

EXPLANATORY STATEMENT

Issued by the authority of the Assistant Minister for Social Services

Aged Care Act 1997

Complaints Principles 2014

The *Aged Care Act 1997* (the Act) provides for the regulation and funding of aged care services. Persons who are approved under the Act to provide aged care services (approved providers) can be eligible to receive subsidy payments in respect of the care they provide to approved care recipients.

Section 96-1 of the Act allows the Minister to make Principles providing for various matters required or permitted by a Part or section of the Act.

Among the Principles made under section 96-1 is the *Complaints Principles 2014* (the Principles).

The purpose of the *Complaints Principles 2014* is to describe a scheme for the management and resolution of complaints and other concerns about aged care services provided by approved providers. The Principles also describe the functions of the Aged Care Commissioner in relation to complaints considered by the Secretary and also complaints about the Australian Aged Care Quality Agency's process for accrediting aged care services, or conducting quality reviews of home care services.

From 1 July 2014, these Principles will replace the existing *Complaints Principles 2011*. The main difference between the principles is that the new Principles have been renumbered and some provisions have been re-drafted to reflect contemporary drafting practice (and for consistency with other aged care principles). Some minor technical changes have also been made to clarify the operation of existing provisions and ensure consistent use of language throughout the Principles. No policy changes have been made to the Principles.

Consultation

In April 2012, the former Government launched a major program of aged care reforms. The reform agenda was developed in close consultation with the aged care sector, including consumers, industry and professional bodies.

As part of the consultation on the proposed changes to the Act, and to delegated legislation, arising from the reforms, the former Government communicated its intention to examine the delegated legislation and, where possible, simplify the delegated legislation.

This intent was communicated in November 2012, with the public release of a paper providing an overview of the proposed legislative changes. A video presentation detailing the proposed reforms was also made available online to assist members of the public to understand these changes.

During late 2012 and in the first half of 2013, briefing sessions were held across Australia to provide information and to explain, in detail, the proposed legislative changes included in the package of Bills introduced into Parliament on 13 March 2013. As part of these consultations, the intention to make related changes to delegated legislation was again discussed. For those interested members of the public unable to attend the briefings, the presentation, supporting handouts, a detailed Question and Answer document and an information video were made available online.

In early 2014, consultation was undertaken on those aged care principles that reflected significant policy changes. As the *Complaints Principles 2014* do not substantially differ from the *Complaints Principles 2011*, an exposure draft of these Principles was not released for public comment.

Regulation Impact Statement

The Office of Best Practice Regulation has advised that no RIS is required (OBPR ID 16682).

Commencement

The Principles commence on 1 July 2014.

Details of the Complaints Principles 2014

Part 1 – Preliminary

Section 1 – Name of principles

This section states that the name of the principles is the *Complaints Principles 2014* (the Principles).

Section 2 – Commencement

This section states that the Principles commence on 1 July 2014.

Section 3 – Authority

This section provides that the authority for making the Principles is section 96-1 of the *Aged Care Act 1997* (the Act).

Section 4 – Definitions

This section defines certain terms used in the Principles.

ACC refers to the Aged Care Commissioner. The Aged Care Commissioner is an independent person, appointed by the Minister. The main function of the ACC is to examine decisions made by the Secretary in relation to complaints about providers of aged care services. The ACC can also examine the Secretary's processes for handling complaints and the Australian Aged Care Quality Agency's process for accrediting aged care services, or conducting quality reviews of home care services. The full details of the functions carried out by the ACC are included in section 95A-1 of the Act and in Part 7 of these Principles.

Act means the *Aged Care Act 1997*.

A *complainant* is a person who makes a complaint to the Secretary (in accordance with the Principles) about an issue, or issues, involving an approved provider's responsibilities under the Act or the Principles.

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

resolution process means the process taken by the Secretary under section 10 in an attempt to resolve an issue that has been raised by a complaint or otherwise comes to the attention of the Secretary. Such processes include, for example, conciliation, mediation, approved provider resolution and investigation.

Section 5 – Purpose of these principles

This section states that the purpose of these principles is to provide a scheme for the management and resolution of complaints and other concerns about the aged care services provided by approved providers.

These principles also make provision in relation to the ACC's function to examine:

- decisions made under the Principles; and
- complaints about the processes for handling matters under the Principles; and
- 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

Section 6 – Making a complaint

Section 6 describes how a person may make a complaint to the Secretary raising an issue or issues about an approved provider's responsibilities under the Act or the principles. A complaint can be made either orally, or in writing, and it can be made anonymously.

The person who makes the complaint (the complainant) may ask the Secretary to keep some of the information confidential. For example, a request can be made for confidentiality in relation to:

- the identity of the complainant;
- the identity of the person who is the subject of the complaint (for example, the care recipient); and
- any other details included in the complaint.

Section 7 – Dealing with a complaint

This section describes the actions the Secretary can take when a complaint is received. In summary, the Secretary must do one of three things:

- decide to take no further action on an issue raised by the complaint on the basis that section 8 of the Principles applies. Section 8 provides a list of reasons why the Secretary might decide to take no further action; or
- quickly resolve the issue raised in the complaint, to the satisfaction of the complainant, by giving assistance and advice to the complainant or approved provider. Examples of this would be:
 - if a complainant contacted the Secretary seeking more information about his/her rights under the Act, in relation to the actions of an approved provider. The Secretary may be able to help the complainant clarify his or her issues and better understand his/her rights and responsibilities. As a result of the conversation, the person may feel comfortable raising the complaint directly with the approved provider and attempting to independently arrive at a resolution. In this example, the Secretary would not need to be involved in undertaking any further resolution process because the Secretary has assisted the complainant to address the issue directly;
 - the Secretary may be able to arrive at a resolution by making contact with the approved provider and ascertaining exactly what the problem is and how it can be resolved as quickly as possible. An example of this would be if the Secretary received a complaint that items of clothing had been damaged in the laundry. The Secretary might make a phone call to the approved provider and learn that a staff member had accidentally mixed coloured clothes with

whites (on the day to which the complaint relates). The approved provider may have already set up a system to avoid damage to laundry in the future and have offered to replace the damaged item. In this instance, if the complainant is satisfied that the complaint has been properly addressed, there would be no need for further involvement of the Secretary in the case; or

- if a care recipient (complainant) calls the Secretary and advises that, after being in hospital for a few weeks, the aged care service that previously accommodated the care recipient is refusing to let the care recipient return to the service. In this circumstance, the Secretary may contact the approved provider and explain the approved provider's obligations under the Act in relation to security of tenure. With this renewed understanding, the approved provider might then agree to re-admit the care recipient. In this case, the issue has been quickly resolved to the satisfaction of the complainant (care recipient) and it is not necessary for the Secretary to undertake any further resolution process.
- undertake a resolution process. This is the more formal process that is described in Part 3 of the Principles. This process would be adopted if the Secretary cannot otherwise quickly resolve the issue to the satisfaction of the complainant and it is appropriate to continue to progress the complaint (that is, there are no grounds on which the Secretary considers that the complaint should not be further actioned).

It is important to note that if the Secretary quickly resolves an issue to the satisfaction of the complainant there will be no formal feedback or opportunity for examination by the ACC. This is because the issue has been resolved quickly, a positive outcome has been achieved (or the complainant has otherwise agreed that they wish to pursue the matter themselves) and the complainant does not need the Secretary to be further involved. Essentially it is the decision of the complainant, as communicated to the Secretary, which stops the process.

Section 8 – No further action on an issue

Section 8 describes the circumstances in which the Secretary may decide to take no further action in relation to a complaint.

For example, no further action would be taken by the Secretary if any of the following circumstances applied in relation to a complaint:

- the issue was not raised in good faith;
- the issue has been, or is, the subject of a legal proceeding;
- the issue has been dealt with under these Principles, the *Complaints Principles 2011* or the *Investigation Principles 2007*;
- the issue relates to an event that occurred more than 1 year before the complaint was given to the Secretary and is not ongoing;
- the issue is subject to a coronial inquiry;
- a care recipient named in the complaint does not wish the issue to be considered by the Secretary;
- the issue is better dealt with by another organisation; or
- having regard to all the circumstances, a resolution process in relation to the issue is not warranted.

Some examples of each of these circumstances are as follows:

- the issue was not raised in good faith. An example of this might be where a lawyer for one approved provider makes a complaint about another approved provider purely for the purposes of uncovering information that might be useful in future, private legal proceedings between the two approved providers. In this case, the Secretary may decide that the complaint was not made in good faith because it was made for the purpose of civil legal action rather than in the interests of identifying a concern about a care recipient which the Secretary may be able to assist in resolving;
- the issue that has been, or is, the subject of a legal proceeding. If a complaint relates to, for example, wound management by the approved provider, and this very same issue is subject to legal proceedings, the Secretary may decide not to undertake a resolution process in relation to the complaint. The reason for this would be that the Secretary's process may interfere with the legal proceeding;
- the issue has been dealt with. For example, a care recipient may make a complaint that they were overcharged in relation to the payment to the approved provider of an accommodation bond. The Secretary might have investigated this and found that the amount of the accommodation bond was in accordance with the aged care legislation (that is, the care recipient was not overcharged). However, the care recipient who made the complaint may not be satisfied and may raise the same issue again, two months later. In this instance, the Secretary may decide to take no further action because the complaint has already been dealt with;
- the issue relates to an event that occurred more than 1 year before the complaint was given to the Secretary and is not ongoing. For example:
 - If the issue raised by the complainant relates to air conditioning that was broken on a particular day over a year ago, the Secretary may decide that it is not warranted to apply a resolution process because it was an isolated event that occurred over a year ago and is not ongoing (for example, because the service has since replaced the air conditioning system);
 - A person may make a complaint relating to an event that occurred over a year ago in circumstances where the care recipient has subsequently died. In this case there may be very good reasons why the complaint is being made after more than a year (for example, because the family has been grieving and has not yet felt ready to make a complaint). If the issue raised was about the care recipient's wound management, and the complainant is concerned that similar problems might be recurring for other care recipients, this may be a circumstance in which the Secretary may choose not to exercise his/her discretion to take no further action and instead decide to undertake a resolution process in relation to the issue; or
- the issue is subject to a coronial inquiry. If a complaint is made to the Secretary which is closely linked to issues being considered as part of a coronial inquiry, the Secretary may decide to take no further action in relation to the complaint;
- a care recipient named in the complaint does not wish the issue to be considered by the Secretary. If a care recipient expressly asks that the Secretary not attempt to resolve a complaint that is directly related to that care recipient, the Secretary may decide to take no further action on this basis. For example, a friend may visit a care

recipient and make a complaint to the Secretary that the care recipient smelt of urine and was not having her incontinence pads changed regularly. The Secretary might raise the issue with the care recipient (or their representative) and on being advised that the Secretary is considering examining the issue the care recipient advises that they do not have any concerns regarding the management of their continence and do not wish to have their continence needs examined by the Secretary. On the basis of the express wishes of the care recipient the Secretary may exercise his/her discretion to take no further action in relation to the complaint;

- the issue is better dealt with by another organisation. For example, the Australian Health Practitioner Regulation Agency;
- having regard to all the circumstances, a resolution process in relation to the issue is not warranted. The Secretary might utilise this provision if, for example, a complainant previously raised six issues relating to the care of a care recipient who has since passed away. The Secretary undertook a resolution process in relation to all six of these issues and did not identify any concerns regarding the approved provider's failure to meet their approved provider responsibilities in respect of the care recipient. If the complainant later raises a seventh issue which is minor, specific to the care recipient (for example, that the approved provider lost the care recipient's magazines) and for which there would be no public interest advanced in undertaking a resolution process, the Secretary may decide that a resolution process is not warranted in relation to the issue.

Part 3 – Resolution process

Section 9 – Secretary may undertake resolution process on own initiative

In some cases, the Secretary receives information about a matter involving an approved provider's responsibilities under the Act or Principles from a source other than a complainant. For example, an ambulance paramedic, a doctor or an assessor from the Australian Aged Care Quality Agency might contact the Secretary if they have concerns about something they have witnessed at an aged care service. Another example might be if the Secretary discovers worrying information about the provision of care at an aged care service from a story in the media.

If the Secretary obtains information from sources such as these, the Secretary may initiate a resolution process at his/her own motion. In other words, the Secretary may undertake a resolution process even where there is no complainant.

This section has also been expanded to ensure that the Secretary can, on his or her own motion, examine an issue that has been identified through a complaint, where this is deemed appropriate. Previously, the matters the Secretary could consider under an own motion were limited to matters other than those raised during a complaint. For example, as part of a complaint the Secretary may become aware of information which is not relevant to the complainant however indicates that an approved provider is not meeting its responsibilities under the Act. In these circumstances, the Secretary may choose to undertake a resolution process in relation to the information identified during the resolution of a complaint.

This may also occur when a care recipient to whom a complaint relates no longer wishes for the resolution process to continue. In these circumstances, the Secretary

would respect the wishes of the care recipient and end the process on this basis. Where the Secretary has ongoing concerns for the safety, health or wellbeing of the care recipient and/or other care recipients within the service however, the Secretary may initiate an own motion resolution process.

Section 10 – Resolution process

When a complaint has been made by a complainant and the Secretary is required to conduct a resolution process (or the Secretary chooses to undertake a resolution process on his/her own motion), there are a number of options available to the Secretary for dealing with the issue identified.

Section 10 enables the Secretary to adopt one or more of the following approaches to try to resolve the issue:

- request the approved provider to examine and attempt to resolve the complaint and report back to the Secretary;
- request that the complainant (if any), the approved provider and any other person participate in a conciliation process;
- undertake an investigation of the issue; or
- refer the issue to mediation.

In adopting any of the approaches detailed above, the Secretary may do one or more of the following:

- analyse and review documents;
- visit the location at which the services are provided by the approved provider or the offices of the approved provider;
- discuss the issue with the complainant (if any), the approved provider or any other person, in person or by other means; or
- request information from any person.

It should be noted that:

- the choice of the resolution approach rests with the Secretary (and not with the complainant or approved provider);
- the Secretary may adapt approaches part way through a resolution process if the approach is not achieving the desired outcome or otherwise becomes unsuitable;
- as a matter of administrative practice, the Secretary will generally adopt one approach for a complaint (regardless of how many issues form part of the complaint) but can choose to adopt different approaches for different issues within a complaint; and
- each of the approaches may be flexibly applied and can involve different activities. For example, conciliation may involve meetings between parties, teleconferences or separate phone calls between the Secretary and the parties. Likewise an investigation does not always involve the same activities – sometimes it might involve a site visit, but for other issues it may simply involve talking to the parties on the phone and requesting and reviewing documents. The most appropriate activities, within a resolution approach, are determined by the Secretary.

Section 11 – Notifying approved provider

This section provides that if the Secretary undertakes a resolution process, the

Secretary must notify the approved provider to which the issues relate, as soon as practicable.

However, in some situations the Secretary may decide not to notify the approved provider (or to notify the approved provider at a later time). The Secretary may decide not to notify the approved provider if he/she considers that it might:

- impede resolution of the issue;
- place the safety, health or well-being of the complainant, a care recipient or any other person at risk; or
- place a complainant or care recipient at risk of intimidation or harassment.

Section 11 also states that, in the event that 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 is not required to provide advance notice of the issues that are subject to a resolution process.

An unannounced site visit may be undertaken if, for example:

- there are serious concerns about a care recipient's health, safety or well-being;
- an announced site visit may limit the Secretary's ability to obtain information; or
- it is assessed that some valuable information could be gained that might be jeopardised by announcing the visit.

Section 12 – Confidentiality

Section 12 states that when a request for confidentiality has been made, the Secretary must respect the wishes of the complainant by not disclosing any information for which the complainant has sought confidentiality.

However, the Secretary may disclose confidential information if he/she considers that continuing to keep the information confidential will, or is likely to, place the health, safety or well-being of the complainant, a care recipient or any other person at risk.

For example, a care recipient may make a confidential complaint relating to the care provider's apparent failure to properly manage the behaviours of a fellow resident. If the complainant care recipient, during the course of the Secretary's resolution process, calls the Secretary and threatens to take matters into his own hands by stopping the fellow resident once and for all, the Secretary would have no choice but to disclose this information to the approved provider (and potentially the police) in order to protect the care recipient, fellow residents and staff within the service.

In these circumstances, the Secretary must take all reasonable steps to let the complainant know, before revealing any confidential information, that the Secretary intends to disclose confidential information.

It should be noted that while this section applies specifically to the confidentiality requests that a complainant may make under subsection 6(3), the other rules in relation to disclosure of protected information under section 86-3 of the Act still apply.

Section 13 – Withdrawal from resolution process

This section provides that a person who has made a complaint can withdraw from the

resolution process at any time, by informing the Secretary either orally or in writing. When a complaint is withdrawn, the Secretary may still continue the resolution process.

There can be a number of reasons why the Secretary would continue a resolution process even though the complainant has withdrawn. For example, in circumstances where a care recipient has died and a complaint has been made by a family member, the family member may decide to withdraw from the process because it is too upsetting for them to continue to be involved. However, if the Secretary continues to have concerns about the care that was provided to the care recipient prior to their death and that poor care may be ongoing with respect to other care recipients, the Secretary can continue the resolution process.

A note at the end of section 13 reminds readers that a complainant who withdraws from the resolution process ceases to have a right to be given feedback or to apply for an examination of the Secretary's decision by the ACC.

Part 4 – Outcome of resolution process

Section 14 – Ending resolution process

This section provides that the Secretary may decide to end a resolution process if one or more of the following circumstances apply:

- the issue raised by the complaint has been resolved because the complainant, and approved provider to which the issue relates, have agreed on an outcome;
- the approved provider has addressed the issue to the satisfaction of the Secretary;
- the Secretary has directed the approved provider to take action to comply with its responsibilities under the Act and the Principles made under section 96-1 of the Act;
- 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;
- the complainant (if any) has withdrawn from the resolution process;
- the issue is better dealt with by another organisation;
- continuation of the resolution process is not warranted because the Secretary is satisfied that:
 - despite reasonable inquiry by the Secretary, the circumstances giving rise to the issue cannot be determined;
 - the information given by the complainant was not given in good faith;
 - the issue has been, or is, the subject of a legal proceeding;
 - the issue has been dealt with under these Principles, the *Complaints Principles 2011* or the *Investigation Principles 2007*;
 - the issue is subject to a coronial inquiry;
 - a care recipient named in the complaint does not wish the issue to be considered by the Secretary;
- having regard to all the circumstances, continuation of the resolution process is not warranted.

Following are some examples of each of these scenarios.

Ending a resolution process on the basis that the issue has been resolved because the complainant, and approved provider to which the issue relates, have agreed on an outcome

One of the key aims of the Complaints Scheme is to assist the parties to resolve concerns (and achieve positive outcomes for care recipients) by reaching agreement on an issue.

For example, a person may make a complaint that there are insufficient daily activities within an aged care service to meet the needs of a particular care recipient. Through conciliation, the Secretary might arrange for the complainant, the care recipient and the activities manager at the service to meet and discuss the matter. The complainant and care recipient explain that the care recipient likes to play cards but the service does not provide any activities of this nature. The activities manager notes that this activity is not currently offered and recognises that there may be a number of other care recipients who may also welcome the opportunity to form a card playing group. The activities manager agrees to canvas other care recipients and set up a group to play cards once a week. The complainant and the care recipient agree to this arrangement.

In this circumstance the Secretary may end the resolution process on the basis that the complainant, and approved provider to which the issue relates, have agreed on an outcome.

Ending a resolution process on the basis that the approved provider has addressed the issue to the satisfaction of the Secretary

There may be situations where, although a complainant may not be satisfied with the outcome, the approved provider is able to demonstrate, to the satisfaction of the Secretary, that it has taken sufficient action to ensure they are meeting their responsibilities under the Act in relation to the concerns raised.

Where this situation arises, every effort will be made to try to explain this to the complainant and seek their agreement that the matters have been addressed. However, even if this is not possible, the Secretary may end a resolution process on the basis that the Secretary is satisfied that the approved provider has addressed the issue raised.

Ending a resolution process on the basis that the Secretary has directed the approved provider (in accordance with section 15) to comply with its responsibilities under the Act and the Principles made under section 96-1 of the Act

If, during the course of a resolution process, the Secretary is concerned that an approved provider is not meeting their responsibilities under the Act and Principles, the Secretary may give the approved provider a notice of intention to issue directions.

This notice provides the approved provider with an opportunity to identify how the approved provider has, or will, address the concerns raised, such that the approved provider meets its responsibilities under the Act and Principles.

If the approved provider adequately addresses the issues, the Secretary would end the process on the basis that the Secretary is satisfied that the approved provider is meeting its responsibilities (refer discussion above). However, if the approved provider proposes to take future action to address the issues or does not propose adequate action to meet the concerns, the Secretary may issue directions to the approved provider, requiring the approved provider to take certain actions within certain timeframes. Where this occurs, the Secretary may end the resolution process on the basis that directions have been issued. The directions would be issued as part of the feedback provided to the approved provider about the outcomes of the resolution process,

Ending a resolution process because 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

In some circumstances a resolution process will identify approved provider non-compliance with the responsibilities detailed in the Act and Principles that is of such concern that action is initiated by the Secretary under Part 4.4 of the Act. Part 4.4 of the Act provides that the Secretary may impose sanctions on an approved provider if: the provider has not complied with its responsibilities under the legislation; the Secretary considers that it is appropriate to impose sanctions (taking into account the various matters described in the Act); and the Secretary complies with the procedure detailed in the Act for imposing sanctions. This process includes a requirement that the Secretary give the approved provider a notice of non-compliance and that the approved provider is afforded an opportunity to make a submission on the issues raised.

If such action is initiated by the Secretary, the Secretary may end a resolution process on this basis.

Ending a process on the basis that the complainant (if any) has withdrawn from the resolution process

There may be circumstances where, for whatever reason, a complainant decides that they no longer wish to be part of the resolution process. If the Secretary has no ongoing concerns, the Secretary may end a resolution process on this basis. This may be particularly relevant where the complainant is a care recipient and the care recipient decides to withdraw from the process as the issues raised in the complaint are no longer of concern to them.

Ending a process on the basis that the issue is better dealt with by another organisation

The Secretary may end a resolution process if the Secretary is satisfied that another organisation is better placed to deal with the issue. The most common circumstances in which this is likely to occur are where the Secretary commences a resolution process but realises that the issue is more appropriately dealt with by:

- the Quality Agency – this organisation accredits approved providers of residential aged care against Accreditation Standards and conducts quality reviews of home

care services. An issue may be referred to the Quality Agency if it potentially relates to failures in the systems employed by the service (e.g. a poor governance system);

- the Australian Health Practitioner Regulation Agency (AHPRA) – this organisation considers the conduct of health professionals. Where a complaint relates to the conduct of a health professional (or the conduct of a health professional is called into question over the course of a resolution process) it may be most appropriate for the Secretary to refer this matter for investigation by AHPRA;
- a food safety organisation. For example, if a complaint relates to poor quality of food but on further examination by the Secretary it becomes apparent that there are food safety/hygiene concerns, this issue might be more appropriately dealt with by the relevant local Council or food safety authority.

Ending a process on the basis that continuation of the resolution process is not warranted because the Secretary is satisfied that despite reasonable inquiry by the Secretary, the circumstances giving rise to the issue can not be determined

A number of complaints made to the Secretary relate to an event that is alleged to have occurred. For example, an allegation that a staff member yelled at, or spoke rudely to a care recipient. Despite speaking with all the parties, the Secretary may receive conflicting accounts of what occurred and may be unable to objectively determine which account is correct (particularly where no other corroborating information can be identified).

On some occasions, despite the best endeavors by the Secretary, it will not be possible to determine whether the event (that is at the heart of the issue raised by the complaint) actually occurred or not. In these circumstances the Secretary may end the resolution process on the basis that, despite all reasonable efforts being made, the circumstances giving rise to the event can not be determined. In these circumstances, continuing the resolution process is not warranted.

Ending a process on the basis that continuation is not warranted because the Secretary is satisfied the information given by the complainant was not given in good faith

Part way through a resolution process, it may come to the attention of the Secretary that information was not given to the Secretary in good faith. For example, a complainant might have made a complaint about the behavior of a senior member of staff yet it later becomes apparent that the complainant is a former staff member of the service who has recently had their employment terminated and is seeking access, through the Secretary, to documents that might assist in their proposed unfair dismissal action.

In these circumstances, the Secretary may end a resolution process on the basis that the Secretary does not consider that the information was given in good faith. In making this decision, the Secretary would also ensure that there is no other reason to continue the process (that is, the Secretary does not otherwise have concerns about the issue that might independently warrant the Secretary continuing the process).

Ending a process on the basis that continuation of the resolution process is not warranted because the Secretary is satisfied the issue has been, or is, the subject of a legal proceeding or a coronial inquiry

Part way through a resolution process, the Secretary may become aware that legal proceedings or a coronial inquest have commenced. If the issue being considered by the Secretary is closely linked to the legal proceedings or coronial inquiry, the Secretary may end the resolution process on this basis. However the Secretary would not end the process on this basis if the legal proceedings or coronial inquiry were not directly related to the issue that was subject to the Secretary's resolution process.

Ending a process on the basis that continuation of the resolution process is not warranted because the Secretary is satisfied the issue has been dealt with under these Principles

Part way through a resolution process, it may become apparent that this issue has previously been raised by the same complainant and previously considered by the Secretary. If this situation arises, the Secretary may end a resolution process on this basis.

Ending a process on the basis that continuation of the resolution process is not warranted because the Secretary is satisfied a care recipient named in the complaint does not wish the issue to be considered by the Secretary

Part way through a resolution process, a care recipient might advise that they do not wish the Secretary to continue the resolution process because, for example, they think it is too invasive of their privacy or because, despite the complainant having concerns, the care recipient does not share these concerns and does not wish the Secretary to continue to be involved. In circumstances such as these, the Secretary may end a resolution process because the Secretary is satisfied that a care recipient named in the complaint does not wish the issue to continue to be considered by the Secretary.

Ending the process because, having regard to all the circumstances, continuation of the resolution process is not warranted

For example, the Secretary may end a resolution process, on the basis that continuing the resolution process is not warranted, if the complainant and the approved provider have agreed to attend mediation and no longer require the involvement of the Secretary.

Section 15 – Directions to approved provider

This section provides that:

- if, as part of a resolution process, the Secretary is concerned that the approved provider is not meeting its responsibilities under the Act and Principles, the Secretary may issue directions to the approved provider;
- 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 the principles made under section 96-1 of the Act;
- before issuing such directions, the Secretary must give the approved provider a

notice of intention to issue directions. The notice of intention to issue directions must:

- state the preliminary findings of the Secretary; and
 - the concerns held by the Secretary regarding the apparent failure of the approved provider to meet its responsibilities under the Act and Principles;
 - give the approved provider the opportunity to respond to the findings and concerns by identifying how they have, or will, address the matters identified;
 - state the timeframe the approved provider has for responding to the notice of intention to issue directions;
- if the Secretary has serious concerns about the health, safety or well-being of a care recipient such that it is necessary for prompt action to be taken, the Secretary can issue a direction to an approved provider without first giving a notice of intention to issue directions;
 - if the Secretary gives the approved provider a notice of intention to issue directions, the approved provider may decide whether or not to respond. If the approved provider responds, they have 14 days within which to do so (unless a lesser time is specified by the Secretary in the notice);
 - the Secretary may, after considering the 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.

If, after considering any response provided by the approved provider to a notice of intention to issue directions (if such a notice is given), the Secretary considers that further action needs to be taken in order to ensure that the approved provider meets its responsibilities under the Act and Principles, the Secretary may issue directions to the approved provider.

The directions will direct the approved provider to take certain actions. The directions may describe the action that the approved provider offered to take (in response to the notice of the intention to issue directions) or may describe such other actions as the Secretary considers are necessary in order to address the concerns raised and ensure that the approved provider meets its responsibilities under the Act and Principles.

Failure by an approved provider to comply with directions can result in the Secretary initiating action under Part 4.4 of the Act.

Part 5 – Feedback

Section 16 – Feedback on no further action

This section provides that if the Secretary decides to take no further action on an issue raised by a complaint, the Secretary must, as soon as practicable, give the complainant, unless the complaint was made anonymously, written feedback about:

- the Secretary’s decision to take no further action and the reasons for that decision;
- how the complainant may apply for reconsideration by the Secretary or examination of the Secretary’s decision by the ACC;
- any other appropriate feedback.

Section 17 – Feedback on resolution process

This section provides that following a resolution process, the complainant and the

approved provider must be given written feedback.

If a decision is made by the Secretary to end a resolution process under section 14, the Secretary must, as soon as practicable, give the complainant (if any) and the approved provider written feedback about:

- any key findings;
- the Secretary's decision to end the resolution process and the reasons for that decision;
- how the complainant or the approved provider may apply for reconsideration by the Secretary or examination of the Secretary's decision by the ACC; and
- any other appropriate feedback.

It should be noted that if the complaint is made anonymously (or if the complainant withdraws from the resolution process) the requirement to provide feedback to the complainant does not apply. However, in these circumstances, the Secretary must still provide feedback to the approved provider.

This Section provides that the Secretary may give different feedback to the complainant and the approved provider. While the same feedback would usually be provided to both parties there may be exceptional circumstances in which different feedback should be provided to the parties. For example, if a complainant does not have a close relationship to the care recipient (i.e. the complainant is a friend or a person visiting the service as opposed to a relative) the Secretary might choose not to share specific, personal information about the care recipient with the complainant, but this information could be provided to the approved provider. Conversely, if a complaint is confidential, more detailed information might be provided to the complainant than to the approved provider.

Section 18 – Feedback to other persons

This section provides that 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. For example, the Secretary may provide feedback to a care recipient (or their representative) where that person was not the complainant.

Requirements in relation to disclosure of protected information under section 86-3 of the Act apply to provision of such feedback.

Part 6 – Other actions

Section 19 – Referral to other organisations

This section provides that nothing in the Principles prevents the Secretary from referring an issue raised by a complaint to another organisation. Section 19 also states that a resolution process may continue even if the Secretary has referred the issue to another organisation.

Examples of other relevant organisations to which the Secretary might refer issues include the police, the Quality Agency or the Australian Health Practitioner Regulation Agency.

Requirements in relation to disclosure of protected information under section 86-3 of

the Act apply in relation to making such referrals.

Section 20 – Use of information obtained during resolution process

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

For example, if during the course of a resolution process, the Secretary finds that an approved provider is not paying staff and is facing financial difficulties, the Secretary may alert the relevant areas within the Department of Social Services such that they might take action to minimise the risk of the approved provider defaulting on the repayment of accommodation bonds to care recipients.

Another example is if the Secretary, as part of the resolution process, uncovers concerns regarding potentially fraudulent claiming, by the approved provider, of aged care subsidies. In these circumstances the Secretary might use the information for the purposes of referring the matter to the audit and fraud control area of the Department of Social Services.

Section 21 – Secretary may take action under the Act

This section provides that 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.

If the Secretary, over the course of a resolution process, has concerns that the approved provider is not meeting their legislated responsibilities under the Act and Principles, the Secretary has a number of options open to him or her. For example:

- the Secretary may give the approved provider a notice of intention to issue directions (requiring the approved provider to explain the situation);
- the Secretary may issue directions without first giving the approved provider notice of intention to issue directions (in circumstances where the Secretary considers that prompt action is required in order to protect the health, safety or wellbeing of one or more care recipients); or
- the Secretary may bypass each of these steps and proceed directly to the taking of action under Part 4.4 of the Act (i.e. commencing the process relating to the imposition of sanctions). Part 4.4 of the Act describes the matters that the Secretary must take into account when deciding whether or not to impose sanctions. This includes, for example, the seriousness of the non-compliance, whether the non-compliance has occurred before and the desirability of deterring future non-compliance.

Part 4.4 of the Act also describes the types of sanctions that may be imposed by the Secretary. These include, but are not limited to, revoking the approved provider's approval as a provider of aged care, restricting the payment of subsidy and prohibiting the charging of accommodation bonds.

Part 7 – Reconsideration and examination of decisions

Division 1 – Reconsideration by Secretary

Section 22 – Application for reconsideration by Secretary

This section provides that:

- a complainant may apply to the Secretary for reconsideration of a decision by the Secretary to:
 - take no further action (under paragraph section 7(a)) on a complaint made by the complainant; and
 - end a resolution process (under section 14) in relation to an issue raised in a complaint made by the complainant; and
- an approved provider may apply to the Secretary for reconsideration of a decision to end the resolution process in relation to an issue raised in a complaint or an issue in relation to which the Secretary undertook an own motion resolution process. The approved provider does not have a right to seek reconsideration of a decision by the Secretary to take no action on a complaint because the approved provider will never have been notified of the issue because no resolution process was ever initiated by the Secretary.

If either the complainant or the approved provider wish to seek reconsideration of a decision made by the Secretary, they must:

- apply to the Secretary (either orally or in writing) within 28 days of being notified in writing of the Secretary's decision; and
- state the reasons why examination is sought. The reasons must go beyond mere dissatisfaction with the decision.

Section 23 – Reconsideration by Secretary

This section provides that within 28 days of receipt of an application for reconsideration under section 22, the Secretary must:

- confirm the decision to take no further action or to end the resolution process; or
- decide to undertake a new resolution process.

If the Secretary confirms the original decision (to take no further action or to end the resolution process), the Secretary must advise the applicant for reconsideration, in writing, of the Secretary's decision.

If the Secretary decides, as a result of the reconsideration, to undertake a new resolution process the Secretary must:

- notify the complainant and the approved provider to which the issue relates, in writing, of his or her decision; and
- complete the new resolution process in accordance with Parts 3 to 5, within 28 days of making the decision to undertake a new resolution process.

Division 2 – Examination by ACC of Secretary's decision

Section 24 – Application for examination by ACC

This section describes each of the circumstances in which a complainant or an approved provider may apply to the ACC for examination of a decision by the Secretary.

In summary:

- a complainant may apply to the ACC for examination of the Secretary's decision:
 - to take no further action on a complaint;

- to end a resolution process;
- to confirm a decision to take no further action or to end a process after reconsideration by the Secretary;
- to end a new resolution process where a new process has resulted from the Secretary reconsidering an original decision to end a resolution process; and
- an approved provider may apply to the ACC for examination of the Secretary’s decision:
 - to end a resolution process;
 - to confirm a decision to end a resolution process after reconsideration by the Secretary;
 - to end a new resolution process where a new process has resulted from the Secretary reconsidering an original decision to end a resolution process;
 - to end a new resolution process where: a new resolution process has resulted from the ACC examining an issue and recommending that the Secretary undertake a new process; and the Secretary’s new resolution process has been ended because directions have been issued to the approved provider (where such directions were not issued as part of the original resolution process).

The only exceptions to the above are:

- an application can not be made to the ACC for examination of a decision by the Secretary under section 14 if the decision to end the resolution process was because the Secretary has initiated action under Part 4.4 of the Act; and
- a further application can not be made for examination by the ACC if the Secretary’s decision has already been considered by the ACC (regardless of whether the ACC decided to take no further action or examined the decision and as a result recommended that the Secretary not undertake a resolution process or undertake a new resolution process). As noted above, the exception to this is if the application to the ACC is made by the approved provider following a new resolution process which results in directions being issued to the approved provider.

An application for examination by the ACC may be made orally or in writing and must:

- state the reasons (other than dissatisfaction with the decision) why examination is sought; and
- be made within 28 days of the applicant being notified in writing of the Secretary’s decision.

Section 25 – ACC must decide whether to examine

This section provides that within 14 days of receipt of an application for examination, the ACC must either decide to take no further action or decide to examine the Secretary’s decision.

Section 25 also states that the ACC may decide to take no further action if:

- the application for examination was not made in good faith;
- the application relates to an issue that has been, or is, the subject of a legal proceeding;
- the application relates to an issue that is subject to a coronial inquiry;
- a care recipient named in the application does not wish for the matter to be

- considered by the ACC; or
- having regard to all the circumstances, examination of the Secretary’s decision is not warranted.

If the decision made by the ACC is to take no further action, the ACC must notify, in writing:

- the complainant (if the application was made by the complainant);
- the approved provider (if the application was made by the approved provider); and
- the Secretary.

Likewise, if the ACC decides to examine the decision, the persons listed above must be contacted in writing.

The ACC may also notify any other person the ACC considers appropriate.

Section 26 – Examination by ACC

If the ACC decides to examine a decision of the Secretary, the ACC may examine the decision in whatever manner the ACC considers appropriate.

Section 26 further provides that within 60 days of the ACC deciding to examine the Secretary’s decision, the ACC must:

- decide to take no further action;
- recommend that the Secretary not undertake a new resolution process; or
- direct the Secretary to undertake a new resolution process in accordance with Parts 3 to 5. If the ACC makes such a direction, the ACC may also identify matters the Secretary should take into account in undertaking the new resolution process. For example, the ACC might (as part of the ACC’s examination of the Secretary’s decision to end the resolution process) have identified that the Secretary failed to take into account certain pertinent information. If this is the case, the ACC may direct the Secretary undertake a new resolution process taking into account the information identified by the ACC in undertaking the new resolution process.

Once the ACC has undertaken his or her examination and determined whether the Secretary must undertake a new resolution process, the ACC must notify:

- the person who applied to the ACC for examination of the Secretary’s decision;
- the approved provider (if the complainant is the applicant) or the complainant (if there was a complainant involved in the original resolution process and if the approved provider is the applicant); and
- the Secretary.

The ACC may also notify any other person the ACC considers appropriate.

Section 27 – New resolution process following ACC examination

This section provides that if the ACC directs the Secretary to undertake a new resolution process, the Secretary must (within 46 days of receiving the direction):

- consider the matters identified by the ACC; and
- undertake and end the new resolution process in accordance with Parts 3 to 5 and this section.

In relation to the timeframe mentioned above (46 days), this may be extended by a further 28 days if the Secretary notifies the complainant and the approved provider to which the new resolution process relates, before the end of the original 46 days, that the time period is to be extended and the reason for the extension. The ACC must be informed of the extension.

When undertaking a new resolution process (following a direction by the ACC), it is the responsibility of the Secretary to notify the complainant (if any), the approved provider and the ACC, in writing.

In the event that the Secretary decides to end a new resolution process under section 14, the Secretary must firstly notify the ACC of his or her intentions and the reasons for making that decision. The Secretary must also take into account any comments given by the ACC within 7 days of the ACC being notified of the Secretary's intention. This provision allows the ACC to consider how the Secretary has taken the matters identified through the ACC's examination into account and make any further comments, prior to the Secretary finalising the new resolution process.

This provision does not apply however, if the Secretary decides to end the resolution process because the Secretary has initiated compliance action under Part 4.4 of the Act, given the ACC's jurisdiction does not extend to compliance activity.

The Secretary must give the ACC a copy of the feedback given under section 17.

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

Section 28 – Complaints to ACC about process

Section 28 provides that a person may make a complaint, either orally or in writing, to the ACC about:

- the Secretary's process for handling complaints under the Principles;
- the Quality Agency's process for accrediting aged care services under the *Quality Agency Principles 2013*; or
- the Quality Agency's process for conducting quality reviews of home care services under the *Quality Agency Principles 2013*.

The complaint must be made within 12 months from the date of the completion of the process that gave rise to the complaint. For example a complaint may be made about the Secretary's process in relation to a complaint, up to 12 months after the Secretary ended the process.

Section 29 – ACC's discretion to examine complaints

Section 29 provides that within 14 days of receiving a complaint under section 28, the ACC must decide:

- to examine the complaint;
- not to examine the complaint because the complaint does not relate to a function of the ACC (in these circumstances, the ACC must not examine the complaint); or
- not to examine a complaint because:
 - it was not made in good faith;
 - it relates to an issue that has been, or is, the subject of a legal proceeding;
 - it relates to an issue that is subject to a coronial inquiry;

- it was made by a person that the ACC does not consider has a sufficient interest in the issue; or
- having regard to all the circumstances, examination of the complaint is not warranted.

Section 30 – Notice of examination

This section provides that the ACC must, as soon as practicable after making a decision to examine (or not to examine) a complaint, notify the person who made the complaint (in writing) of this decision. If the decision is to examine the complaint, the ACC must also, as soon as practicable after deciding to examine the complaint, give the person or body, against whom the complaint is made, information (in writing) about the nature and substance of the complaint.

Section 31 – Examination of complaint

This section provides that the ACC may examine a complaint made under section 28 in the manner that the ACC considers appropriate. 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.

Section 32 – Notification of outcome of examination

Section 32 provides that the ACC must advise (in writing) the following parties of the outcome of the ACC's examination under section 31:

- the person who made the complaint; and
- the person or body to whom the complaint relates (for example, the Secretary or the Agency).

The ACC may also notify any other person the ACC considers appropriate.

Part 8 – Transitional provisions

Section 33 – Processes in progress under previous Complaints Principles

Section 32 provides that if, immediately before 1 July 2014, a process is 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.

Section 34 – Expiry of this Part

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

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Complaints Principles 2014

The *Complaints Principles 2014* (the Principles) are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The Principles describe a scheme for the management and resolution of complaints and other concerns about aged care services provided by approved providers. The Principles also describe the functions of the Aged Care Commissioner in relation to complaints considered by the Secretary and also complaints about the Australian Aged Care Quality Agency's process for accrediting aged care services, or conducting quality reviews of home care services.

Human Rights Implications

The Principles promote the right of care recipients to an adequate standard of living and the right to the enjoyment of the highest attainable standard of physical and mental health as contained in article 11(1) and article 12(1) of the International Covenant on Economic, Social and Cultural Rights, and article 25 and article 28 of the Convention on the Rights of Persons with Disabilities. The Principles set up a scheme to resolve complaints about the care and services provided to care recipients by approved providers of aged care. This assists in promoting a high quality of care and accommodation for the recipients of aged care services.

The Principles engage the right to privacy contained in article 17 of the International Covenant on Civil and Political Rights and article 22 of the Convention on the Rights of Persons with Disabilities. They require the Secretary to ensure that a request by a complainant for confidentiality 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. Before deciding not to keep information confidential that a complainant has requested to be kept confidential, the Secretary must take all reasonable steps to notify the complainant.

Conclusion

This legislative instrument is compatible with human rights as it promotes the human right to an adequate standard of living and the highest attainable standard of physical and mental health. Insofar as the legislative instrument limits the right to privacy of a confidential complainant, the limitation is necessary, reasonable and proportionate.

Senator the Hon Mitch Fifield
Assistant Minister for Social Services