



Strengthening Provider Governance

**Information and consultation paper
December 2021**

1. About this paper

Purpose

The Australian Government has proposed new requirements to strengthen the governance of approved aged care providers.

If legislation is passed, all approved aged care providers will need to meet the requirements.

This paper outlines the new requirements. It also asks for your views on the rules for applying these new requirements.

Consultation themes

We are seeking feedback on the following:



- the quality care advisory body that reports to the approved provider's governing body



- the approved providers' annual statement on operations



- the records approved providers should keep on the proposed requirements in the legislation.

This project is part of the broader aged care reforms. More information on the aged care reforms is available at: health.gov.au/aged-care-reforms.

How to provide your feedback

Making a submission

You are invited to provide feedback via the online questionnaire. You may choose to answer some or all the questions in the consultation paper. To assist you to provide feedback, the consultation paper and questionnaire are available through the Department of Health's Consultation Hub platform.

Please submit your feedback by **11:59pm (AEDT), 18 January 2022**.

Thank you for your interest and we look forward to receiving your submission.

2. Overview

The importance of provider governance

The governing body (for example, a Board) of a provider is responsible for the safe and quality care and services delivered to consumers.

The governing body sets the strategic priorities for the provider's organisation. It plays a critical role in setting the provider's culture and whether this is focused on safety, quality and the best interests of consumers.

The Royal Commission into Aged Care Quality and Safety (the Royal Commission) noted the need for aged care providers to have strong governance arrangements. Provider governance and management impact all aspects of aged care.¹

New legislative requirements for approved providers

The Royal Commission recommended introducing new legislation by 1 January 2022 to strengthen provider governance. The Australian Government accepted the Royal Commission recommendations about provider governance. It introduced [the Aged Care and Other Legislation Amendment \(Royal Commission Response No. 2\) Bill 2021](#) (the Bill), to Parliament on 1 September 2021 that if passed will place new requirements on providers from 1 March 2022.

The Department will keep you informed of developments if the Bill is not passed by Parliament in February 2022.

The new legislation allows for extra details about these governance arrangements to be set out in legislative rules.

From 1 March 2022, approved providers of Australian Government-funded aged care will have new governance responsibilities, subject to passage of the [Bill](#). These responsibilities are summarised below.

What are the new requirements?

There will be stronger requirements for:

- the membership of governing bodies
- the provider's constitution
- advisory bodies
- staff qualifications, skills and experience
- the suitability of key personnel in the provider's organisation
- providing an annual statement on the provider's operations.

¹ Commonwealth of Australia, 2021. Royal Commission into Aged Care Quality and Safety. Final Report - Volume 1: Summary and Recommendations. Commonwealth of Australia (p75). Available at: <<https://agedcare.royalcommission.gov.au/publications/final-report-volume-1>>.

The new governance responsibilities aim to:

- improve leadership and culture
- improve transparency and accountability
- ensure providers focus on the best interests of consumers

Membership of governing bodies

The reforms in the Bill will introduce new responsibilities for the membership of governing bodies that will mean certain approved providers must have:

1. a majority of the members on their governing body being independent non-executive members (for example, members that do not hold another position in the provider's organisation).
2. at least one member on their governing body who has clinical care experience.

These responsibilities will not apply to approved providers, if:

- the governing body has fewer than five members; and
- the approved provider provides care to fewer than 40 care recipients across their services.

This responsibility also does not apply to approved providers that are a State or Territory, a State or Territory authority, or a local government authority.

Under the arrangements in the Bill, an approved provider may apply to the Aged Care Quality and Safety Commissioner (Commissioner) for a determination that either or both of the above responsibilities do not apply for a period of time.

When deciding that these responsibilities do not apply, the Commissioner may consider several matters such as:

- the number of care recipients,
- the location of the provider's services, and
- any arrangements the provider has made to support members of the governing body in their decision making (such as seeking advice from a person with clinical care experience).

All providers should consider how to improve the effective functioning of their governing body. For example, a provider that is not required to comply with these responsibilities should seek advice from a clinical care expert.

Proposed start date: 1 March 2022. However, providers who are approved before 1 March 2022, will have until 1 March 2023 to meet these new responsibilities.

Provider's constitution

The reforms in the Bill will mean certain organisations need to ensure their constitution does not allow a director to act other than in the best interests of the approved provider. This responsibility will apply to certain approved providers who are:

- incorporated or taken to be incorporated under the *Corporations Act 2001*; or
- an Aboriginal and Torres Strait Islander corporation within the meaning of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

Proposed start date: 1 March 2022. However, providers who are approved before 1 March 2022, will have until 1 March 2023 to meet these new responsibilities.

Advisory bodies

Quality care advisory body

The reforms in the Bill will mean approved providers have to create, and maintain, a quality care advisory body. This body is to help keep the governing body informed about the quality of care delivered by the provider's service/s.

The reforms will mean the quality care advisory body has to give the provider's governing body a written report on the quality of the aged care provided for each aged care service at least once every six months. The quality care advisory body can also give feedback to the provider's governing body about the quality of care of a service.

Under the reforms, the governing body will have to consider the report and any other feedback from the quality care advisory body when making decisions about the quality of care and tell the quality care advisory body in writing of how the feedback was considered.

Consumer advisory body

The reforms in the Bill will mean that, at least once every 12 months, approved providers have to offer care recipients and their representatives the opportunity to create a consumer advisory body if one is not currently established and operating. Its purpose is to give the provider's governing body feedback about the quality of care delivered at a provider's service/s.

If the consumer advisory body is created, the governing body must consider its feedback when making decisions about the quality of care and tell the consumer advisory body in writing of how the feedback was considered.

Proposed start date: 1 March 2022. However, providers who are approved before 1 March 2022, will have until 1 March 2023 to meet these new responsibilities.

Staff qualifications, skills and experience²

The new legislation will mean the governing body must ensure the approved provider's staff members:

- have appropriate qualifications, skills or experience to provide the care or other services to care recipients through an aged care service; and
- have opportunities to develop their capability to provide that care or those other services.

Proposed commencement date: 1 March 2022. However, providers who are approved prior to 1 March 2022, will have until 1 March 2023 to meet these new responsibilities.

Suitability of key personnel

Under current aged care legislation³, the key personnel of an approved provider include:

- people responsible for the nursing services who hold a recognised qualification in nursing, and
- any person who is responsible for the day to day operations of an aged care service.

For providers who are not a State or Territory it also includes:

- a member of the group responsible for executive decisions, and
- a person who has authority/responsibility for, or significant influence over, the planning, direction or control of the provider's activities.

² The new arrangements for: membership of governing bodies: advisory bodies; and staff qualifications, skills and experience; do not apply to approved providers that are a State or Territory, a State or Territory authority, or a local government authority.

³ See Section 8B *Aged Care Quality and Safety Commission Act 2018* for further information about the definition of key personnel.

The reforms in the Bill will mean that, at least once every 12 months, approved providers must consider the suitability of their key personnel and be satisfied that their key personnel are suitable to be involved in providing aged care. Providers must keep a record of this.

Key personnel must tell the provider of changes in their circumstances that may affect their suitability to provide aged care.

In addition, approved providers must tell the Aged Care Quality and Safety Commission (Commission) of any changes to key personnel within 14 days of the change. This includes a change of circumstances that is about the suitability of their key personnel involved in providing aged care.

The Commission will have the power to ask the approved provider for information relevant to the suitability of key personnel at any time.

The Commissioner may decide that an individual who is a key personnel is not suitable to provide aged care. The Commission can decide that a provider must take action to stop the individual being one of their key personnel.

Proposed start date: 1 March 2022 for all approved providers.

Annual statement of operations

The reforms in the Bill mean approved providers will need to give an annual statement on their operations, to be published on My Aged Care. The annual statement is to help care recipients and their families to better understand the provider's operations. More information about the required content of the annual statement will be available in 2022.

Proposed start date: From 1 July 2022, approved providers need to start collecting information to compile their first annual statement for the 2022-23 financial year. The first statement for most providers is due to the Department of Health by 31 October 2023.

3. Consultation questions

The following parts of this paper discuss how specific details of these governance arrangements may be set out in legislative rules. We are seeking your views on these rules.

a. Who should be members of the quality care advisory body?

Membership of the quality care advisory body

The Royal Commission noted that approved providers' governing bodies do not always pay enough attention to the quality of care⁴ being delivered to older people.

It recommended that every approved provider have a quality care advisory body, that every six months will give the governing body a report on the quality of the care being delivered by each service operated by the provider.

The Royal Commission suggested that the quality care advisory body be chaired by an independent non-executive member of the governing body with appropriate care experience.

The legislation being considered by Parliament will mean approved providers need to create and maintain a quality care advisory body. The rules will set out the Body's membership requirements.

It is suggested that all the following be created as rules for the members of all approved provider's quality care advisory body:

- The quality care advisory body is chaired by an independent non-executive member of the approved provider's governing body.⁵ This person should have experience in care provision so they can report on the quality of care provided.
- All providers must have one or more members of the quality care advisory body directly involved in the delivery of care (for example, the person responsible for the delivery of care and services, registered nurse or a personal care worker).
- If an approved provider delivers clinical care, the quality care advisory body must include a person directly involved in providing clinical care to the provider's consumers (for example, the person responsible for the nursing services or a registered nurse).
- Membership of the quality care advisory body must include an individual who is a care recipient and/or their representatives (for example, carer, family or friend).

It is suggested that these be minimum requirements. The proposal would allow providers to include extra members on their quality care advisory body if they wished.

Some things to consider about these proposed rules include:

- The ability of all approved providers (including small providers and those in remote areas) to meet the requirements.
- The value of having an independent view from someone outside the organisation.
- The ability of individual members to meet the demand of preparing the six-monthly reports.

⁴ As defined in the *Aged Care Act 1997*, care means services, or accommodation and services, provided to a person whose physical, mental or social functioning is affected to such a degree that the person cannot maintain himself or herself independently.

⁵ An independent non-executive member of the governing body does not hold another position in the organisation.

We are interested in your views about whether a provider should be required to include the following people in their quality care advisory body:

- a member of the provider's governing body
- an independent non-executive member of the provider's governing body (meaning they do not hold another position in the organisation)
- a person who delivers the provider's services (for example, person responsible for the delivery of care and services, registered nurse or a personal care worker)
- a person who delivers the provider's clinical care services (for example, the person responsible for the nursing services or a registered nurse).
- a person who receives services from the provider or their family and friends.

We would also like to know if:

- the quality care advisory body should be chaired by a member of the provider's governing body that does not hold another position in the organisation.

b. What information should be in the quality care advisory body's report to the governing body?

Quality care advisory body's report to the governing body

The proposed new legislation being considered by Parliament will mean that at least once every six months the quality care advisory body has to give a written report to the governing body on the quality of care provided for each service.

The quality care advisory body may also, at any time, give feedback to the governing body on the quality of aged care delivered by the provider.

The quality care advisory body's report is to inform the governing body about the quality of care the provider delivers. It should also highlight any concerns and risks.

The governing body will be required to consider the reports and any feedback given by the quality care advisory body whenever making decisions about the quality of aged care. The governing body will also be required to tell the quality care advisory body how its reports and feedback have been considered.

We are interested in your views about whether the report should include an assessment of the quality of care provided by the service, taking into account:

- trends in quality of care (including quality indicators, incidents, consumer surveys, staff and consumer feedback and complaints)
- progress made on the Plan for Continuous Improvement
- concerns about the quality of care
- action being taken against the service by the Aged Care Quality and Safety Commission or other agencies
- action being taken to address any concerns
- matters/issues referred to the quality care advisory body by the governing body
- signature of each person on the quality care advisory body to show they agree with the report.

c. Requirements for the provider's annual statement

The legislation being considered by Parliament will mean approved providers need to give an annual statement to the Department that will be publicly available on My Aged Care.

The purpose of the annual statement is to increase transparency and help care recipients and their families better understand an approved provider's operations. It will bring together key information about providers on My Aged Care to help inform consumers.

The annual statement must not include personal information about an individual, other than an individual who is a key personnel of the approved provider.

An information technology solution is being considered, where information has already been collected to reduce duplication of reporting for providers.

It is suggested that if a provider requests for the reporting period to align with its financial year, the Department may grant this. This mirrors the arrangements that exist for a provider's Aged Care Financial Report.

We are interested in your views about what should be in the new annual statement that approved providers must give on their operations. Should the report include:

- the provider's key personnel names and role
- statement by the governing body that the provider meets the Aged Care Quality Standards
- any exemption from the new governing body membership requirements (that is, a majority of members are independent non-executive members, and that at least one member has clinical experience)
- if the provider has a consumer advisory body.
- time staff spent on delivering direct care
- information about the number of consumers using/leaving the provider's service
- the provider's financial position
- the quality of food
- how diversity and inclusion are addressed
- complaints
- other (please specify)

d. Records to be kept by approved providers

We are seeking your views about the need for the legislative rules to detail extra records a provider keeps as evidence they comply with their new proposed governance obligations.

It is suggested that providers be required to keep records that will show they meet each new governance requirement. This would involve the rules specifying that the provider keep the following records.

Proposed records to be kept by approved providers:

Membership of the governing body records

- record of members that are independent non-executive members
- record of members of the provider's governing body that have clinical care experience and details of this experience

Quality care advisory body records

- a list of members of the quality care advisory body
- evidence the quality care advisory body meet the membership requirements
- written reports and feedback from the quality care advisory body to the governing body
- written advice from the governing body to the quality care advisory body
- meeting dates and minutes

Consumer advisory body records

- dates and evidence of the provider's written offer to create a consumer advisory body given to care recipients and their representatives
- feedback from the consumer advisory body to the governing body
- written advice from the governing body to the consumer advisory body
- meeting dates and minutes

Governing body responsibility for staff members records

- evidence showing how the governing body of the provider has ensured staff members:
 - have appropriate qualifications, skills or experience to provide the care or other services to care recipients
 - have opportunities to develop their capability to provide that care or those other services

Suitability of key personnel

- the suitability of each member of their key personnel
- all the evidence used to decide suitability (for example, qualifications, police checks)
- date the provider considered the suitability of the key personnel

We are seeking your views about whether the legislative rules need to specify the records a provider should keep to show it is compliant with the proposed new governing body responsibilities.

Should the provider be required to keep records about:

- the members of their governing body
- their quality care advisory body
- their consumer advisory body
- how the governing body has met its responsibility for staff
- the suitability of its key personnel involved in providing care.

4. Next steps

Your feedback will be used to inform the development of new rules for approved providers.

These rules will complement the new provider governance legislative arrangements that are expected to start from 1 March 2022.

If the Bill is not passed by Parliament in February 2022, the start dates will be pushed back. The Department will keep you informed of these developments.

5. Further opportunities to engage in aged care reforms

For more opportunities to give feedback on the aged care reforms being delivered by the Australian Government, please visit agedcareengagement.health.gov.au.