

EXPLANATORY STATEMENT

Select Legislative Instrument No. _____, 2015

Issued by the authority of the Minister for Aged Care

Aged Care Act 1997

Complaints Principles 2015

Purpose

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 2015* (the Principles).

The purpose of the Principles is to describe a scheme for the management and resolution of complaints and other concerns about aged care services provided by approved providers, (previously known as the Aged Care Complaints Scheme) to be known as the Aged Care Complaints Commissioner (the Commissioner) from 1 January 2016. The Principles also describe the functions of the Commissioner in relation to investigation of complaints about approved providers.

Background

The Principles are established as part of a 2015 Budget measure, *Aged Care – Independent Complaints Arrangements*, responsibility for aged care complaints handling will be transferred from the Secretary of the Department of Health (the Secretary) to the Commissioner. To give effect to this measure, the Act was amended by the *Aged Care Amendment (Independent Complaints Arrangements) Act 2015* (the Complaints Arrangements Act). Amendments to subordinate legislation are also needed to give effect to the Budget measure.

From 1 January 2016, these Principles will replace the existing *Complaints Principles 2014*. The main difference between the existing Principles and these Principles is that the powers which the Secretary exercised to investigate and handle complaints under the *Complaints Principles 2014* will now be exercised by the Commissioner under the *Complaints Principles 2015*. Some provisions of the *Complaints Principles 2014* have been re-numbered or expanded, and differences between them and this instrument are noted in the descriptions of the provisions.

The purpose of these changes is to increase the independence of aged care complaints handling by separating responsibility for the management of aged care complaints from the Department of Health's aged care policy and regulatory functions.

Commencement

This instrument commences on 1 January 2016, to align with the commencement of the Complaints Arrangements Act.

Consultation

In preparing this instrument, and other instruments made to support the changes arising from the Complaints Arrangements Act, the Department consulted with the Aged Care Commissioner, the Aged Care Pricing Commissioner and the Australian Aged Care Quality Agency on parts of the changes relevant to each body.

Industry stakeholders including the Aged Care Sector Committee and the National Aged Care Alliance have been consulted regarding the transition of the Aged Care Complaints Scheme to the Commissioner.

As the processes for handling complaints in the *Complaints Principles 2015* do not differ significantly from the *Complaints Principles 2014*, an exposure draft of these Principles was not released for public comment.

Regulation Impact Statement (RIS)

Following consultation with the Office of Best Practice Regulation (OBPR), a RIS is not required as per OPBR reference number 19883.

The Principles are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Explanation of the provisions

Part 1 – Preliminary

Section 1 – Name of Principles

This section provides how the proposed instrument is to be cited, that is, as the *Complaints Principles 2015*.

Section 2 – Commencement

This section states that the Principles commence on 1 January 2016. The commencement of these Principles is intended to align with the commencement of the *Aged Care Amendment (Independent Complaints Arrangements) Act 2015* (the Complaints Arrangements Act).

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), and item 34 of Part 2 of Schedule 1 to the amending Act (which provides that the Complaints Principles may deal with matters of a transitional, application or saving nature relating to the amendments made by the amending Act).

This instrument repeals and re-makes the Complaints Principles. Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Accordingly, the power in section 96-1 of the Act to make Principles is relied on, in conjunction with subsection 33(3) of the Interpretation Act, to repeal the previous Complaints Principles and re-make them.

Section 3A – Schedules

This section provides that each instrument that is specified in a Schedule to these Principles is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Section 4 – Definitions

This section defines certain terms used in these Principles.

- **Act** means the *Aged Care Act 1997*.
- A **complainant** is a person who makes a complaint to the Aged Care Complaints Commissioner (in accordance with the Principles) about an issue, or issues, involving an approved provider's responsibilities under the Act or the Principles.
- **resolution process** means the process taken by the Aged Care Complaints Commissioner under section 12 in an attempt to resolve an issue that has been raised by a complaint or otherwise comes to the attention of the Aged Care Complaints Commissioner. Such processes include, for example, conciliation,

mediation, approved provider resolution and investigation. A resolution process may also be undertaken in relation to information that has come to the attention of the Aged Care Complaints Commissioner other than through a complainant. For example, an issue that has been identified in the media or by an ambulance paramedic, general practitioner or other health professional. Both complaints and issues identified from another source may be subject to a resolution process.

Section 5 – Purpose of this instrument

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.

Part 2 – Complaints

Part 2 of the Complaints Principles describes how a person can make a complaint to the Commissioner and the way that the Commissioner may deal with the complaint.

Section 6 – Making a complaint

Section 6 describes how a person may make a complaint to the Commissioner 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 Commissioner 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.

This section mirrors section 6 of the *Complaints Principles 2014*, but provides that a complaint may be made to the Commissioner, not to the Secretary.

Section 7 – Dealing with a complaint

This section describes the actions the Commissioner can take when a complaint is received. In summary, the Commissioner 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 Commissioner 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 Commissioner seeking more information about his/her rights under the Act, in relation to the actions of an approved provider. The Commissioner 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 Commissioner would not need to be involved in undertaking any further resolution process because the Commissioner has assisted the complainant to address the issue directly;

- the Commissioner 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 Commissioner received a complaint that items of clothing had been damaged in the laundry. The Commissioner 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 Commissioner in the case; or
- if a care recipient (complainant) calls the Commissioner 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 Commissioner 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 Commissioner 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 Commissioner 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 Commissioner considers that the complaint should not be further actioned).

It is important to note that if the Commissioner quickly resolves an issue to the satisfaction of the complainant there will be no formal feedback or opportunity for reconsideration. 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 Commissioner to be further involved. Essentially it is the decision of the complainant, as communicated to the Commissioner, which stops the process.

This section mirrors section 7 of the *Complaints Principles 2014*, but replaces references to the Secretary with the Commissioner.

Section 8 – No further action on an issue

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

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

- 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 Commissioner 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 Commissioner may be able to assist in resolving;
- the issue 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 Commissioner may decide not to undertake a resolution process in relation to the complaint. The reason for this would be that the Commissioner's process may interfere with the legal proceeding;
- the issue has been dealt with under these Principles or the *Complaints Principles 2014*. For example, a care recipient may make a complaint that they were overcharged in relation to the payment to the approved provider of a refundable accommodation deposit. The Commissioner might have investigated this and found that the amount of the refundable accommodation deposit 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 Commissioner may decide to take no further action because the complaint has already been dealt with;
 - References to the *Complaints Principles 2011* and the *Investigation Principles 2007*, which were included in the *Complaints Principles 2014*, have been replaced with a reference to the *Complaints Principles 2014*. This is because the Commissioner may decide not to take further action on an issue which relates to an event that occurred more than 1 year before the complaint was made to the Commissioner, and is not ongoing, so references to the 2011 and 2007 Principles were no longer needed.
- the issue is raised in another complaint that is already being dealt with under these Principles. For example, a care recipient's family member may make a complaint that raises an issue and subsequently another family member makes a complaint about that same issue. The Commissioner may decide to take no further action in relation to the subsequent complaint on the basis that the issue is already being dealt with through the first complaint. Previously, the Secretary could take no further action in relation to an issue if the issue had already been dealt with, but not if it was currently being dealt with in another complaint. Because at times multiple complaints are made in relation to the same issue, this

provision allows the Commissioner to take no further action in relation to one of those complaints and continue to deal with the issue in the other complaint;

- the issue relates to an event that occurred more than 1 year before the complaint was given to the Commissioner 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 Commissioner may decide that it is not warranted to undertake 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 Commissioner 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 on the basis that the issue is ongoing; or
- the complainant has withdrawn their complaint. If the complainant, for whatever reason, decides to withdraw his or her complaint under section 9, the Commissioner may choose to take no further action in relation to the issues raised in the complaint;
- the issue is subject to a coronial inquiry. If a complaint is made to the Commissioner which is closely linked to issues being considered as part of a coronial inquiry, the Commissioner 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 Commissioner. If a care recipient expressly asks that the Commissioner not attempt to resolve a complaint that is directly related to that care recipient, the Commissioner 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 Commissioner that the care recipient smelt of urine and was not having her incontinence pads changed regularly. The Commissioner might raise the issue with the care recipient (or their representative) and on being advised that the Commissioner 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 Commissioner. On the basis of the express wishes of the care recipient the Commissioner 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 or the Department; or
- having regard to all the circumstances, a resolution process in relation to the issue is not warranted. The Commissioner 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 Commissioner 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 Commissioner may decide that a resolution process is not warranted in relation to the issue.

Section 9 – Withdrawal of complaint

This section provides that a person who has made a complaint can withdraw their complaint at any time, by informing the Commissioner either orally or in writing. When a complaint is withdrawn, the Commissioner may still continue dealing with the complaint without the involvement of the complainant.

There can be a number of reasons why the Commissioner would continue dealing with a complaint even though the complainant has withdrawn their complaint. 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 their complaint because it is too upsetting for them to continue to be involved in the resolution process. However, if the Commissioner 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 Commissioner can continue dealing with the complaint.

Previously the *Complaints Principles 2014* provided that a complainant may withdraw from the resolution process, but did not specify that the complainant may withdraw their complaint. Section 9 makes it clear that a complainant may withdraw their complaint at any time, and not just at a time after the Commissioner has started undertaking a formal resolution process.

A note at the end of section 9 reminds readers that a complainant who withdraws his or her complaint ceases to have a right to be given feedback or to apply for reconsideration of the Commissioner's decision.

Section 10 – Confidentiality

Section 10 states that when a request for confidentiality has been made, the Commissioner must respect the wishes of the complainant by not disclosing any information for which the complainant has sought confidentiality.

However, the Commissioner 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 Commissioner's resolution

process, calls the Commissioner and threatens to take matters into his own hands by stopping the fellow resident once and for all, the Commissioner 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 Commissioner must take all reasonable steps to let the complainant know, before revealing any confidential information, that the Commissioner intends to disclose confidential information.

An identical provision was included in the *Complaints Principles 2014* but has been moved to Part 2 in these Principles to clarify that the way the Commissioner handles a request for confidentiality is to be in accordance with this section throughout the entire process of handling a complaint, and not only during the resolution process.

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 Division 86 of the Act still apply.

Part 3 – Resolution process

Section 11 – Aged Care Complaints Commissioner may undertake resolution process on own initiative

In some cases, the Commissioner may receive 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 Commissioner if they have concerns about something they have witnessed at an aged care service. Another example might be if the Commissioner discovers worrying information about the provision of care at an aged care service from a story in the media.

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

The Commissioner can also, on his or her own initiative, examine an issue that has been identified through a complaint, where this is deemed appropriate.

For example, as part of a complaint the Commissioner may become aware of information which is not relevant to the complainant but indicates that an approved provider is not meeting its responsibilities under the Act. In these circumstances, the Commissioner 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 Commissioner would respect the wishes of the care recipient and end the process on this basis as per paragraph 14(g)(vi) of these Principles. Where the

Commissioner has ongoing concerns for the safety, health or wellbeing of the care recipient and/or other care recipients within the service however, the Commissioner may initiate an own initiative resolution process under section 11.

Section 11 also allows the Commissioner to initiate a resolution process in relation to an issue that has arisen in regards to multiple approved providers, without having to undertake concurrent resolution processes in relation to each approved provider. In rare circumstances, the same issue may be raised in association with multiple providers (for example, a media article may bring to the Commissioner's attention an issue that affects approved providers in a certain region). If such a situation occurs, the Commissioner may undertake a resolution process in regards to one or more approved providers.

Section 12 – Resolution process

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

Section 12 enables the Commissioner 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 Commissioner;
- 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 Commissioner 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 Commissioner (and not with the complainant or approved provider);
- the Commissioner 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 Commissioner 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 Commissioner 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 Commissioner.

Section 13 – Notifying approved provider

This section provides that if the Commissioner undertakes a resolution process, the Commissioner must notify the approved provider to which the issues relate, as soon as practicable.

However, in some situations the Commissioner may decide not to notify the approved provider (or to notify the approved provider at a later time). The Commissioner 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 13 also states that, in the event that the Commissioner 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 Commissioner 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 Commissioner's ability to obtain information; or
- it is assessed that some valuable information could be gained that might be jeopardised by announcing the visit.

Part 4 – Outcome of resolution process

Section 14 – Ending resolution process

This section provides that the Commissioner 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 Commissioner;
- the Commissioner has directed the approved provider to take action in relation to the issue;
- the Commissioner has been notified that the Secretary has initiated action under Part 4.4 of the Act which relates to the issue;
- the complainant (if any) has withdrawn their complaint;
- the issue is better dealt with by another organisation;
- continuation of the resolution process is not warranted because the Commissioner is satisfied that:
 - despite reasonable inquiry by the Commissioner, the circumstances giving rise to the issue cannot be determined;
 - 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 is already being dealt with under this instrument or has been dealt with under this instrument or the *Complaints Principles 2014*;
 - the issue is subject to a coronial inquiry;
 - a care recipient named in the complaint does not wish the resolution process to continue;
- 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 Commissioner’s role 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 Commissioner 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 Commissioner 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 Commissioner

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 Commissioner, that they have 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 Commissioner may end a resolution process on the basis that the Commissioner is satisfied that the approved provider has addressed the issue raised.

Ending a resolution process on the basis that the Commissioner has directed the approved provider (in accordance with section 15) to take stated action in relation to the issue

If, during the course of a resolution process, the Commissioner is concerned that an approved provider is not meeting their responsibilities under the Act and Principles, the Commissioner 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 Commissioner would end the process on the basis that the Commissioner 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 Commissioner may issue directions to the approved provider, requiring the approved provider to take certain actions within certain timeframes. Where this occurs, the Commissioner 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 Commissioner has been notified that the Secretary has initiated action under Part 4.4 of the Act which relates to the issue

In some circumstances a resolution process will identify that an approved provider has not complied 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 Commissioner may end a resolution process on this basis. It is important to note that for this provision to apply the compliance action initiated by the Secretary needs to relate to the issue, but it does not have to be in response to the issue as such. For example, the Secretary may initiate action in relation to multiple issues in regards to an approved provider, only some of which are issues that have been raised in a complaint.

Ending a process on the basis that the complainant (if any) has withdrawn their complaint

There may be circumstances where, for whatever reason, a complainant decides that they no longer wish to be part of the resolution process and decides to withdraw their complaint. If the Commissioner has no ongoing concerns, the Commissioner 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 their complaint 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 Commissioner may end a resolution process if the Commissioner 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 Commissioner 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 against relevant standards (e.g. the residential aged care Accreditation Standards);
- the Department of Health – the Department oversees the regulation of approved providers of aged care. Where a serious issue arises as part of an investigation of a complaint or as part of a resolution process, the Commissioner may choose to refer the matter to the Secretary of the Department so that the Secretary may consider whether to initiate action under the Aged Care Act in relation to the issue;
- 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 Commissioner 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 Commissioner 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 Commissioner is satisfied that despite reasonable inquiry by the Commissioner, the circumstances giving rise to the issue cannot be determined

A number of complaints made to the Commissioner 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 Commissioner 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 Commissioner, 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 Commissioner may end the resolution process on the basis that, despite all reasonable efforts being made, the circumstances giving rise to the event cannot 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 Commissioner is satisfied that 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 Commissioner that information was not given to the Commissioner 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 Commissioner, to documents that might assist in their proposed unfair dismissal action.

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

Ending a process on the basis that continuation of the resolution process is not warranted because the Commissioner is satisfied the issue is already being dealt with under these Principles or has been dealt with under these Principles or the Complaints Principles 2014

Part way through a resolution process, it may become apparent that this issue has been raised in another complaint which is currently being considered by the Commissioner; or that the issue has previously been raised by the same complainant and previously considered by the Commissioner; or that the issue has previously been raised in a complaint under the *Complaints Principles 2014* and dealt with by the Secretary under those Principles. If this situation arises, the Commissioner may end a resolution process on this basis.

For example, a care recipient may make a complaint that raises an issue and subsequently another care recipient makes a complaint about that same issue (for example, if multiple care recipients are unhappy with the quality of food offered in a residential care facility). The Commissioner may decide to end a resolution process in relation to the subsequent complaint on the basis that the issue is already being dealt with through the first complaint. Previously, the Secretary could end a resolution process in relation to an issue if the issue had already been dealt with, but not if it was currently being dealt with in another complaint. Because at times multiple complaints are made in relation to the same issue, this provision allows the Commissioner to end a resolution process in relation to one of those complaints and continue to deal with the issue in the other complaint.

Ending a process on the basis that continuation of the resolution process is not warranted because the Commissioner 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 Commissioner may become aware that legal proceedings or a coronial inquest have commenced. If the issue being considered by the Commissioner is closely linked to the legal proceedings or coronial inquiry, the Commissioner may end the resolution process on this basis. However the Commissioner 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 Commissioner's resolution process.

Ending a process on the basis that continuation of the resolution process is not warranted because the Commissioner is satisfied a care recipient named in the complaint does not wish the resolution process to continue

Part way through a resolution process, a care recipient might advise that they do not wish the Commissioner 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 Commissioner to continue to be involved. In circumstances such as these, the Commissioner may end a resolution process because the Commissioner is satisfied that a care recipient named in the complaint does not wish for the resolution process to continue.

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

For example, the Commissioner 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 Commissioner.

Section 15 – Directions to approved provider

This section provides that:

- if, as part of a resolution process in relation to one or more issues, the Commissioner is concerned that the approved provider is not meeting its responsibilities under the Act and Principles, the Commissioner may issue directions to the approved provider;
- the directions must require the approved provider to take stated actions in order to meet 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 Commissioner must give the approved provider a notice of intention to issue directions. The notice of intention to issue directions is a procedural fairness step that allows the approved provider to have a chance to respond to the Commissioner's concerns. The notice of intention to issue directions must:
 - state the preliminary findings of the Commissioner;
 - state the concerns held by the Commissioner 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; and
 - state the timeframe the approved provider has for responding to the notice of intention to issue directions;
- if the Commissioner 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 different time frame is specified by the Commissioner in the notice. This timeframe may be much shorter where the Commissioner considers the matter requires a more urgent response);
- the Commissioner may, after considering any response from the approved provider, give written directions to the approved provider directing the approved provider to take stated actions in order to meet its responsibilities under the Act.

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 Commissioner 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 will result in the Commissioner notifying the approved provider that the Commissioner is not satisfied that the approved provider has sufficiently taken the stated action to meet its responsibilities. This notice will include details of the information that the Commissioner relied on in determining that the approved provider did not take the actions stated in the directions. The notice will also be provided to the Secretary. Failure by an approved provider to comply with directions may then result in the Secretary initiating action under Part 4.4 of the Act, in accordance with the processes set out in Part 4.4.

Part 5 – Feedback

Section 16 – Feedback on no further action

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

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

It should be noted that if the complaint is made anonymously, or if the complainant withdraws their complaint or has requested the Commissioner not to provide feedback in relation to the complaint, then the requirement to provide feedback to the complainant does not apply. The feedback may be written or oral.

Section 17 – Feedback on resolution process

This section provides that following a resolution process, the complainant and the approved provider must be given feedback. Feedback may be provided orally or in writing.

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

- any key findings;
- the Commissioner’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 Commissioner; and
- any other appropriate feedback.

It should be noted that if the complaint is made anonymously, or if the complainant withdraws their complaint or has requested the Commissioner not to provide feedback in relation to the complaint, then the requirement to provide feedback to the complainant does not apply. However, in those circumstances feedback must still be given to the approved provider.

This section provides that the Commissioner 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 Commissioner 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 Commissioner may give feedback about a resolution process to any other person or organisation that the Commissioner considers has a sufficient interest in the matter. For example, the Commissioner 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 Division 86 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 Commissioner from referring an issue raised in a complaint to the Secretary or to another organisation. Section 19 also states that the Commissioner may continue to deal with an issue raised in a complaint even if the Commissioner has referred the issue to another organisation.

Examples of other relevant organisations to which the Commissioner might refer issues include the police, the Quality Agency or the Australian Health Practitioner Regulation Agency. As the Commissioner is separate from the Department of Health, the Commissioner may also refer an issue to the Secretary under this section for consideration of the Secretary (for example, for consideration of possible compliance action to be taken against an approved provider).

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 the administration of this instrument

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 Commissioner finds that an approved provider is not paying staff and is facing financial difficulties, the Commissioner may alert the relevant areas within the Department of Health such that they might take action to minimise the risk of the approved provider defaulting on the repayment of refundable accommodation deposits or accommodation bonds to care recipients.

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

Section 21 – Secretary may take action under the Act

This section provides that nothing in this instrument prevents the Secretary from taking action under Part 4.4 of the Act in relation to an issue raised in a complaint or that otherwise comes to the attention of the Commissioner through information received by the Commissioner.

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

- the Commissioner may give the approved provider a notice of intention to issue directions (requiring the approved provider to explain the situation);
- the Commissioner may then issue directions to the approved provider; or
- the Commissioner may refer the matter to the Secretary so that the Secretary may consider taking 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 refundable accommodation deposits or accommodation bonds.

Part 7 – Reconsideration of decisions

Part 7 sets out the process by which a complainant or an approved provider, who is unhappy with a decision made by the Commissioner, may apply for reconsideration of that decision.

Section 22 – Application for reconsideration by Aged Care Complaints Commissioner

This section provides that:

- a complainant may apply to the Commissioner for reconsideration of a decision by the Commissioner to:
 - take no further action (under paragraph 7(a)) with regards to 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 Commissioner for reconsideration of a decision to end a resolution process in relation to an issue raised in a complaint or an issue in relation to which the Commissioner undertook a resolution process on the Commissioner’s own initiative under section 11. The approved provider does not have a right to seek reconsideration of a decision by the Commissioner to take no action on a complaint (under paragraph 7(a)) because the approved provider would never have been notified of the issue because no resolution process was ever initiated by the Commissioner.
- A complainant cannot apply for reconsideration of a decision to take no further action in relation to an issue if that decision was made as a result of a complainant withdrawing their complaint. By withdrawing their complaint, the complainant ceases to have rights to receive feedback or to apply for reconsideration of a decision in relation to that complaint.

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

- apply to the Commissioner (either orally or in writing) within 42 days of being notified in writing of the Commissioner’s decision; and
- state the reasons why examination is sought. The reasons must go beyond mere dissatisfaction with the decision.

Previously applicants had to apply for reconsideration of a decision within 28 days of being notified of the decision. This has been increased to 42 days to allow applicants more time to consider a decision before deciding whether or not to apply for reconsideration. For example, a complainant may be a grieving relative of a care recipient who has recently passed away. In such circumstances it is appropriate that a complainant have more time to apply for reconsideration of a decision. The increased time frame also allows complainants and approved providers a reasonable time frame in which to apply for reconsideration, as those parties will no longer be able to apply for a subsequent examination of a decision by the Aged Care Commissioner, as was available previously under the *Complaints Principles 2014*.

This section also provides that an application cannot be made for reconsideration of a decision by the Commissioner to end a resolution process in the following circumstances:

- where the complainant has withdrawn their complaint under section 9 of this instrument;
- a complainant or approved provider cannot apply for reconsideration of a decision to end a new resolution process where the Commissioner decides to end a new resolution process which was undertaken under paragraph 23(1)(b), due to any of the circumstances in paragraphs 14(a), (b), (d), (e), (f) or (g). This means that, for example, if after a complainant applies for reconsideration of a decision, the Commissioner undertakes a new resolution process and then decides to end that new resolution process under paragraph 14(b) because the Commissioner is satisfied that the approved provider has sufficiently addressed the issue, the complainant cannot apply for reconsideration of the Commissioner's decision to end the new resolution process;
- a complainant or approved provider cannot apply for reconsideration of a decision to end a new resolution process which was undertaken under paragraph 23(1)(b), if:
 - the new resolution process was undertaken in relation to reconsideration of a decision to end the original resolution process, where the original resolution process was ended because the Commissioner issued directions to the approved provider under section 15; and
 - the Commissioner decided to end the new resolution process because directions had been issued to the approved provider as part of that new resolution process.

In other words, an approved provider and/or complainant cannot apply for reconsideration of a decision to end a new resolution process if the original decision resulted in directions being issued to the approved provider, and the new resolution process also resulted in a decision to end on the basis of directions being issued (in essence, the original decision to issue directions is confirmed on reconsideration).

The policy intent is that where the Commissioner, after undertaking a new resolution process, has decided to end on the basis of issuing directions for a second time to an approved provider, the approved provider and/or complainant cannot apply for reconsideration of that second decision.

The note to subsection 22(4) clarifies that an applicant may apply for reconsideration of a decision to end a new resolution process where directions were not issued to the approved provider as part of the first resolution process, but the second resolution process results in a decision to end on the basis of directions being issued. This ensures that the approved provider is always afforded natural justice following the issuing of directions.

Section 23 – Reconsideration by Aged Care Complaints Commissioner

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

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

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

If the Commissioner decides, as a result of the reconsideration, to undertake a new resolution process the Commissioner 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 of these Principles, within 90 days of receiving the application to reconsider the decision.

Previously, a new resolution process had to be completed within 28 days of making the decision to undertake the new resolution process. This meant that a new resolution process had to be completed within 56 days of the Secretary receiving an application for reconsideration. The overall time frame for completing the new resolution process has been increased by a further 34 days to 90 days of receipt of the application for reconsideration. This time frame allows more time for the Commissioner to gather information and is in line with key performance indicators used by other Commonwealth complaints bodies.

The policy intent of the increased time frame is to ensure that decisions made as part of a new resolution process will be sufficiently robust given that complainants and approved providers will no longer be able to apply for examination of a decision by the Aged Care Commissioner, as was available previously under the *Complaints Principles 2014*.

The 90 day time frame can also be increased by a further 14 days if the Commissioner notifies the complainant (if any) and the approved provider before the end of the original 90 days that the timeframe will be extended and the reasons for that extension.

Part 8 – Application and transitional provisions

This Part provides for matters of a transitional nature, so that issues and complaints which are currently ongoing at the commencement of this instrument can continue to be handled by the Commissioner. The power to make this Part relies on item 34 of Part 2 of Schedule 1 to the Complaints Arrangements Act.

Section 24 – Definitions

This section defines certain terms used in this Part.

- **ACC** means the Aged Care Commissioner, in accordance with the *Complaints Principles 2014*.
- **old Principles** means the *Complaints Principles 2014* (as they were in force immediately before 1 January 2016, when these Principles commence).
- **Quality Agency** means the Australian Aged Care Quality Agency, which was established by the *Australian Aged Care Quality Agency Act 2013*.

Section 25 – Transitional—complaints made before 1 January 2016

This section provides for complaints that were made before the commencement of these Principles, but were not yet dealt with under the old Principles or where a resolution process was still ongoing in relation to the complaint at 1 January 2016. Section 25 allows the Commissioner to deal with the complaint as if the complaint were made to the Commissioner under these Principles. Any notification that was given to an approved provider under the old Principles regarding the resolution process is deemed to have been given by the Commissioner under these Principles.

Section 26 – Transitional—applications for reconsideration made before 1 January 2016

Section 26 provides for applications for reconsideration that were made before the commencement of these Principles, but were not yet dealt with under the old Principles or where a new resolution process had started but had not yet been completed before 1 January 2016. Section 26 allows the Commissioner to deal with the complaint as if the application for reconsideration were made to the Commissioner under these Principles. Any notification that was given to an approved provider under the old Principles regarding the resolution process is deemed to have been given by the Commissioner under these Principles.

The effect of sections 25 and 26 together is that the Commissioner has the ability to resolve complaints and consider applications for reconsideration that were made prior to 1 January 2016.

Section 27 – Transitional—reconsideration of certain decisions made by the Secretary

Section 27 provides for reconsideration in circumstances where the Secretary decided to take no further action under the old Principles in relation to an issue raised in a complaint.

This section provides that:

- a complainant may apply to the Commissioner for reconsideration of a decision by the Secretary under the old Principles to:
 - take no further action (under paragraph 7(a) of the old Principles) with regards to a complaint made by the complainant; and/or
 - end a resolution process (under section 14 of the Principles) in relation to an issue raised in a complaint made by the complainant; and

- an approved provider may apply to the Commissioner for reconsideration of a decision by the Secretary under the old Principles to end a resolution process in relation to an issue raised in a complaint or an issue in relation to which the Secretary undertook a resolution process on the Secretary's own initiative under section 9 of the old Principles. As with section 22 of these Principles, the approved provider does not have a right to seek reconsideration of a decision by the Secretary to take no further action on a complaint because the approved provider would never have been notified of the issue because no resolution process was ever initiated by the Secretary.

An approved provider and/or complainant cannot apply for reconsideration of a decision by the Secretary to end a new resolution process under the old Principles.

If either the complainant or the approved provider wishes to seek reconsideration under section 27 of a decision made by the Secretary, they must:

- apply to the Commissioner (either orally or in writing) within 42 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.

Subsection 27(6) provides that the time frame in which the Commissioner must decide how to handle the application for reconsideration and to complete a new resolution process (if the Commissioner decides to do so) is the time frame set out in section 23 of these Principles. In other words, the Commissioner must decide within 28 days whether to confirm the Secretary's decision or to undertake a new resolution process. If the Commissioner decides to undertake a new resolution process, that new resolution process must be completed within 90 days of receiving the application for reconsideration. The Commissioner may also extend the 90 day time frame by a further 14 days in accordance with subsection 23(4).

Section 28 – Transitional—examination of decisions made by Secretary

Section 28 applies to applications made under the old Principles for examination by the Aged Care Commissioner (ACC) of a decision made by the Secretary under the old Principles.

This section provides that where a complainant or approved provider had already applied to the ACC for examination of a decision by the Secretary before 1 January 2016, but at 1 January 2016:

- the application for examination had not yet been dealt with by the ACC; or
- the ACC had decided to examine the decision, but the ACC's examination was not yet complete at 1 January 2016; or
- the ACC had examined the decision before 1 January 2016 and had directed the Secretary to undertake a new resolution process under the old Principles, but the new resolution process was not completed by 1 January 2016;

the application for examination of the decision will be treated as an application for reconsideration of a decision by the Commissioner under these Principles.

The Commissioner will handle the application as a reconsideration of a decision under section 22 of these Principles. The time frames that apply to that process will be the same time frames as for reconsideration of decisions under these Principles, but will apply as if the Commissioner received an application for reconsideration on 1 January 2016.

This means that on 1 January 2016, where an application for examination was ongoing, the Commissioner will have 28 days from 1 January 2016 to decide whether to confirm the Secretary's original decision or to undertake a new resolution process. If the Commissioner decides to undertake a new resolution process, that new resolution process must be completed within 90 days of 1 January 2016. The Commissioner may also extend the 90 day time frame by a further 14 days in accordance with subsection 23(4).

Section 29 – Transitional—decisions to examine complaints about processes of Secretary or Quality Agency

Section 29 applies to complaints made under the old Principles before 1 January 2016 about the Secretary's process for handling complaints under the old Principles, or complaints about the Australian Aged Care Quality Agency's (the Quality Agency) process for accrediting aged care services, or the Quality Agency's process for conducting quality reviews of home care services, and where the complainant had not been notified before 1 January 2016 of the ACC's decision as to whether or not to examine the complaint.

This would cover situations where the complaint had not yet been dealt with under the old Principles at 1 January 2016.

This provision allows the Commissioner to handle those ongoing complaints as if the Commissioner received the complaint on 1 January 2016. The provision gives the Commissioner all the powers that the ACC held under Part 3 of Division 7 of the old Principles. However, the reference to a function of the ACC in subsection 29(2) of the old Principles is still taken to mean a function of the ACC immediately before 1 January 2016, not a function of the Commissioner after the commencement of these Principles.

The Commissioner can treat the complaint as if he or she had the power to examine the complaint under these Principles. No reconsideration will be available for an examination of a complaint under this section, as the ACC's examination of complaints under the old Principles occurred after a reconsideration of a decision had already been made.

The time frames and processes for examining those complaints are those set out in Division 3 of Part 7 of the old Principles. This means that the Commissioner must decide within 14 days of 1 January 2016 whether or not to examine the complaint.

Section 30 – Transitional—examination of complaints about processes of Secretary or Quality Agency

Section 30 applies to complaints made under the old Principles before 1 January 2016 about the Secretary's process for handling complaints under the old Principles, or complaints about the Quality Agency's process for accrediting aged care services, or the Quality Agency's process for conducting quality reviews of home care services, and where the ACC had decided to examine the complaint but the complainant had not yet been notified of the outcome of that examination at 1 January 2016.

This would cover situations where the ACC had started to examine a complaint, but the examination had not yet been completed at 1 January 2016.

This provision gives the Commissioner the power to examine those complaints under section 31 of the old Principles and notify the complainant under section 32 of the old Principles as if the Commissioner held the powers previously held by the ACC under those provisions in relation to those examinations. No time frames are specified in the old Principles for those examinations.

Section 31 – Transitional—annual reports

Section 31 provides for transitional arrangements relating to the annual reports of the Commissioner and the ACC under the old Principles. This section provides that for the 2015-16 financial year, the Commissioner must report on the ACC's functions for the period 1 July 2015 to 31 December 2015. For the time period 1 January 2016 to 30 June 2016, the Commissioner will report on his or her functions as they exist from 1 January 2016.

Schedule 1 – Repeals

Item 1 repeals the whole of the *Complaints Principles 2014*.

Statement of Compatibility with Human Rights

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

Complaints Principles 2015

These 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 Principles

The *Complaints Principles 2015* (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 will reflect the transfer of the aged care complaints handling powers of the Secretary of the Department of Health to the Aged Care Complaints Commissioner (the Commissioner) from 1 January 2015. It will also make changes of a structural nature, as well as address practical issues faced by the Commissioner in handling complaints.

Human Rights Implications

The Principles engage the following human rights:

- the right to an adequate standard of living;
- the right to the enjoyment of the highest attainable standard of physical and mental health;
- the right to protection from exploitation, violence and abuse; and
- the protection against arbitrary interference with privacy.

Standards of living and health

The Principles engages the right 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 28 and article 25 of the Convention on the Rights of Persons with Disabilities (CRPD).

The amendments transfer responsibility for aged care complaints handling to the Commissioner. This will enhance the handling of complaints about aged care services, which will enhance consumer and service provider confidence in the complaints handling system and will ensure care recipients receive the most appropriate level of care. This will further enforce the rights of care recipients to an

adequate standard of living and to enjoy the highest attainable standard of physical and mental health.

Protection from exploitation, violence and abuse

The Principles engage the right to protection from exploitation, violence and abuse as contained in article 20(2) of the International Covenant on Civil and Political Rights (ICCPR), article 19(1) of the Convention on the Rights of the Child and article 16(1) of the CRPD. The transfer of responsibility for complaints management to a statutory office-holder independent of the Department's funding and regulatory roles enhances human rights by ensuring there is no perceived 'conflict of interest' in the handling of complaints, and further protects care recipients from exploitation, violence and abuse.

Protection against arbitrary interference with privacy

The Principles engage article 17 of the ICCPR and article 22 of the ICRPD, which provide that no one shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, and that everyone has the right to the protection of the law against such interference or attacks.

The Principles require the Commissioner to ensure that a request by a complainant for confidentiality is complied with unless the Commissioner considers that doing so will, or is likely to, place the safety, health or well-being 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 Commissioner must take all reasonable steps to notify the complainant.

Any personal information which the Commissioner collects as part of the performance of his or her functions is 'protected information' under the *Aged Care Act 1997* and will be handled in accordance with the limitations placed on the use of protected information under that Act, as well as the *Privacy Act 1988* and any other applicable legislation. Information will only be dealt with where reasonably necessary for the fulfilment of the Commissioner's lawful and legitimate functions and only in accordance with the Australian Privacy Principles and the *Aged Care Act 1997*.

Conclusion

The Principles are compatible with human rights as it promotes the human rights to an adequate standard of living, the highest attainable standard of physical and mental health, and protection from exploitation, violence and abuse. To the extent that it may limit the protection against arbitrary interference with privacy, those limitations are reasonable and proportionate and this approach is compatible with human rights principles.

The Hon Sussan Ley, MP

Minister for Aged Care