

# The Aged Care Act 2024 - Factsheet for Councillors

## Fact Sheet Updated: March 2025 - Version 2

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We acknowledge the traditional custodians of the land on which we live. We recognise their continuing connection to land, waters and culture and pay our respects to their Elders past, present and emerging.

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While every effort has been made to ensure the accuracy of this document, providers should refer to the Department of Health, Disability and Ageing, and the Aged Care Quality and Safety Commission for up-to-date information.

The factsheet is funded by the Australian Government Department of Health, Disability and Ageing. Although funding for this resource has been provided by the Australian Government, the material contained herein does not necessarily represent the views or policies of the Australian Government.

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Summary of Version 2 Updates
Pg. 4; section 3 – Updated reference to s 12 of the Aged Care Act
Updates to items on: Pg 9: ss. 13 (1) (b) ss. 13 (1) (c) Pg 10: ss. 13 (1) (d) ss. 13 (1) (e) Pg 11: ss. 13 (1) (g)

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# The Aged Care Act 2024 - Factsheet for Councillors

The new *Aged Care Act 2024* (Cth) ('the Act') is changing the way federally funded aged care is governed in Australia. When it commences on 1 November 2025, the Act introduces a series of new arrangements and requirements that aged care providers must comply with.

While some of these changes will be new for council-aged care providers, many will be broadly aligned to processes and arrangements councils already have in place in other areas of council business.

Previously, councils delivering only the Commonwealth Home Support Programme have not been subject to specific legislation. This will change under the Act, with all services funded by the Commonwealth Government to be regulated by legislation for the first time.

The Act will apply to aged care providers, their governing bodies, responsible persons, associated providers (sub-contractors) and aged care workers and volunteers.

## 1. About this guidance

This factsheet provides local government councillors with key information about the Act, including their responsibilities as 'responsible persons' and the council's obligations as the governing body when delivering Commonwealth-funded aged care services. This includes where councils receive grant funding through the Commonwealth Home Support Programme, are registered to deliver Home Care Packages (to be known as Support at Home from 1 November 2025) or provide residential aged care services.

This resource outlines how the Act relates to your role as a councillor, provides practical steps to help

you meet your obligations under the legislation, and how to support your council in delivering high-quality aged care services through effective leadership.

## 2. Why do I need to know about the Aged Care Act 2024?

The Act introduces significant governance responsibilities for executive leaders and governing bodies of aged care service providers. Under the Act, local government councillors are defined as 'responsible persons', alongside CEOs and other senior officers. This means you will have a statutory duty to exercise due diligence in ensuring your council complies with its obligations when delivering aged care services.

Understanding these new responsibilities will help you support your council's leadership in delivering high-quality aged care. It also provides an opportunity to build on your knowledge of the valued aged care services your council provides and to foster a culture of quality, safety and inclusion.

This guidance will help you interpret what these new duties mean in practice and assist you to confidently meet your obligations under the legislation.

## 3. About the Aged Care Act 2024

The Act has been developed in direct response to the Royal Commission into Aged Care Quality and Safety (the 'Royal Commission'), which found that the aged care sector needed significant reform. The Royal Commission heard significant evidence that the aged care system was not meeting the needs of older Australians. The Royal Commission's first recommendation was that Australia needed a new **rights-based** Aged Care Act. The Royal Commission also found that the system and providers needed to strengthen governance to

ensure older Australians receive high-quality care and avoid poor outcomes.

The Act directly responds to the Royal Commission findings by requiring providers to put in place strong organisational and, in some cases, clinical governance arrangements.

The Aged Care Quality and Safety Commission (ACQSC) is the national regulator of funded aged care services under the Act. The ACQSC oversees provider compliance, works to uplift provider monitors the quality and safety of care, and takes enforcement action where standards are not met.

Under s 12 of the Act, Councillors are captured in the definition of Responsible Persons because they are responsible for the executive decisions of the council.

The ACQSC advises that governing bodies are responsible for:

- identifying and managing risk
- monitoring the provider’s compliance with all legal requirements and their own organisational policies.

You’ll be supported to undertake this role through your council’s governance systems and processes.

#### **4. Responsible Persons under the Aged Care Act 2024**

The term ‘responsible person’ has a clear definition in the Act. This definition is specific to this legislation and differs from the *Aged Care Act 1997*, which uses the term ‘key personnel’. In particular, the Act defines a responsible person to include local government councillors. Section 12 of the Act defines a responsible person as:

- Any person who is responsible for the executive decisions of the registered provider;

- Any other person who has authority or responsibility for (or significant influence over) planning, directing or controlling the activities of the registered provider;
  - any person who has responsibility for overall management of the nursing services delivered by the registered provider, or overall management of the nursing services delivered at an approved residential care home of the registered provider, and who is a registered nurse; and
  - any person who is responsible for the day-to-day operations of an approved residential care home or service delivery branch of the registered provider.

While arrangements may differ from council to council, ‘responsible officers’ include, as a minimum:

- Councillors
- Chief Executive Officer (CEO)
- Director or senior officer responsible for aged care services (regardless of their official title)

This new definition means that, as a ‘responsible person’, councillors have a direct role in ensuring that Council’s aged care services are governed effectively and meet their accountability obligations. Council services will therefore need to adapt their reporting processes and decision-making to reflect this responsibility.

#### **5. Councillors as responsible persons**

The Department of Health, Disability and Ageing has provided the following policy guidance to support Councillors to highlight their role as responsible persons.

*Councillors are generally responsible for key aspects of the executive decisions of the registered provider.*

*For example, councillors may make strategic decisions about services offered and/or provide independent oversight and assurance of council management action – including financial oversight. By contrast, your CEO may be responsible for management and decision-making about day-to-day delivery of services.*

*As defined in Section 12 of the Act, a responsible person of a registered provider includes anyone responsible for the executive decisions, which includes members of governing bodies, and anyone who has authority or responsibility for (or significant influence over) planning, directing or controlling the activities of the registered provider.*

*This highlights that an elected councillor as an individual will generally be considered a responsible person for the purpose of the Act.*

## **6. Statutory duty of responsible persons**

As outlined above, councillors, the CEO and other senior officers are considered responsible persons under the Act.

Under the Act, ‘certain’ responsible persons have a duty to exercise **due diligence** to ensure that the provider complies with **the registered provider duty** set out in the legislation. This includes councillors as the council’s governing body.

The registered provider duty states that a provider must ensure, so far as is **reasonably practicable**, that the conduct of the provider does not cause adverse effects to the health and safety of individuals to whom the provider is delivering

funded aged care services while the provider is delivering those services.

It is important to unpack what “**due diligence**” entails. The legislation describes due diligence as taking “**reasonable steps**”, which include:

- (a) to acquire and maintain knowledge of requirements applying to registered providers under this Act; and
- (b) to gain an understanding of the nature of the funded aged care services the registered provider delivers and the potential adverse effects that can result to individuals when delivering those services; and
- (c) to ensure that the registered provider has available for use, and uses, appropriate resources and processes to manage adverse effects to the health and safety of individuals accessing funded aged care services delivered by the provider; and
- (d) to ensure that the registered provider has appropriate processes for receiving and considering information regarding incidents and risks and responding in a timely way to that information; and
- (e) to ensure that the registered provider has, and implements, processes for complying with any duty or requirement of the registered provider under this Act.<sup>1</sup>

Keep in mind that what constitutes taking “reasonable steps” will depend on your role as a councillor. Your council’s systems and processes, including reporting mechanisms to Council, are designed to support you in meeting this obligation.

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<sup>1</sup> Aged Care Act 2024, Section 180 (2)

## 7. Other obligations required of responsible persons

Responsible persons of aged care providers also have other obligations under the Act.

These include:

- complying with [the Aged Care Code of Conduct](#) (applies to providers, responsible persons, workers, and volunteers) (see section 12 of this factsheet)
- notifying your provider as to any changes in your suitability as a responsible person (see section 8 and 13)
- complying with whistleblower protections under the Act when a protected disclosure is made to a responsible person. This includes safeguarding the discloser's identity and avoiding any actions that could victimise them.

## 8. Suitability requirements of responsible persons

Another element in ensuring that funded aged care services have strong governance, as outlined in the Act, is the requirement for responsible persons to meet certain **'suitability requirements'**. The Act sets out a comprehensive range of matters that providers must ensure their responsible persons satisfy.

Suitability matters are covered in section 12 of the Act. Suitability matters are explored in more detail in Section 13 of this factsheet.

It is the responsibility of the individual responsible person to notify the aged care provider of **any relevant change** in their circumstances related to suitability.

Notification must be provided in writing within 14 days of the person becoming aware of the change and must include the details relevant to the suitability requirement. The ACQSC can pursue a civil penalty against a responsible person who fails to comply with this obligation<sup>2</sup>.

Registered providers must consider the suitability matters in relation to their responsible persons at least once every 12 months. This can be achieved through an annual declaration process.

## 9. Breaches of the registered provider or responsible persons duty

It's important that responsible persons take reasonable steps to ensure they are complying with their prescribed duties. The Act also provides descriptions of what would constitute 'contravening' these duties.

Firstly, contravening a duty occurs where a registered provider or responsible person, **'without reasonable excuse, engages in conduct that does not comply with the duty'** and the conduct amounts to a **'serious failure'**.

Serious failures have a specific definition under the Act. Broadly, a serious failure means conduct that exposes an individual to a risk of death or serious injury **and** that conduct involves significant failure or is a part of a systemic pattern of conduct.

S 179 (4) states **that the conduct of a registered provider amounts to a *serious failure* to comply with the duty** if:

- (a) the conduct exposes an individual to whom the duty is owed a risk of death or serious injury or illness; and
- (b) the conduct:
  - (i) involves a significant failure; or

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<sup>2</sup> Aged Care Act 2024, Section 169

(ii) is part of a systematic pattern of conduct.

**Conduct of a person** amounts to a **serious failure** to comply with the duty in subsection 180 (5) if:

(a) the conduct exposes an individual to whom the duty is owed a risk of death or serious injury or illness; and

(b) the conduct:

(i) involves a significant failure; or

(ii) is part of a systematic pattern of conduct.

For both the registered provider duty and the responsible person duty, both elements (i) 'involves a significant failure' and (ii) 'is part of a systemic pattern of conduct' must be present to amount to a breach of the duty.

Importantly, a Responsible Person will also breach their duty where their conduct amounts to a 'serious failure' and that conduct results in the death of, serious injury to or illness of a recipient of the funded aged care services.

## 10. Penalties

Breaches of the registered provider or responsible person's duty may result in civil penalties against the registered provider or responsible person(s). You can read about these civil penalties in MAV's second factsheet 'Unpacking the Aged Care Act for Victorian Local Government Providers'.

## 11. Aged Care Code of Conduct

From 1 November 2025, as a member of your council's governing body, you will need to understand and comply with the Aged Care Code of Conduct (the Code) and ensure your registered provider is taking reasonable steps to ensure aged care workers and members of the governing body comply with the Code.

The Code outlines the expected behaviour and treatment of aged care providers, their governing bodies (including councillors), and workers (including volunteers) towards individuals receiving aged care.

It helps ensure that people can have confidence and trust in the quality and safety of the aged care they receive.

The Code outlines 8 elements of expected behaviour:

1. Act with respect for people's rights to freedom of expression, self-determination and decision-making in accordance with applicable laws and conventions.
2. Act in a way that treats people with dignity and respect and values their diversity.
3. Act with respect for the privacy of people.
4. Provide care, supports and services safely and competently, with care and skill.
5. Act with integrity, honesty and transparency.
6. Promptly take steps to raise and act on concerns about matters that may impact the quality and safety of care, support and services.
7. Provide care, supports and services free from:
  - i. all forms of violence, discrimination, exploitation, neglect and abuse
  - ii. sexual misconduct.
8. Take all reasonable steps to prevent and respond to:
  - i. all forms of violence, discrimination, exploitation, neglect and abuse
  - ii. sexual misconduct.

You can read more about the Code at the ACQSC website.

## 12. Aged Care Quality Standards

The commencement of the Act will also introduce the Strengthened Aged Care Quality Standards (the Standards).

Aged care providers need to meet the strengthened standards based on the types of services they deliver. The types of services your council delivers determine the 'registration category' assigned to your council.

You can watch [this short](#) video that provides an overview of these categories.

If your council only delivers services in categories 1, 2 or 3, the Strengthened Quality Standards do not apply.

If your council is registered to deliver services in category 4, 5 or 6, it will need to comply with the Standards, including [Quality Standard 2 – the Organisation](#).

This specific standard sets out the Commission's expectations of the governing body and management of the service.

Quality Standard 2 also provides an important framework for you, as a member of the governing body, to exercise your role effectively.

## 13. Further reading

A range of helpful resources is available to support members of aged care governing bodies, developed by the ACQSC and other leading governance organisations.

[Aged Care Provider Governance Responsibilities – Aged Care Quality and Safety Commission](#)

[Australian Institute of Company Directors](#)

## 14. Appendices

Meaning of suitability matters in relation to an individual		
Sub-section (for example, ss. 28 (3) (e))	What the sub-section states	Explanation/Comment
ss.13 (1) (a).	Whether an individual has experience in providing, at any time, funded aged care services or similar services.	This suitability matter requires that only individuals with relevant experience be allowed to work in aged care services for a registered provider.
ss. 13 (1) (b).	Whether a banning order against an individual is, or has at any time been, in force.	The banning order that is being referred to here is a banning order under the new <i>Aged Care Act 2024</i> (Cth). Note the use of the words “or has at any time been”. This includes banning orders that have been revoked or expired, not just current banning orders. This is only likely to apply to Councillors who are involved in the delivery of funded aged care services in their private capacity.
ss.13 (1) (c)	Whether an NDIS banning order against an individual is, or has at any time been, in force.	Same point as ss.13 (1) (b) above. This is only likely to apply to Councillors who are involved in the delivery of the NDIS in their private capacity.
ss.13 (1) (d)	Whether an individual has at any time been convicted of an indictable offence.	An offence is usually defined in the Act which creates it as summary or indictable. If this does not occur, an offence will be deemed to be indictable if it is punishable by imprisonment or fine between levels 1 (life) – 6 (5 years or 600 penalty units), as set out in the <i>Sentencing Act 1991</i> .

		<p>Summary offences are usually heard and determined ‘summarily’ in the Magistrates’ Court. In a summary hearing, the Magistrate hears and determines both the facts and the law and ultimately decides if the charge is proven and what sentence to impose.</p> <p>Indictable offences are usually heard and determined ‘on indictment’ before a jury in the County Court or Supreme Court. Only the Director of Public Prosecutions may file an indictment. The jury will decide if the accused is guilty and the judge will determine the sentence. However, many indictable offences are deemed triable summarily in the <i>Criminal Procedure Act 2009</i>, meaning that they may be heard and determined in the Magistrates’ Court.</p>
<p>ss.13 (1) (e)</p>	<p>Whether a civil penalty order against the individual has been made at any time.</p>	<p>A civil penalty is defined by section 7 of the new <i>Aged Care Act 2024</i> (Cth) as having the same meaning as in the <i>Regulatory Powers Act 2014</i> (Cth). Under sub-section 79 (2) (a) (i) of the <i>Regulatory Powers Act 2014</i> (Cth) a provision is a civil penalty order if, at the foot of the pecuniary penalty, it states that it is a civil penalty by using the words “civil penalty”. An example of this is:</p> <p><b>142 Conditions of registration</b></p> <p>(3) An entity contravenes this subsection if:</p> <ul style="list-style-type: none"> <li>(a) the entity is a registered provider; and</li> <li>(b) the entity engages in conduct; and</li> <li>(c) the conduct breaches a condition to which the entity’s registration is subject.</li> </ul> <p>Civil penalty:            250 penalty units.</p> <p>There are good arguments to say the following sub-section of 169 is not a civil penalty because the required words are deliberately not used:</p>

		<p>(3) A person commits an offence of strict liability if:</p> <p>(a) the person is one of the responsible persons of a registered provider; and</p> <p>(b) the person fails to comply with subsection (1).</p> <p>Penalty: 30 penalty units.</p> <p><b>170 Determination relating to suitability of responsible persons of a registered provider</b></p> <p>Interestingly, no Local Government Act uses the words “civil penalty” and so any misconduct matters or other contraventions of the Local Government Act by a councillor will not amount to a civil penalty under the new Aged Care Act 2024 (Cth) and so it is strongly suggested that no issues under the Local Government Act will have any impact on a councillor’s role as responsible persons.</p>
ss.13 (1) (f)	Whether an individual is, or has at any time been, an insolvent under administration.	Care with this one needs to be taken with Councillors who own and run private registered Australian businesses. Councillors whose business enter into insolvency and are placed under administration do not disqualify them from being a councillor but it will mean that a suitability matter may arise under this new <i>Aged Care Act 2024</i> (Cth).
ss.13 (1) (g)	Whether an individual is, or has at any time been, the subject of adverse findings or enforcement action by a Department of the Commonwealth or State or Territory, the Australian Securities and Investments Commission, the Australian Charities and Not-for-profits Commission, the Australian Competition and Consumer Commission, the Australian Prudential Regulation Authority, the Australian Crime Commission, AUSTRAC, the Australian Health Practitioner Regulation Agency, another body established for a public purpose under	Councillors who own businesses that may be subject to adverse findings by ACCC (misleading and deceptive conduct), professionals who deal with large amounts of cash (bankers, lawyers, accountants, real estate agents) (non-reporting to AUSTRAC), councillors who are also members of not-for-profit incorporated associations (generally community groups and community sporting teams), councillors who are medical professionals and arguably, because adverse findings include local governments, this could include adverse findings against councillors regarding planning and building. While a simple rejection of a planning or building permit application would not suffice to count as an adverse finding in this case and for the purposes of this section, there is an argument that findings of misconduct by an arbiter, and of serious misconduct by a Councillor Conduct Panel, could fall into this category.

	the law of the Commonwealth, a State or Territory authority, a local government authority or a body responsible for maintaining standards of conduct in a profession that is involved in the delivery of funded aged care services.	
s.13 (1) (h)	Whether an individual is, or has been, the subject of fraud findings or judgments or is currently the party to fraud proceedings.	No explanation/comment is required.
s.13 (1) (i)	Whether an individual is disqualified from managing corporations.	No explanation/comment is required.
s.13 (1) (j)	Whether a worker is subject to worker screening requirements under the Rules.	No explanation/comment is required.
s.13 (1) (k)	Any other matters prescribed by the rules (currently there are no other matters prescribed by the Rules).	No explanation/comment is required.