

Examination by the Aged Care Commissioner of conduct of the accreditation body or persons carrying out an audit or making a support contact

Summary information for staff and assessors

This summary provides an outline of the role of the Aged Care Commissioner when examining the conduct of the accreditation body (the Aged Care Standards and Accreditation Agency Ltd or persons carrying out an audit or making a support contact. The purpose of this summary is to assist employed and contracted quality assessors in understanding their rights and responsibilities and to facilitate compliance with Agency policies and procedures in such situations.

The Agency is committed to working with the Aged Care Commissioner in support of the Commissioner's role. The Commissioner and the Agency have developed an agreed protocol¹ for dealings with other. A copy of this Protocol is attached.

If you need further information on the issues covered in this summary, please contact the General Manager Corporate Affairs and Human Resources, Chris Falvey, (02) 88311088, or chris.falvey@accreditation.org.au. The General Manager Corporate Affairs and Human Resources is the designated central contact point for all correspondence between the Agency and the Commissioner.

Role and powers of the Commissioner

Functions of the Aged Care Commissioner under the Aged Care Act 1997

- 1 The Aged Care Amendment (Security and Protection) Act 2007 amended the Aged Care Act 1997 (**Act**) with effect from 1 May 2007 to establish an Aged Care Commissioner (**Commissioner**) under Part 6.6 of the Act.
- 2 Section 95A-1 (2) sets out the functions of the Commissioner. In relation to the Aged Care Standards and Accreditation Agency Ltd (**Agency**) these functions include:
 - (d) to examine complaints made to the Aged Care Commissioner about:
 - (i) the conduct of an *accreditation body relating to its responsibilities under the Accreditation Grant Principles; or
 - (ii) the conduct of a person carrying out an audit, or making a support contact, under those Principles;
(but not a complaint about the merits of a decision under those Principles), and make recommendations to the accreditation body concerned arising from the examination;
 - (e) to examine, on the Aged Care Commissioner's own initiative:
 - (i) the conduct of an accreditation body relating to its responsibilities under the Accreditation Grant Principles; and
 - (ii) the conduct of persons carrying out audits, or making support contacts, under those Principles;

¹ Current protocol is dated 24 January 2008

and make recommendations to the accreditation body concerned arising from the examination;

(f) to advise the Minister, at the Minister's request, about matters relating to any of paragraphs (a), (b), (c), (d) and (e);

(g) the functions (if any) specified in the Investigation Principles.

3 The Investigation Principles (**IP**) are made under s96-1(1) of the Act. The current principles are the Investigation Principles 2007, which commenced on 1 May 2007.

4 The Commissioner may examine conduct either following receipt of a complaint or on the Commissioner's own initiative.

5 It is important to note the **limited scope** of the Commissioner's functions:

5.1 the conduct of the Agency being examined must relate to the Agency's responsibilities under the Accreditation Grant Principles and the conduct of the person must relate to an audit or a support contact made under the Accreditation Grant Principles.

5.2 the Commissioner cannot review the merits of, or change, decisions made by the Agency

5.3 where the Commissioner receives a complaint, the complainant must have previously made a complaint or brought the matter to the attention of the Agency²

5.4 complaints must be in writing and can only be made about a matter that occurred on or after 1 May 2007

Power is to 'examine' not to investigate

6 Under the Act and the Investigation Principles, the Commissioner 'may examine a complaint in the manner that the Commissioner considers appropriate'. Accordingly, the Commissioner's powers are more limited than a formal investigation.

7 The Commissioner is not given any specific powers under the Act or the IP to require provision of information or production of a document by the Agency or an assessor.

8 The Commissioner does not have a power to compel the Agency or an assessor to provide information or produce documents to the Commissioner.

9 The power to 'examine' is essentially a right of the Commissioner to look at the process of handling of the complaint and/or the conduct of the Agency, or the conduct of an assessor conducting a support contact or an audit. The Commissioner can then make recommendations to the Agency.

² Clause 16A.27(2)(b) of the Investigation Principles 2007

- 10 While in some respects, the Commissioner has a role that has some similarity to the role of an Ombudsman, the Commissioner does not have the investigative and other powers usually given to an Ombudsman.
- 11 The legislation, including the Principles made under the Act, are available online at www.comlaw.gov.au .

What should you do if the Commissioner requests information or wishes to interview you?

- 12 To enable the Commissioner to examine a matter falling within the Commissioner's jurisdiction, the Commissioner will need to be provided with background and other information by the Agency.
- 13 The Commissioner has agreed to channel all correspondence to assessors via the Agency's central contact. However, should an assessor be contacted by the Commissioner, the assessor should promptly notify the Agency of any request received from the Commissioner. Assessors should in the first instance notify their State Manager who will in turn contact the General Manager Corporate Affairs.
- 14 This will enable the Agency to determine whether the matter has been recorded as a complaint or previously been brought to the attention of the Agency.
- 15 The Agency will request appropriate background information from the Commissioner so that the nature of the matter being examined and the associated issues are clearly identified.
- 16 The Agency can then work out who is best placed to assist the Commissioner in the Commissioner's examination of the matter and organise the co-ordinated provision of appropriate information to the Commissioner.

Who can provide information to the Commissioner on behalf of the Agency?

- 17 Only staff authorised to do so can provide information to the Commissioner on behalf of the Agency.
- 18 As set out in the contract with the Agency, contracted quality assessors may not disclose information concerning their contracted services without the prior approval of the Agency.
- 19 The Agency will assess requests from the Commissioner to interview employed or contract assessors and, in consultation with the Commissioner, make arrangements for the interviews of agreed personnel.

Interviews of staff and/or contracted quality assessors

- 20 Where it is agreed by the Agency that it is appropriate that a member of staff or an assessor be interviewed by the Commissioner as part of the Commissioner's examination of a matter, the person(s) being interviewed should ensure that they have been provided with appropriate background information on the matter under examination and given an outline of the issues that the Commissioner wishes to cover in the interview in advance of the interview.

- 21 The Commissioner may seek to interview people who are not the subject of the complaint, but who may be in a position to assist the Commissioner's examination of the complaint.
- 22 Where the Commissioner is examining a complaint about the conduct of the Agency or an assessor, the Agency will request a copy of the complaint.
- 23 Occasionally due to particular sensitivities concerning the complainant or the complaint, it may not be possible to provide a copy of the complaint to persons being interviewed. However, in these circumstances a summary of the complaint will be provided.
- 24 While the Agency expects employed and contract assessors to support the Commissioner in the Commissioner's examination of matters in the interests of resolving concerns, the Commissioner does not have powers to compel persons to be interviewed or to answer a particular question or to produce a particular document.
- 25 Should a person decline to be interviewed, the Agency will form no view as a result.
- 26 Persons being interviewed are entitled to have a support person attend with them if they wish to do so.