

EXPOSURE DRAFT



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Aged Care Quality and Safety Commission Amendment (Code of Conduct and Banning Orders) Rules 2022

I, Anika Wells, Minister for Aged Care, make the following rules.

Dated 2022

Anika Wells **[DRAFT ONLY—NOT FOR SIGNATURE]**
Minister for Aged Care

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1 Name

This instrument is the *Aged Care Quality and Safety Commission Amendment (Code of Conduct and Banning Orders) Rules 2022*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 December 2022.	1 December 2022

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Aged Care Quality and Safety Commission Act 2018*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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Schedule 1 Code of Conduct, Commissioner's Code of Conduct functions and banning orders

Schedule 1—Code of Conduct, Commissioner's Code of Conduct functions and banning orders

Aged Care Quality and Safety Commission Rules 2018

1 Section 4

Insert:

register of banning orders means the register mentioned in section 74GI of the Commission Act.

2 After Part 2

Insert:

Part 2A—Code of Conduct

23AA Simplified outline of this Part

This Part makes provision for the Code of Conduct that applies to approved providers and their aged care workers and governing persons.

23AB Purpose of this Part

This Part is made for the purposes of section 74AE of the Commission Act.

23AC Code of Conduct

The provisions of the Code of Conduct set out in clause 1 of Schedule 1 apply to the following in accordance with clause 2 of Schedule 1:

- (a) approved providers;
- (b) aged care workers of approved providers;
- (c) governing persons of approved providers.

Note: For provisions relevant to compliance with the Code of Conduct, see the following:

- (a) for requirements for approved providers and their aged care workers and governing persons to comply with the Code of Conduct, and civil penalties for non-compliance—Part 8AA of the Commission Act;
- (b) for responsibilities of approved providers in relation to the Code of Conduct—paragraphs 54-1(1)(g) and (ga) of the *Aged Care Act 1997*;
- (c) for sanctions for non-compliance with responsibilities—Part 7B of the Commission Act;
- (d) for the Commissioner's complaints functions and code functions—sections 18 and 18A of the Commission Act and Parts 2 and 2B of this instrument;
- (e) for enforcement of responsibilities and requirements—Part 8A of the Commission Act.

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Code of Conduct, Commissioner's Code of Conduct functions and banning orders **Schedule 1**

Part 2B—Commissioner's Code of Conduct functions

Division 1—Introduction

23BA Simplified outline of this Part

The Commissioner may take action, and do other things, in relation to compliance by an approved provider, or an individual who is or was an aged care worker or governing person of an approved provider, with the provisions of the Code of Conduct that apply or applied to them.

This Part does not affect the powers that the Commissioner has apart from this Part.

Division 2—Purpose of this Part

23BB Purpose of this Part

This Part is made for the purposes of subsections 21(1), (3A) and (3B) of the Commission Act.

Division 3—Taking action

23BC Purpose of this Division

This Division sets out actions that the Commissioner may take in relation to compliance by any of the following with the provisions of the Code of Conduct that apply or applied to them:

- (a) an approved provider;
- (b) an individual who is or was an aged care worker of an approved provider;
- (c) an individual who is or was a governing person of an approved provider.

Note: The Commissioner may also take other action (see section 23BH of these Rules).

23BD Actions the Commissioner may take

General

- (1) The Commissioner may do any one or more of the following in relation to the compliance:
 - (a) discuss the compliance, in person or by other means, with any of the following:
 - (i) if the compliance is compliance by an approved provider—the approved provider;
 - (ii) if the compliance is compliance by an individual who is or was an aged care worker or governing person of an approved provider—the individual or the approved provider, or both;
 - (iii) any other person;
 - (b) request information or documents from any person;

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Schedule 1 Code of Conduct, Commissioner's Code of Conduct functions and banning orders

- (c) consider information and documents;
- (d) carry out an investigation;
- (e) refer information about the compliance to another person or body;
- (f) take any other action that the Commissioner considers reasonable in the circumstances.

Note: The Commissioner may also require a person to attend before an authorised officer to answer questions or give information or documents that are relevant to compliance with the Code of Conduct (see section 74FA of the Commission Act).

- (2) To avoid doubt, the Commissioner may carry out an investigation under paragraph (1)(d):
 - (a) independently of any other person or body; or
 - (b) jointly with another person or body.

Requiring action by approved providers

- (3) If the compliance is compliance by an approved provider, or an individual who is or was an aged care worker or governing person of an approved provider, the Commissioner may require the approved provider to do any one or more of the following:
 - (a) carry out an internal investigation into the compliance in a specified manner and give the Commissioner a written report on the investigation within a specified period;
 - (b) engage an appropriately qualified and independent expert, at the approved provider's expense, to carry out an investigation into the compliance in a specified manner and give the Commissioner a written report on the investigation within a specified period;
 - (c) undertake specified action in relation to the compliance within a specified period.

Requiring action by individuals

- (4) If the compliance is compliance by an individual who is or was an aged care worker or governing person of an approved provider, the Commissioner may require the individual to undertake specified action in relation to the compliance within a specified period.

Referring information and requiring action by approved providers

- (5) If the compliance is compliance by an individual who is or was an aged care worker or governing person of an approved provider, the Commissioner may, in writing, refer information about the compliance to the approved provider and require the provider to take appropriate action in relation to the compliance.

Referring information does not prevent Commissioner taking other action

- (6) If information about the compliance is referred under paragraph (1)(e) or subsection (5), this does not prevent the Commissioner from taking other action in relation to the compliance.

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Oral requirements to also be given in writing

- (7) If the Commissioner gives a requirement under this section orally, the Commissioner must also give the requirement in writing as soon as practicable after giving the requirement orally.

23BE Actions dealing with outcomes of investigations

If an investigation is carried out in relation to the compliance under paragraph 23BD(1)(d) or as required under paragraph 23BD(3)(a) or (b), the Commissioner may take any action to deal with the outcome of the investigation that the Commissioner considers appropriate.

23BF Further investigations

If an investigation is carried out in relation to the compliance under paragraph 23BD(1)(d) or as required under paragraph 23BD(3)(a) or (b), this does not prevent the Commissioner carrying out a further investigation in relation to the compliance under paragraph 23BD(1)(d), or requiring a further investigation to be carried out in relation to the compliance under paragraph 23BD(3)(a) or (b), on the basis of new information.

Division 4—Doing other things

23BG Notices about investigations carried out by Commissioner that are closed

- (1) This section applies if:
- (a) the Commissioner carries out an investigation under paragraph 23BD(1)(d) in relation to compliance with the Code of Conduct by an approved provider or an individual who is or was an aged care worker or governing person of an approved provider; and
 - (b) the investigation is closed; and
 - (c) at the time the investigation is closed, the Commissioner is not taking any other action in relation to the compliance under the Commission Act or these Rules (including this Part).
- (2) The Commissioner must give a written notice setting out the outcomes of the investigation to:
- (a) if the compliance is compliance by an approved provider—the approved provider; or
 - (b) if the compliance is compliance by an individual who is or was an aged care worker or governing person of an approved provider—the individual and the approved provider.

23BH Taking of other action not prevented by this Part

Nothing in this Part prevents the Commissioner from taking action under the Commission Act or another provision of these Rules in relation to compliance with the Code of Conduct.

Note: For other provisions relevant to compliance with the Code of Conduct, see the following:

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- (a) for requirements for approved providers and their aged care workers and governing persons to comply with the Code of Conduct, and civil penalties for non-compliance—Part 8AA of the Commission Act;
- (b) for responsibilities of approved providers in relation to the Code of Conduct—paragraphs 54-1(1)(g) and (ga) of the *Aged Care Act 1997*;
- (c) for sanctions for non-compliance with responsibilities—Part 7B of the Commission Act;
- (d) for the Commissioner's complaints functions—section 18 of the Commission Act and Part 2 of this instrument;
- (e) for enforcement of responsibilities and requirements—Part 8A of the Commission Act.

Part 2C—Register of banning orders

Division 1—Simplified outline of this Part

23CA Simplified outline of this Part

Certain information must be included in the register of banning orders.

An individual may request access to information about the individual that is included in the register and may seek the correction of such information.

The Commissioner may correct information that is included in the register of banning orders.

The register of banning orders may be published on the Commission's website.

Division 2—Information in register of banning orders

23CB Information that must be included in the register of banning orders

For the purposes of paragraph 74GI(1)(h) of the Commission Act, the following information is specified in relation to each individual against whom a banning order has been made at any time:

- (a) the State or Territory, suburb and postcode of the individual's last known place of residence;
- (b) if the Commissioner considers that further information is necessary to identify the individual—further information, including personal information, that the Commissioner considers is sufficient to identify the individual.

Note 1: For other information that must be included in the register in relation to each individual against whom a banning order has been made, see subsection 74GI(1) of the Commission Act.

Note 2: For the application of subsection 74GI(1) of the Commission Act to banning orders, see subsections 74GI(2) and (3) of that Act.

Example: For paragraph (b), if 2 individuals who work in aged care have the same name, suburb and postcode, and a banning order is made in relation to one of those individuals, the Commissioner could include information in the register to identify the individual in relation to whom the banning order is made.

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Code of Conduct, Commissioner's Code of Conduct functions and banning orders **Schedule 1**

Division 3—Accessing and correcting information

23CC Purpose of this Division

This Division is made for the purposes of subsection 74GI(6) of the Commission Act.

23CD Accessing information in the register

An individual against whom a banning order has been made may request that the Commissioner provide the individual with access to information (if any) that is included in the register of banning orders in relation to the individual.

Note: The Commissioner must, in certain circumstances, give an individual access to personal information that the Commissioner holds about the individual (see Australian Privacy Principle 12 in Schedule 1 to the *Privacy Act 1988*).

23CE Seeking correction of information in the register

An individual against whom a banning order has been made may request that the Commissioner make a correction to information that is included in the register of banning orders in relation to the individual.

Note: The Commissioner must, in certain circumstances, take reasonable steps to correct personal information that is wrong or misleading so that the information is accurate, up to date, complete, relevant and not misleading (see Australian Privacy Principle 13 in Schedule 1 to the *Privacy Act 1988*).

23CF Corrections on the Commissioner's initiative

If the Commissioner considers that information that is included in the register of banning orders in relation to an individual is inaccurate, out-of-date, incomplete, irrelevant or misleading, the Commissioner may correct the information.

Note: The Commissioner must, in certain circumstances, take reasonable steps to correct personal information that is wrong or misleading so that the information is accurate, up to date, complete, relevant and not misleading (see Australian Privacy Principle 13 in Schedule 1 to the *Privacy Act 1988*).

Division 4—Publication of register of banning orders

23CG Making the register of banning orders publicly available

- (1) This section is made for the purposes of subsection 74GI(7) of the Commission Act.
- (2) The register of banning orders may be published on the Commission's website.

Note: For the information that must be included in the register, see subsection 74GI(1) of the Commission Act and section 23CB of this instrument.
- (3) Despite subsection (1), a part of the register of banning orders must not be published if the Commissioner considers that the publication of the part would be contrary to:
 - (a) the public interest; or
 - (b) the interests of one or more care recipients.

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Schedule 1 Code of Conduct, Commissioner's Code of Conduct functions and banning orders

3 At the end of the instrument

Add:

Schedule 1—Code of Conduct

Note: See section 23AC.

1 Code of Conduct

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

2 Application to approved providers and aged care workers and governing persons of approved providers

- (1) The provisions of the Code of Conduct set out in clause 1 apply as if:
 - (a) the references to "care, supports and services" were references to care, including aged care; and
 - (b) the references to "people" were references to care recipients; and
 - (c) the reference to "I" was a reference to all of the following:
 - (i) an approved provider;
 - (ii) an aged care worker of an approved provider;
 - (iii) a governing person of an approved provider.
- (2) For the purposes of the application of the provisions of the Code of Conduct set out in clause 1 to the provision of care, including aged care, to care recipients by a governing person of an approved provider (in accordance with subclause (1) of this clause), the provisions apply to the performance by the governing person of the responsibilities and functions of the governing person.

Schedule 2—Other amendments

Aged Care Quality and Safety Commission Rules 2018

1 Paragraph 15(3)(c)

After “information”, insert “or documents”.

2 Paragraph 95H(4)(b)

Omit “information that is”, substitute “information or documents that are”.