



Sanctions Principles 2014

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

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Part 1—Preliminary

1 Name of principles

These principles are the *Sanctions Principles 2014*.

2 Commencement

These principles commence on 1 July 2014.

3 Authority

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

4 Definitions

In these principles:

Accreditation Standards means the Accreditation Standards specified in the *Quality of Care Principles 2014*.

Act means the *Aged Care Act 1997*.

Home Care Standards means the Home Care Common Standards specified in the *Quality of Care Principles 2014*.

non-compliance, by an approved provider, means a failure by the approved provider to comply with one or more of the approved provider's responsibilities under Part 4.1, 4.2 or 4.3 of the Act.

police certificate, for a person, means a report prepared by the Australian Federal Police, CrimTrac or the police force or police service of a State or Territory, about the person's criminal conviction record.

Note: A number of expressions used in these principles are defined in the Act, including the following:

- (a) disqualified individual;
- (b) key personnel.

Part 2—Reasonable steps to ensure suitability of key personnel

5 Purpose of this Part

For subsection 63-1A(2) of the Act, this Part specifies reasonable steps that an approved provider must take to ensure that none of its key personnel is a disqualified individual.

6 Reasonable steps to be taken

The following reasonable steps are specified:

- (a) in relation to each of the approved provider's key personnel—the approved provider must:
 - (i) ensure that the person understands the obligations of key personnel and of approved providers under the Act in relation to disqualified individuals; and
 - (ii) if the approved provider reasonably believes that the person may be mentally incapable of performing his or her duties as one of the approved provider's key personnel—make arrangements for the person to be examined by a registered medical practitioner; and
 - (iii) if the approved provider has ascertained that the person is a disqualified individual—ensure that the person ceases to be one of the approved provider's key personnel;
- (b) in relation to a person who proposes to become, or becomes, one of the approved provider's key personnel—the approved provider must:
 - (i) obtain (with the person's written consent) a police certificate for the person; and
 - (ii) conduct a search of bankruptcy records; and
 - (iii) conduct previous employment and referee checks;
- (c) if the approved provider reasonably believes that a person who is one of the approved provider's key personnel may be a disqualified individual—the approved provider may take any of the steps referred to in paragraph (b), or other appropriate steps, to ascertain if the person is a disqualified individual;
- (d) if the Secretary seeks information from the approved provider as to the steps taken by the approved provider to ensure that a person who is one of the approved provider's key personnel is not a disqualified individual—the approved provider must provide that information to the Secretary.

Part 3—Administration of sanctions

Division 1—Appointment of adviser instead of revoking approval

7 Purpose of this Division

For subparagraph 66-2(1)(a)(iii) of the Act, this Division specifies requirements in relation to the appointment of a person as an adviser to assist an approved provider to comply with its responsibilities in relation to care and services.

8 Secretary must decide whether to appoint nominated adviser

- (1) Within 14 days after receiving a nomination by an approved provider of a proposed adviser under subsection 66A-2(2) of the Act, the Secretary must, for the Commonwealth, approve, or refuse to approve, the appointment of the proposed adviser.
- (2) Before making a decision under subsection (1), the Secretary may require the proposed adviser to provide (either in writing or at a personal interview with an officer) a summary or description of the advice, or type of advice, that the proposed adviser proposes to give to the approved provider to assist the approved provider to comply with its responsibilities in relation to care and services.
- (3) The Secretary may approve the appointment of the proposed adviser only if the Secretary is satisfied that:
 - (a) the proposed adviser meets the eligibility criteria for appointment; and
 - (b) the proposed adviser has a sufficient understanding of the issues that need to be addressed to remedy the non-compliance by the approved provider; and
 - (c) there would be no conflict, affecting the delivery of care or other services, between the proposed adviser's obligations as adviser and any other obligations of the proposed adviser; and
 - (d) the proposed adviser has complied with any requirement under subsection (2).
- (4) Within 7 days after the Secretary makes a decision under subsection (1), the Secretary must notify the approved provider, in writing, of the decision.
- (5) If the Secretary's decision is to refuse to approve the proposed appointment, the Secretary must also give the approved provider a written statement of the reasons for the decision.
- (6) A decision under subsection (1) to refuse to approve the proposed appointment is a reviewable decision under section 85-1 of the Act.

9 Nomination of another adviser

- (1) If the Secretary refuses to approve the appointment of a proposed adviser, the Secretary may ask the approved provider, in writing, to nominate another proposed adviser.

Part 3 Administration of sanctions

Division 1 Appointment of adviser instead of revoking approval

Section 9

- (2) If the approved provider agrees to nominate another proposed adviser, the approved provider must, within 5 days after receiving the invitation:
- (a) nominate, in writing, another proposed adviser to the Secretary; and
 - (b) give the Secretary written information about the proposed adviser to allow the Secretary to decide whether the proposed adviser meets the eligibility criteria for appointment.

Note: Section 8 and this section apply to the nomination.

Division 2—Appointment of administrator instead of revoking approval

10 Purpose of this Division

For subparagraph 66-2(1)(a)(iv) of the Act, this Division specifies requirements in relation to the appointment of a person as an administrator to assist an approved provider to comply with its responsibilities in relation to governance and business operations.

11 Secretary must decide whether to appoint nominated administrator

- (1) Within 14 days after receiving a nomination by an approved provider of a proposed administrator under subsection 66A-3(2) of the Act, the Secretary must, for the Commonwealth, approve, or refuse to approve, the appointment of the proposed administrator.
- (2) Before making a decision under subsection (1), the Secretary may require the proposed administrator to provide (either in writing or at a personal interview with an officer) a summary or description of the action that the proposed administrator proposes to take to assist the approved provider to comply with its responsibilities in relation to governance and business operations.
- (3) The Secretary may approve the appointment only if the Secretary is satisfied that:
 - (a) the proposed administrator meets the eligibility criteria for appointment; and
 - (b) the proposed administrator has a sufficient understanding of the issues that need to be addressed to remedy the non-compliance by the approved provider; and
 - (c) there would be no conflict, affecting the delivery of care or other services, between the proposed administrator's obligations as administrator and any other obligations of the proposed administrator; and
 - (d) the proposed administrator has complied with any requirement under subsection (2).
- (4) Within 7 days after the Secretary makes a decision under subsection (1), the Secretary must notify the approved provider, in writing, of the decision.
- (5) If the Secretary's decision is to refuse to approve the proposed appointment, the Secretary must also give the approved provider a written statement of the reasons for the decision.
- (6) A decision under subsection (1) to refuse to approve the proposed appointment is a reviewable decision under section 85-1 of the Act.

12 Nomination of another administrator

- (1) If the Secretary refuses to approve the appointment of a proposed administrator, the Secretary may ask the approved provider, in writing, to nominate another proposed administrator.

Part 3 Administration of sanctions

Division 2 Appointment of administrator instead of revoking approval

Section 12

- (2) If the approved provider agrees to nominate another proposed administrator, the approved provider must, within 5 days after receiving the invitation:
- (a) nominate, in writing, another proposed administrator to the Secretary; and
 - (b) give the Secretary written information about the proposed administrator to allow the Secretary to decide whether the proposed adviser meets the eligibility criteria for appointment.

Note: Section 11 and this section apply to the nomination.

Part 4—When sanctions cease to apply

13 Purpose of this Part

This Part specifies:

- (a) for subsection 68-2(2) of the Act—the matters to which the Secretary must have regard in deciding on the length of a sanction period in relation to a sanction that has been imposed on an approved provider for non-compliance with its responsibilities under Part 4.1, 4.2 or 4.3 of the Act; and
- (b) for paragraph 68-3(b) of the Act—other matters to which the Secretary must have regard in deciding whether it is appropriate for a sanction to be lifted; and
- (c) for paragraph 68-4(2)(b) of the Act—the requirements that an application to lift a sanction must meet.

14 Matters to which Secretary must have regard in deciding on sanction period

For subsection 68-2(2) of the Act, the matters to which the Secretary must have regard in deciding on the length of a sanction period, in relation to a sanction that has been imposed on an approved provider for non-compliance with its responsibilities under Part 4.1, 4.2 or 4.3 of the Act, are as follows:

- (a) whether the non-compliance is of a minor or serious nature;
- (b) whether the non-compliance has happened before, and, if so, how often;
- (c) whether the non-compliance threatens or threatened the health, welfare or interests of care recipients;
- (d) whether the non-compliance would threaten the health, welfare or interests of future care recipients;
- (e) whether the approved provider has failed to comply with any undertaking to remedy the non-compliance;
- (f) the period likely to be needed to establish whether any improvement in compliance can be sustained.

15 Other matters to which Secretary must have regard in deciding whether to lift sanction

For paragraph 68-3(b) of the Act, the other matters to which the Secretary must have regard in deciding whether it is appropriate to lift a sanction that has been imposed on an approved provider are:

- (a) the matters referred to in section 14; and
- (b) whether any changes made by the approved provider are likely to result in a sustained improvement in the approved provider's compliance with its responsibilities under Part 4.1, 4.2 or 4.3 of the Act.

16 Application for sanction to be lifted

For paragraph 68-4(2)(b) of the Act, an application by an approved provider for a sanction to be lifted must provide details of the following matters:

Section 16

- (a) what the approved provider has done to remedy the non-compliance for which the sanction was imposed;
- (b) any assessment, carried out while the sanction has been in effect:
 - (i) against the Accreditation Standards of the approved provider's management systems, staffing and organisational development; or
 - (ii) against the Home Care Standards of the home care services (if any) provided by the approved provider;
- (c) any consultations with staff, care recipients, or care recipients' relatives about the non-compliance;
- (d) the approved provider's proposals for sustaining its compliance with its responsibilities under Part 4.1, 4.2 or 4.3 of the Act.