



# Obligations and Accountabilities

Flip Guides have been designed as supplementary supports for the learning modules. The Guides include key messages and insights for your continued reflection.

# Need to Know: Obligations and Accountabilities

Aged care provider governing bodies and executives have a wide range of legal duties and obligations that they individually and collectively must adhere to. It is essential that governing body members and executives not only understand their obligations and any changes to them, but how they can effectively report on these obligations and facilitate an organisational culture of continuous improvement in respect to compliance.

There are a number of core responsibilities with which aged care providers are required to comply with in meeting their obligations.

→ *Read about these core responsibilities on the following pages*

Quality of  
care and service  
provided

User rights  
of people  
receiving care

Being  
accountable  
for care  
provided

# Need to Know: Obligations and Accountabilities

## Quality of care and service provided

- Providing care and services as specified in the [Quality of Care Principles 2014](#)
- Maintaining an adequate number of appropriately skilled staff to ensure that the care needs of consumers are met
- Providing care consistent with the [User Rights Principles 2014](#)
- Complying with the [Aged Care Quality Standards](#)
- Minimising the use of restraint
- Introducing an influenza vaccination scheme for service staff.

## User rights of people receiving care

- Deciding how much to charge care recipients for services
- Complying with requirements relating to fees, costs and charges
- Ensuring security of tenure (for residential aged care)
- Enabling a person acting for a care recipient, or an advocate or community visitor (for residential aged care), access to services
- Meeting requirements for home care and flexible care agreements
- Managing and solving complaints
- Complying with the [Charter of Aged Care Rights](#).

# Need to Know: Obligations and Accountabilities

## Being accountable for care provided

Providers should understand all responsibilities under the [Aged Care Act 1997](#) to comply with the [Code of Conduct for Aged Care](#). This includes taking reasonable steps to support, equip and prepare your staff to carry out their roles (e.g. providing training, making sure policies and procedures are easily accessible and ensuring staff comply with the Code). The [Serious Incident Response Scheme \(SIRS\)](#) has been extended from residential aged care to home care and flexible care delivered in a home or community setting.

This requirement covers:

- Complying with record-keeping obligations
- Cooperating with any person exercising powers under the [Aged Care Act 1997](#) or the [Aged Care Quality and Safety Commission Act 2018](#)
- Appraising and reappraising consumers care requirements, in relation to classifying consumers needs
- Ensuring all staff and volunteers have police checks or criminal history checks
- Ensuring key personnel are not disqualified individuals
- Notification of any material changes
- Completing annual reporting
- Participating in an aged care workforce census
- Reporting alleged and suspected reportable incidents to the Commission under the SIRS.

# Overview of the legal frameworks

The below segments outline some of the relevant *Acts* and supporting principles in the Aged Care Sector. Governing body members should take the time to read and understand what their requirements are underneath these *Acts*.



# Role of the governing body and executive

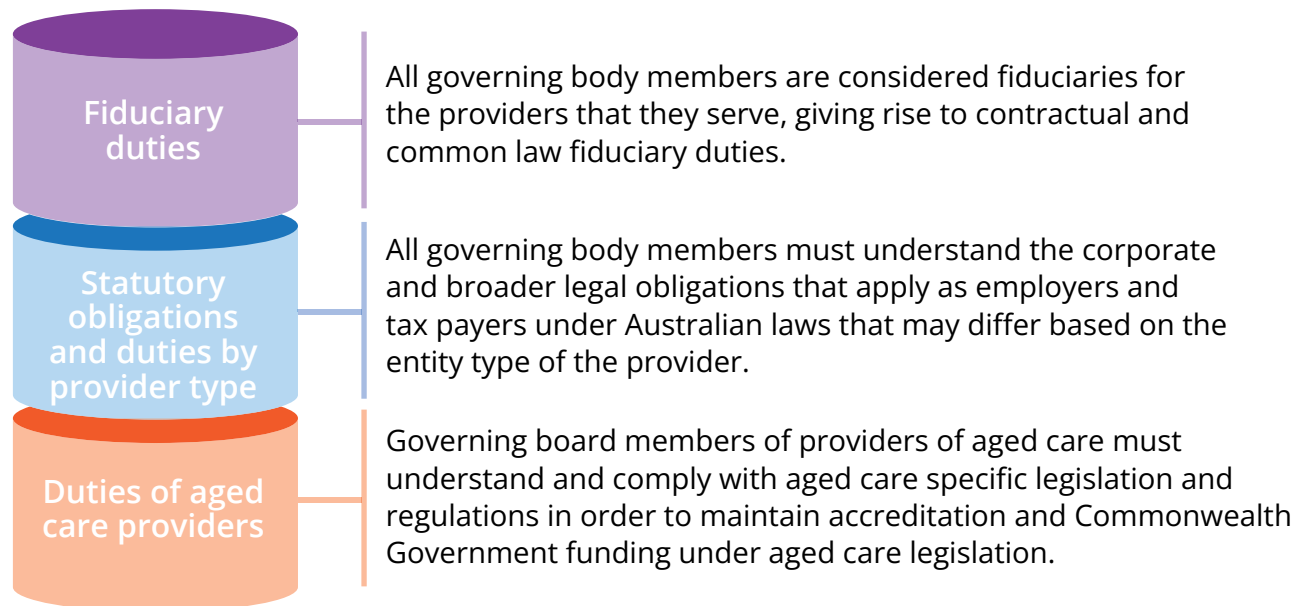
Governing body members and executives have a responsibility to understand their obligations and are ultimately responsible and accountable for ensuring that safe and quality care and services are delivered to consumers.

To do this successfully, governing bodies and executives need to:

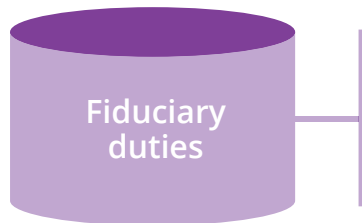
- Discharge their legal duty
- Monitor how the organisation is delivering quality and safe care
- Comply with reporting obligations i.e. Serious Incident Response Scheme (SIRS), National Aged Care Mandatory Quality Indicator Program
- Establish organisational culture that supports holding people accountable for providing quality and safe care.

## Understanding your obligations and duties

→ [Read about the fiduciary, statutory and duties of aged care providers on the following pages](#)



# Role of the governing body and executive (continued)



## Fiduciary

→ A duty to act in good faith in the best interests of the provider and for a proper purpose

Act honestly, fairly and loyally in making decisions for the benefit of consumers and the provider.

→ Duty to act with due care, skill and diligence

Keep up to date with developments in the aged care sector, ask for more information if needed to make a decision or seek out skills or professional advice when necessary.

→ A duty to avoid and manage conflicts of interest

Identify and manage any actual, potential or perceived conflicts as they arise.

→ A duty not to misuse information obtained as a governing body member

Do not use commercially sensitive information shared at governing body meetings with third parties or for personal advantage.

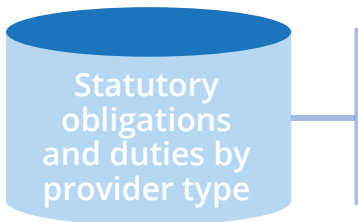
→ A duty to prevent the provider from trading while insolvent

Stay informed about the financial position of the provider take reasonable steps to prevent the provider from incurring further debt until it is able to pay any outstanding debts.

→ A duty of skill, competence and diligence in the understanding of the financial report

Take time to understand the financial report and how the finances impact on operations and clinical care.

# Role of the governing body and executive (continued)

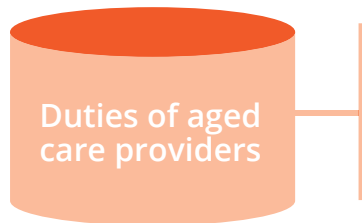


## Statutory obligations and duties by provider type

ENTITY TYPE	REGULATION	OPERATION	REGULATION
<b>Listed companies</b>	<ul style="list-style-type: none"> <li>• Corporations Act 2001</li> <li>• ASX Listing Rules</li> <li>• ASX Corporate Governance Principles and Recommendations</li> </ul>	<b>Use of personal information and data breaches</b>	<ul style="list-style-type: none"> <li>• Privacy Act 1988</li> <li>• Notifiable Data Breaches scheme</li> </ul>
<b>Indigenous Corporation</b>	<ul style="list-style-type: none"> <li>• Corporations (Aboriginal and Torres Strait Islander) Act 2006</li> </ul>	<b>Using My Health Record for consumer records</b>	<ul style="list-style-type: none"> <li>• My Health Records Act 2012</li> </ul>
<b>Not-for-profit or Charitable</b>	<ul style="list-style-type: none"> <li>• Australian Charities and Not-for-profits Commission Act 2012</li> <li>• Charities Act 2013</li> </ul>	<b>Employee entitlements and safe working conditions</b>	<ul style="list-style-type: none"> <li>• Fair Work Act 2009</li> </ul>
<b>Faith based</b>	<ul style="list-style-type: none"> <li>• Church establishing legislation</li> </ul>	<b>Providing National Disability Insurance Scheme (NDIS) supports</b>	<ul style="list-style-type: none"> <li>• National Disability Insurance Scheme Act 2013</li> </ul>
<b>Incorporated Associations</b>	<ul style="list-style-type: none"> <li>• State based enabling legislation</li> </ul>		



# Role of the governing body and executive (continued)



## Duties of Aged Care Providers

DUTY	REGULATION
Prepare financial reports in approved form	<ul style="list-style-type: none"><li>Accountability Principles 2014 (part 4)</li></ul>
Notification of circumstances materially affecting suitability to provide aged care	<ul style="list-style-type: none"><li>Aged Care Act 1997 (section 9-1)</li></ul>
Ensure suitability of key personnel	<ul style="list-style-type: none"><li>Accountability Principles 2014 (part 7A)</li></ul>
Ensure suitability of staff and volunteers	<ul style="list-style-type: none"><li>Accountability Principles 2014 (part 6)</li></ul>
Maintaining quality of care and provider accreditation	<ul style="list-style-type: none"><li>Quality of Care Principles 2014 (Schedule 2 – Accreditation Standards)</li></ul>

# How your obligations might change in response to the legislative reforms

It is the duty of governing body members and executive leaders to keep abreast of the obligations and accountabilities they are held to.

A range of changes have been made to aged care in response to the final report of the Royal Commission into Aged Care Quality and Safety. These changes aim to achieve six key outcomes for consumers.

There will be a heightened focus on many different areas including:

- Stronger governance of approved providers, for example, board composition, offering of the establishment of advisory bodies
- Minimising the use of restrictive practices and the clarity of informed consent for the use of restrictive practices where consumers lack the capacity to consent on their own behalf and there is no explicit legal avenue under state/territory laws for a restrictive practices substitute decision-maker to be appointed
- Funding models for different types of services
- Extension of the SIRS to home care or flexible care
- New annual reporting requirements and other reporting requirements, for example submitting of data in relation to the QI Program
- Mandatory participation of residential aged care services in the QI Program
- Changes to the aged care regulatory framework including a new consumer focussed Aged Care Act and revised Aged Care Quality Standards.

The aged care reform agenda hopes to achieve the following **six outcomes** for consumers:



*Read about these on the following pages.*

# How your obligations might change in response to the legislative reforms

# 1

## Reforming aged care:

Consumers are valued as a person and as an individual. All older Australians receive the care they deserve, not just for essential medical treatment but also essential things, such as helping them shower, get dressed and eat a meal, restoring dignity for consumers.

View [Reforming aged care](#) to learn more about this consumer outcome.

# 2

## Real control and real choice:

Consumers have real choice and control over their care. They can understand, access and navigate aged care information to enable them to make informed choices.

View [Real control and real choice](#) to learn more about this consumer outcome.

# 3

## Safe and quality aged care services:

Consumers are provided with safe and high quality care that supports and optimises their health and well-being and maintains their dignity and quality of life.

View [Safe and quality aged care services](#) to learn more about this consumer outcome.

# How your obligations might change in response to the legislative reforms

## 4

### Reforming in-home aged care to prioritise independence:

Consumers receive care and support at home that contributes to their quality of life and supports their family and community connections.

View [Reforming in-home aged care to prioritise independence](#) to learn more about this consumer outcome.

## 5

### Easy access to aged care:

Consumers have a consistent and seamless experience of receiving the information, support and care they need. A range of initiatives and programs will improve access to aged care, assessment and services, including support for vulnerable people and culturally safe aged care.

View [Easy access to aged care](#) to learn more about this consumer outcome.

## 6

### More skilled workers providing appropriate care:

Consumers' care and support needs are met by an appropriately skilled, diverse and valued workforce who provide high quality, safe care and keep consumers' families and representatives supported and informed.

View [More skilled workers providing appropriate care](#) to learn more about this consumer outcome.

# Practical Implications of obligations and responsibilities (reflective)

## Consider the following check list.

Does this apply in your organisation? What actions could be taken to ensure that the governing body, executive and organisation are aware of their obligations and accountabilities and how to effectively discharge them?



1. Does my governing body and organisation have effective systems and mechanisms to identify, track and monitor obligations depending on the services provided? If not, how can we do this better?
2. Does my organisation define and actively communicate/educate standards and expectations of your workforce in supporting compliance?   
This can be done through items such as:
  - a. Code of Conduct
  - b. Compliance Policy and governance framework
  - c. Open Disclosure Policy
  - d. Whistle blower Policy
  - e. WHS Policy and Guidelines
  - f. Privacy Policy
  - g. Workforce Strategy
3. Does my governing body promote the expected and acceptable behaviours to drive a culture of compliance and continuous improvement? If so, how can we do this better?
4. Does my governing body have effective and timely oversight of risk-based reporting to maintain oversight and accountability for ensuring all legislative and regulatory requirements are met?
5. Does my governing body have an assurance model that ensures governing body members and executives are satisfied that obligations and duties are being fulfilled?

# Additional Resources



**Australian Government**

Aged Care Quality and  
Safety Commission

