about the capability of another aged care worker that may cause harm to consumers
- notes that records are not being properly maintained.

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### 3. Practical guidance for aged care workers

The first step in responding to a concern is to ensure the consumer is safe, and to raise the issue or concern with the appropriate person within the organisation.

Aged care workers are expected to:

- know how to raise concerns about quality and safety issues with the provider in line with the organisation's policies and procedures, including in relation to reportable incidents
- capture information the provider may need as part of its incident management system
- be familiar with the organisation's complaint handling system and the avenues for consumers and others to provide feedback to the provider about the delivery of care, supports and services
- understand the use of open disclosure and know the organisation's policies and procedures for managing complaints and open disclosure principles
- support consumers to feel safe to give feedback and make complaints
- be open to adjusting the way they deliver care, supports and services in response to complaints or concerns where they or the provider identifies this is needed.

**Aged care workers play a key role in improving care, supports and services by listening to consumers about ways to improve their experience, participating in complaints processes and engaging in continuous improvement activities.**

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### **What types of behaviour would not be consistent with this element of the Code?**

You should understand, and be able to recognise, those behaviours that would not be consistent with this element of the Code.

#### **Examples of behaviours that are not consistent with the Code**

- Failing to recognise and report a quality or safety issue that presents a risk to consumers
- Failing to take action to safeguard consumers who might be affected by a quality or safety issue
- Failing to properly record information about an issue or incident in accordance with the organisation's policies and practices
- Withholding information about quality and safety concerns that consumers or others raised with you
- Failing to engage in open disclosure when things go wrong, in accordance with the organisation's policies and practices and the requirements of the Quality Standards
- Discouraging consumers from making a complaint or providing feedback
- Threatening or taking adverse action against someone who proposes to make a complaint, has made a complaint or is involved in reporting an incident.

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### 3. Practical guidance for aged care workers

#### Case study

Two new care workers, Cindy and Mitch, have been asked by a registered nurse to complete the weekly drug count to ensure that all of the Schedule 8 medications are accounted for. The provider's policy is that a registered nurse must perform the weekly drug count and that this task cannot be delegated. Cindy and Mitch raise this with the registered nurse but are told that all the registered nurses are too busy, so Cindy and Mitch should just complete the task and sign it under the registered nurse's name. The care workers perform the task and decide not to share their concerns with the Nurse Manager or colleagues as they fear retribution. Failing to raise concerns about practices that could affect the quality of care provided to consumers is inconsistent with the Code.

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#### Case study

Rosa receives a Home Care Package. She has agency staff visiting her house for cleaning and food preparation. Rosa makes a complaint about the quality of food preparation, specifically mentioning that she has concerns about the hygiene practices during food preparation and that she has found mould on food given to her. She raises the issue with her service coordinator who quickly takes steps to understand Rosa's concerns, apologises for the issues and tells Rosa that she'll raise this with the agency.

The service coordinator speaks to the agency about the issues, sending across the provider's policies about hygiene and their 'check before you serve' principles. The service coordinator gets back in touch with Rosa telling her what has been done, and that they will revisit it with Rosa in a fortnight to see if any further actions should be taken. Responding to complaints and feedback in a timely and proactive manner is consistent with the Code.

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### 3. Practical guidance for aged care workers

#### Case study

Michael receives a Home Care Package and has a nurse attend his home to dress a wound. Michael tells the nurse that the personal care worker who assists with daily personal hygiene regularly fails to shower him as she has insufficient time. The nurse reiterates to Michael that this can happen because staff do not always have time to do what is expected. The nurse does not raise this with the personal care worker or the care manager. Michael continues not to be showered until a complaint is made by Michael's son a week later.

Where workers become aware that care needs are not being met, these need to be raised with the provider. Failing to raise issues or consumer concerns is inconsistent with the Code.

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#### Case study

Frances receives residential aged care. She requires mechanical assistance to transfer in and out of bed and recently fell while being hoisted into her bed. One of the aged care workers involved notified the registered nurse on duty, an assessment was conducted, and an incident report lodged reflecting that Frances sustained an injury during the fall.

A teleconference was organised with Frances, her niece and the workers involved shortly after to discuss what had happened. The nurse in charge apologised for what had happened and offered Frances the opportunity to describe what had happened and how it had affected her. The nurse in charge explained that as follow-up actions, the hoist was inspected, and workers given additional training on using the hoist for transfers. When incidents occur, aged care workers and providers are expected to take actions to promptly address the issue. Responding to the incident and engaging Frances and her family in this way is consistent with the Code.



## Element G

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I must provide care, supports and services free from all forms of violence, discrimination, exploitation, neglect, abuse and sexual misconduct

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### 3. Practical guidance for aged care workers

#### Context

This element of the Code focuses on safeguarding consumers from all forms of violence, discrimination, exploitation, neglect, abuse and sexual misconduct.

All care delivery should be free from violence, discrimination, exploitation, neglect, abuse and sexual misconduct. This includes, but is not limited to:

- physical and verbal violence
- coercively controlling behaviours
- predatory sexual behaviours that influence or seek to take advantage of consumers
- psychological or emotional harm and abuse
- any sexual act between a consumer and an aged care worker
- use of inappropriate restrictive practices
- forced treatments and interventions
- humiliation and harassment
- financial abuse or exploitation
- physical and emotional neglect
- passive neglect and wilful deprivation
- discrimination in delivery of services or verbal or written discrimination, including racism or bullying
- abuse and violence that happens between consumers
- abuse and violence that is inflicted by people coming onsite to the residential aged care service.

**Providers are expected to take prompt action against an individual who engages in these behaviours, including reporting to the Commission and the police where required under the SIRS.**

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#### What is expected of aged care workers?

The relationship between a consumer and an aged care worker relies on a high degree of trust which should never be exploited or betrayed.

In upholding this element of the Code, aged care workers are expected to:

- not commit, or participate in, any form of violence, discrimination, exploitation, neglect or abuse of a consumer
- not commit, or participate in, any form of sexual misconduct, including unlawful sexual contact or inappropriate sexual conduct
- not participate in, or seek to foster, an inappropriate relationship with a consumer
- be alert to situations that may give rise to violence, discrimination, exploitation, neglect or abuse towards a consumer
- understand what a restrictive practice is and be able to identify when it is being applied
- work in partnership with the provider to contribute to the reduction and elimination of restrictive practices
- comply with the requirements around restrictive practices and behaviour support set out in the aged care legislation (where applicable to the provider)
- maintain professional boundaries with consumers and consumers' immediate network, including representatives, families and carers
- be familiar with any obligations they have under other professional codes of conduct about such behaviours (applicable to only some aged care workers).

There are also some professions where prohibitions on certain acts are identified, including prohibitions on close personal, physical or emotional relationships. Aged care workers found not to have complied with a professional code or standard regarding how they treat consumers while providing care, supports and services may be acting inconsistently with the Code.

**Aged care workers should never harm a consumer or act in a way that makes them feel unsafe, belittled or scared.**

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## Terms explained

### What is sexual misconduct?

Sexual misconduct is a broad term encompassing any unwelcome acts or behaviours that are sexual in nature. This includes physical and verbal actions committed without consent or by force, intimidation, coercion or manipulation.

For the purposes of aged care, this term should be read in the context of the types of acts that constitute a reportable incident under the SIRS, notably 'unlawful sexual contact and inappropriate sexual conduct'.

Unlawful sexual contact and inappropriate sexual conduct is defined<sup>3</sup> as including:

- where the contact or conduct is inflicted by an aged care worker:
  - any conduct or contact of a sexual nature inflicted on the consumer, including but not limited to sexual assault, an act of indecency or sharing of an intimate image of the consumer
  - any touching of the consumer's genital area, anal area or breast in circumstances where this is not necessary to provide care or services to the consumer
- any non-consensual contact or conduct of a sexual nature, including but not limited to sexual assault, an act of indecency or sharing of an intimate image of the consumer
- engaging in conduct relating to the consumer with the intention of making it easier to procure the consumer to engage in sexual contact or conduct.

Any sexual act towards a consumer committed by you would be inconsistent with the Code (and would be a reportable incident, and possibly a criminal offence).

In upholding the expected standards of behaviour and acting professionally and respectfully towards consumers, you should avoid behaviours such as:

- speaking to consumers in a sexually inappropriate manner. This includes telling sexual jokes, making sexual innuendos, explicit or crude comments, or asking sexualised questions (including about a consumer's sexual history or preferences)
- engaging in sexualised conduct towards consumers, including undressing or acting sexually in front of consumers
- inviting or encouraging consumers to engage with you in a sexually inappropriate manner or to act in a more intimate or friendly way towards you than is otherwise regarded as professional
- getting close to a consumer for a reason other than care delivery (for example, lying against the consumer on the bed next to them).

Unlawful sexual contact and inappropriate sexual conduct are reportable incidents that must be reported to the Commission and police. For further information about reportable incidents and the Serious Incident Response Scheme see the [Commission's website](#).

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<sup>3</sup> See Subsections 15NA(4) and (5) of the Quality of Care Principles.

#### **What types of behaviour would not be consistent with this element of the Code?**

You should understand, and be able to recognise, those behaviours that would not be consistent with this element of the Code.

#### **Examples of behaviours that are not consistent with the Code:**

- Committing an act of violence against a consumer, including using unreasonable force, hitting or punching, slapping, verbally abusing them, etc.
- Threatening to act violently towards a consumer
- Harassing consumers in any way
- Punishing consumers by withdrawing services
- Telling consumers there will be consequences and inferring you will harm them
- Forcing consumers to do something they do not wish to do through physical force
- Exploiting and taking advantage of a consumer including lying to them, seeking to get a financial benefit from them, tricking them into doing an act, etc.
- Abusing a consumer in any way (be that physically, emotionally, financially, psychologically, sexually, etc.)
- Neglecting a consumer, including leaving them unattended in an unsafe place, withholding care delivery, failing to attend or check on a consumer, or being reckless to the consequences of not following their care plan

- Unreasonably treating a consumer differently because of a personal characteristic, including withholding care delivery or speaking to them in a derogatory way
  - Acting in a sexual way towards a consumer
  - Failing to recognise the use of restrictive practices (in all its forms)
  - Applying or recommending the inappropriate use of restrictive practices.
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### 3. Practical guidance for aged care workers

#### Case study

Betty lives in a residential aged care service. She has dementia and dislikes bathing. At times Betty can be aggressive while being showered and sometimes bites staff. While assisting her to shower, a personal care worker loses his patience and holds the shower nozzle to Betty's nose and mouth for several seconds causing her to cough and splutter. This conduct is abuse and is inconsistent with the Code.

#### Case study

Nadia is a Sri Lankan woman who gets food deliveries as part of her Home Care Package. Nadia has noticed that a new worker, Sean, ignores her when she says 'hello' or tries to engage him in conversation. Sean knocks and enters, puts the food in the kitchen and leaves without a word. This behaviour is repeated over several weeks. One day, Nadia's friend answers the door to Sean who greets and speaks with him. Nadia hears this from the next room and begins to believe her nationality is the reasons why Sean is treating her differently. Nadia feels distressed and anxious that she is being discriminated against. She raises her concerns with the provider. The provider discusses the concerns with Sean and realises that Sean has, based on appearances, mistakenly assumed he should not interact with Nadia out of respect for her culture. The provider enrolls Sean in cultural awareness training to support him to provide culturally safe care, and Sean apologises to Nadia for his misunderstanding.

Treating someone differently without understanding their preferences is not culturally safe and is inconsistent with the Code. Recognising where you have made a mistake, rectifying the issue and apologising are consistent with the Code.

#### Case study

James is a subcontracted gardener and attends to Devon's lawns and backyard fortnightly as part of a home care package. James sees Devon undressing through a back window one afternoon and takes photos of her. Devon doesn't realise until James starts sending these photos to her mobile, suggesting that Devon and he spend more time together next time he visits. Devon is frightened about what will happen next time James attends.

It is inconsistent with the Code to make sexual advances towards consumers and to take photos of them in a vulnerable state for personal gain or pleasure.

#### Case study

During a medical round at a residential aged care service, the medical officer enters Faye's room and asks her to get out of bed so that she can see to the stitches on Faye's back. Faye becomes agitated and wants the medical officer to come back in 45 minutes after Faye has showered and had breakfast. The medical officer gets frustrated and walks up to Faye's bedside and starts tugging at the back of her dressing gown to try to get to her stitches. Faye calls out and tells the medical officer to stop. The medical officer leaves out of frustration and doesn't come back to Faye during their round. Faye makes a complaint to the service manager who speaks with the medical officer about their behaviour. The medical officer reflects and realises that they had mistreated Faye by trying to force a procedure on her and apologises to Faye. While the medical officer's initial conduct was inconsistent with the Code, recognising this was inappropriate behaviour and apologising for it (and improving interactions in future) is consistent with the Code.

## Element H

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I must take all reasonable steps to prevent and respond to all forms of violence, discrimination, exploitation, neglect, abuse and sexual misconduct

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### 3. Practical guidance for aged care workers

#### Context

This element of the Code focuses on ensuring that steps are taken to safeguard consumers against the occurrence of harm and where this occurs, to respond appropriately to incidents, including incidents of violence, discrimination, exploitation, neglect, abuse and sexual misconduct.

This element H differs from element G in that it focuses on actions taken to prevent incidents and respond after incidents occur. In contrast, element G expressly states that such actions are not to occur in care delivery either at the hand of the provider, or by aged care workers and governing persons.

#### What is expected of aged care workers?

Aged care workers play an important role in helping to prevent, intervene early and respond to violence, discrimination, exploitation, neglect, abuse and sexual misconduct. Noting the direct contact aged care workers have with consumers as part of care delivery, aged care workers are often best placed to detect concerns or fears consumers may have, and to identify when a consumer's vulnerabilities may put them at risk.

Aged care workers are expected to:

- foster an environment where consumers feel safe to speak up about their concerns or fears
- identify when consumers are at risk of being subject to violence, discrimination, exploitation, neglect, abuse or sexual misconduct in the provision of care, and prevent this occurring as far as possible

- respond to situations of violence, discrimination, exploitation, neglect, abuse and sexual misconduct where this occurs in connection with the provision of care
- work closely with the provider in preventing violence, discrimination, exploitation, neglect, abuse and sexual misconduct as part of delivering quality and safe care, supports and services
- report incidents of violence, discrimination, exploitation, neglect, abuse, and sexual misconduct to the person within their organisation who is responsible for managing reportable incidents, and where appropriate, the Commission and other relevant authorities
- be familiar with the organisation's policies, systems, procedures, and strategies to prevent these incidents
- follow the organisation's policies, procedures, and directions when an incident occurs
- support consumers to feel safe to make a complaint about alleged or suspected conduct of this nature without fear of retribution or loss of services
- fully cooperate with any related investigative action taken by the provider, the Commission, or other relevant authorities, including the police.

**We all have a responsibility to help prevent the abuse and neglect of older people. If you become aware of elder abuse or neglect, you should take appropriate steps to protect the person's safety, health and wellbeing. This includes raising concerns with the provider. The provider may decide to report it to the police and/or Commission, or contact the Australian Human Rights Commission, where appropriate.**

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### 3. Practical guidance for aged care workers

The Code applies to incidents that occur in connection with the provision of care, supports and services. There may, however, be broader acts of abuse and violence that occur within a service or against consumers. For example, aged care workers may identify concerns about the conduct of family members, partners or friends of consumers, or consumers may raise issues and concerns with them directly. While such incidents may be outside the scope of serious incident requirements under the aged care legislation, aged care workers should raise all concerns about the welfare and safety of consumers with the provider. There will be occasions where the organisation will need to consider, in line with its responsibilities and policies, whether there is scope to consult the consumer and/or their representatives about the conduct, or seek permission from the consumer to involve other parties such as the police (even where it is not otherwise required to be notified to the Commission).

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#### **What types of behaviour would not be consistent with this element of the Code?**

You should understand, and be able to recognise, those behaviours that would not be consistent with this element of the Code.

#### **Examples of behaviours that are not consistent with the Code**

- Failing to take reasonable steps to identify risks of violence, discrimination, exploitation, neglect, abuse and sexual misconduct
- Failing to raise concerns or suspicions that violence, discrimination, exploitation, neglect, abuse and sexual misconduct has occurred or is likely to occur in connection with care
- Failing to take action to support consumers who might be affected by violence, discrimination, exploitation, neglect, abuse and sexual misconduct or withholding information relevant to such an incident, as it relates to the provision of care
- Failing to notify the provider of incidents that occur in connection with the delivery of care
- Failing to properly record information about the issue or incident in accordance with policies and practices in place
- Ignoring or dismissing issues raised by a consumer because you think they are unlikely to have occurred
- Implying or stating consumers should not, or are unable to, raise concerns with you or the provider.

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### 3. Practical guidance for aged care workers

#### Case study

Belinda is a care worker in a residential aged care facility. While passing one of the consumer's rooms, Belinda could hear knocking from the other side of the door. The consumer, Miles is non verbal and wanders throughout the service. Belinda realises that Miles has been locked in his room from the outside. Staff are not permitted to lock consumers' doors except in an emergency. Belinda opens the door and finds Miles distressed. Belinda offers Miles a tea and words of comfort, apologising to him for what's happened. Belinda reports her suspicions that a colleague has locked Miles in his room to the facility manager, consistent with the expectations to respond to suspected instances of abuse.

#### Case study

Jessica is a care worker who delivers home care services to Daphne. Sometimes Daphne's nephew comes to the house when Jessica is there. One day, Jessica hears Daphne's nephew ask if he can borrow some money. Daphne says no. The nephew disappears into the house and then quickly leaves. Daphne asks Jessica to fetch her handbag as Daphne suspects he has taken money from her wallet. On seeing that he has taken \$80, Daphne is distressed and explains that her nephew often enters her house and takes money without her consent. Jessica recognises that this may be financial abuse and meets with the service coordinator to discuss how they might support Daphne. While Daphne does not want the incident reported to the police, Jessica and the service coordinator speak with Daphne about other ways the provider can help safeguard Daphne from this behaviour. Identifying ways to reduce the occurrence of elder abuse is consistent with the Code.

#### Case study

Tabitha tells the service's Occupational Therapist (OT) that she has been visited by one of the male consumers during the night and that he has been getting into bed with her. The OT doesn't think the conduct is likely to have happened given Tabitha's long history of poor recall and tendency to 'tell stories'. The OT doesn't tell the provider or any of the other staff. It is later revealed to the OT that there had been a reportable incident with another female consumer complaining about the same male consumer. Even with the new information, the OT does not disclose this to the provider. The OT had a responsibility to report the conduct to the provider and for it to be notified to the Commission as a reportable incident. Failing to respond to the allegations appropriately is inconsistent with the Code.

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#### **Protections for those providing information about reportable incidents**

Where you have reasonable grounds to suspect that a reportable incident has occurred, including where you think a provider has not responded appropriately or if you think the matter might be of more systemic significance (for example, a pattern of violence, or a repeated failure of the provider to manage incidents appropriately), you are encouraged to report the incident to the Commission. You can provide this information anonymously if you wish.

The Aged Care Act affords protections against detriment, threat, victimisation and protection of identity for people who disclose reportable incidents. For the protections to apply, disclosures relating to reportable incidents must meet the following requirements:

- the disclosure must be made to any of the following:
  - the provider
  - one of the provider’s key personnel
  - a staff member of the provider
  - another person authorised by the provider to receive reports of reportable incidents
  - a police officer, or
  - the Commission

- before making the disclosure, the person disclosing the information must give their name to the person to whom the disclosure is made
- the discloser must have reasonable grounds to suspect that the information indicates that a reportable incident has occurred, and
- the disclosure must be made in good faith.<sup>4</sup>

If the disclosure qualifies for protection, then the person making the disclosure:

- will be protected from any civil or criminal liability for making the disclosure
- will have qualified privilege in proceedings for defamation relating to the disclosure
- is not liable to an action for defamation relating to the disclosure
- is protected from someone enforcing a contractual or other remedy against that person based on the disclosure.

A person who makes a protected disclosure is also protected from victimisation.

This means that the person may be compensated if they suffer an actual detriment or a detriment is threatened. Compensation will be paid by the person who caused the detriment or made the threat.

If the person who made the disclosure is a staff member, providers have a responsibility to ensure, as far as reasonably practicable, that other staff or contractors do not victimise the person.

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<sup>4</sup> ‘Good faith’ (in layperson’s terms) may be taken to mean truthfully relaying information known at the time including any context, and limitations on the information, and it must be provided without prejudice or malicious intent.

# Practical guidance for governing persons

Governing persons of approved providers play an important role as leaders of the organisation. They not only contribute to how the organisation operates and upholds its responsibilities, but their behaviours must also be consistent with the Code.

Given their governing role, governing persons are responsible for ensuring the organisation has systems and practices that comply with the provider responsibilities, including with responsibilities under the Code. They should therefore be familiar with the *Code of Conduct for Aged Care – Guidance for approved providers* about compliance with the Code at the organisational level, and the responsibility to take reasonable steps to ensure individuals, like aged care workers, comply with the Code.

While some governing persons may not be directly engaging with consumers, their behaviour must still be consistent with the Code. For example, in developing policies and procedures for the organisation, when submitting reports to the Commission and when communicating about, or to, consumers in correspondence or other materials.

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## What is expected of governing persons?

In addition to the behaviours outlined in [Chapter 3](#), Practical guidance for aged care workers, governing persons of approved providers should:

- understand the rights of consumers and ensure they are upheld by the organisation
- foster a culture of consumer empowerment and person-centred care
- know and act in accordance with the organisation's policies and procedures
- ensure information provided to consumers, their representatives, families or carers is clear and informative
- foster a respectful workplace culture, including through modelling good behaviours in the management of aged care workers to demonstrate how all persons should be treated with dignity and respect
- understand the applicable privacy laws and obligations under the aged care legislation to manage information in a certain way and ensure the organisation's policies and procedures are consistent with these laws
- maintain and respect the personal privacy of consumers when using consumer information in performing their role, when meeting with consumers, representatives, families and carers, and attending the home or service of the consumer

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#### 4. Practical guidance for governing persons

- lead a positive culture of safety, inclusivity (for both consumers and aged care workers) and quality improvement that prioritises the rights, safety and wellbeing of consumers and aged care workers, and be able to demonstrate this culture exists within the organisation
- have the right mix of skills, experience and expertise to perform their role in the organisation
- maintain oversight of key aspects of the organisation's operations, including analysing data and identifying trends to continuously improve the quality of care, supports and services and ensure compliance with provider responsibilities, including the Code
- demonstrate the highest standards of integrity, honesty and transparency. This includes declining inducements or gifts that take advantage of consumers, representatives, families and carers, and avoiding conflicts of interest that might influence decisions to act against the best interests of consumers
- ensure the organisation has systems and practices in place to detect and respond to dishonest and/or inappropriate practices as they relate to consumers
- ensure there is regular review of the effectiveness of systems and make updates to improve systems and practices that support the delivery of high-quality and safe care, supports and services
- ensure information they give to the provider about themselves is accurate. They have a personal responsibility as key personnel to notify the provider of any changes in circumstances that may affect their suitability. This requirement assists providers to have the necessary information to ensure all key personnel continue to be suitable to be involved in the provision of aged care
- take steps to safeguard consumers from any form of violence, discrimination, exploitation, neglect, abuse or sexual misconduct
- foster and maintain a culture of zero tolerance of elder abuse and seek the reduction and elimination of restrictive practices
- manage incidents in accordance with the aged care legislation, consistent with providers' responsibilities, including where incidents are required to be notified to the Commission as a reportable incident and, in some circumstances, the police
- uphold the protections against victimisation afforded to certain aged care workers and others in certain circumstances relating to the disclosure of reportable incidents
- cooperate with the Commission regarding reportable incidents, complaints and other matters.

Governing persons are responsible for ensuring they act in a way that is consistent with the Code, but also that the provider maintains compliance with its responsibilities under the Code. They should therefore understand how the Code applies to the provider, aged care workers, other governing persons and themselves.

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## 4. Practical guidance for governing persons

### Case study

Following a budget review, Jane, the area manager of a group of residential aged care services, sends a memo to all staff that there is to be a limit on the number of continence aids used per day per consumer. In the days following the memo, clothing and bedding are regularly left soiled and consumers start commenting to family members that they are requesting the change of aids and that staff are very apologetic, but unable to assist them. Some family members start bringing in additional continence aids to ensure their loved ones have access to what they need. Such organisational decisions deny dignity and comfort to consumers and are inconsistent with the Code.

### Case study

During a recent board discussion, the Chair, Frank, is given a report from management about an increase in pressure injuries at the service. Staff are complaining that the new beds the provider ordered are contributing to pressure injuries. Frank expresses concerns to management that they can't submit these numbers as part of their quality indicator reporting obligations. Frank states that for this quarter, they need to be 'careful' with what the regulator is given, implying that the figures should be revised. Other board members challenge Frank and ensure that action is taken to address the increasing pressure injuries and to accurately report the data to the regulator. Calling out concerns about integrity and poor practice is consistent with the Code.

### Case study

Five staff members have written letters to the governing body of an aged care service complaining that inadequate steps are being taken to fill sick leave shifts. The staff members describe instances when managers have attributed this to the cost of agency staff and have asked staff members to undertake additional tasks when the service has been short-staffed due to staff members on sick leave. Staff members complain this is a chronic practice that is exacerbating workplace stress and exposing consumers to potential errors and poor care delivery. Several consumers and their family have also raised concerns that staff appear stressed and do not have enough time to attend to consumers. The governing body review the complaints and do not take any further action to consider what steps can be taken to ensure sick leave is not negatively impacting consumers or the work health and safety of their workforce. Failing to address issues that are persistent and systematic and that impact the quality and safety of care is inconsistent with the Code.

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# Role of the Commission

## Overview

- The Commission is responsible for overseeing compliance with the Code, including:
  - providing education and support about the operation of the Code
  - monitoring compliance with the Code
  - receiving and resolving complaints about conduct that is inconsistent with the Code
  - managing information about conduct that is inconsistent with the Code
  - investigating conduct that is inconsistent with the Code
  - enforcing provider responsibilities in relation to the Code
  - taking risk-proportionate compliance and enforcement action in response to conduct by aged care workers and governing persons, including issuing caution letters and, in some cases, issuing banning orders against aged care workers and governing persons for non compliance with the Code (where appropriate).
- The Commission will, as far as practicable, coordinate regulatory activity with any relevant professional body or other regulator, as appropriate, to support the safety, health and well being of consumers.

## The role of the Commission

The Commission is the national regulator of aged care and the primary point of contact for consumers and providers in relation to quality and safety.

Through the Commission’s engagement and education work, it aims to build confidence and trust in aged care, empower consumers, and support providers, governing persons and aged care workers to comply with their responsibilities. As part of this educative function, the Commission supports the sector to understand its expectations of conduct and the elements of the Code.

In ensuring compliance with the Code, approved providers are expected to manage and resolve incidents, complaints and concerns about conduct that occurs in connection with the provision of care, supports and services. This includes where concerns are raised about the provider’s own conduct, as well as the conduct of its aged care workers and governing persons. Approved providers have responsibilities to take action and mitigate risks to consumers that might arise from incidents, complaints and issues relating to compliance with the Code.

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## 5. Role of the Commission

The Commission uses a range of regulatory powers to prevent, detect and respond to non compliance in the aged care sector. The Commission is empowered to monitor compliance with all provider responsibilities, including compliance with the Code and whether providers are taking reasonable steps to ensure aged care workers and governing persons comply with the Code. The Commission is also responsible for monitoring and enforcing aged care workers' and governing persons' compliance with the Code.

The Commission may identify concerns about conduct that is inconsistent with the Code in various ways, including through:

- a complaint from any source, including from consumers, representatives, families or carers, aged care workers, advocates, interested persons and other regulatory bodies
- information that raises concerns about the conduct of a provider, aged care worker or governing person
- SIRS notifications
- a material change notification regarding the suitability matters of an approved provider's key personnel
- referrals from other regulatory bodies
- the Commission's monitoring of providers, including as part of monitoring assessment contacts or performance assessments against the Quality Standards.

In response to information that raises concerns, the Commission may:

- discuss the conduct with a provider, aged care worker or governing person of a provider, consumer, consumer representative or complainant
  - record the concerns and take no further immediate action
  - take regulatory action, including requiring a person to give the Commission information or documents about the circumstances
  - undertake an investigation, which may be followed by compliance and enforcement action
  - provide education about provider responsibilities, including compliance with the Code to a provider, and/or educate an individual about their responsibilities under the Code
  - refer the matter to another responsible body, including the police, the Ahpra, or state or territory health complaints body (where appropriate).
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### Considering the role of individuals and the organisation

When information about conduct is received, the Commission will consider the role of the provider and its aged care workers and governing persons to understand the circumstances and to ensure an appropriate response.

In considering the role of providers in relation to concerns about the conduct of their aged care workers and governing persons, the Commission will look to see if the conduct stems from any failures of the provider. The conduct may indicate the provider has not taken reasonable steps to ensure the individual complies with the Code, or may indicate the provider is otherwise non-compliant with its responsibilities, including in relation to workforce competencies and training under the Quality Standards.

An individual's conduct that may be attributed in part to a provider may include unsafe workload demands, poor access to appropriate resources and training, low supervision, or insufficient support or policies and procedures.

### Case study

Concerns are raised about an aged care worker's competency following a complaint about the individual incorrectly administering medication to consumers. On further consideration by the Commission, it is determined that although the worker was given written guidance on how to administer the medication, the worker was incorrectly delegated medication administration responsibilities and not supervised appropriately.

Providers are expected to be able to demonstrate that their workforce is competent and the workforce has qualifications and knowledge to effectively perform their roles. It is a provider responsibility to ensure tasks are not inappropriately delegated and that staff are supervised where required to ensure the safety and wellbeing of aged care consumers.

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## 5. Role of the Commission

Similarly, where concerns are raised about a provider, the Commission will consider the role of an individual aged care worker or governing person of the provider. Even where a provider is compliant with their provider responsibilities, has appropriate systems and processes in place, and has taken all reasonable steps to ensure its aged care workers and governing persons act in accordance with the Code, the Commission may still take action where an aged care worker or governing person has acted contrary to the directions of the provider and caused harm to a consumer.

It may also be that both a provider and an individual have acted inconsistently with the Code and the Commission needs to respond through parallel compliance and enforcement action to direct changes to the way the provider and individual conduct themselves.

The Commission will therefore consider the relative roles of those involved, the assessed risk and take this into account in determining how to respond.

### Case study

A consumer has fractured their hip following a fall in her home. The aged care worker engaged to attend to the consumer had been to the consumer's home in the two days following the fall but when no one answered the door, they left without alerting the provider. The worker had not disclosed the failure to answer the door and had instead falsely written in the care notes that they had attended the consumer's home and carried out the services. The provider has since taken steps to strengthen their no-response procedure, to counsel the worker about the conduct and has since supervised the worker's conduct through follow up calls to consumers the worker attends to. The provider still has some concerns about the worker and is aware the worker also has shifts with other aged care providers.

On becoming aware of this from the provider, the Commission gathers more information from the provider to better understand the circumstances. The Commission decides to investigate the conduct of the worker based on the level of risk in the circumstances. The investigation will inform the Commission as to any necessary action against the worker.

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### Compliance and enforcement action

The Commission will manage non-compliance with the Code in accordance with the Commission's [Compliance and Enforcement Policy](#). Consistent with this policy, the Commission takes a risk-based approach and responds in a way that is proportionate to the risks that the non-compliance poses to the safety, health, wellbeing and quality of life of aged care consumers.

The Commission has access to a range of compliance and enforcement actions to respond to different situations. The Commission may undertake an investigation where needed to inform an appropriate and proportionate compliance and enforcement action.

The Commission may take compliance and enforcement actions in response to an aged care worker or governing person's non-compliance (or possible non-compliance) with the Code. The Commission may, for example:

- 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
- issue an infringement notice that requires an individual to pay a penalty amount, within a specified period, in relation to the non-compliance with the Code. If the person who has received an infringement notice does not pay the fine specified in the notice in full and by the due date, then that person may be subject to prosecution in Court in relation to the offence or civil penalty for which the infringement notice was issued.

- seek an injunction from a court that compels an individual to take a certain action, or to refrain from taking a certain action in order to comply with the Code. If the individual fails to comply with an injunction, then the Commission may ask the Court to enforce the requirements of the injunction and to supervise compliance.
- apply to a court to impose a civil penalty on an individual for non-compliance with the Code, which if imposed by the Court, would require the individual to pay a penalty amount to the Commonwealth
- issue a banning order to prohibit or restrict an individual, either permanently or for a specified period, from being involved in providing aged care, or in providing certain care, supports and services.

### When may banning orders be used?

A banning order is a form of enforcement action available to the Commission which prohibits or restricts a person from engaging in, providing or being involved in the provision of aged care. This order may ban a person permanently or for a specified period.

Banning orders are considered the Commission's most serious enforcement action in relation to individuals and will therefore only be appropriate for the most serious cases of poor conduct.

The Commission may make a banning order in relation to current and former aged care workers and governing persons where, for example:

- the Commission reasonably believes that the person did not, is not complying or is unlikely to comply with the Code
- the Commission reasonably believes that the person is not suitable to be involved in the provision of aged care (or certain types of aged care), or to engage in certain activities as an aged care worker or as a governing person
- the Commission reasonably believes there is an immediate or severe risk to the safety, health or wellbeing of one or more consumers if the person is involved in the provision of aged care (or certain types of aged care), or to engage in certain activities as an aged care worker or a governing person
- the person has at any time been convicted of an indictable offence involving fraud or dishonesty, or
- the individual is an insolvent under administration.

The Commission also has the power to issue a banning order in relation to a person who has not previously been an aged care worker or governing person. This may occur where the Commission reasonably believes that the person is not suitable to be involved in the provision of aged care (or certain types of aged care), or to engage in certain activities as an aged care worker or as a governing person.

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The Commission determines the appropriate compliance and enforcement action to be taken on a case-by-case basis, taking into account a range of factors, including:

- the nature of the conduct, including where there may be evidence of non-compliance
- the likelihood of further harm to the safety, health, wellbeing and quality of life of consumers
- the likelihood of the provider or individual taking steps to minimise harm to consumers and implement actions to ensure compliance.

For more information on the Commission's approach to compliance and enforcement, including use of its regulatory powers and procedural fairness, refer to the Commission's [Compliance and Enforcement Policy](#).

### Publication

The Commission may publish certain compliance and enforcement action taken against a provider or an individual on the Commission's website. This can include:

- information about the performance of a provider in relation to their responsibilities and any regulatory action taken, or intended to be taken, by the Commission<sup>6</sup>
- where a banning order is placed on an aged care worker, a governing person or a person prohibited or restricted from being involved in or being engaged in aged care.

For more information on the Commission's approach to publication, see the Commission's related [Regulatory Bulletin](#).

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### Intersections with other regulatory schemes and regulators

At any stage, the Commission may make a referral to another organisation, where the Commission identifies that conduct is likely to be of relevance to that organisation. Release of information in these circumstances will be consistent with the Commission's legal obligations.

The following are examples of the organisations to which the Commission may make a referral and the types of referrals:

- the NDIS Quality and Safeguards Commission, where a NDIS participant is a party to a reportable incident under the SIRS, or where a complaint or concern is raised about an aged care worker who also works for a NDIS provider
- Services Australia, in relation to aged care payments management including fraud investigation
- the relevant State Coroner where there are circumstances involving a reportable death
- Ahpra for concerns about the conduct of aged care workers who are registered health professionals
- the Australian Competition and Consumer Commission (ACCC) in relation to concerns related to overcharging or unlawful charging of aged care fees
- State authorities responsible for the investigation of conduct of unregistered health care workers, including health complaints bodies
- the police where matters intersect with criminal conduct.

The Commission will, as far as practicable, coordinate any regulatory activity with any applicable professional body or other regulator, as appropriate, and to reduce any unnecessary duplication.

<sup>6</sup> See the existing Non-compliance register on the Aged Care Quality and Safety Commission's website. See also section 59 Commission Act which requires certain information to be made publicly available, including information about a provider's performance in relation to its provider responsibilities and any action taken, or intended to be taken under the Commission Act and Commission Rules.

### Professional regulatory bodies

Some aged care workers are also regulated by other professional regulatory bodies.

Some aged care workers are members of a professional association or other relevant body with existing professional codes of conduct they are required to comply with. For example, registered health practitioners such as nurses and psychologists are subject to regulation by the Ahpra and the relevant National Board. In addition, some health care workers are required to deliver care consistent with the relevant code and any other applicable regulatory framework that applies at a state and territory level.

Concerns about a worker's conduct may be raised in parallel to consideration by these other bodies, or otherwise referred from, or to, the Commission.

For example, concerns about aged care worker conduct may come to the attention of the Commission where:

- a complaint is made to the Commission about an aged care worker's care delivery in the context of their professional obligations and the matter is being investigated by the professional body
- a notification is made to the Ahpra about an aged care worker's conduct and following an investigation by the Ahpra, information is shared with the Commission
- an adverse decision has been made by the professional body and related information is disclosed to the aged care worker's provider and is further provided to the Commission

- the Ahpra is seeking information about an aged care worker's conduct through the provider about an incident, where the Commission has visibility of this incident and the actions taken after the incident where it relates to a reportable incident.

The Commission may work with professional regulatory bodies in investigating alleged non-compliance with the Code where an aged care worker's conduct may be contrary to both the Code and any applicable professional codes.

The Commission will not seek to assess those aged care workers subject to professional codes against the requirements of the relevant professional code; it will only determine whether the matter is of interest to be shared with the relevant professional regulatory body.

The Commission will focus on whether the aged care worker has acted inconsistently with the Code. The Commission's consideration will likely be based on adverse decisions made by professional regulatory bodies. The delivery of care can be multi-faceted and even where an adverse decision is not made by a professional regulatory body, the same conduct may still amount to non-compliance with the Code.

In turn, where an aged care worker is non-compliant with the Code, the Commission may report an adverse decision to the professional regulatory body where the conduct may be so concerning as to likely constitute a breach of their professional code, in accordance with any arrangement or information sharing legislation that is in place.

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# Glossary

## ***Aged Care Act 1997 (the Aged Care Act)***

The legislation which outlines the responsibilities that approved providers must follow to receive subsidies from the Australian Government.

## ***Aged Care Quality and Safety Commission (the Commission)***

The national regulator of aged care services, and the primary point of contact for consumers and providers in relation to quality and safety in aged care in Australia. The Commission's primary purpose is to protect and enhance the safety, health, wellbeing and quality of life of aged care consumers; to promote aged care consumers' confidence and trust in the provision of aged care services; and to promote engagement with aged care consumers about the quality of their care, supports and services.

## ***Aged Care Quality and Safety Commission Act 2018 (the Commission Act)***

The primary legislation that sets out the functions of the Commission and further responsibilities of approved providers.

## ***Aged Care Quality and Safety Commission Rules 2018 (the Commission Rules)***

The delegated legislation that sets out information relevant to the Commission's functions and approved provider responsibilities.

## ***Aged Care Quality Standards (the Quality Standards)***

The Aged Care Quality Standards. Providers are required to comply with these Standards.

## ***Aged care worker (worker)***

An individual employed or otherwise engaged (including on a voluntary basis) by the provider, or an individual who is employed or otherwise engaged (including on a voluntary basis) by a contractor or subcontractor of the provider and who provides care or other services to consumers provided with aged care through an aged care service of the provider. Note an individual engaged by an approved provider includes an independent contractor.

## ***Ahpra***

The Australian Health Professionals Registration Authority.

## ***Approved provider (provider)***

An entity which has been approved to provide residential care, home and/or flexible care under the Aged Care Act. Approved providers receive government subsidies for the delivery of care to consumers.

**Banning order**

An order made by the Commission that a person cannot be involved in the provision of aged care, or in providing certain care, supports and services. Banning orders may include conditions on how the person is engaged in the aged care sector.

**Carer**

A person who provides personal care, support and help to a consumer. This does not include members of the provider's workforce, or people the provider contracts or pays to provide those services, or people who provide the services as a volunteer.

**Charter of Aged Care Rights (the Charter)**

Describes the rights of consumers of Australian Government funded aged care services to be consulted and respected. Provides the same rights to all consumers, regardless of the type of subsidised care, supports and services they receive.

**Consumer**

As defined in the Aged Care Quality and Safety Commission Act, a care recipient or a person who is a recipient of a Commonwealth funded aged care service.

**Culturally safe care**

Culturally safe care is care that respects cultural values, strengths and differences, and addresses racism and inequity. It is about how care is provided, rather than what care is provided. It requires providers to deliver safe, accessible and responsive care that is free of racism by recognising and responding to the power imbalance between the provider and the consumer and reflecting on their knowledge, skills, attitudes, practising behaviours, and conscious and unconscious biases.<sup>7</sup>

**Dignity of risk**

Dignity of risk supports a consumer's independence and self-determination to make their own choices, including to take some risks in life. If consumer choices are possibly harmful to them, providers are expected to help the consumer understand the risk and how it could be managed to help them live the way they choose. Providers are expected to show how they involve consumers and look for solutions.

7 National Aboriginal and Torres Strait Islander Health Plan 2021-2031, p.52.

**Governing person**

A member of the group of persons who is responsible for the executive decisions of the provider or any other person who has authority or responsibility for, or significant influence over, planning, directing or controlling the activities of the provider.

**Incident management system**

Any system that helps a provider to prevent incidents and to identify, respond to and manage any incidents that occur during the course of delivering care, supports and services to consumers.

**NDIS**

The National Disability Insurance Scheme.

**Open disclosure**

Open discussions with consumers, their representatives, families, carers and other support people about incidents that have caused harm or had the potential to cause harm to the consumer. It may involve an expression of regret and a factual explanation of what happened, the potential consequences and what steps are being taken to manage this and prevent it happening again.

**Personal information**

Information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

**Provider responsibilities**

The set of responsibilities that an approved provider has in relation to the aged care they provide to aged care consumers. These responsibilities, as specified under the Aged Care Act, relate to:

- the quality of care they provide
- user rights for the people to whom the care is provided
- accountability for the care that is provided, and the basic suitability of key personnel.

**Quality of Care Principles 2014 (the Quality of Care Principles)**

The Quality of Care Principles 2014. These principles are made under section 96-1 of the Aged Care Act.

**Reportable incident**

An incident described in section 54-3 of the Aged Care Act 1997 (and section 15NA of the *Quality of Care Principles 2014*).

**Restrictive practices**

Any practice or intervention that has the effect of restricting the rights or freedom of movement of the consumer. Restrictive practices include chemical restraint, environmental restraint, mechanical restraint, physical restraint and seclusion.

**Scope of practice**

Scope of practice describes the procedures, actions and processes that a healthcare practitioner is permitted to undertake in keeping with the terms of their professional license. The scope of practice is limited to what the law allows for specific education and experience, and specific demonstrated competency.

**Serious Incident Response Scheme (SIRS)**

The SIRS is designed to prevent, and reduce the risk of, incidents of abuse and neglect in Commonwealth-subsidised aged care. It requires providers to have an effective incident management system in place and to identify, record, manage, resolve and report all reportable incidents that occur, or are alleged or suspected to have occurred.

**Supported decision-making**

The process of enabling a person who requires decision-making support to make, and/or communicate, decisions about their own life. The decision-making is supported, but the decision is theirs.

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*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.*

December 2022



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