



# Appointing an eligible advisor

1800 951 822  
[agedcarequality.gov.au](http://agedcarequality.gov.au)

## When do I need to appoint an eligible advisor?

When the Commission issues a Notice of Requirement to Agree to Certain Matters (referred to as a Notice to Agree) in response to non-compliance with aged care responsibilities, and you agree to this notice, you will then be required to appoint an eligible advisor.

Advisors are often skilled professionals who use evidence-based clinical management, organisational management and leadership practices to improve the quality of management and care at aged care services.

Advisors may also be required to assist an approved provider to manage prudential and other responsibilities.

## What is the legislation that enables the Commission to direct an approved provider to appoint an advisor?

Under section 63U of the *Aged Care Quality and Safety Commission Act 2018* (the Commission Act), if the Commission is considering imposing a sanction to revoke the approval of a provider, the Commission may require that approved provider to agree to undertake specified actions as set out in the Notice to Agree before imposing this sanction. This includes agreeing to appoint an eligible advisor who has the appropriate qualifications, skills or experience to effectively assist the approved provider to comply with its responsibilities under the *Aged Care Act 1997* (the Aged Care Act).

## **What is the role of the advisor?**

Where severe and immediate risk to the health, safety and wellbeing of consumers at the service has been identified in determining the non-compliance of the approved provider, the role of the advisor is to determine and guide interventions that ensure risks to consumer are identified, mitigated and managed in a responsive and timely manner. Advisors use operational management, leadership practices and evidence-based clinical skills to work with the relevant personnel to prioritise the risk to consumers and improve the quality of management and care at the service.

Alternatively, or in addition to the above, the advisor may determine and guide interventions in relation to governance and business operations to enable the provider to achieve and sustain compliance with its aged care responsibilities.

## **How long is an advisor appointed for?**

When the Commission issues a Notice to Agree to an approved provider, the notice will clearly state the date by which the approved provider must appoint an advisor, and how long that advisor must be appointed for.

## **Who contracts the advisor?**

The advisor is selected and contracted directly by the approved provider within the period specified in the Notice to Agree. The approved provider is responsible for all aspects of the contract with the advisor, including payment of remuneration and costs in connection with the contracted duties of the advisor. The Commission is not party to the contract between the approved provider and the advisor.

However, the Commission will advise the approved provider on its expectations relating to the selection, appointment and role of the advisor.

## **What is expected of the advisor?**

The advisor is expected to effectively assist the approved provider to demonstrate compliance with its aged care responsibilities. The advisor is expected to continue undertaking their role throughout the duration of the period specified in the notice.

## **Attending the service site**

The advisor should undertake their role on-site at the service to determine and guide interventions. Where there is immediate and severe risk to consumers identified in the determination of non-compliance, the advisor should be able to be on site to guide the providers interventions in mitigating and removing those risks as quickly as possible, as well as monitoring for and responding to new and emerging risks of harm to the consumers at the service.

## **Engaging with the Commission**

In accordance with the Notice to Agree, the approved provider will meet with the Commission at regular determined intervals, to report on their progress in mitigating immediate and severe risk to consumers, and remedying non-compliance. This engagement is supported by the presence of and reporting from the advisor in evidencing actions undertaken.

## Skills or experience

When appointing an advisor, careful consideration should be given to the advisor not only remedying existing non-compliance, but also to assess and respond to new and emerging risks as well as enhancing your service capabilities to ensure sustained compliance with your obligations.

The advisor should have the relevant skills, qualifications and experience to address the identified areas of non-compliance and respond to risks of harm to consumers.

It is expected this would include:

- experience in senior positions in managing or providing professional advice and support in relation to an aged care service
- capability to determine and guide interventions that are specific to the complex needs of the consumers at the service
- relevant operational management skills including, but not limited to: financial management, HR management including workforce development, complaint handling, risk assessment, governance and business operations
- a contemporary and applied working knowledge of aged care legislation (including the Aged Care Act, supporting Principles, the Aged Care Quality Standards, and Prudential Standards), the Serious Incident Response Scheme, as well as the aged care responsibilities of approved providers.
- experience and knowledge in infection control, particularly an understanding of public health directions and COVID-19 outbreak management.

## Conflict of interest

The advisor should not have any actual or perceived conflict of interest between their duties as an advisor and any of their other interests or duties. The independence and availability of the advisor is important to the provision of objective, unbiased and reliable advice and support.

## Are there any persons prohibited from being an advisor?

An advisor must:

- not be a disqualified individual; under section 10A-1 of the Aged Care Act, a disqualified individual is a person convicted of an indictable offence, insolvent under administration or of unsound mind; and
- not be a Commonwealth officer or employee.

## How do I identify an advisor who is appropriate for my service?

Advisors can operate under various business arrangements; for example, organisations that are solely focussed on clinical governance, through to larger organisations that deliver an all-encompassing model of care, associated business systems and ongoing support.

Identifying the right advisor is the first step to achieving success in mitigating the immediate and severe risk to consumers, in addition to remedying non-compliance with approved provider responsibilities.

The following questions are not exhaustive, but may elicit sufficient information in which to aid the approved provider in making an informed decision in identifying an eligible advisor:

- What is the advisor's core business?
- Does the advisor have the relevant qualifications, skills and experience to guide their response to any identified risks and the areas of non-compliance?
- Does the advisor have references from other providers where they have previously worked in similar roles?
- What is the geographic reach or constraints in which the advisor or their organisation can operate?
- What contingencies does the advisor have to continue supporting the approved provider in changing circumstances over the course of a Notice to Agree period?
- Does the advisor possess skills relevant to special interest groups? For example, people from Aboriginal and Torres Strait Islander communities; people from culturally and linguistically diverse backgrounds; people who live in rural or remote areas; lesbian, gay, bisexual, transgender and intersex people.
- If the approved provider specialises in services to particular consumers, does the advisor possess relevant skills relating to the specialisation? For example, if the service provides care and services to consumers with dementia, does the advisor have skills in relation to behaviour management, and/or an understanding of dementia and sexuality specifically around capacity and consent?
- How many advisors does the organisation have working for them – are they employed, sub-contracted etc?

- Is the advisor capable of meeting the response times required to support the provider to mitigate and manage identified risk to consumers as well as under the terms of the Notice to Agree?

To be successful, there is a need for the advisor to build trust with your management, board and staff, so that they will respond to guidance and deliver lasting and meaningful performance improvement and organisational change.

The advisors additionally have to work closely with consumers and representatives to understand and resolve their concerns in a timely manner. This may include engaging with the Commission regarding any complaints.

### **Who is responsible for the performance of the advisor?**

As the contract for the advisor is between the approved provider and the advisor, the approved provider is responsible for monitoring the performance of the advisor.

### **Can the approved provider change the advisor during the period of the Notice to Agree?**

In circumstances where the approved provider has concerns regarding the performance or availability of the advisor, the approved provider should consider a change in advisor if it would assist them to address the immediate and severe risk and/or address non-compliance with their responsibilities.

The approved provider is encouraged to discuss the matter immediately with the relevant case manager in the Commission.



## Who can I contact for advice?

Aged care peak bodies provide support and services to approved providers in the areas of legislative compliance, policy advice, work health and safety, industrial relations, aged care legislative review, training and advice when appointing an eligible advisor. Peak bodies may be able to assist you in identifying an advisor that is suited to your service and location.

## Aged & Community Care Providers Association (ACCPA)

Phone: 1300 222 721

Email: [info@accpa.asn.au](mailto:info@accpa.asn.au)

Note that the list of aged care peak bodies is not exhaustive and does not preclude an approved provider from sourcing an advisor that meets requirements from an alternate source.

*The Aged Care Quality and Safety Commission acknowledges the Traditional Owners of country throughout Australia, and their continuing connection to land, sea and community. We pay our respects to them and their cultures, and to Elders both past and present.*

1 July 2022



**Phone**  
1800 951 822



**Web**  
[agedcarequality.gov.au](http://agedcarequality.gov.au)



**Write**  
Aged Care Quality and Safety Commission  
GPO Box 9819, In Your Capital City