



Complaints Principles 2014

I, Mitch Fifield, Assistant Minister for Social Services, make the following principles.

Dated 19 June 2014

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Part 1—Preliminary

1 Name of principles

These principles are the *Complaints Principles 2014*.

2 Commencement

These principles commence on 1 July 2014.

3 Authority

These principles are made under section 96-1 of the *Aged Care Act 1997*.

4 Definitions

In these principles:

ACC means the Aged Care Commissioner.

Act means the *Aged Care Act 1997*.

complainant means a person who makes a complaint to the Secretary under section 6.

Quality Agency means the Australian Aged Care Quality Agency established by the *Australian Aged Care Quality Agency Act 2013*.

resolution process means the process undertaken by the Secretary under section 10 to resolve an issue that is:

- (a) raised by a complaint made under section 6; or
- (b) raised as referred to in section 9.

5 Purpose of these principles

- (1) For Division 94A of the Act, these principles provide a scheme for the management and resolution of complaints and other concerns about aged care services through which aged care is provided by approved providers.
- (2) For section 95A-1 of the Act, these principles make provision in relation to the ACC's functions to examine:
 - (a) decisions made under these principles; and
 - (b) complaints about the processes for handling matters under these principles; and
 - (c) complaints about the Quality Agency's process for accrediting aged care services, or conducting quality reviews of home care services, under the *Quality Agency Principles 2013*.

Part 2—Complaints

6 Making a complaint

- (1) A person may make a complaint to the Secretary raising an issue or issues about an approved provider's responsibilities under the Act or under the principles made under section 96-1 of the Act.
- (2) The complaint may be made orally or in writing, and may be made anonymously.
- (3) A complainant may ask the Secretary to keep the following information confidential:
 - (a) the identity of the complainant;
 - (b) the identity of a person identified in the complaint;
 - (c) any other details included in the complaint.

7 Dealing with a complaint

If the Secretary receives a complaint under subsection 6(1), the Secretary must, in relation to each issue raised in the complaint:

- (a) decide to take no further action on the issue on the basis that section 8 applies to the issue; or
- (b) quickly resolve the issue to the satisfaction of the complainant by giving assistance and advice to the complainant or the approved provider to which the issue relates; or
- (c) undertake a resolution process.

Examples for paragraph (b):

- (a) assist the complainant to clarify the issues to enable the complainant to raise them directly with the approved provider;
- (b) telephone the approved provider on behalf of the complainant to discuss and resolve the issue raised by the complainant;
- (c) advise the approved provider of the approved provider's rights and responsibilities under the Act and, in doing so, facilitate the resolution of the issue.

Note: A decision under paragraph (a) may be reconsidered or examined under Part 7.

8 No further action on an issue

The Secretary may decide to take no further action in relation to an issue raised in a complaint if any of the following circumstances applies:

- (a) the issue was not raised in good faith;
- (b) the issue is, or has been, the subject of a legal proceeding;
- (c) the issue has been dealt with under:
 - (i) these principles; or
 - (ii) the *Complaints Principles 2011* (as in force under section 96-1 of the Act before 1 July 2014); or
 - (iii) the *Investigation Principles 2007* (as in force under section 96-1 of the Act before 1 September 2011);
- (d) the issue relates to an event:

Section 8

- (i) that occurred more than 1 year before the complaint was given to the Secretary; and
- (ii) that is not ongoing;
- (e) the issue is subject to a coronial inquiry;
- (f) a care recipient named in the complaint does not wish the issue to be considered by the Secretary;
- (g) the issue is better dealt with by another organisation;
- (h) having regard to all the circumstances, a resolution process in relation to the issue is not warranted.

Part 3—Resolution process

9 Secretary may undertake resolution process on own initiative

- (1) This section applies if the Secretary receives information (whether in a complaint or otherwise) that raises an issue about an approved provider's responsibilities under the Act or under principles made under section 96-1 of the Act.
- (2) The Secretary may undertake a resolution process in relation to the issue.

10 Resolution process

- (1) If the Secretary undertakes a resolution process in relation to an issue, the Secretary may adopt one or more of the following approaches to resolve the issue:
 - (a) request the approved provider to which the issue relates to examine and attempt to resolve the issue and report back to the Secretary;
 - (b) request the complainant (if any), the approved provider and any other person to participate in a conciliation process;
 - (c) undertake an investigation of the issue;
 - (d) refer the issue to mediation.
- (2) In adopting any of the approaches in subsection (1), the Secretary may do one or more of the following:
 - (a) analyse and review documents;
 - (b) visit the location at which the services are provided by the approved provider or the offices of the approved provider;
 - (c) discuss the issue with the complainant (if any), the approved provider or any other person, in person or by other means;
 - (d) request information from any person.

11 Notifying approved provider

- (1) If the Secretary undertakes a resolution process in relation to an issue, the Secretary must notify the approved provider to which the issue relates about the issue as soon as practicable, unless the Secretary considers that the notification will, or is likely to:
 - (a) impede the resolution of the issue; or
 - (b) place the safety, health or wellbeing of the complainant (if any), a care recipient or any other person at risk; or
 - (c) place the complainant (if any) or a care recipient at risk of intimidation or harassment.
- (2) If the Secretary decides to make an unannounced visit to the location at which services are provided by the approved provider or to the offices of the approved provider, the Secretary need not notify the approved provider of the issue until the time of the unannounced visit.

12 Confidentiality

- (1) The Secretary must ensure that a request for confidentiality under subsection 6(3) is complied with unless the Secretary considers that doing so will, or is likely to, place the safety, health or wellbeing of the complainant, a care recipient or any other person at risk.
- (2) The Secretary must take all reasonable steps to notify the complainant before deciding not to keep information confidential that the complainant has requested be kept confidential under subsection 6(3).

13 Withdrawal from resolution process

- (1) The complainant may withdraw from the resolution process, either orally or in writing, at any time.
- (2) The Secretary may undertake, or continue to undertake, the resolution process despite the complainant withdrawing from the resolution process.

Note: A complainant who withdraws from the resolution process ceases to have a right to be given feedback or to apply for reconsideration of the Secretary's decision or an examination of the Secretary's decision by the ACC.

Part 4—Outcome of resolution process

14 Ending resolution process

The Secretary may decide to end a resolution process in relation to an issue if one or more of the following circumstances apply:

- (a) if the issue was raised by a complaint—the issue has been resolved because the complainant, and the approved provider to which the issue relates, have agreed on an outcome;
- (b) the approved provider has addressed the issue to the satisfaction of the Secretary;
- (c) the Secretary has directed the approved provider, in accordance with section 15, to take stated action to comply with its responsibilities under the Act and principles made under section 96-1 of the Act;
- (d) the Secretary has initiated action under Part 4.4 of the Act on the basis that the approved provider has not complied, or is not complying, with one or more of its responsibilities under Parts 4.1 to 4.3 of the Act;
- (e) the complainant (if any) has withdrawn from the resolution process;
- (f) the issue is better dealt with by another organisation;
- (g) continuation of the resolution process is not warranted because the Secretary is satisfied that:
 - (i) despite reasonable inquiry by the Secretary, the circumstances giving rise to the issue cannot be determined; or
 - (ii) the information given by the complainant (if any) was not given in good faith; or
 - (iii) the issue is, or has been, the subject of a legal proceeding; or
 - (iv) the issue has been dealt with under these principles, the *Complaints Principles 2011* (as in force under section 96-1 of the Act before 1 July 2014) or the *Investigation Principles 2007* (as in force under section 96-1 of the Act before 1 September 2011); or
 - (v) the issue is subject to a coronial inquiry; or
 - (vi) if the issue was raised by a complaint—a care recipient named in the complaint does not wish the resolution process to continue;
- (h) having regard to all the circumstances, continuation of the resolution process is not warranted.

Note: Requirements for feedback following a decision under this section to end a resolution process are in Part 5.

15 Directions to approved provider

- (1) If, as part of a resolution process, the Secretary is satisfied that the approved provider to which the resolution process relates, is not meeting the approved provider's responsibilities under the Act or under principles made under section 96-1 of the Act, the Secretary may give directions to the approved provider.

Section 15

- (2) The directions must require the approved provider to take stated actions in order to comply with the approved provider's responsibilities under the Act or under principles made under section 96-1 of the Act.
- (3) Before the Secretary gives directions to the approved provider, the Secretary must give a written notice of intention to issue directions to the approved provider.
- (4) However, the Secretary may give directions to the approved provider, without having issued a notice of intention to issue directions, if it is necessary to do so because prompt action is required by the approved provider in order to protect the health, safety or wellbeing of a care recipient.
- (5) The notice of intention to issue directions must:
 - (a) state:
 - (i) the preliminary findings of the Secretary; and
 - (ii) the concerns of the Secretary about the apparent failure of the approved provider to meet the approved provider's responsibilities under the Act or under principles made under section 96-1 of the Act; and
 - (b) give the approved provider the opportunity to respond to those findings by identifying how the approved provider has addressed or will address the concerns identified; and
 - (c) state the timeframe the approved provider has for responding to the notice.
- (6) The approved provider may respond to the notice of intention to give directions.
- (7) If the approved provider responds to the notice under subsection (6), the approved provider must give the response, in writing, to the Secretary:
 - (a) within 14 days after receiving the notice; or
 - (b) within such other time as specified in the notice.
- (8) The Secretary may, after considering any response from the approved provider, give written directions to the approved provider directing the approved provider to take stated actions in order to comply with its responsibilities under the Act and under principles made under section 96-1 of the Act.

Note: If the Secretary is satisfied that the approved provider has addressed the issue, the Secretary may decide to end the resolution process under paragraph 14(b).
- (9) If the Secretary gives directions to an approved provider, the approved provider must comply with the directions.
- (10) If the approved provider fails to comply with the directions, the Secretary may initiate action under Part 4.4 of the Act.

Part 5—Feedback

16 Feedback on no further action

If the Secretary decides to take no further action on an issue under paragraph 7(a), the Secretary must, as soon as practicable, give the complainant, unless the complaint was made anonymously, in writing:

- (a) feedback about the Secretary's decision to take no further action and the reasons for that decision; and
- (b) information about how the complainant may apply for reconsideration of the decision by the Secretary or examination of the Secretary's decision by the ACC; and
- (c) any other appropriate feedback.

17 Feedback on resolution process

- (1) If the Secretary decides to end a resolution process under section 14, the Secretary must, as soon as practicable, give the complainant (if any), and the approved provider to which the resolution process relates, in writing:
 - (a) feedback about:
 - (i) any key findings; and
 - (ii) the Secretary's decision to end the resolution process and the reasons for that decision; and
 - (b) information about how the complainant or the approved provider may apply for reconsideration of the decision by the Secretary or examination of the Secretary's decision by the ACC; and
 - (c) any other appropriate feedback.
- (2) However, the Secretary is not required to comply with subsection (1) if:
 - (a) the complaint was made anonymously; or
 - (b) the complainant withdrew from the resolution process.
- (3) The Secretary may give different feedback to the complainant and to the approved provider.

18 Feedback to other persons

The Secretary may give feedback about a resolution process to any other person or organisation that the Secretary considers has a sufficient interest in the matter.

Part 6—Other actions

19 Referral to other organisations

- (1) Nothing in these principles prevents the Secretary from referring an issue to another organisation.
- (2) A resolution process may continue even if the Secretary has referred the issue to which the process relates to another organisation under subsection (1).

20 Use of information obtained during resolution process

Nothing in these principles prevents the use of information that was obtained during the administration of these principles for any other purpose related to the administration of the Act or principles made under section 96-1 of the Act.

21 Secretary may take action under the Act

Nothing in these principles prevents the Secretary from taking action in relation to an issue under Part 4.4 of the Act instead of under these principles.

Part 7—Reconsideration and examination of decisions etc.

Division 1—Reconsideration by Secretary

22 Application for reconsideration by Secretary

- (1) A complainant may apply to the Secretary for reconsideration of a decision by the Secretary under paragraph 7(a) to take no further action on an issue raised in a complaint made by the complainant.
- (2) A complainant (if any), or an approved provider to which a resolution process relates, may apply to the Secretary for reconsideration of a decision by the Secretary under section 14 to end the resolution process.
- (3) However, an application cannot be made under subsection (2) for reconsideration of a decision to end a new resolution process undertaken following a decision under paragraph 23(1)(b).
- (4) An application under subsection (1) or (2) for reconsideration of a decision must:
 - (a) state the reasons (other than dissatisfaction with the decision) why reconsideration is sought; and
 - (b) be made within 28 days of the applicant being notified, in writing, of the decision.
- (5) An application under subsection (1) or (2) may be made orally or in writing.

23 Reconsideration by Secretary

- (1) Within 28 days of receiving an application under section 22 to reconsider a decision, the Secretary must:
 - (a) confirm the decision to take no further action or to end the resolution process; or
 - (b) decide to undertake a new resolution process.
- (2) If the Secretary confirms the original decision under paragraph (1)(a), the Secretary must notify the applicant for reconsideration, in writing, of the Secretary's decision.
- (3) If the Secretary decides to undertake a new resolution process in relation to an issue under paragraph (1)(b):
 - (a) the Secretary must notify the complainant and the approved provider to which the issue relates, in writing, of the Secretary's decision; and
 - (b) the Secretary must complete the new resolution process:
 - (i) in accordance with Parts 3 to 5; and
 - (ii) within 28 days of making the decision.

Division 2—Examination by ACC of Secretary's decision

24 Application for examination by ACC

- (1) A complainant may apply to the ACC for examination of a decision by the Secretary under paragraph 7(a) to take no further action on a complaint made by the complainant.
- (2) A complainant (if any), or an approved provider to which a resolution process relates, may apply to the ACC for examination of a decision by the Secretary under section 14 to end the resolution process.
- (3) However, an application cannot be made to the ACC for examination of a decision by the Secretary under section 14 to end the resolution process on the basis that the Secretary has initiated action under Part 4.4 of the Act.
- (4) A complainant (if any) may apply to the ACC for examination of a decision by the Secretary:
 - (a) under paragraph 23(1)(a) confirming a decision to take no further action or to end a resolution process; or
 - (b) under section 14 to end a new resolution process following a reconsideration by the Secretary.
- (5) An approved provider may apply to the ACC for examination of a decision by the Secretary:
 - (a) under paragraph 23(1)(a) confirming a decision to end a resolution process; or
 - (b) under section 14 to end a new resolution process following a reconsideration by the Secretary.
- (6) An approved provider may apply to the ACC for examination of a decision by the Secretary under section 14 to end a new resolution process if:
 - (a) the resolution process was undertaken as a result of a direction by the ACC under paragraph 26(2)(c); and
 - (b) the Secretary gave directions under section 15 to the approved provider as part of the new resolution process that were not given as part of the original resolution process.
- (7) However, an approved provider must not apply under subsection (6) for examination of a decision to end a new resolution process in relation to an issue if the approved provider has previously applied under subsection (6) for examination of a new resolution process relating to the same issue.
- (8) An application under subsection (1), (2), (4), (5) or (6) for examination of a decision must:
 - (a) state the reasons (other than dissatisfaction with the decision) why examination is sought; and
 - (b) be made within 28 days of the applicant being notified, in writing, of the Secretary's decision.

Section 25

- (9) An application under subsection (1), (2), (4), (5) or (6) may be made orally or in writing.

25 ACC must decide whether to examine

- (1) Within 14 days of receiving an application under subsection 24(1), (2), (4), (5) or (6) to examine a decision by the Secretary, the ACC must:
- (a) decide to take no further action on the basis that subsection (2) applies; or
 - (b) decide to examine the Secretary's decision.
- (2) The ACC may decide to take no further action if:
- (a) the application for examination was not made in good faith; or
 - (b) the application relates to an issue that is, or has been, the subject of a legal proceeding; or
 - (c) the application relates to an issue that is subject to a coronial inquiry; or
 - (d) a care recipient named in the application does not wish the matter to be considered by the ACC; or
 - (e) having regard to all the circumstances, examination of the Secretary's decision is not warranted.
- (3) If the ACC decides under paragraph (1)(a) to take no further action, the ACC must notify the following persons, in writing, of the ACC's decision:
- (a) if the application under section 24 was made by the complainant—the complainant;
 - (b) if the application under section 24 was made by the approved provider—the approved provider;
 - (c) the Secretary.
- (4) If the ACC decides under paragraph (1)(b) to examine the Secretary's decision, the ACC must notify the following persons, in writing, of the ACC's decision:
- (a) the complainant;
 - (b) the approved provider;
 - (c) the Secretary.
- (5) The ACC may also notify any other person the ACC considers appropriate.

26 Examination by ACC

- (1) If the ACC decides, under paragraph 25(1)(b), to examine a decision of the Secretary, the ACC may examine the decision in whatever manner the ACC considers appropriate.
- (2) Within 60 days of the ACC deciding under paragraph 25(1)(b) to examine the Secretary's decision, the ACC must:
- (a) decide to take no further action on the basis that subsection 25(2) applies; or
 - (b) recommend that the Secretary not undertake a new resolution process; or
 - (c) direct the Secretary to undertake a new resolution process in accordance with Parts 3 to 5.

- (3) If the ACC directs, under paragraph (2)(c), the Secretary to undertake a new resolution process, the ACC may specify matters the Secretary must take into account in undertaking the new resolution process.
- (4) The ACC must notify the following persons, in writing, of the ACC's decision under subsection (2), and any matters identified under subsection (3):
 - (a) the complainant (if any);
 - (b) the approved provider to which the examination relates;
 - (c) the Secretary.
- (5) The ACC may also notify any other person the ACC considers appropriate.

27 New resolution process following ACC examination

- (1) If the ACC directs, under paragraph 26(2)(c), the Secretary to undertake a new resolution process, the Secretary must, within 46 days of receiving the direction:
 - (a) consider the matters identified by the ACC under subsection 26(3); and
 - (b) undertake and end the new resolution process in accordance with Parts 3 to 5 and this section.
- (2) The timeframe referred to in subsection (1) may be extended by a further 28 days if the Secretary notifies the complainant (if any) and the approved provider to which the new resolution process relates, before the end of the original 46 days, that the timeframe is to be extended and the reason for the extension.
- (3) If the timeframe is extended under subsection (2), the Secretary must notify the ACC that the timeframe has been extended and the reason for the extension.
- (4) The Secretary must notify the following persons, in writing, that the Secretary is undertaking a new resolution process following a direction by the ACC:
 - (a) the complainant (if any);
 - (b) the approved provider;
 - (c) the ACC.
- (5) Before deciding to end the new resolution process under section 14, the Secretary must:
 - (a) notify the ACC:
 - (i) that the Secretary is considering ending the new resolution process; and
 - (ii) of the Secretary's reasons for considering making that decision; and
 - (b) take into account any comments given to the Secretary by the ACC within 7 days of the ACC being notified under paragraph (a).
- (6) However, subsection (5) does not apply if the Secretary decides to end the resolution process in the circumstances referred to in paragraph 14(d).
- (7) The Secretary must give the ACC a copy of the feedback given under section 17.

Section 28

Division 3—Complaints to ACC about processes of Secretary or Quality Agency

28 Complaints to ACC about process

- (1) A person may make a complaint, either orally or in writing, to the ACC about:
 - (a) the Secretary's process for handling complaints under these principles; or
 - (b) the Quality Agency's process for accrediting aged care services under the *Quality Agency Principles 2013*; or
 - (c) the Quality Agency's process for conducting quality reviews of home care services under the *Quality Agency Principles 2013*.
- (2) The complaint must be made within 12 months from the date of the completion of the process that gave rise to the complaint.

29 ACC's discretion to examine complaints

- (1) Within 14 days of receiving a complaint under section 28, the ACC must:
 - (a) decide not to examine the complaint on the basis that subsection (2) or (3) applies; or
 - (b) decide to examine the complaint.
- (2) The ACC must decide not to examine a complaint if the ACC is satisfied that the complaint does not relate to a function of the ACC.
- (3) The ACC may decide not to examine a complaint if the ACC is satisfied that:
 - (a) the complaint was not made in good faith; or
 - (b) the complaint relates to an issue that is, or has been, the subject of a legal proceeding; or
 - (c) the complaint relates to an issue that is subject to a coronial inquiry; or
 - (d) the complaint was made by a person that the ACC does not consider has a sufficient interest in the issue; or
 - (e) having regard to all the circumstances, examination of the complaint is not warranted.

30 Notice of examination

- (1) As soon as practicable after making a decision under subsection 29(1) in relation to a complaint, the ACC must notify the person making the complaint, in writing, of the ACC's decision to examine or not to examine the complaint.
- (2) If the ACC decides to examine the complaint, the ACC must, as soon as practicable after making the decision, give the person or body, against whom the complaint is made, information, in writing, about the nature and substance of the complaint.

31 Examination of complaint

- (1) The ACC may examine a complaint made under section 28 in the manner that the ACC considers appropriate.

- (2) The ACC may, at any time, decide to take no further action on the basis that, having regard to all the circumstances, examination of the complaint is not warranted.

32 Notification of outcome of examination

- (1) The ACC must notify the following persons, in writing, of the outcome of the ACC's examination under section 31:
 - (a) the person who made the complaint;
 - (b) the person or body to whom the complaint relates.
- (2) The ACC may also notify any other person the ACC considers appropriate.

Part 8—Transitional provisions

33 Processes in progress under previous Complaints Principles

If, immediately before 1 July 2014, a process was in progress under a provision of the *Complaints Principles 2011* (as in force before that date), the process may be completed under the corresponding provision of these principles as if the process had been begun under these principles.

34 Expiry of this Part

This Part expires on 30 June 2016 as if it had been repealed by another legislative instrument.