

Memorandum of Understanding

between

Aged Care Complaints Commissioner

and

Australian Aged Care
Quality Agency

June 2018

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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).

The Complaints Commissioner and the Quality Agency, along with the Commonwealth Department of Health, share responsibility for the quality and safety of aged care services that are funded by the Commonwealth, including residential care, care at home and flexible care. The three agencies have separate responsibilities and can share information with each other in order to carry out their duties.

On 18 April 2018, the Minister for Aged Care, the Hon Ken Wyatt AM, MP Minister Wyatt announced the establishment of a new independent Aged Care Quality and Safety Commission (Commission) from 1 January 2019; that will bring together the functions of the Complaints Commissioner and the Quality Agency. The two agencies are committed to working together to deliver on the government's intent for a single standalone regulator of quality and safety in aged care. This MOU will support regular engagement and liaison between the Complaints Commissioner and the Quality Agency at appropriate levels during the transition to the new Commission.

This MoU comes into effect on 1 July 2018 and describes the arrangements that exist between the Complaints Commissioner and the Quality Agency from that date. It replaces the MOU dated 1 January 2016 and will remain in effect until the establishment of the new Commission.

1.2 Scope and Purpose

This MoU between the Complaints Commissioner and the Quality Agency describes the way the two agencies 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 either separately or collaboratively in an effective and efficient way and activities to support transition to a new Aged Care Quality and Safety Commission.

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 Complaints Commissioner is a statutory office holder under the *Aged Care Act 1997* (the Act). The Commissioner and her team can examine complaints and act on information received about Australian Government funded aged care providers. The Complaints Commissioner has a number of options for resolving complaints as set out in the *Complaints Principles 2015*. This includes making referrals to other agencies. The Complaints Commissioner also has a responsibility for

educating service providers and the public about complaints management and matters arising from complaints.

The Quality Agency is an independent statutory agency established under the *Australian Aged Care Quality Agency Act 2013*. The Quality Agency accredits services and conducts quality reviews in accordance with the Accreditation Standards, Home Care Standards, the National Aboriginal and Torres Strait Islander Flexible Aged Care Program (NATSIFACP) Quality Program or the grant agreement (referred to in this agreement collectively as 'the standards'). **The Quality Agency also promotes high quality care and innovation through providing training and information to service providers and the public.**

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.
- iv) Support collaboration on strategic initiatives and education activities.
- v) Guide activities undertaken to support transition to the Aged Care Quality and Safety Commission on 1 January 2019.

There is 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 collaborate on matters of common interest.
- iii) To foster early and constructive resolution of issues and differences.
- iv) To support a consistent approach nationally in the processes between the two organisations, and avoid unnecessary duplication and red tape.
- v) 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 Regional or 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 as an Appendix which is not for publication.

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, at least quarterly, 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 at least monthly and 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 Directions notice;
- aged care services and/or approved providers with systemic or multiple issues, and
- services that are not meeting the standards for complaints management.

Operational engagement will typically occur between the relevant Complaints Commissioner Regional Director 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 liaise with each other to avoid attending a service at the same time.

2.4 Co-ordinated response to significant incidents

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, investigations or reviews 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 gives immediate consideration to assessing an aged care service's performance against the relevant standards because the Complaints Commissioner considers there is a need for urgent action.

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 Regional Operations office of the Complaints Commissioner to the Quality Agency State office via email with a copy to the Quality Agency's national referrals inbox. Notification of a Type 3 referral will occur via the National Operations Manager Complaints Commissioner calling the Executive Director Operations Quality Agency. The written referral will follow.

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 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 the Quality Agency with any additional information or findings relevant to the referral that may assist the Quality Agency to assess the service's performance against the standards.

2.5.7 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.

2.5.8 Referrals from the Quality Agency to the Complaints Commissioner

The Quality Agency may refer information to the Complaints Commissioner which will include, but is not limited to:

- Information about an individual who may wish to raise concerns about the service with the Complaints Commissioner.
- Information about a service's performance against the standards in relation to complaints management, which may assist the Complaints Commissioner with risk assessment, case progression or targeting of education activities.

The Quality Agency may also directly refer an individual to the Complaints Commissioner by providing information on how they can lodge a complaint, or by direct telephone transfer to the Complaints Commissioner's complaints intake line.

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.

2.7 Education

The Complaints Commissioner and the Quality Agency each have responsibilities in relation to education of service providers and the community.

The Complaints Commissioner has a responsibility to educate service providers and the public in relation to complaints management and matters arising from complaints. The Quality Agency provides training and information to approved providers and it promotes high quality care and innovation in quality improvement.

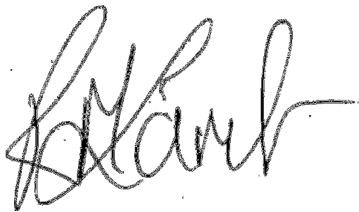
The two organisations will identify opportunities to work collaboratively in providing these functions, to reduce duplication and make best use of each organisation's expertise.

2.8 Disclosure of Protected Information

Section 95A-1 of the Act provides that the Complaints Commissioner and the Quality Agency may each request that the other provides information that is relevant to their respective functions, and that available information must be provided when requested.

Information collected by the Complaints Commissioner or the Quality Agency is defined as 'protected information' under section 86-1 of the Act and section 3 of the Quality Agency Act. Protected information can only be released in accordance with these provisions.

2.9 Signatories



Rae Lamb
Aged Care Complaints Commissioner

Date 13 June 2018



Nick Ryan
Chief Executive Officer
Australian Aged Care Quality Agency

Date 14 June 2018