



Aged Care Amendment (Independent Complaints Arrangements) Act 2015

No. 131, 2015

An Act to amend the *Aged Care Act 1997*, and for related purposes

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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No. 131, 2015

An Act to amend the *Aged Care Act 1997*, and for related purposes

[Assented to 13 October 2015]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Aged Care Amendment (Independent Complaints Arrangements) Act 2015*.

No. 131, 2015 Aged Care Amendment (Independent Complaints Arrangements) Act 1
2015

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	1 January 2016 (F2015L01792)

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Part 1—Amendments

Aged Care Act 1997

1 Paragraph 56-4(1)(d)

Repeal the paragraph, substitute:

- (d) allow *authorised complaints officers to have such access to the service as is specified in the User Rights Principles, for the purpose of those officers investigating and assisting in the resolution of complaints; and

2 After paragraph 63-1(1)(b)

Insert:

- (ba) to cooperate with any person who is exercising powers under Division 94B in relation to the service;

3 Section 84-1

Omit:

- | |
|---|
| (e) the management and resolution of complaints and other concerns about the provision of aged care services (see Part 6.4A); |
|---|

substitute:

- | |
|---|
| (e) the management and resolution of complaints and other concerns about the provision of aged care services, and powers of authorised complaints officers (see Part 6.4A); |
|---|

4 Section 84-1

Omit:

- | |
|--|
| (g) the Aged Care Commissioner, whose functions include examining certain matters relating to the management |
|--|

and resolution of complaints and other concerns about the provision of aged care services (see Part 6.6);

substitute:

- (g) the Aged Care Complaints Commissioner, whose functions include those relating to complaints and other concerns conferred on the Commissioner by the Complaints Principles (see Part 6.6);

5 Section 86-3

Omit “The Secretary”, substitute “(1) The Secretary”.

6 At the end of section 86-3

Add:

- (2) The *Aged Care Complaints Commissioner may disclose *protected information:
- (a) if the Commissioner certifies, in writing, that it is necessary in the public interest to do so in a particular case—to such people and for such purposes as the Commissioner determines; and
 - (b) to a person who is, in the opinion of the Commissioner, expressly or impliedly authorised by the person to whom the information relates to obtain it; and
 - (c) if the Commissioner believes, on reasonable grounds, that disclosure is necessary to prevent or lessen a serious risk to the safety, health or well-being of a care recipient—to such people as the Commissioner determines, for the purpose of preventing or lessening the risk; and
 - (d) if the Commissioner believes, on reasonable grounds, that:
 - (i) a person’s conduct breaches the standards of professional conduct of a profession of which the person is a member; and
 - (ii) the person should be reported to a body responsible for standards of conduct in the profession; to that body, for the purposes of maintaining standards of professional conduct in the profession; and

- (e) if the Commissioner believes, on reasonable grounds, that disclosure of the information is reasonably necessary for:
 - (i) enforcement of the criminal law; or
 - (ii) enforcement of a law imposing a pecuniary penalty; or
 - (iii) protection of the public revenue;to an agency whose functions include that enforcement or protection, for the purposes of that enforcement or protection; and
 - (f) to a person of a kind specified in the Information Principles, for the purposes specified in the Information Principles in relation to people of that kind.
- (3) The following are not legislative instruments:
- (a) a certification under paragraph (1)(a) or (2)(a);
 - (b) a determination under paragraph (1)(a) or (e) or (2)(a) or (c) (if the determination is in writing).

7 Section 86-5 (heading)

Repeal the heading, substitute:

86-5 Limits on use of information disclosed under section 86-3 or 86-4

8 Part 6.4A (heading)

Repeal the heading, substitute:

Part 6.4A—Complaints and authorised complaints officers

9 Before Division 94A

Insert:

Division 94AA—Introduction

94AA-1 What this Part is about

The Complaints Principles may provide a scheme for the management and resolution of complaints and other concerns about the provision of aged care services.

The Aged Care Complaints Commissioner may appoint authorised complaints officers. Those officers may enter premises with consent and exercise certain powers.

Table of Divisions

94AA	Introduction
94A	Complaints Principles
94B	Authorised complaints officers

10 After paragraph 94A-1(2)(f)

Insert:

- ; (g) authorising the provision of information relating to complaints and concerns to the Secretary or to the *CEO of the Quality Agency.

11 At the end of Part 6.4A

Add:

Division 94B—Authorised complaints officers

94B-1 Authorised complaints officers

Appointment of authorised complaints officers

- (1) An *authorised complaints officer* is an officer of the Department appointed by the *Aged Care Complaints Commissioner, by written instrument, to be an authorised complaints officer for the purposes of this Division.

Identity cards to be issued

- (2) The *Aged Care Complaints Commissioner must cause an identity card to be issued to each person appointed as an *authorised complaints officer under subsection (1).
- (3) The identity card must specify the name and appointment of the person.
- (4) A recent photograph of the person must be attached to the card.

Return of identity cards

- (5) A person appointed as an *authorised complaints officer under subsection (1) must, upon ceasing to be an authorised complaints officer, return to the *Aged Care Complaints Commissioner the identity card issued to the person under subsection (2).

Penalty: 1 penalty unit.

94B-2 Meaning of *complaints powers*

- (1) The following powers are ***complaints powers***:
 - (a) any of the following in relation to premises:
 - (i) to search the premises;
 - (ii) to take photographs (including a video recording), or make sketches, of the premises or any substance or thing at the premises;
 - (iii) to inspect, examine and take samples of, any substance or thing on or in the premises;
 - (iv) to inspect any document or record kept at the premises;
 - (v) to take extracts from, or make copies of, any document or record at the premises;
 - (vi) to take onto the premises any equipment or material reasonably necessary for the purpose of exercising a power under subparagraph (i), (ii), (iii), (iv) or (v);
 - (b) in relation to a thing that may afford evidence of the commission of an offence against this Act, the powers in subsection (2);
 - (c) in relation to documents or records at premises, the powers in subsections (3) and (4).
-

- (2) If an *authorised complaints officer, during a search of premises, believes on reasonable grounds that there is at the premises a thing that may afford evidence of the commission of an offence against this Act, the **complaints powers** include:
- (a) informing the Secretary or an *authorised officer of that belief, and the grounds for that belief; and
 - (b) securing the thing pending the obtaining of a warrant to seize it.

Note: For the granting of warrants authorising seizure, see sections 92-3 and 92-4.

- (3) The **complaints powers** include operating equipment at the premises to see whether:
- (a) the equipment; or
 - (b) a disk, tape or other storage device that:
 - (i) is at the premises; and
 - (ii) can be used with or is associated with the equipment;
- contains information that is relevant to assessing, in respect of an approved provider:
- (c) whether responsibilities under Chapter 4 have been complied with; or
 - (d) whether records have been kept as required under Part 6.3.
- (4) If an *authorised complaints officer, after operating equipment at the premises, finds that the equipment, or a disk, tape or other storage device at the premises, contains information of that kind, the **complaints powers** include:
- (a) operating facilities at the premises to put the information in documentary form and copying the documents so produced; or
 - (b) if the information can be transferred to a disk, tape or other storage device that:
 - (i) is brought to the premises; or
 - (ii) is at the premises and the use of which for the purpose has been agreed in writing by the occupier of the premises;
- operating the equipment or other facilities to copy the information to the storage device and removing the storage device from the premises.
-

94B-3 Power to enter premises with occupier's consent to exercise complaints powers

- (1) Subject to subsections (2) to (5), an *authorised complaints officer may:
 - (a) enter:
 - (i) the premises of an *aged care service at any time of the day or night; or
 - (ii) any other premises (including residential premises) at any time between 9 am and 5 pm on a business day; and
 - (b) exercise *complaints powers.
- (2) An *authorised complaints officer must not act as provided for under subsection (1) unless the officer does so:
 - (a) in relation to a matter that is connected with the functions of the *Aged Care Complaints Commissioner; and
 - (b) to the extent reasonably necessary for the purpose of:
 - (i) assessing whether an approved provider is complying with its responsibilities under Chapter 4; or
 - (ii) assessing whether records have been kept as required under Part 6.3.
- (3) An *authorised complaints officer must not enter premises under subsection (1) unless the occupier of the premises has consented to the entry. An occupier of premises may withdraw consent at any time. The officer must leave the premises if the occupier asks the authorised officer to do so.
- (4) Before obtaining the consent of an occupier, the *authorised complaints officer must inform the occupier that he or she may refuse to give consent, or withdraw that consent at any time. An entry by an authorised complaints officer by virtue of the consent of an occupier is not lawful unless the person voluntarily consented to the entry.

Note: Approved providers have a responsibility under paragraph 63-1(1)(ba) to cooperate with a person exercising powers under this Division. An approved provider who:

- (a) refuses to consent to the entry of an *authorised complaints officer; or
- (b) withdraws consent for an authorised complaints officer to enter premises;

may not be complying with that responsibility. Failure to comply with a responsibility can result in a sanction being imposed under Part 4.4.

- (5) An *authorised complaints officer must not enter premises under subsection (1) or do a thing referred to in section 94B-2 if:
- (a) the occupier of the premises has asked the officer to produce his or her identity card for inspection by the occupier; and
 - (b) the officer fails to do so.

94B-4 Power to ask people to answer questions etc.

- (1) An *authorised complaints officer who has entered premises under section 94B-3 may ask a person at the premises:
- (a) to answer any questions put by the officer; and
 - (b) to produce any documents or records requested by the officer.

- (2) A person is not obliged to comply with a request under subsection (1).

Note: Approved providers have a responsibility under paragraph 63-1(1)(ba) to cooperate with a person exercising powers under this Division. An approved provider who does not comply with a request under subsection (1) may not be complying with that responsibility. Failure to comply with a responsibility can result in a sanction being imposed under Part 4.4.

- (3) The powers of an *authorised complaints officer under this section are to be exercised subject to the requirements of Australian Privacy Principles 3 and 5.

94B-5 Occupier of premises to assist authorised complaints officers

- (1) An *authorised complaints officer may ask the occupier of any premises entered under section 94B-3 to provide reasonable assistance to the officer, at any time while the officer is entitled to remain on the premises, for the purpose of the exercise of the officer's powers under that section.

- (2) An occupier may refuse to provide assistance as requested under subsection (1).

Note: Approved providers have a responsibility under paragraph 63-1(1)(ba) to cooperate with a person exercising powers under this Division. An

approved provider who does not assist an * authorised complaints officer when requested under subsection (1) may not be complying with that responsibility. Failure to comply with a responsibility can result in a sanction being imposed under Part 4.4.

12 Part 6.6 (heading)

Repeal the heading, substitute:

Part 6.6—Aged Care Complaints Commissioner

13 Division 95A (heading)

Repeal the heading, substitute:

Division 95A—Aged Care Complaints Commissioner

14 Section 95A-1 (heading)

Repeal the heading, substitute:

95A-1 Aged Care Complaints Commissioner

15 Subsection 95A-1(1)

After “Care”, insert “Complaints”.

Note: This item alters the name of an office. Section 25B of the *Acts Interpretation Act 1901* provides that the office continues in existence under the new name so that its identity is not affected.

16 Subsection 95A-1(2)

Repeal the subsection, substitute:

Functions of Aged Care Complaints Commissioner

- (2) The functions of the *Aged Care Complaints Commissioner are as follows:
- (a) the functions relating to complaints and other concerns conferred on the Commissioner by the Complaints Principles (see section 94A-1);
 - (b) to educate people about, and develop resources relating to, best practice in the handling of:

- (i) complaints that relate to responsibilities of approved providers under this Act and the Principles made under section 96-1; and
- (ii) matters arising from such complaints;
- (c) any other functions conferred on the Commissioner by the Complaints Principles for the purpose of this paragraph;
- (d) any other functions conferred on the Commissioner by this Act;
- (e) to advise the Minister, at the Minister's request, about matters relating to any of paragraphs (a), (b), (c) and (d).

17 Before subsection 95A-1(3)

Insert:

Provision of information to Aged Care Complaints Commissioner

18 Subsections 95A-1(3) and (4)

After "Care", insert "Complaints".

19 At the end of section 95A-1

Add:

Provision of information by Aged Care Complaints Commissioner

- (5) If the Secretary requests the *Aged Care Complaints Commissioner to give the Secretary information that the Secretary requires for the purposes of the Secretary's functions relating to aged care, the Commissioner must, if the information is available to the Commissioner, give the information to the Secretary.
- (6) If the *CEO of the Quality Agency requests the *Aged Care Complaints Commissioner to give the CEO information that the CEO requires for the purposes of the CEO's functions, the Commissioner must, if the information is available to the Commissioner, give the information to the CEO.

20 Sections 95A-2, 95A-3, 95A-4, 95A-5, 95A-6, 95A-7, 95A-8, 95A-9 and 95A-10

After "Care" (wherever occurring), insert "Complaints".

21 Section 95A-11 (heading)

Repeal the heading, substitute:

95A-11 Delegation of Aged Care Complaints Commissioner's functions

22 Section 95A-11

After "Care" (wherever occurring), insert "Complaints".

23 Section 95A-11A (heading)

Repeal the heading, substitute:

95A-11A Aged Care Complaints Commissioner may give report to Minister at any time

24 Section 95A-11A

After "Care", insert "Complaints".

25 Subsection 95A-12(1)

After "Care" (wherever occurring), insert "Complaints".

26 Subsection 95A-12(2)

Repeal the subsection, substitute:

- (2) The report must include the information that is required by the Commissioner Principles to be included in the report.

27 Subsection 96-2(2) (heading)

Repeal the heading, substitute:

Aged Care Complaints Commissioner

28 Subsection 96-2(2)

After "Care", insert "Complaints".

29 Clause 1 of Schedule 1 (definition of *Aged Care Commissioner*)

Repeal the definition.

30 Clause 1 of Schedule 1

Insert:

Aged Care Complaints Commissioner means the Aged Care Complaints Commissioner holding office under Part 6.6.

authorised complaints officer has the meaning given by subsection 94B-1(1).

complaints powers has the meaning given by section 94B-2.

Australian Aged Care Quality Agency Act 2013

31 Section 3 (definition of Aged Care Commissioner)

Repeal the definition.

32 Section 3

Insert:

Aged Care Complaints Commissioner means the Aged Care Complaints Commissioner holding office under Part 6.6 of the *Aged Care Act 1997*.

33 Paragraph 49(h)

After “Care” (wherever occurring), insert “Complaints”.

Part 2—Transitional provisions

34 Complaints Principles may deal with transitional matters

In addition to the matters covered by section 96-1 of the *Aged Care Act 1997*, Complaints Principles made by the Minister under that section may deal with matters of a transitional, application or saving nature relating to the amendments made by this Act.

*[Minister's second reading speech made in—
Senate on 13 August 2015
House of Representatives on 15 September 2015]*

(130/15)

*No. 131, 2015 Aged Care Amendment (Independent Complaints Arrangements) Act 15
2015*