

Unpacking the Aged Care Act 2024 – Victorian Local Government providers

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Introduction

The Aged Care Act 2024 ('Act') introduces a suite of new obligations, duties and responsibilities for registered aged care providers and their responsible persons.

These changes aim to make aged care safer and fairer, strengthen system and provider governance and centre the rights of older people.

Many of these changes apply to local government providers for the first time from 1 November 2025. Unlike non-government providers, council local government providers in Victoria are navigating the changes in the context of the Local Government Act 2020 (Vic) and their broader governance arrangements.

The new Act also expands the role of governing bodies and responsible persons, applying a new statutory duty and other obligations.

Purpose of this document

This document is designed as a quick reference guide to the Aged Care Act 2024 as it relates to local government in Victoria. It provides high-level commentary and explanations on both the Aged Care Act and the Aged Care Rules as they relate to Victorian local government providers. This document is not exhaustive. Guidance on elements of the Act not addressed in this document can be found on the [Department of Health, Disability and Ageing](#) and [Aged Care Quality and Safety Commission](#)'s websites.

Disclaimer

This publication is not legal advice and must not be used or relied upon as a substitute for legal advice. Users must seek their own independent legal advice in relation to their particular circumstances.

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.

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Responsible persons/registered provider obligations/duties, registered providers obligations/duties, incidents, notification and consequences of non-compliance		
Section or Rule no. (s = section, ss = sub-section, r = rule)	What the Act states	Explanation/Comment
Registered provider/responsible persons - General Statutory Duty		
ss.179 (1)	A person who is a responsible person of a registered provider...must exercise due diligence to ensure that the registered provider complies with the provider's duty under section 179.	No explanation/comment required.
ss.180 (2)	Due diligence means: - to acquire and maintain knowledge of the requirements applying to registered providers; - to gain an understanding of the nature of the services provided and the risks to the individuals providing those services; - to ensure appropriate resources and processes; - to ensure appropriate information is provided	Compliance with this sub-section can be achieved by periodic reporting to Council and embedding training into the current Councillor induction training program.

Responsible persons/registered provider obligations/duties, registered providers obligations/duties, incidents, notification and consequences of non-compliance		
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	regarding incidents and risks; and - to ensure compliance with duties and requirements of the legislation.	
ss. 180 (4)	A person contravenes this subsection if the person has a duty under subsection 180 (1) and the person, without reasonable excuse, engages in conduct that does not comply with that duty and the conduct amounts to a serious failure to comply with that duty.	Requires a failure to comply with the duty <i>without reasonable excuse</i> , and the failure must amount to a serious failure.
ss.180 (5)	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.	Note the requirement that it exposes an individual to the risk of death or serious injury. Serious injury is defined by the rules as including dehydration or malnutrition. That is, failure to feed or provide liquids (see r.7-22). This sub-section is mirrored by sub-section 179 (4). Note that it does not include situations where an individual deliberately refuses food or liquids. It means that a responsible person or registered provider has deliberately chosen not to provide or make available food or liquids to individuals within its care.
ss. 180 (6)	Contravention of the general statutory duty means a breach of a civil penalty and carries with it a penalty of 500 penalty	No explanation/comment required.

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	units. One penalty unit currently amounts to \$203.51 (meaning a maximum penalty of \$101,755).	
ss.13 (e)	Suitability matters – a suitability matter refers to whether a civil penalty order has been made against an individual at any time.	A civil penalty order is defined as a penalty that is specifically stated as being a civil penalty within the relevant legislative provision. For example, contravention of the general statutory duty is specifically stated as being a civil penalty (s.180 (6)): <i>Death or serious injury or illness</i> (6) A person contravenes this subsection if: (a) the person has a duty under subsection (1) in relation to a registered provider; and (b) the person, without reasonable excuse, engages in conduct; and (c) the conduct amounts to a serious failure by the person to comply with the duty; and (d) the conduct results in the death of serious injury to or illness of an individual to whom the duty in section 179 is owed by the registered provider. Civil penalty: 500 penalty units. Interestingly there are no civil penalties in the <i>Local Government Act 2020</i> (Vic) or the <i>Local Government Act 1989</i> (Vic) so any misconduct matters relating to a councillor are not going to amount to a suitability matter under the new <i>Aged Care Act 2024</i> (Cth) although there are several provisions under the <i>Local Government Act 1989</i> (Vic) that are expressed as being “penalties”. These still do not fall within the definition of a civil penalty within the new <i>Aged Care Act 2024</i> (Cth).

Responsible persons/registered provider obligations/duties, registered providers obligations/duties, incidents, notification and consequences of non-compliance		
Section or Rule no. (s = section, ss = sub-section, r = rule)	What the Act states	Explanation/Comment
ss. 179 (1)	As far as reasonably practicable a responsible person/registered provider must ensure that conduct does not cause adverse effects to health and safety.	The meaning of reasonably practicable is defined in sub-section 179 (2).
ss. 179 (2)	Factors to be taken into account as to whether conduct is reasonably practicable includes the likelihood of adverse effects, the likely degree of harm, the knowledge about ways of preventing adverse effects and the rights of individuals (that is, the right of individuals to exercise choice and make decisions, including taking personal risks).	This amounts to no more than exercising a general risk based assessment and the balancing of factors. It is not seen as any more than what the sector is already doing.
ss.179 (3)	Penalties apply for serious failures.	Penalties for a registered provider = up to \$203,510.00 Penalties for a responsible person = up to \$30,526.50
s.7	Definition of serious injury or illness.	A serious injury or illness means an injury or illness requiring an individual to have immediate treatment for an amputation, serious head injury, serious eye injury, serious burn, separation of the skin from the underlying tissue, spinal injury, loss of bodily function, serious lacerations or injury requiring medical treatment within 48 hours of exposure to a substance.
ss. 179 (5)	Penalties for serious injury or illness.	Penalties for a registered provider = up to \$976,848.00 Penalties for a responsible person = up to \$101,755.00

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Section or Rule no. (s = section, ss = sub-section, r = rule)	What the Act states	Explanation/Comment
Responsible person/registered provider - Reporting, reportable incidents and notifications		
s.16	A reportable incident is any of the following that has occurred, has been suspected of having occurred or has been alleged to have been occurred: - unreasonable force - unlawful sexual conduct or inappropriate sexual conduct - psychological or emotional abuse - unexpected death - stealing or financial coercion - neglect - restrictive practice other than in accordance with the requirements under the rules - unexplained absence of an individual	r.16-5 provides more detail about each of these reportable incidents. Incidents must be reported to the Aged Care, Quality and Safety Commission ('Commission'): - the Aged Care Quality and Safety Commissioner of the Commission - the Complaints Commissioner of the Commission - the Inspector-General of Aged Care - the Systems Governor (that is, the Secretary of the Department of Aged Care) - the Pricing Authority (that is, the Independent Health and Aged Care Pricing Authority) (see s.166)

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r.16-10	Acts or omissions and events that are not reportable include refusals of services in approved residential care homes and choices made by individuals in home or community settings, provided these choices are recorded. Additionally, the use of restrictive practices that are predetermined and recorded in a care and services plan for the individual is also not reportable.	Further details as to restrictive practices are contained in r.17-5.
s.167	Notification must be given by a registered provider of a change in circumstances, such as any change that materially affects the provider's suitability, any suitability matter of a responsible person, a change in governance arrangements, a change in the scale of funded services or a change in the type of services delivered.	Notice must be given within 14 days of becoming aware of the change. The penalty for a registered provider for non-compliance is up to \$6,105.30. For further details, refer to r.167. Notification is to be provided to the Aged Care, Quality and Safety Commissioner only.

Responsible persons/registered provider obligations/duties, registered providers obligations/duties, incidents, notification and consequences of non-compliance		
Section or Rule no. (s = section, ss = sub-section, r = rule)	What the Act states	Explanation/Comment
s.168	This section obliges the registered provider to protect whatever personal information it collects for the purpose of providing aged care services.	This obligation is no different to the obligations relating to protecting personal privacy under the current <i>Privacy and Data Protection Act 2014</i> (Vic). Councils will already be complying with these requirements, and so no action is required in this respect.
r.165A-10	Reportable incidents obligations are applicable to all providers.	Incidents are reportable to the Aged Care, Quality and Safety Commissioner.
r.165A-25 (1)	Priority 1 incidents must be reported within 24 hours.	No explanation/comment required.
r.165A-25 (2)	A Priority 1 incident is an incident that caused physical or psychological injury that requires medical or psychological treatment or where there are reasonable grounds to report the incident to the police or involves unlawful sexual conduct or involves unexpected death or unexplained absences.	It is recommended that the notice of priority 1 incidents be specifically delegated via the instrument of delegation from Council to staff or that, if a council subscribes to the Maddocks template of delegations and authorisations, then no action be taken as the delegated power will already rest with the CEO, as the CEO will have delegated power to notify as the new aged care act duties will not be a specific excluded delegation.
r.165-25 (3)	Information to be provided in the notice.	The information to be provided includes information that would normally be expected in such a notice – for example, the names of persons involved, the type of incident, the measures taken to address the issue or issues that caused the incident and the level of cognitive condition of the client. Also, the Commissioner may require further information to be provided. The approved form of notice is outlined in section 585 of the <i>Aged Care Act 2024</i> (Cth)

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Section or Rule no. (s = section, ss = sub-section, r = rule)	What the Act states	Explanation/Comment
r.165A-30	A priority 2 incident is one that does not fall within the definition of a priority 1 incident.	Notice must be given within 30 days. As this will generally fall within Council reporting cycles it is suggested that these are not delegated via the instruments of delegation from the Council to staff. Alternatively, if a council subscribes to the Maddocks template of delegations and authorisations, then the power to notify will sit with the CEO of the council. Either way, the notification of a priority 2 incident can be easily managed.
r.165A-35 to r.165-45	These rules give the Aged Care, Quality and Safety Commissioner wide powers to make enquiries and request further reports from an aged care provider.	No explanation/comment required.
r.166-5 to r.166-210	These requirements only apply to a registered provider who provides residential care. Requirement to inform the Systems Governor of staff vaccination levels (COVID an influenza) annually and quality indicators report (pressure injuries, restrictive practices, unplanned weight loss, falls and major injury, medical management, activities of daily living, incontinence care, hospitalisation, workforce, consumer experience	These responsibilities should be delegated from the council directly to staff.

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Section or Rule no. (s = section, ss = sub-section, r = rule)	What the Act states	Explanation/Comment
	assessment, quality of life assessment, allied health report, lifestyle officer report and enrolled nursing report, if applicable)	
Incident management		
s.164	It is a condition of registration that a registered provider must maintain an incident management system.	No explanation/comment required.
r.164-1	This applies to various aged care services regardless of the category of service it provides.	It is recommended that the periodic council reporting cycle be used to fulfil this obligation. This applies to the categories of providers who provide home and community services, advisory and support services, personal and care support in the home or community, nursing and transitional care or residential care.
r,164-5	Requirements for implementing an incident management system.	It is recommended that, other than priority 1 incidents, that the periodic council reporting cycle be used to fulfil this obligation.
r.164-45	Obligation to take reasonable steps to prevent incidents.	No explanation/comment required.
Responsible persons - Suitability matters, change in circumstances and other obligations		
s.169	Notification of a change in circumstances of a responsible person must be given in writing	Interestingly, this is not described as a civil penalty, but the penalty for non-compliance is \$6,105.30, and it is applicable to individuals, that is, responsible persons.

Responsible persons/registered provider obligations/duties, registered providers obligations/duties, incidents, notification and consequences of non-compliance		
Section or Rule no. (s = section, ss = sub-section, r = rule)	What the Act states	Explanation/Comment
	within 14 days of becoming aware of the change in suitability.	
ss. 170 (1)	The Aged Care, Quality and Safety Commissioner may determine that a person who is a responsible person is not suitable to be involved in the delivery of funded aged care services.	The Aged Care, Quality and Safety Commissioner may make a determination under this section, but that does not mean or make any difference to a councillor's eligibility or capacity to continue to play their role under the <i>Local Government Act 2020</i> (Vic). The recommendation is to utilise the same governance processes as when a councillor has a declared conflict of interest against an officer's report.
ss.170 (4) & (6)	Before the Commissioner makes a determination under ss.170 (1) they must give written notice that they are considering making such a determination and the Commission must consider any submissions made by the person.	No explanation/comment required.
s.171	It is an offence for an entity to fail to take action in accordance with the determination made under s.170 (1)	Interestingly, this is expressed not as being a "civil penalty" but just a "penalty". The penalty being up to \$61,053.00.

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Section or Rule no. (s = section, ss = sub-section, r = rule)	What the Act states	Explanation/Comment
s.172 (1) (a)	Every registered provider must consider the suitability matters in relation to its responsible persons at least once every 12 months.	It is recommended that an officer's report be presented to Council at least once a year, even if it is just a report stating that there are no suitability matters. The penalty for not doing so is a penalty of up to \$61,053.00.
s.173 & s.174	Aged care workers and responsible persons must comply with the Aged Care Code of Conduct.	No explanation/comment required.
r.169-5	The obligation to notify of a change in circumstances relating to suitability applies to every registered provider.	No explanation/comment required.
r.172-10	Every registered provider must keep a record of its consideration of suitability matters, which includes the name of the person, the dates when consideration occurred, the outcome, and the reasons for reaching that decision.	It is recommended that this be done via an officer's annual report to Council.
Registered Provider – general obligation to cooperate and to notify		
s.177	A registered provider has a duty to cooperate with any person	No explanation/comment required.

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	who is performing functions or exercising powers under the new <i>Aged Care Act 2024</i> (Cth) or under the <i>National Health Reform Act 2011</i> (Cth).	
r.167-20, 25, 30, 35, 45.	Every registered provider must notify the Aged Care, Quality and Safety Commissioner if there is a materially change in its suitability, there is a change in circumstances of a responsible person (that is, a suitability matter arises), there is a change of responsible persons, if the organisation enters into any agreement with someone else to provide aged care services or there is a restructure or sale, acquisition or merger of business or if there are any changes to the scale of operations.	No explanation/comment required.
r.167-50 and 55	Registered providers who provide support in the home services must notify the Aged Care, Quality and Safety	No explanation/comment required.

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Section or Rule no. (s = section, ss = sub-section, r = rule)	What the Act states	Explanation/Comment
	Commissioner of any changes to intended service types and any changes relating to arrangements with associate providers.	
r.167-70	A registered provider that provides residential care must notify the Aged Care, Quality and Safety Commissioner about any changes to the building (that is, planned or unplanned construction), reduction in number of beds or anything that presents a risk to providing or delivering quality and safe residential care.	No explanation/comment required.
r.167-15	The Systems Governor must be notified of any changes under r.167-35 (changes to organisational arrangements) and changes under r.167-70 (residential care providers)	No explanation/comment required.
Registered Provider – obligation to provide information		

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Section or Rule no. (s = section, ss = sub-section, r = rule)	What the Act states	Explanation/Comment
r.155-5	Registered providers must provide information that includes a statement of rights, information that allows individuals to choose the services that best meet their needs, clear and understandable invoices, information about the use of refundable deposits, monthly statements, individualised budget, general information about the services to be provided, information about the financial position of the registered provider and pricing information.	Section 23 of the Aged Care Act 2024 (Cth) sets out the Statement of Rights. Further details for each of these is contained in r.155-15, 20, 25, 30, 35, 36, 40, 45, 50, 55, 60, 65, 70, 80
Consequences of non-compliance - Banning orders		
s.498	The Commissioner may make an order that prohibits or restricts the involvement of an individual either as an aged care worker or responsible person.	The Aged Care, Quality and Safety Commissioner can only do this if they reasonably believe that the person is unsuitable or is a severe risk to safety, health or wellbeing of one or more individuals.

Responsible persons/registered provider obligations/duties, registered providers obligations/duties, incidents, notification and consequences of non-compliance		
Section or Rule no. (s = section, ss = sub-section, r = rule)	What the Act states	Explanation/Comment
S.499	The Aged Care, Quality and Safety Commissioner must first give notice that it is considering making a banning order and allow the person to make submissions.	No explanation/comment required.
s.504 and s.505	The Aged Care, Quality and Safety Commissioner may vary or revoke a banning order on application by the entity against which a banning order has been made or on its own initiative.	The penalty for not complying with a banning order is a civil penalty of up to \$203,510.00.
Consequences of non-compliance - Compensation orders		
s.186	The Federal Court or Family Court may order an entity to compensate an individual for serious injury or illness or any serious failure. The application for the order must be made by the Aged Care, Quality and Safety Commissioner or an individual within 6 years from the time the contravention occurred.	Civil penalty under the <i>Aged Care Act 2024</i> (Cth) for serious failures of up to \$30,526.00 (for an individual) or \$203,510.00 (for non-individuals). Civil penalty under the <i>Aged Care Act 2024</i> (Cth) for serious injury or illness \$101,755.00 (for individuals) \$976,848.00 (for non-individuals).

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Section or Rule no. (s = section, ss = sub-section, r = rule)	What the Act states	Explanation/Comment
Consequences of non-compliance - Suspension and revocation of registration		
s.129	The Aged Care, Quality and Safety Commissioner may suspend the registration of an entity or suspend a responsible person if they reasonably believe that the Act has been or is being contravened or reasonably believes the entity or responsible person is no longer suitable.	Would probably require systemic, repeated and deliberate non-compliance and the suspension cannot be any longer than 90 days.
s.131	The Aged Care Quality and Safety Commissioner can revoke the registration of an entity for similar reasons as those outlined in section 129 above.	No explanation/comment required.
Consequences of non-compliance – infringement notices		
s.448	The Aged Care Quality and Safety Commissioner or System Governor may issue infringement notices if an entity fails to give reports, fails to give	No explanation/comment required.

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Section or Rule no. (s = section, ss = sub-section, r = rule)	What the Act states	Explanation/Comment
	notice of change in circumstances, fails to cooperate with other persons, fails to comply with notices or fails to provide reasonable facilities and assistance.	
Consequences of non-compliance – compliance notices		
s.481, s.482 & s.483	The Aged Care Quality and Safety Commissioner or Systems Governor may give a registered provider a written notice (a compliance notice). The notice must specify the details of the non-compliance, what action must be taken and the period in which action must be taken.	It is suggested that compliance notices and infringement notices will be used for lesser non-conformance issues, and banning, compensation orders, suspension, and revocation powers will be primarily reserved for serious failures, serious injuries or serious illnesses.
ss.483 (f)	Failure to comply with a notice is a civil penalty under s.487.	The civil penalty is up to \$12,210.60.