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Welcome to the latest edition of our Not-for-Profit Newsletter. Please feel free to contact us if you have any questions about the content of this Newsletter.

In this edition

This edition includes a few ACNC related items including a review of cyber security best-practice, the commission's focus areas for 2025-26, and the publishing of new constitution templates for companies limited by guarantee. We also cover several governance and compliance matters including enforcement action for data breaches, wage underpayment, and NDIS and Aged Care compliance failures. Whilst not applicable to charities, we note some resources on sustainability reporting for information.





Governance

ACL fined \$5.8m for data breach

The Federal Court has fined Australian Clinical Labs \$5.8 million in civil penalties following a data breach by its Medlab Pathology in February 2022.

The breach resulted in unauthorised access and potential use of the personal information of more than 223,000 people.

The fine was the first under the *Privacy Act 1988*.

Australian Information Commissioner Elizabeth Tydd welcomed the court's decision, saying that it provided 'an important reminder to all entities [subject to privacy provisions] that they must remain vigilant in securing and responsibly managing the personal information they hold.

'These orders also represent a notable deterrent and signal to organisations to ensure they undertake reasonable and expeditious investigations of potential data breaches and report them to the Office of the Australian Information Commissioner appropriately.

'Entities holding sensitive data need to be responsive to the heightened requirements for securing this information as future action will be subject to higher penalty provisions now available under the [act]'

The Federal Court:

- Ordered a penalty of \$4.2 million for ACL's failure to take reasonable steps to protect the personal information it held on Medlab Pathology's IT systems under Australian Privacy Principle 11.1, which amounted to more than 223,000 contraventions of s13G(a)
- Fined ACL \$800,000 for its failure to conduct a reasonable and expeditious assessment of whether an eligible data breach had occurred following the cyberattack on the Medlab Pathology IT systems in February 2022, in contravention of s26WH(2), and
- Fined it \$800,000 for failures to prepare and send the Australian Information Commissioner as soon as practicable a statement concerning the eligible data breach, in contravention of s26WK(2).
- Justice John Halley said that ACL's contraventions were 'extensive and significant'. He found that:
- ACL's most senior management participated in the decision-making around the integration of Medlab's IT systems into its core environment and its response to the Medlab Cyberattack, including whether it amounted to an eligible data breach
- ACL's contraventions [...] resulted from its failure to act with sufficient care and diligence in managing the risk of a cyberattack on the Medlab IT Systems
- ACL's contravening conduct [...] had at least the potential to cause significant harm to individuals whose information had been exfiltrated, including financial harm, distress or psychological harms, and material inconvenience
- The contraventions had the potential to have a broader impact on public trust in entities holding individuals' private and sensitive information.

The penalties were imposed under a regime that was in force at the time of the contraventions, a maximum penalty of \$2.22 million per contravention pertaining.

A new penalty regime that came into force on 13 December 2022 allows the court to impose much higher penalties. Under the new regime, maximum penalties per contravention can be as much as \$50 million, three times the benefit derived from the conduct, or up to the 30 per cent of a business's annual turnover per contravention.

Privacy Commissioner Carly Kind said: 'This outcome represents an important turning point in the enforcement of privacy law in Australia.

'For the first time, a regulated entity has been subject to civil penalties under the *Privacy Act*, in line with the expectations of the public and the powers given to the OAIC by parliament.

'This should serve as a vivid reminder to entities, particularly providers operating within Australia's healthcare system, that there

will be consequences of serious failures to protect the privacy of those individuals whose healthcare and information they hold.'

The act includes 13 legally-binding principles. They apply to organisations and government agencies covered by the act, including most Australian government agencies and specified private-sector organisations, particularly those handling personal or sensitive information or with annual revenues over \$3 million.

The 13 principles apply to:

- The collection, use, and disclosure of personal information
- An organisation or agency's governance and accountability
- Integrity and correction of personal information, and
- The rights of individuals to access their personal information.

CA ANZ launches *AI Fluency Playbook*

In response to the rapid evolution of artificial intelligence and its growing impact on the accounting profession, Chartered Accountants Australia and New Zealand has launched a guide designed to help members harness its power.

The *AI Fluency Playbook* advises on using generative AI ethically, effectively, and strategically.

With more than 70 per cent of chartered accountants worldwide already using AI tools and 76 per cent eager to integrate them further, the playbook arrives at a pivotal moment.

It includes:

- Real-world case studies demonstrating how AI is transforming client engagement, reporting, and workflow automation
- Toolkits and prompts to use GenAI tools more effectively
- Ethical use of AI in supporting members in navigating bias, transparency, and data privacy, and
- Best-practice strategies for AI governance, implementation, and risk management.





Financial Reporting

Feedback sought on simplified-disclosure review

The Australian Accounting Standards Board is conducting post-implementation reviews of AASB 1060 *Simplified Disclosures for For-Profit and Not-for-Profit Tier 2 Entities* and AASB 2020-2 *Removal of Special Purpose Financial Statements for Certain For-Profit Private Sector Entities*.

Feedback is sought on potential updates to Tier 2 reporting requirements, considering recent updates to *IFRS for SMEs* accounting standard (third edition), AASB 18 *Presentation and Disclosure in Financial Statements*, and *IFRS 19 Subsidiaries without Public Accountability: Disclosures*.

Feedback on the reviews is sought by 22 January.





Sustainability Reporting

AASB helps with climate-change disclosures

The AASB has released *Proportionality Mechanisms*, a guide to using them in AASB S2 *Climate Change Disclosures*.

The mechanisms help entities with different levels of capabilities and preparedness to apply the standard.

They support disclosures for specific requirements where there might be a high level of judgement or uncertainty. Requirements are proportionate to an entity's circumstances.

Two mechanisms are described and how they can be applied:

- Use all reasonable and supportable information that is available at the reporting date without undue cost or effort, and
- Use them commensurate with the skills, capabilities, and resources that are available to the entity.

The AASB has also published new educational material on *Greenhouse gas (GHG) emissions disclosures under AASB S2 Climate-related Disclosures*. It outlines the context and rationale behind GHG emissions-related requirements, the role of GHG protocol materials in supporting AASB S2 disclosures, and key considerations for applying specific GHG-related requirements.

Landmark ethics-code amendment released

The Accounting Professional and Ethical Standards Board has released a landmark amendment to APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)*.

It sets out new ethical and independence requirements for sustainability reporting and assurance. They are effective from 1 January.

The new code provides clear and robust ethical principles and guidance for professional accountants, including their using external experts.

The standards are based on global ethics and independence counterparts issued by the International Ethics Standards Board for Accountants and support the implementation of Australia's mandatory climate-related financial disclosures and sustainability reporting, which became effective for group 1 entities from 1 January.

The standards' release marks a significant step forward in responding to public concerns about greenwashing and the risks to ethical behaviour in sustainability disclosures and assurance, the qualitative and forward-looking nature of sustainability information, the complexity of climate-related reporting, and the associated challenges of assuring sustainability information.

Compliance with the standards should contribute to the quality and effectiveness of sustainability reporting and assurance and help to ensure the credibility, transparency, and trustworthiness of sustainability information relied on by the public, government, regulators, and investors.

The standards are fully interoperable with Australian Sustainability Reporting Standards S1 *General Requirements for Disclosure of Sustainability-related Financial Information (Voluntary)* and S2 *Climate-related Disclosure issued by the AASB and the Australian Standard on Sustainability Assurance 5000* issued by the AUASB and complete an Australian sustainability-standards infrastructure.

A key feature of the standards is the introduction of part 5 of the code, which applies the same ethical and independence expectations to sustainability-assurance engagements as those that apply to financial-statement audits.

While the new provisions for sustainability assurance are immediately applicable to members of the three professional accounting bodies and accounting firms, they are designed to be applied by assurance practitioners regardless of their background.

The standards allow consistent application across a range of reporting and assurance.

They also introduce specific requirements for evaluating the use of external-experts' work, addressing their competence, capabilities, and objectivity, an essential consideration given the increasing reliance on them in areas such as greenhouse-gas emissions.



Help on climate-transition planning

The Australian Council of Superannuation Investors and Australian Institute of Company Directors have released guidance on the complexities of climate-transition planning.

A climate-transition plan outlines how an organisation will respond to climate-related risks and opportunities.

With mandatory climate reporting begun in Australia, the release of *Governing for net zero: The board's role in organisational transition planning* helps organisations navigate the transition to a low-carbon economy.

The resource reflects insights from directors and investors who have practical experience preparing and analysing company transition plans and provides an overview of directors' legal obligations.

It comes when companies and investors are recognising that they need to address climate risks and prepare for transition opportunities.

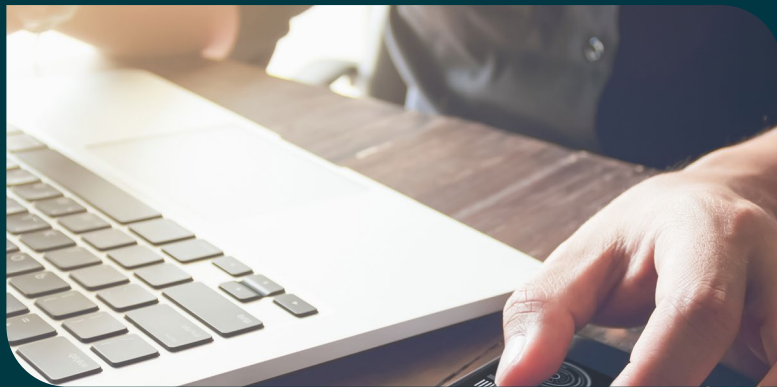
The guide aims to support company boards in overseeing the development and implementation of transition plans, including articulating investors' key priorities.

This resource is designed to support directors to:

- Integrate climate-transition planning into core business strategies
- Understand transition planning in the context of directors' duties and compliance obligations, and
- Lead and oversee effective organisational responses to climate change.

The guide outlines fundamental elements of effective board oversight, supported by Australian case studies, director questions, and red flags.

It offers insights to strengthen climate governance in a shifting policy, regulatory, and investment landscape.



ACNC Activities

Transitional-reporting arrangements extended

The Australian Charities and Not-for-profits Commission has extended its transitional reporting arrangements for some charities.

The arrangements will apply for FY2025 and remain in place until FY2029, unless the ACNC advises otherwise.

Under transitional-reporting arrangements, the commission may accept reporting to another Australian government agency as meeting relevant ACNC requirements.

The extended transitional reporting arrangements apply to:

- Charities registered with the Office of the Registrar of Indigenous Corporations
- Non-government schools reporting to the federal Department of Education, and
- Co-operatives in each state and territory.

Cyber Security Risks highlights best-practice

Cyber-security is an emerging challenge for charities, a new ACNC review has found.

Cyber Security Risks identified key areas where charities could strengthen governance to minimise risks and manage a cyber incident if necessary.

ACNC commissioner Sue Woodward said that the threat of attack was real, and the risks were significant.

She said: 'Nearly all charities, small and large, hold sensitive personal data such as the names and other details of donors, members, volunteers, staff, and the people who use their services. This information can be taken and misused if there is an attack on [NFPs'] systems.

'Cyber attacks can lead to financial losses for those you serve, as well as reputational and financial damage for your charity. It can also harm public trust and confidence in the charity sector.

'Those who run charities have an obligation to ensure good governance is in place to minimise the risks, and to be prepared to act quickly and effectively if an incident did occur.'

The review found charities achieved satisfactory cyber security by:

- Having robust information and data-management policies and procedures
- Having governance that enabled and supported board members to drive strong cyber-governance practices
- Promoting a strong culture of cyber-security awareness to ensure that the charity's people understood common cyberthreats and best practice measures to manage them
- Drawing on the latest cyber-security resources, tools, and advice freely available online through various lead agencies and organisations, and
- Understanding risks in the charity's unique operating environment and taking steps to manage them.

The review also addressed specific risks entailed in using AI.

Commission's 2025-2026 regulatory focus

The ACNC's 2025-26 focus highlights the critical importance of good record-keeping and the commission's work to educate charities about their obligations.

Updated guidance states that appropriate and effective record-keeping is generally reflective of good governance, decision making, financial management, and risk management.

Financial records should explain how a charity receives and spends its money and other assets, a charity's financial position, and performance, and allow for true and fair financial statements to be prepared, and audited or reviewed.

Operational records must show how a charity is entitled to be registered as a charity, to be registered with its subtype, meet tax-law obligations and other obligations under the act.

Guidance includes checklists and examples that will support charities of all sizes and types in transparency efforts and record-keeping, including *Keeping charity records*, *Record-keeping checklist*, and examples of financial and other records.

The commission will support Australia's compliance with the Financial Action Task Force obligations, beginning with compliance reviews and consultation with charities that work overseas.

It will help to ensure that charities working overseas understand the risks of being misused for terrorism financing and how to protect themselves.

The focus will be to ensure charities:

- Understand the risks they face due to their operating locations and activities
- Have strong governance arrangements, including appropriate financial controls, as well as robust risk management
- Have established appropriate due diligence measures, including oversight and monitoring of their partners, their overseas projects, and funds sent overseas
- Keep appropriate records and report annually to the ACNC, and
- Recognise that clear and accurate records are the foundation of good governance and risk management.

Guidance includes a checklist to guard against terrorism financing and governance help for charities operating in complex structures.

Operating within a complex structure – sometimes also known as operating as a 'group' – typically involves several entities that might have varying structures, purposes, and operations. They might comprise a variety of organisations – trusts, incorporated associations, unincorporated bodies, companies limited by guarantee, and private companies.

They may be set up to help charities manage risk, focus on different programs, and operate across many locations. Sometimes separate entities may be required to operate different services. Greater structural complexity can also create governance and operational complexity. This may result in confusion about roles, responsibilities, and obligations.

Charities within complex structures need to focus on:

- Policies and procedures
- Record-keeping
- Common boards and directorships
- Board meetings
- Roles within complex structures
- Conflicts of interest, and
- Related-party transactions.

ACNC commissioner Sue Woodward said that without clear systems and good communication it can be harder to meet the commission's governance and external-conduct standards.

'While operating within a complex structure is not in itself a problem – and the ACNC recognises there are often good and legitimate reasons for charities to do so – it is important that any charity operating within such a structure takes extra care', she said.

'The ACNC's new guidance on good governance in complex structures is part of our education-first approach. This approach sees us provide practical information to help charities, and the people involved in running them, to get things right [...].'

Charities, especially those with shared boards and governance arrangements, are encouraged to read the guidance and seek professional advice if needed.

The guidance may be found on the ACNC website.



ACNC publishes new templates

The ACNC has published new constitution templates for not-for-profit organisations incorporated as public companies limited by guarantee.

The templates aim to help small charities and not-for-profits with straight-forward membership to create a suitable governing document.

As well as a standard template, there are versions for organisations that have specific circumstances, for example, those that have deductible-gift-recipient status, and those that promote health or are public benevolent institutions.

ACNC updates PBI interpretation

The ACNC has published an updated definition of a public-benefit institution and how it is applied.

The updated interpretation considers a 2024 judgement of the Full Court of the Federal Court on Equality Australia's PBI status.

It makes clear that the ordinary meaning of PBI will continue to evolve over time and that the commissioner takes a contemporary approach and will consider contemporary ways that organisations look to relieve benevolent needs.

Commissioner Sue Woodward said: 'Interestingly, the term public-benevolent institution isn't defined by legislation, which makes our interpretation especially important. There will always be grey areas. We look at each application on its particular facts and take a holistic view of the circumstances.'

'The refreshed guidance includes examples of how we will apply the statement in practice, with the hope that this will assist would-be applicants to more accurately assess if they are likely to be eligible to be registered under this charity subtype. The updated statement will also help those who provide professional advice to charities.'

The updated interpretation applies from 29 September.



Wages Underpayment

FWO inquires into disability-support services

The Fair Work Ombudsman has launched an inquiry into compliance with workplace laws in the disability-support-services sector. Previous investigations have found widespread, sometimes large-scale, non-compliance.

Between January 2020 and December 2024, the FWO responded to more than 75,000 enquiries, received more than 2500 anonymous reports, and completed more than 3000 matters arising from requests for assistance, proactive activities, and self-reported non-compliance. Back-payments for workers in that period were close to \$68 million.

'We have serious concerns about workplace compliance in the [...] sector', Fair Work Ombudsman Anna Booth said.

'The time is right to look at how we can boost compliance with workplace laws and ultimately drive systemic change.

'Every worker in the disability-support-services sector must be paid all they are owed under the law. Where businesses fail to do so, this puts compliant businesses on an uneven playing field and results in a poorer delivery of services to those who need support.'

The inquiry's main objective is to identify drivers of non-compliance. Its first phase over about 18 months will involve the FWO engaging nationwide to speak with workers, managers, directors, digital-platform providers, and clients about their workplace experiences and assessing whether minimum entitlements of wages and conditions are being met.

Workplace participants have already told the FWO that they face compliance challenges on many levels, including a strong demand for their services, heavy reliance on migrant workers, high levels of casualisation involving a predominantly female workforce, quick turnover of staff, significant regulatory reform, and concerns about tight profit margins and financial viability.

Ms Booth said: 'What we're looking to achieve, ultimately, is for businesses to find it easier to comply with the relevant fair-work laws, to commit to self-reporting non-compliance in the sector, and for workers to have a strong understanding of their rights and obligations.'





Sydney childcare centre fined

The Federal Circuit and Family Court has fined The Ella Group (NSW) Pty Ltd \$28,875 for failing to comply with a compliance notice. The company's sole director Louise Ramona Yaacoubian was fined \$5,775. The FWO was the action's plaintiff.

The group operates Funtime Childcare in Greenacre, and it failed to calculate and back-pay a young worker's entitlements between November 2019 and April 2022. Aged between 19 and 22 at the time, the worker was a casual early-childhood educator.

The court ordered The Ella Group to take the actions required by the notice, including calculating and rectifying underpayments, plus interest and superannuation.

The FWO began a separate legal action against the group and Ms Yaacoubian earlier this year. That matter remains before the court.

Fair Work Ombudsman Anna Booth said companies that failed to act on compliance notices needed to be aware that they could face court-imposed penalties on top of having to back-pay workers.

'As the judge in this case described, the employee did not receive the amount owed to her under the [notice] for the duration of her employment, and this took on particular significance as the employee was performing relatively low-paid work', Ms Booth said.

'The amount owed under the compliance notice has still not been paid. When [notices] are not followed, we are prepared to take legal action to ensure workers like this educator receive their full lawful entitlements.

'Employers also need to be aware that taking action to protect young workers is among our top priorities.

'Any employees with concerns about their pay or entitlements should contact the Fair Work Ombudsman for free assistance.'

A Fair Work Inspector issued a notice to the group in February 2023 after believing that the worker had been underpaid under the Children's Services Award 2010.

In her judgment, Judge Sophie Given found that there was a heightened need to impose penalties to deter The Ella Group and Ms Yaacoubian from future breaches because of their 'serious and deliberate disregard' for their obligations under the act.

Judge Given said it was also 'important that others be deterred from behaving in a similar manner'.



NDIS

NDIS Commission to clamp down on unregistered providers

A reduction in the use of restrictive practices and improved management of high-risk health concerns were among key priorities for the NDIS Quality and Safeguards Commission in 2025–26.

The commission will also strengthen regulatory oversight of unregistered NDIS providers, including sole traders, and take action to ensure providers have appropriately skilled and capable workers.

NDIS Quality and Safeguards Commissioner Louise Glanville said that the 2025–2026 priorities reflected the regulator's commitment to upholding the rights of NDIS participants by improving quality and safety and supporting people with disabilities to live with independence and dignity.

Commissioner Glanville said: 'We expect providers to uphold the rights of people with disability in all areas, but especially where the risk to participants is high. Providers must deliver safe, high-quality services that empower people with disability to achieve their goals. Where there is serious non-compliance, the NDIS Commission will take firm action.'

'Preventable deaths or dire health outcomes are completely unacceptable. We expect providers to identify and act on health risks early – lives depend on it.'

Unregistered providers represent more than 90 per cent of the market. Being unregistered does not shield providers from obligations under the NDIS Code of Conduct and the commission's reach.

'The community expects NDIS providers to meet high standards, regardless of their registration status', commissioner Glanville said.

'We will take decisive action against unregistered NDIS providers for serious breaches of the NDIS Code of Conduct.'

Poor work practices and insufficient staff training remained an issue. The NDIS Commission would prioritise action that ensured that providers were meeting their obligations to support, train, and monitor appropriately skilled and capable workers.

Former NDIS provider fined millions

The Federal Court has fined Aurora Community Care Pty Ltd \$2.2 million over the death of Ankur Gupta. It was the highest civil penalty imposed on an NDIS provider.

Mr Gupta, an NDIS participant with an intellectual disability, was killed after being struck by a car on a motorway near his supported-independent-living home in Eagleby, Queensland.

The Federal Court found that Mr Gupta had been put at serious risk of harm by Aurora and its support workers, which led to his death.

Aurora was responsible for providing full-time two-on-one support to Mr Gupta and knew he was at serious risk of wandering. At the time Mr Gupta left the home, he was not being monitored or supervised. A support worker was asleep and the second was in an adjacent room.

The court also found that Aurora had contravened the *National Disability Insurance Scheme Act 2013* by failing to:

- Report to the NDIS Quality and Safeguards Commission the use of behaviour-controlling medication given to Mr Gupta
- Report to the NDIS Commission the withholding of Mr Gupta's access to television and Pepsi, which amounted to a long-term negative trigger for Mr Gupta's behaviour, and
- Develop suitable longer-term behaviour support plans for Mr Gupta.

Aurora's sole director Mohamed Issak placed Aurora into voluntary liquidation in January 2024, shortly after the NDIS Commission began the proceeding.

Justice Wendy Abraham said: 'Mr Gupta's parents placed him in Aurora's care. They trusted that Aurora would provide the supervision, support, and safe environment their son needed. Aurora did not provide those things.

'Although [Aurora] is in liquidation, the penalty to be imposed serves to recognise the gravity of the contraventions and fulfils, inter alia, the important role of general deterrence in the penalty process. [...] These contraventions [...] are of the utmost seriousness.

'Aurora has over an extended period displayed an ongoing and flagrant disregard for its legal obligations as an NDIS provider.'

Commissioner Glanville said: 'The NDIS Commission will hold to account NDIS providers that fail to deliver safe services. This legal action and the significant penalty imposed by the court send a strong deterrent message to all NDIS providers to take their obligations seriously'.

The commissioner also emphasised that restrictive practices should be used only as a last resort in line with a participant's authorised behaviour-support plan. Any unauthorised use must be reported to the NDIS Commission.

'Failure to report restrictive practices [...] is a serious contravention that puts participants at risk and will not be tolerated', commissioner Glanville said.

The NDIS Commission banned Mr Issak from being involved in certain NDIS activities for 10 years. The two support workers have also been banned for two years from providing NDIS-funded supports and services to NDIS participants who are under a positive behaviour-support plan and have had restrictions placed on their shifts.



NDIS Commission permanently bans provider

The NDIS Quality and Safeguards Commission has permanently banned Crescent Respite Facility Pty Ltd, trading as Crescent Disability Services, and its managing director Moaz Ibrahim from providing supports and services to the disabled.

The banning orders came into effect on 12 September and superseded a suspension notice that was in effect from 13 August. Crescent's application for renewal of registration has been refused.

The ban follows an investigation into Crescent and related entities including Horizon SolSolutions Australia Pty Ltd, trading as Cocoon SDA Care, that uncovered serious and systemic breaches of the NDIS Code of Conduct, including failure to provide supports and services in a safe and competent manner, failure to act with integrity, honesty and transparency, and unlawful breaches of participant privacy, among other violations.

The investigation into allegations that Crescent is attempting to 'phoenix' – transitioning the provision of NDIS supports and services to another business – is ongoing.

NDIS Quality and Safeguards Commissioner Louise Glanville said the NDIS Commission was committed to upholding the human rights of NDIS participants and will take strong action against organisations that risk the safety of participants.

'We will not tolerate the exploitation of participants by providers, or any provider misconduct that puts participants at risk', she said.

'Our investigation found Crescent was closely linked to Horizon, with both companies demonstrating the kind of provider behaviour we are committed to eradicating from the NDIS.

'Companies and individuals that take advantage of NDIS participants or don't deliver high quality and safe supports and services should not have access to NDIS funds.

'We will not tolerate fraudulent behaviour by providers, and we will take decisive action against those providers we identify as bad actors.'



Aged Care

Aged-care commission revokes provider status

The Aged Care Quality and Safety Commission has issued a notice to revoke the approved provider status of NDN Care Services Pty Ltd, the provider of residential aged-care service Della Dale Aged Care of Ringwood, Victoria.

The notice took effect on 26 September. The revocation follows an investigation by the commission that identified persistent and significant non-compliance with the quality standards.

The commission found that the provider had failed to ensure safe, quality care for its residents and had not demonstrated the capacity to address identified risks or improve practices to meet legal obligations.

Aged Care Quality and Safety Commissioner Liz Hefren-Webb said: 'The safety and dignity of older Australians is non-negotiable. Our decision shows that sub-standard care will not be tolerated. We are committed to ensuring [that] services meet the highest standards, and we will continue to act decisively where those standards are not met.'





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