

June 2025

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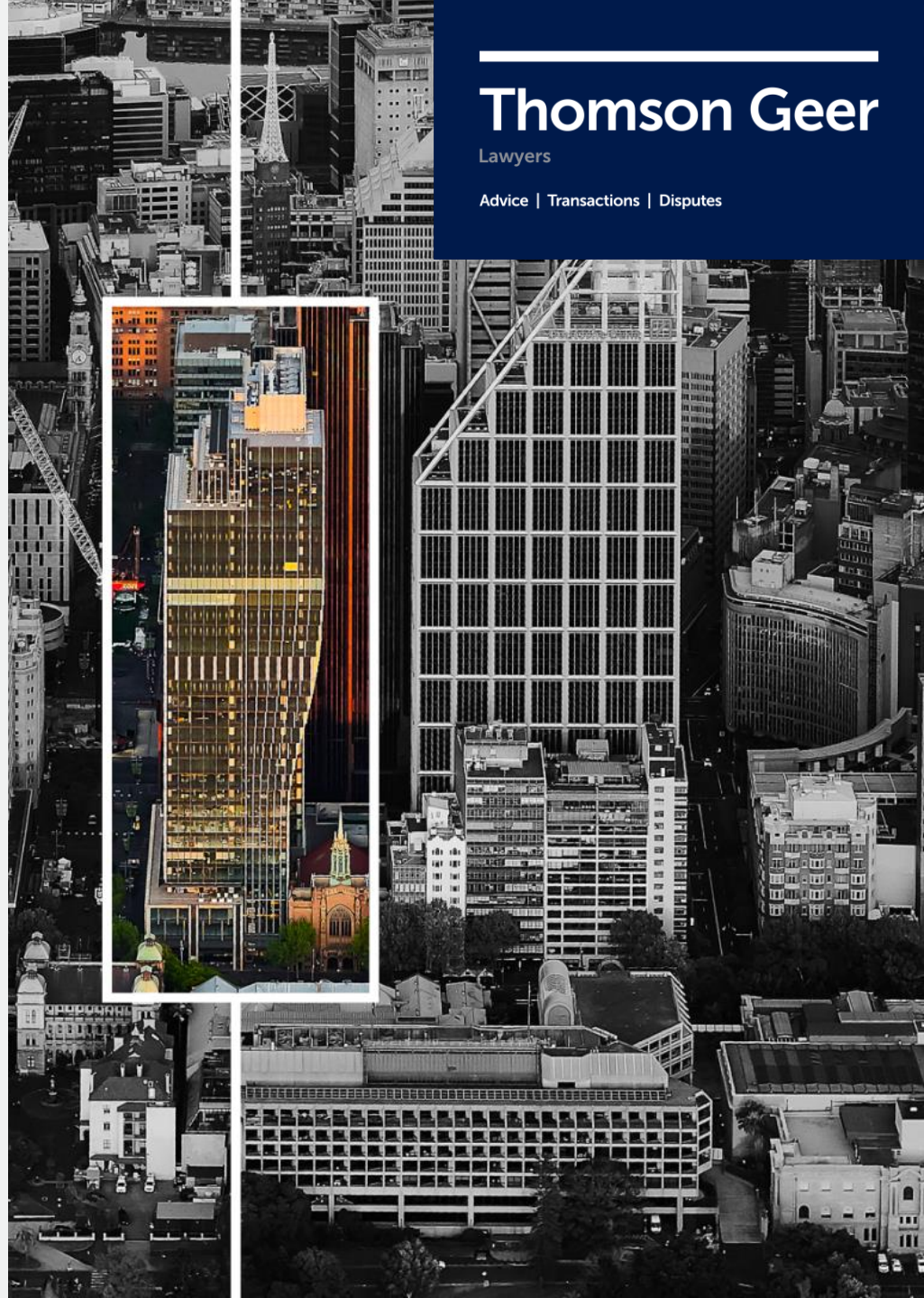
# The Aged Care Act 2024 – positives and priorities..

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Lawyers

Advice | Transactions | Disputes



# Positives and Priorities

# Time

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Fundamental change



Aged Care Act 2024 + Rules replaces Aged Care Act 1997 + principles, Aged Care Quality and Safety Commission Act 2018 + rules



Act: 556 pages, 8 Chapters

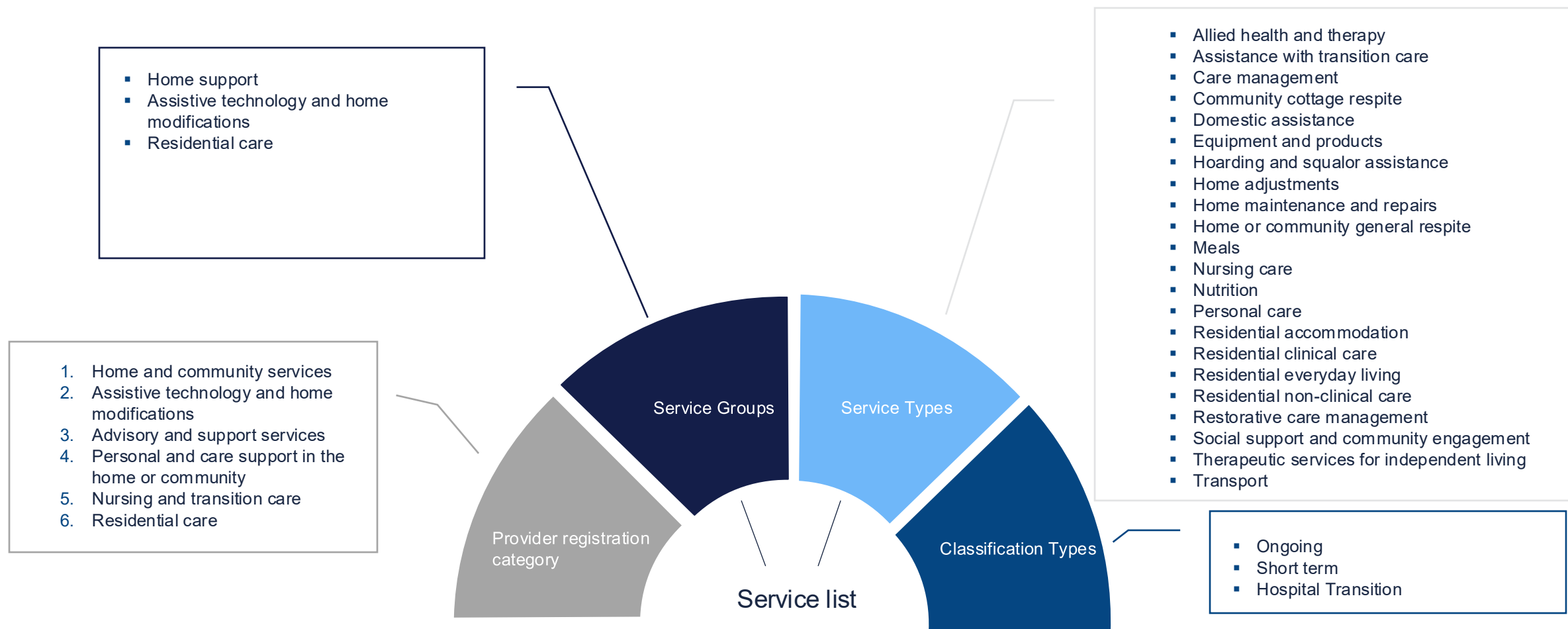


Rules: 505 pages still in draft, still released, not all Rules available



Grandparenting arrangements

# Categories/groups/types



# Operational issues –

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- Any new admission for residential care (ongoing) from 1 November 2025 will need a service agreement
- Service agreement must be entered into **before** the individual's start day
- Start notifications
- Provision of information to individuals pre entry and ongoing
- Care and services plan
- Reporting to Commission and System Governor
- Security of tenure
- Cessation notifications

# Compliance changes

Substitute decision making/supporters

Whistle-blowers

Arrangements to transition existing residents

Significant changes to policy:

- Admission and assessment
- Suitability assessments for responsible persons
- Notification of material change to ACQSC
- Disclosure of information to individuals/supporters
- Record keeping
- Reporting
- Vaccinations
- Worker screening
- Security of tenure

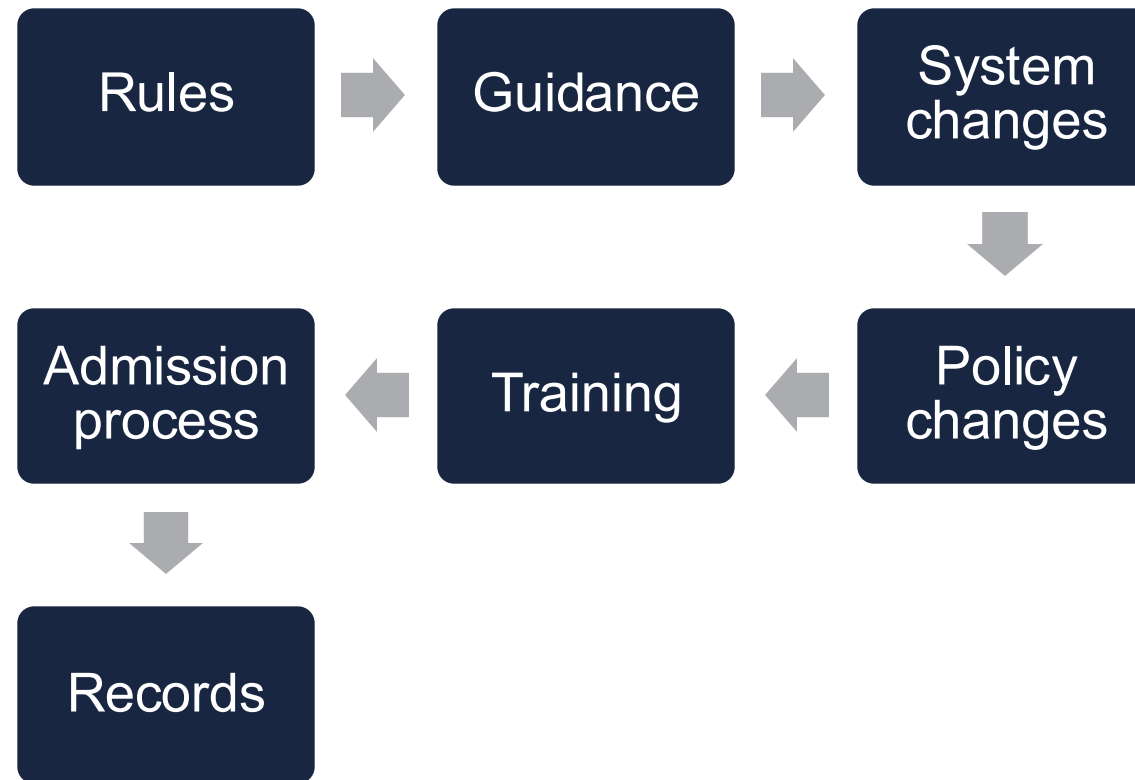
Service list

New Standards

# Admission and Agreements

FACS can only be provided to a person who has a access approval for the service	Compliant agreements	Must enter service agreement before the start date – unless	Must develop care and services plan before the start day (at this stage looks like it includes existing consumers too)
	<ul style="list-style-type: none"> <li>• Depends on service type</li> <li>• Cooling off period</li> <li>• annual review and on request</li> <li>• Individual and supporters – involved in development</li> </ul>	<ul style="list-style-type: none"> <li>• the individual urgently needs access to facs and there was a significant risk of harm if the services were not delivered before the access approval was given;</li> <li>• the individual is an Aboriginal or Torres Strait Islander person and there was a lack of availability of an approved needs assessor to undertake a culturally safe needs assessment;</li> <li>• the individual commenced access facs under a specialist aged care program before the approval was given and there was a significant delay in the availability of an approved needs assessor.</li> </ul>	

# Implementation needs time





# Financial changes

# Financial - positive changes

- Increase max accommodation price to \$750,000 (approvals required over \$750,000)
- Funding to individual not to place
- Re-introduction of retentions
- Increased Co-contributions
- DAP indexation
- Capped pricing SAH pushed out for a year??
- HELF scope

# **RAD Management/Financial and Prudential Standards**

- Reintroduction of retentions
- Permitted use provisions are similar to the 1997 Act
- Waiting for the updated draft of the Financial and Prudential standards
- Minimum liquidity:
  - Position not confirmed
  - Shift from original position
  - Likely providers can use default minimum liquidity formula or an assurance approach with additional disclosure
  - Default amount – 3 components but percentages not known ? Cash (25%?) + RADs (5%?) + RVs deposits (2%?)?

# HEL F + AS/ES

## AS/ES

1 July 2025 no new agreements

1 July 2025 no fee increases or variations

1 July 2026 any agreements not transferred to HEL F cancelled

## HEL F scope

Services which are in addition to service list but connected to service list

Services which are at a higher quality than service list

## HEL F fees

Must be disclosed

Must be agreed, only after start day

Indexed at CPI

## Consumer protection

28 day cooling off

Cancellation at any time on 28 days notice + request variations

Cannot be condition of entry for particular room

Cannot charge for services which provide no benefit

Annual review

# WHS and balance of rights

# Security of tenure - residential care (ongoing)

- Similar
- Additional obligations more, not less onerous
- SOT provisions N/A for short term (respite) – finally!

Concept	User Rights Principles	Rules
Grounds to ask resident to leave	No change	No change
Suitable alternative accommodation	<ul style="list-style-type: none"> <li>Meets <i>long term assessed</i> needs</li> <li>Affordable</li> <li>Available</li> </ul>	<ul style="list-style-type: none"> <li>Meets <i>individual's needs</i></li> <li>Affordable</li> <li>Is only "available" if new provider has "offered to enter into a service agreement"</li> </ul>
Assessment	2 practitioners – one chosen by resident one by provider	No change
Notice	14 days, dates, reasons complaints mechanisms	14 days, dates, reasons complaints mechanisms + continuity of care plan

# Cessation of services - support at home

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- Largely the same as residential care except notice must also now be given to:
  - the individual of the unspent portions of their funds; and
  - any new provider regarding the individual's account balances

# Balance of rights and security of tenure

## Provider obligation – stmt of rights

- “reasonable and proportionate steps to act compatibly with the statement of rights” in the delivery of services

## Qualifier

- Taking into account that limits on rights might be necessary to balance:
  - Competing or conflicting rights
  - The rights and freedoms of other individuals including aged care workers and other residents; and
  - Compliance with other laws including the WHS Act

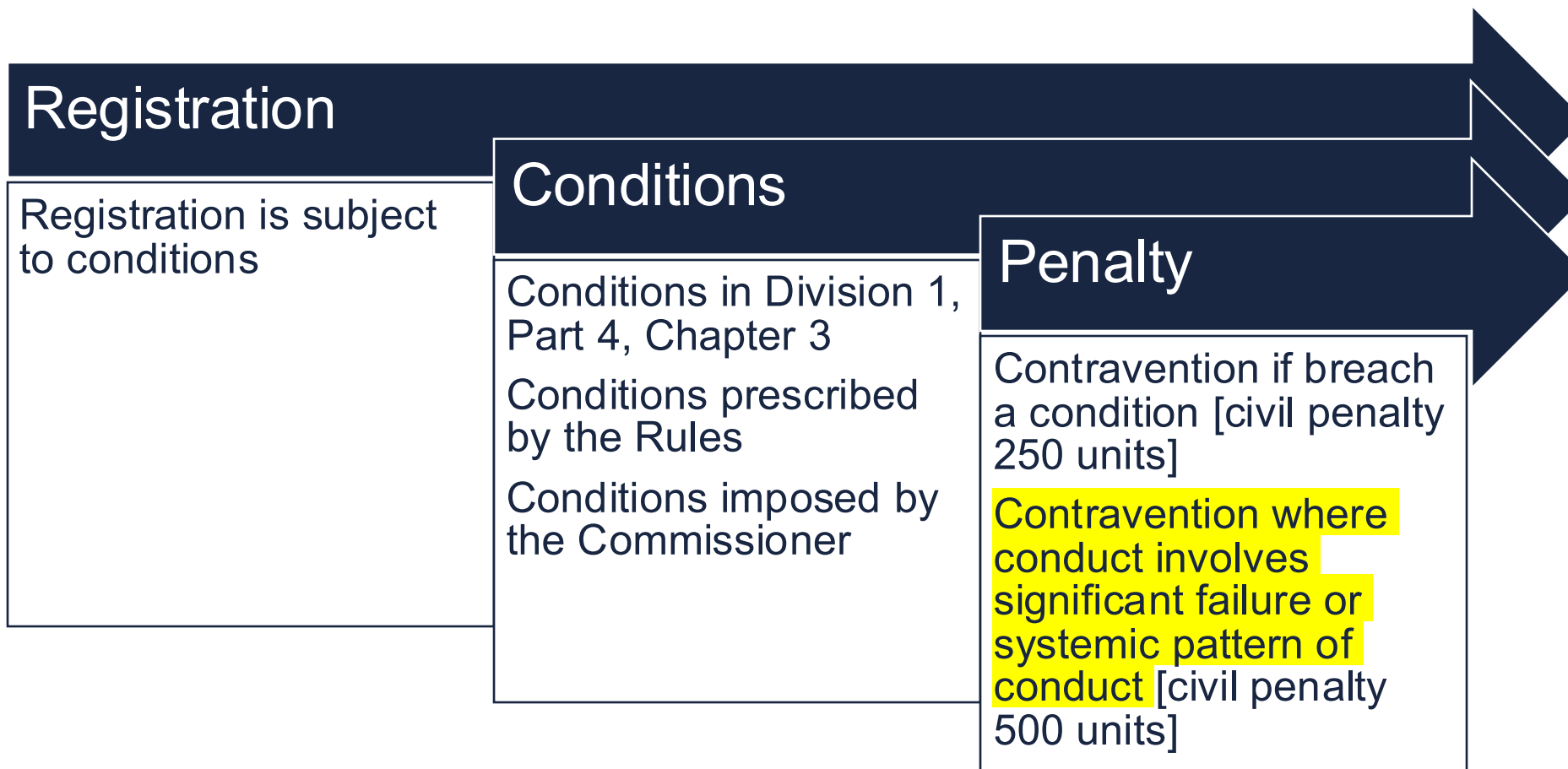
## Can you meet care needs?



# Accountability

Providers, responsible persons and aged care workers

# Conditions of registration



# Conditions

Group	Condition
Conditions relating to Rights, Principles and Code of Conduct	Rights and Principles, Aged Care Code of Conduct
Conditions relating to delivery of facts	Quality Standards, Continuous improvement, Delivery of facts, starting and ceasing facts and continuity of service
Conditions relating to financial matters	Compliance with Financial and Prudential Standards, Fees, payments contributions and subsidies
Conditions relating to aged care workers	Workforce and aged care worker requirements and vaccinations
Conditions relating to information and access	Personal information and record keeping, provision of information to individuals and access by supporters
Conditions relating to governance	Membership of governing bodies and advisory body requirements
Conditions relating to restrictive practices	Restrictive practices
Conditions relating to management of incidents and complaints	Incident management, complaints, feedback and whistle-blowers

# Code of Conduct

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- Aged Care Workers must comply with the Code of Conduct
- Individual
  - employed or otherwise engaged:
    - by provider
    - by associated provider (high recommend you get advice on this one)
  - engaged in conduct under associated provider's arrangements
- Civil penalty up to \$82,500

# Revised statutory duties

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Registered providers have a duty to 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 facts.

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A duty is owed ***by some responsible persons*** to exercise 'due diligence' to ensure that the registered provider complies with the provider's duty

# Duties and penalties

Penalties can be imposed on providers and (some) responsible persons for breach:

- serious failure to comply (penalty up to \$330,000); or
- serious failure to comply + death or serious injury or illness (penalty up to \$1,584,000)

Which responsible persons does the duty apply to:

- Any person responsible for executive decisions (including member of governing body)
- Any other person who has authority or responsibility for (or significant influence over) planning, directing or controlling the activities of the registered provider

# Boards and exec? Can you demonstrate DD?

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Review alignment between obligations under Act and your systems – do your systems support compliance with the Act?

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Systems and policy changes – approach for board oversight, allocation of responsibilities

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D&O cover (including cover for statutory liability)

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Deed of access and indemnity

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Review TOR, committee structures and agendas – alignment to DD

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Gap analysis on new Quality Standards – from an organisational governance perspective

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Review LMS, IMS and ability to meet proposed liquidity standard

Due diligence - take reasonable steps to...	Steps to demonstrate due diligence
<ul style="list-style-type: none"> <li>Acquire and maintain knowledge of requirements applying to registered providers</li> </ul>	<ul style="list-style-type: none"> <li>Regular Board training</li> </ul>
<ul style="list-style-type: none"> <li>Understand the FACS delivered and the potential adverse effects that can result to individuals when delivering services</li> </ul>	<ul style="list-style-type: none"> <li>Visits to homes, engage with individuals and workers, review feedback</li> <li>Monitor and review:               <ul style="list-style-type: none"> <li>operational reports</li> <li>clinical governance systems</li> <li>Quality Indicator Data</li> <li>engagement with QCAB and CAB</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>Ensure the registered provider has:               <ul style="list-style-type: none"> <li>appropriate resources and processes to manage incidents and risks</li> <li>processes necessary to comply with any duty or requirement of the provider under the Act.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Understand systems and reporting mechanisms - incident management, risk management, feedback and complaints, whistle-blowers</li> <li>Review reports on effectiveness of those systems and regularly consider opportunities for improvement</li> </ul>



# What does this mean for managers?

Responsible person statutory duties unlikely to extend to facility/service managers and senior clinicians

However:

- You must take action to assist provider and responsible persons to discharge their duties
- What does this look like for you?
  - Be aware of duties and consequences of breach
  - Report matters up asap
  - Ensure any request is actioned promptly and diligently

Assist provider to comply with obligations to notify changes and ensure that you (and other responsible persons) satisfy the suitability requirements

# And there is this....

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- More positive media for the industry than we have seen in a long time
  - “Once in a generation reform”
  - “Aged care rejuvenation”
  - “Investing in quality aged care”
- Plenty of investment activity
- TG Transition Tool (now updated with rules), template policies, agreements and training programs including Responsible Persons Compliance Program



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