

Module	<b>AGED CARE</b>
Jurisdictions	<b>CTH, NSW, VIC, SA, TAS, WA, NT, QLD, ACT</b>
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## Module Scope

Does your organisation provide home care services to customers/clients? Have you/do you wish to apply for Commonwealth subsidies?

Does your organisation provide residential care services to people with physical, social, medical or psychological needs who are unable to care for themselves at home, on a permanent basis?

Does your organisation own or operate a retirement village and have obligations arising under the retirement villages legislation?

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## Module Application

The Aged Care module has 3 sub modules:

- › Home Care
- › Residential Care
- › Retirement Villages

The *AGED CARE* module advises aged care providing entities of the processes and procedures they need to implement to ensure compliance with all residential aged care legal obligations which are based on the broad requirements of;

- › Value;
- › Consumer rights;
- › Choice;
- › Dignity;
- › Respect;
- › Accountability;
- › Privacy;
- › Safety; and
- › Risk.

There are three main areas to consider when providing an overview of the legal obligations of aged care service providers in Australia;

- › Residential care;
- › Retirement villages; and
- › Home care services.

There is considerable overlap between the obligations of aged care service providers operating residential care facilities and aged care service providers providing home care services. Both of these areas source core obligations from the same commonwealth legislative basis;

- › Aged Care Act 1997 (Cth);
- › Aged Care (Transitional Provisions) Act 1997; and
- › Aged Care (Transitional Provisions) Principles 2014.

And both are regulated by the same commonwealth regulatory bodies;

- › The Department of Human Services (DHS);
- › The Department of Health (DOH);
- › Australia Aged Care Quality Agency;
- › The Aged Care Pricing Commissioner; and
- › The Aged Care Complaints Commissioner.

This is different to aged care providers operating retirement villages in Australia. The obligations of operators of retirement villages are derived from individual state-based legislation;

- › Each state and territory has a Retirement Villages Act;
- › Each state and territory has at least one Retirement Villages Regulations;
- › Some states and territories have a Code of Conduct applicable to the operators of retirement villages;

Each state and territory also has legislation which regulates the rights and obligations of operators and residents (consumers) of retirement villages in that state or territory that are not specific to retirement villages. Also relevant is commonwealth legislation that informs consumer rights and privacy provisions throughout Australia.

### **Home Care**

The *HOME CARE* sub module informs the aged care service provider of their legislated legal obligations related to the provision of home services in aged care in Australia. The module demonstrates effective practical advice and assistance to the aged care provider to implement procedures and processes that will ensure compliance and regulatory accountability throughout all levels of the home services in aged care providing organisation.

Home services in aged care providers are obligated to familiarise themselves with the broad landscape of legal obligations to which they are subject and establish relevant systems and processes to ensure compliance throughout their organisation.

The *HOME CARE* sub module focuses on obligations and regulations of aged care providers operating in the home care sector. The module also provides practical assistance and guidance to ensure these obligations are complied with by demonstrating the establishment and maintenance of best practice processes. The module also covers potential exemptions to the obligations, where applicable, and how they may or may not apply in particular instances and circumstances.

The *HOME CARE* sub module focuses on the obligations on aged care providers through the provision of information on the following topic and sub-topic areas;

- The process and criteria for becoming an aged care approved provider and appointing key personnel;
- Maintaining approved aged care provider status through a system of reviews;
- The application and approval of home care recipients and the National prioritisation process;
  - Managing care recipient information;
  - Eligibility;
  - Levels of packages;
  - The offer of a package; and
  - Moving between levels of packages.
- Changing home care providers;
  - Unspent home care funds; and
  - Exit amounts.
- Eligibility and calculation of home care subsidies and supplements;
- Agreements with continuing care recipients;
- Determination and payment of fees;
- Financial requirements for consumer directed care;
- The charter of aged care rights;
  - Security of tenure;
  - Protection of personal information; and
  - Rights to information.
- Specified care, support services and clinical services;
- The dignity, respect and choice of the consumer taking into consideration value, culture, independence, risk taking, the provision of information and privacy and confidentiality principles;
- Ongoing assessment, planning and review;
  - To provide safe and effective care and services;
  - To consider consumer needs, goals and preferences;
  - Based on partnership and inclusion; and
  - Communication of outcomes.
- Monitoring system for the identification and management of incidents;
- Ongoing personal care and clinical care review;
  - To provide safe and effective care;
  - To appropriately manage risks;
  - To consider consumer needs, goals and preferences;
  - Reassessment of care recipients;
  - Recognition and response to change or deterioration;
  - Documentation and communication of information;
  - Timely and appropriate referrals; and
  - Minimisation of infection related risks.

- Quality review of services;
- Services and supports for daily living;
  - Frequency of reviews and site visits;
  - Safe and effective services and supports;
  - Self-assessment of providers;
  - Promotion of consumer wellbeing;
  - Community participation and relationships;
  - Interim and final reports;
  - Continuous improvement;
  - Communication of information about consumer condition, needs and preferences;
  - Assessment contracts;
  - Timely and appropriate referrals;
  - Provision of meals; and
  - Provision of equipment.
- Internal complaints handling systems and the Aged Care Complaints Commissioner;
- The management of feedback and complaints;
- Human resources;
- Organisation governance;
- Different states and territories; and
  - Capacity and decision making;
  - Financial and personal decisions; and
  - Applications to the state or territory tribunal;
- Record keeping and reporting.

If the home services aged care provider has failed to meet its legal obligations generally or to the consumer or to the wider community there may be further obligations to communicate this failure to the affected parties and take every reasonable step to prevent reoccurrence of the failure. The *HOME CARE* sub module covers remedial actions designed to ensure compliance with legal obligations and demonstrate specific actions recommended to the home services aged care provider designed to avoid breaches or further failures in the future.

Continued or systemic failure to meet legal obligations in relation to the provision of home services aged care may result in the imposition of significant legal consequences. Penalties that apply to the aged care provider are, in some cases, also applicable to authorised persons who permitted or were complicit in the commission of the offence. Such penalties can include substantial pecuniary fines as well as criminal penalties resulting in imprisonment. The range of specific consequences that may be imposed in specific circumstances are covered in detail in the *HOME CARE* sub module.

The *HOME CARE* sub module provides comprehensive coverage of the legal obligations of aged care services providers. The module does not cover the procedures or processes to be followed by individuals, consumers or entities relying on aged care service providers who have suffered damages or losses due to breaches of obligations by home services aged care providers.

The focus of this sub module is the provision of home services in aged care. There is significant overlap with the provision of aged care in residential facilities but aged care in

residential facilities is not the focus of this module. This module also does not cover aged care in retirement villages.

### **Residential Care**

The *RESIDENTIAL CARE* sub module informs the aged care service provider of their legislated legal obligations related to the provision of residential aged care in Australia. The module demonstrates effective practical advice and assistance to the aged care provider to implement procedures and processes that will ensure compliance and regulatory accountability throughout all levels of the residential aged care providing organisation.

Residential aged care providers are obligated to familiarise themselves with the broad landscape of legal obligations to which they are subject and establish relevant systems and processes to ensure compliance throughout their organisation.

The *RESIDENTIAL CARE* sub module focuses on obligations and regulations of aged care providers operating in the residential care sector. The module also provides practical assistance and guidance to ensure these obligations are complied with by demonstrating the establishment and maintenance of best practice processes. The module also covers potential exemptions to the obligations, where applicable, and how they may or may not apply in particular instances and circumstances.

The *RESIDENTIAL CARE* sub module focuses on the obligations on aged care providers through the provision of information on the following topic and sub-topic areas;

- The process and criteria for becoming an aged care approved provider and appointing key personnel;
- Maintaining approved aged care provider status through a system of reviews;
- The application and allocation of residential places;
- The eligibility of residential care recipients and residential respite care recipients;
- The classification of new care recipients and the continuing status of care recipient's classification status;
- Eligibility, claims, reductions and calculations of subsidies, supplements and grants;
- Agreements with permanent residents, respite recipients, and continuing care recipients;
- Fees and payments following changes that came into effect on 1<sup>st</sup> July 2014;
- Fees and payments applying prior to the changes that came into effect on 1<sup>st</sup> July 2014;
- The management of refundable deposits;
  - Prudential standards;
  - Permitted uses; and
  - The refund process.
- The charter of aged care rights;
  - Security of tenure;
  - Movement of a recipient within a service;
  - The protection of personal information;
  - Rights to information; and
  - Access to service by others.
- Specified and optional care and services that may attract additional fees;

- The dignity, respect and choice of the consumer taking into consideration value, culture, independence, risk taking, the provision of information and privacy and confidentiality principles;
- Ongoing assessment, planning and review;
  - To provide safe and effective care and services;
  - To consider consumer needs, goals and preferences;
  - Based on partnership and inclusion; and
  - Communication of outcomes.
- Ongoing personal care and clinical care review;
  - To provide safe and effective care;
  - To appropriately manage risks;
  - To consider consumer needs, goals and preferences;
  - Recognition and response to change or deterioration;
  - Documentation and communication of information;
  - Timely and appropriate referrals; and
  - Minimisation of infection related risks.
- Services and supports for daily living;
  - Safe and effective services and supports;
  - Promotion of consumer wellbeing;
  - Community participation and relationships;
  - Communication of information about consumer condition, needs and preferences;
  - Timely and appropriate referrals;
  - Provision of meals; and
  - Provision of equipment.
- The provision of a welcoming and comprehensible service environment that is safe and well maintained;
- The management of feedback and complaints;
- Human resources;
- The accreditation process;
- Organisation governance;
- Incident management;
- Different states and territories;
  - Capacity and decision making;
  - Financial and personal decisions;
  - Applications to the state or territory tribunal;
- Record keeping and reporting.

If the residential aged care provider has failed to meet its legal obligations generally or to the consumer or to the wider community there may be further obligations to communicate this failure to the affected parties and take every reasonable step to prevent reoccurrence of the failure. The *RESIDENTIAL CARE* sub module covers remedial actions designed to ensure compliance with legal obligations and demonstrate specific actions recommended to the residential aged care provider designed to avoid breaches or further failures in the future.

Continued or systemic failure to meet legal obligations in relation to the provision of residential aged care services may result in the imposition of significant legal consequences. Penalties that apply to the aged care provider are, in some cases, also applicable to authorised persons who permitted or were complicit in the commission of the offence. Such penalties can include substantial pecuniary fines as well as criminal penalties resulting in

imprisonment. The range of specific consequences that may be imposed in specific circumstances are covered in detail in the *RESIDENTIAL CARE* sub module.

The *RESIDENTIAL CARE* sub module provides comprehensive coverage of the legal obligations of aged care services providers. The module does not cover the procedures or processes to be followed by individuals, consumers or entities relying on aged care service providers who have suffered damages or losses due to breaches of obligations by residential aged care service providers.

The focus of this sub module is aged care in residential facilities. There is significant overlap with the provision of home services in aged care but home services in aged care is not the focus of this sub module. This sub module also does not cover aged care in retirement villages.

### **Retirement Villages**

The *RETIREMENT VILLAGES* sub module informs the aged care service provider of their legislated legal obligations related to the provision of aged care services in retirement villages in Australia. The module demonstrates effective practical advice and assistance to the aged care provider to implement procedures and processes that will ensure compliance and regulatory accountability throughout all levels of the retirement village provider organisation.

Aged care retirement villages providers are obligated to familiarise themselves with the broad landscape of legal obligations to which they are subject and establish relevant systems and processes to ensure compliance throughout their organisation.

The *RETIREMENT VILLAGES* sub module focuses on obligations and regulations of aged care providers operating retirement villages. The module also provides practical assistance and guidance to ensure these obligations are complied with by demonstrating the establishment and maintenance of best practice processes. The module also covers potential exemptions to the obligations, where applicable, and how they may or may not apply in particular instances and circumstances.

The *RETIREMENT VILLAGES* sub module focuses on the obligations on aged care providers through the provision of information on the following topic and sub-topic areas with particular reference to each state or territory when applicable;

- The process and criteria for registering a retirement village;
- Information and marketing before contracts are agreed;
- Entry payments, ingoing contributions and premiums;
- Contracts for new residents;
  - Eligibility;
  - Contract requirements;
  - Form and content;
  - Operators' obligations not to contract out of legislative requirements;
  - Ancillary documents;



- Condition reports; and
  - Independent advice.
- Obligations arising from the signing of a contract;
  - Copies of the contract;
  - Binding provisions of the contract; and
  - Right to rescission.
- Termination of the contract by the resident or the operator;
  - Notice requirements;
  - Medical grounds;
  - Village rules;
  - Premises uninhabited or abandoned; and
  - Operational reasons.
- Village rules;
  - Amendments; and
  - Ensuring compliance.
- Services and facilities;
- Fees and charges;
  - Recurrent charges;
  - Special levies and contingencies;
  - Departure or exit fees;
  - Receipts;
  - Cost of reinstatement works; and
  - Prohibited fees and charges.
- Maintenance and improvements;
  - Repair or replacement work;
  - Urgent work;
  - Maintenance funds;
  - Capital replacement funds; and
  - Capital improvement work.
- General management;
  - Individuals not permitted to be operators;
  - Residents' rights;
  - Power of attorney;
  - Insurance; and
  - Duty not to obstruct investigations.
- Financial management;
  - Determination of financial year;
  - Annual budget;
  - Account keeping;
  - Surplus / deficit; and
  - Audits.
- The provision of a safe and secure premises;
  - Access for emergency vehicles and home care services;
  - Emergency systems; and
  - Privacy.
- Residents' rights;
  - The duty to respect residents' rights;
  - Access to the premises;
  - The right to alter or renovate the premises;
  - The right to appoint an agent or representative;



- The right to access personal information and documents;
  - The right to choose goods and services providers;
  - Consultation and participation;
  - Residents' committees and organisations;
  - Residents' meetings;
  - Annual meetings; and
  - New operator or manager.
- Non-residents living in the village;
  - A cohabiting spouse; and
  - Tenant.
- Dispute resolution procedures;
- Resident transfers;
- Sale of premises or right to reside;
  - Residents' right to sell;
  - Operators' option to buy;
  - Operator as selling agent;
  - Price or valuation;
  - Selling costs; and
  - Requirement for operator to enter a contract with the buyer.
- Uncollected goods of former residents;
  - Notice of disposal;
  - Storage; and
  - Delivery.
- Record keeping and accounting.

If the retirement village operator has failed to meet its legal obligations generally or to the consumer or to the wider community, there may be further obligations to communicate this failure to the affected parties and take every reasonable step to prevent reoccurrence of the failure. The *RETIREMENT VILLAGES* sub module covers remedial actions designed to ensure compliance with legal obligations and demonstrate specific actions recommended to the retirement village operator designed to avoid breaches or further failures in the future.

Continued or systemic failure to meet legal obligations in relation to the provision of retirement village aged care services may result in the imposition of significant legal consequences. Penalties that apply to the aged care provider are, in some cases, also applicable to authorised persons who permitted or were complicit in the commission of the offence. Such penalties can include substantial pecuniary fines as well as criminal penalties resulting in imprisonment. The range of specific consequences that may be imposed in specific circumstances are covered in detail in the *RETIREMENT VILLAGES* sub module.

The *RETIREMENT VILLAGES* sub module provides comprehensive coverage of the legal obligations of aged care services providers. The module does not cover the procedures or processes to be followed by individuals, consumers or entities relying on aged care service providers who have suffered damages or losses due to breaches of obligations by retirement villages aged care providers.

The focus of this sub module is the provision of aged care in retirement villages. There is significant overlap with the provision of aged care in residential facilities but aged care in residential facilities is not the focus of this sub module. This sub module also does not cover provision of home services in aged care.

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