



Spotlight on serious risk

When an approved provider of a service fails to meet the expected outcomes of the aged care standards what is the risk to care recipient's safety, health or wellbeing?

The Quality Agency must consider this question when an approved provider of a service is found not to comply with the standards. Serious risk is a statutory decision made by the Quality Agency.

This bulletin covers the Quality Agency process and responsibilities relating to findings of serious risk.

Quality Agency Principles 2013, S2.63 and S3.18

The *Quality Agency Principles 2013* S 2.63 (2) and S 3.18 (2) require that, if the CEO of the Quality Agency identifies a failure by an approved provider of a service to meet one or more expected outcomes of the applicable Standards, the CEO must decide whether there is evidence that the failure has placed, or may place the safety, health or wellbeing of a care recipient of the service at serious risk.

The Quality Agency must act as soon as reasonably practicable to consider the impact of the failure on the safety, health or wellbeing and whether care recipients have been or may be placed at serious risk. When the Quality Agency makes a finding of serious risk the Quality Agency gives the approved provider of the service a written notice outlining the reasons for and evidence of the risk and also notifies the Department of Health. This ensures that prompt attention by the approved provider of the service is given to rectifying the risk to care recipients.

You can find out more about serious risk on our website at www.aacqa.gov.au/serious-risk

Frequently asked questions

1. What is the definition of serious risk?

The following definition of the term “serious risk” is adopted by the Quality Agency and is based on the ordinary meaning of the words when used individually and when used together.

Serious: Important, significant

Risk: exposure to danger, injury or loss



2. Is there a relationship between serious risk and failure to meet an expected outcome?

Yes, a finding of serious risk is in relation to a failure to meet an expected outcome of the Accreditation or Home Care Standards.

When there is a finding that an approved provider of a service has failed to meet one or more expected outcomes of the applicable standards the Quality Agency must consider whether this failure has placed or may place the safety, health or wellbeing of a care recipient at serious risk.

3. Does a finding of serious risk need to relate to an individual care recipient?

The *Quality Agency Principles 2013* are concerned with whether a failure against the applicable standards carries serious risk in respect of the safety, health or wellbeing of an individual care recipient. Therefore, the evidence and the subsequent decision about serious risk must show evidence of serious risk in respect of an individual care recipient or individual care recipients. The finding can also relate to risk to previous care recipients of the service as long as they were receiving care at the time of the failure to meet the applicable standards. (This could include care recipients that have been transferred to hospital, to another aged care facility, or to live in the community, either living or deceased).

4. Is serious risk just really poor compliance?

No, serious risk is a separate statutory decision. There needs to be failure in one or more expected outcomes of the applicable standards to consider serious risk. However this could be a consequence of failure in one expected outcome. Conversely multiple not met expected outcomes do not necessarily lead to a decision of serious risk.

5. Do serious risk decisions apply to all services?

Yes, under the *Quality Agency Principles 2013*, a finding of serious risk may be made in relation to approved providers of both residential care services and home care services

6. Can a finding of serious risk be revised or resolved?

Serious risk is not an “ongoing state”; it is a statutory decision / finding based on evidence at a point in time about the risk to care recipient(s) arising from a failure in the standard of care. Once a decision is made about a finding of serious risk this is not revised. There is not a statutory decision that finds that there is no serious risk.



7. Are approved providers notified if serious risk is being considered and do they have an opportunity to respond to the notification?

Yes, the Quality Agency will notify the approved provider of the service that serious risk is under consideration. The notification to the approved provider will detail specific information about the reasons for consideration of serious risk including evidence in relation to the identified care recipient(s).

The approved provider has an opportunity to respond to the notification of serious risk. Because of the nature of serious risk impacting on care recipient(s) the approved provider is given a short period to respond to evidence of serious risk.

The approved provider's response to the notification of serious risk should address the specific evidence relating to the failure in one or more expected outcomes of the applicable standards AND the risk to the identified care recipient(s).

The response provided by the approved provider is considered when determining whether the failure to meet the applicable standards has placed, or may place, the safety, health or wellbeing of care recipients at serious risk.

In making a decision as to whether the failure has placed or may place a care recipient at serious risk the delegate may decide that the failure has placed a care recipient at serious risk even if the failure has subsequently been addressed by the approved provider.

8. Is the Department of Health notified?

The Quality Agency is required to notify the Department of Health when a serious risk finding is made.

We may provide early information to the Department of Health where we are concerned about immediacy of serious risk to care recipients. This information may be provided during a performance assessment at any time and may be before a decision of failure against the applicable standards is made.

On receipt of this information, the Department of Health makes a decision on whether there is immediate and severe risk to care recipients and whether to impose sanctions on the approved provider of the service.

The Department of Health can make the decision of whether to impose sanctions on any information received or on a decision by the Quality Agency of serious risk.

9. What is the role of the Assessment Team in relation to serious risk?

The Quality Agency assessment team collects information or evidence for the purpose of assessing the performance of an approved provider of an aged care service in relation to expected outcomes of the applicable Aged Care Standards. While undertaking a performance assessment against the applicable Standards, the assessment team is required to gather sufficient evidence about the care



and circumstances of care recipients. The assessment team may seek clarification from the service about any matters that require more information related to the circumstances of individual care recipients in relation to the expected outcomes of the standards.

The assessment team do not make decisions about serious risk to care recipients. When an assessment team identifies that an approved provider of a service may not meet one or more expected outcomes of the standards (a failure to meet the standards), they provide a report to the relevant State Office of the Quality Agency.

10. What is the State Office's role in relation to serious risk?

The State Director and Assistant Director act as delegates of the CEO of the Quality Agency. When the State Director or Assistant Director make a finding that an approved provider of a service has not complied with one or more expected outcomes of the applicable standards they are required to consider the evidence for the purposes of understanding whether the failure has placed or may place a care recipient at serious risk. The State Director or Assistant Director will communicate with the approved provider of the service in relation to consideration of serious risk and serious risks decisions.

The State Director or Assistant Director will notify the approved provider of the service in writing, that they are considering serious risk in relation to an individual care recipient. The provider is given a short period to respond to evidence of serious risk (typically hours to one or two days). A serious risk decision is then made by the State Director or Assistant Director once they have considered the response (if any) from the approved provider to a serious risk notification. The approved provider of the service is then notified in writing of a serious risk decision and provided with a detailed serious risk report.

11. At what point can a finding be made that a failure has placed a care recipient of a service at serious risk?

A serious risk decision can be made at any time the Quality Agency finds that there is a failure to meet an expected outcome of the applicable standards. This could be arising from an assessment contact or performance assessment such as a site audit, or at any other time where the delegate considers evidence and makes a finding of failure such as consideration of a Coroners' Report. Once a finding of failure has been made the Quality Agency must consider the evidence as to whether the failure "*has placed*" or "*may place*" a care recipient at serious risk.

The finding of serious risk may relate to circumstances that have since been addressed by the approved provider of the service. This is because in making a decision as to whether the failure has placed or may place a care recipient at serious risk the delegate may decide that the failure *has placed* a care recipient at serious risk even if the service has returned to compliance.

The finding may also relate to care recipients that are no longer receiving care from the services as long as they were receiving care from the service at the time of the failure to meet the standards.



12. Can a decision regarding serious risk be made prior to a decision regarding an assessment process?

Yes. A decision as to whether there is serious risk to the safety, health or wellbeing of care recipient(s) is made as soon as practicable after a finding of non-compliance by the Quality Agency delegate. This means that the decision does not have to wait for the completion of the assessment process. For example, a full re-accreditation site audit may be underway and a serious risk decision is not contingent on completion of the process or a decision on re-accreditation. This ensures that prompt attention by the approved provider is given to rectifying the risk to care recipients of the service.

13. How does the Quality Agency publish serious risk decisions

The Quality Agency publishes a notification of a serious risk decision on its website that includes information about the failure to meet an expected outcome of the applicable standards and the date that the serious risk decision was made in relation to the approved provider of the service.

Need to know more?

Contact our policy helpdesk on: qualityagencypolicy@aacqa.gov.au