

Memorandum of Understanding

between

Aged Care Complaints Commissioner

and

Australian Aged Care
Quality Agency

January 2016

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PART 1: GENERAL AGREEMENT

1.1 Introduction

This Memorandum of Understanding (MoU) has been jointly developed and endorsed by the Aged Care Complaints Commissioner (Complaints Commissioner) and the Australian Aged Care Quality Agency (Quality Agency).

This MoU comes into effect on 1 January 2016 and confirms the arrangements that exist between the Complaints Commissioner and the Quality Agency from that date. The MoU will remain in effect until a new memorandum is signed or this memorandum is terminated.

1.2 Scope and Purpose

This MoU between the Complaints Commissioner and the Quality Agency describes the way the two organisations will work together to enable engagement, information exchange, and processes which support the Complaints Commissioner and the Quality Agency to undertake their respective statutory functions effectively.

Where circumstances arise which are not covered in this MoU, an approach will be developed in consultation between the Complaints Commissioner and the Quality Agency to address these issues.

1.3 Structure

The MoU consists of *Part 1: General Agreement*, which includes the objectives of the MoU, the principles that govern its operation and an overview of the roles and responsibilities of the parties. The MoU also contains *Part 2: Engagement, Referral and Information Exchange*, setting out specific requirements as relevant.

1.4 Roles and Responsibilities

The Quality Agency and the Complaints Commissioner recognise that they each have separate responsibilities as set out in the *Australian Aged Care Quality Agency Act 2013* (Quality Agency Act), the *Quality Agency Principles 2013* (Quality Agency Principles), the *Aged Care Act 1997* (the Act), the *Complaints Principles 2015* and the other Principles made under the Act, as well as under the *Australian Aged Care Quality Agency (Other Functions) Specification 2014* (the Specification) and that each is accountable for its decisions.

Both the Complaints Commissioner and the Quality Agency have responsibilities that ensure care recipients receive a high quality of care and services by Commonwealth subsidised aged care services under the Act or under contractual arrangements.

1.5 Objectives and Guiding Principles

The key objectives of this MoU are to:

- i) Facilitate information exchange, and establish processes, which support the Complaints Commissioner and the Quality Agency to undertake their respective statutory functions effectively;
- ii) Support regular engagement and liaison between the Complaints Commissioner and the Quality Agency at appropriate levels;

- iii) Provide for a co-ordinated approach where required, including the response to an event or incident of a scale or severity that necessarily involves both organisations.

The MoU is underpinned by a joint commitment to the following guiding principles:

- i) To respect that the exchange of information between the two organisations occurs in the context of respective legislation and statutory independence.
- ii) To foster early and constructive resolution of issues and differences.
- iii) To support a consistent approach nationally in the processes between the two organisations, and avoid unnecessary duplication and red tape.
- iv) To encourage ongoing learning, and continuous improvement in these processes.

1.6 Variation or review of the MoU

The MoU will be reviewed annually or as a result of substantial policy, and/or legislative changes that impact the relationship between the Complaints Commissioner and the Quality Agency.

Minor amendments can be approved by the Assistant Commissioner, Governance Education and Strategy of the Complaints Commissioner and the Executive Director, Operations, of the Quality Agency. Minor amendments will be documented in a letter of variation and agreed in writing by the Complaints Commissioner and the Quality Agency.

1.7 Issues Resolution

Early and constructive resolution of issues is expected between operational staff with support from their State Directors. If this is not possible, the matter will be escalated to the National Manager, Complaints Operations and the Executive Director, Operations at the Quality Agency.

1.8 Key Contacts

Key contacts are listed at Attachment A.

PART 2: ENGAGEMENT, REFERRALS AND INFORMATION EXCHANGE

2.1 Engagement

A national approach will be taken to engagement and communication between the Complaints Commissioner and the Quality Agency. Communication between the bodies will occur:

- i) at a strategic level on at least a quarterly basis, to discuss areas of mutual interest, exchange information of interest to both organisations and report on trends and emerging issues, in line with mutually agreed terms of reference, and;
- ii) at an operational level on a case-by-case basis, in line with agreed processes.

2.2 Operational communications/meetings

Meetings/teleconferences between the Complaints Commissioner and Quality Agency will be held at the operational level on a case-by-case basis to discuss matters which may include, but are not limited to:

- services subject to a referral from the Complaints Commissioner to the Quality Agency;
- operational considerations such as scheduling of visits to aged care services (see 2.3);
- approved providers (administered under the Act) that have been given or may be given a Notice of Intention to Issue Directions (NIID) or directions notice, and;
- aged care services and/or approved providers with systemic or multiple issues.

Operational engagement will typically occur between the relevant Director, Complaints Commissioner and the relevant State Director of the Quality Agency.

2.3 Scheduling Visits

In order to minimise disruption to aged care services and care recipients, the Complaints Commissioner and the Quality Agency will take reasonable steps at a case level to avoid attending a service at the same time.

2.4 Co-ordinated response to significant incident

In the event of a significant incident that is of a scale or severity that would necessarily involve both organisations' immediate action, the National Manager, Complaints Operations and the Executive Director Operations at the Quality Agency will agree on a process which supports the Complaints Commissioner and the Quality Agency to undertake their respective statutory functions effectively.

2.5 Referrals

2.5.1 Referral of information from the Complaints Commissioner to the Quality Agency

The Complaints Commissioner may refer information to the Quality Agency which may include, but is not limited to, information or findings from complaints or investigations which indicate systemic issues that may impact the delivery of care and services in accordance with the Accreditation Standards, Home Care Standards, the NATSIFACP Quality Framework or the grant agreement.

A systemic issue is one that indicates a breakdown of processes or practices that affects, or potentially affects, a number of care recipients, or a failure that has been ongoing over a period of time. It includes any process or practice that the Complaints Commissioner is not confident will be

resolved and/or prevented for all affected care recipients, even though the specific issues may be resolved for an individual complainant.

Such information or findings will be provided by the Complaints Commissioner to help:

- ensure that systemic issues that may impact on the health, safety, or wellbeing of residents or care recipients are identified and remedied as soon as possible;
- inform the Quality Agency's risk assessment activities, and;
- inform the Quality Agency's monitoring activity.

On receipt of a referral from the Complaints Commissioner, the Quality Agency will consider the information received, along with any other relevant information that the Quality Agency may hold in respect of that residential aged care or home care service to decide on the action required.

2.5.2 Types of referral

There are 3 types of referrals to the Quality Agency from the Complaints Commissioner. The referral types indicate the Commissioner's view on the seriousness of issues that may impact the delivery of care and services in accordance with the Accreditation Standards, Home Care Standards, the NATSIFACP Quality Framework or the grant agreement.

The 3 referral types are:

Type 1: *Relevant issue/concern* – to provide information to the Quality Agency that may be considered in case management, risk assessment, planning an auditor quality review, and/or prioritising next assessment contacts.

Type 2: *Significant issues/concerns* – to alert the Quality Agency to significant issues/concerns about a service. A type 2 referral indicates that the Complaints Commissioner considers there is a need for action to be undertaken by the Quality Agency, outside the routine schedule, including a possible visit to the service within two weeks.

Type 3: *Major issues/concerns* – to request that the Quality Agency considers whether to conduct an urgent review audit or quality review. A type 3 referral indicates that the Complaints Commissioner considers there is a need for urgent action where an identified or suspected failure appears to be so extensive as to consider a comprehensive assessment of the aged care service performance against all of the relevant standards.

2.5.3 Advising of referral to other organisations

Where a referral of information is made to the Quality Agency and the Complaints Commissioner also refers information to another organisation, such as the police or professional registration bodies, the Complaints Commissioner will inform the Quality Agency as soon as practicable or in any event within five working days.

The Complaints Commissioner will always inform the Department of Health when a Type 3 referral is made to the Quality Agency

2.5.4 Process for making a referral

Referrals will be sent from the relevant Director of the Complaints Commissioner to the relevant Quality Agency State Director via email. When sending a Type 3 referral regarding an approved provider administered under the Act, the relevant Complaints Commissioner Director making the referral will contact the relevant State Director or Assessment Manager by telephone to advise them of the referral.

2.5.5 Format and content of referral

Referrals from the Complaints Commissioner to the Quality Agency will include sufficient detail to allow the Quality Agency to form a view about the nature and severity of the issues identified and will be accompanied by all relevant information collected by the Complaints Commissioner. This may include but is not limited to:

- identifying the type of referral (Type 1, Type 2, Type 3);
- how the information was obtained;
- a summary of current information on the residential aged care or home care service including details of any notices related to an intention to or issuing of directions that may have been issued in the case of an approved provider administered under the Act;
- advice on what, if any, information has been given to the service provider regarding the content of the referral, and;
- any other information that may assist the Quality Agency to decide on timing or type of action.

2.5.6 Complaints Commissioner action following a referral to the Quality Agency

The Complaints Commissioner will continue to work with the individual complainant to resolve their concerns following a referral to the Quality Agency, if appropriate.

The Complaints Commissioner will provide any relevant information on the outcome of the Complaints Commissioner's process to the Quality Agency.

2.5.7 Quality Agency consideration of referrals

On receipt of a referral from the Complaints Commissioner, the Quality Agency will consider the information received, along with any other relevant information that the Quality Agency may hold in respect of that residential aged care or home care service.

2.5.8 Information provided to Complaints Commissioner following a referral

Following a referral from the Complaints Commissioner, the Quality Agency will:

- On a case by case basis advise the Complaints Commissioner in relation to action and /or outcomes for Type 1 referrals;
- Advise the Complaints Commissioner of any action that the Quality Agency will take in relation to referral types 2 and 3 as soon as practicable; and,
- Advise the Complaints Commissioner of the outcomes of any action taken by the Quality Agency in relation to referral types 2 and 3 as soon as practicable.

2.6 Provision of information

2.6.1 Exchange of information on trends and emerging issues

The quarterly meeting between the Complaints Commissioner and Quality Agency will be an opportunity to exchange strategic information of interest to both organisations and report on trends and emerging issues.

2.6.2 Provision of information about residential aged care, home care, CHSP and NATSIFACP services

If considered necessary in relation to the functions of either the body, the Complaints Commissioner and the Quality Agency have the legislative authority to request information from the other party. Where such information is requested, the Complaints Commissioner and the Quality Agency undertake to provide such requested information as soon as practicable.

2.6.3 Disclosure of Protected Information

'Protected information' is defined in section 3 of the Quality Agency Act and section 86-1 of the Act. It is an offence for officers of the Complaints Commissioner and the Quality Agency to disclose protected information except in accordance with Part 7 of the Quality Agency Act and Part 6.2 of the Act respectively. Both Acts allow disclosure of such information between the Complaints Commissioner and the Quality Agency where this is in accordance with the functions of the body concerned.

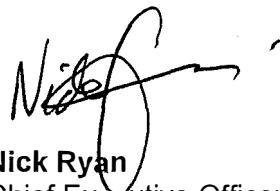
The release of protected information by either the Complaints Commissioner or the Quality Agency will be managed in accordance with relevant legislation section (namely the *Aged Care Act 1997* Part 6.2 s 86-3(2), the *Information Principles 2014* Part 3 s.8(a) and the *Australian Aged Care Quality Agency Act 2013*, Part 7 s.48 2(a) and s49 (h)). Where protected information is disclosed by either organisation the appropriate delegate in the organisation will authorise the information being released.

2.7 Signatories



Rae Lamb
Aged Care Complaints Commissioner

Date 22.12.15,



Nick Ryan
Chief Executive Officer
Australian Aged Care Quality Agency

Date 22.12.15