

**PROTOCOL  
BETWEEN  
THE OFFICE OF THE AGED CARE COMMISSIONER  
AND THE  
AGED CARE STANDARDS AND ACCREDITATION AGENCY LTD**

The Aged Care Commissioner (the Commissioner) and the Aged Care Standards and Accreditation Agency Ltd (the Agency) have reached the understandings set out in this protocol and have endorsed them.

The Commissioner and the Agency agree that, where possible, any issues arising out of this protocol or their dealings with each other should be resolved by negotiation in good faith.

Nothing in the Protocol should be read or taken to suggest or permit either the Commissioner or the Agency to do other than discharge their statutory functions in a lawful, independent and impartial way.

### **Interpretation**

In this document:

“Commissioner” means the Aged Care Commissioner whose office was established by s95a.1 of the *Aged Care Act 1997*

“Agency” means the Aged Care Standards and Accreditation Agency Ltd which was appointed as the accreditation body under the *Aged Care Act 1997*.

“Principles” means the Investigation Principles, the Accreditation Grant Principles, Accountability Principles or any other Principles under the Aged Care Act which refer to the Aged Care Commissioner or accreditation body.

“Staff member” in relation to the Commissioner or the Agency means any person employed or engaged under contract to provide services to the Commissioner or Agency and any person to whom the Commissioner has delegated powers or functions or authorised to take action.

### **Description of the Offices**

The Aged Care Commissioner is a statutory appointment and is independent of the Department of Health and Ageing and the Aged Care Standards and Accreditation Agency Ltd.

The Commissioner’s functions are set out in s 95A-1(2) of the *Aged Care Act 1997*. These are outlined further in the *Investigations Principles 2001*.

The Commissioner’s main areas of responsibility include:

- dealing with complaints about the Secretary’s processes for handling matters under the *Investigation Principles 2007* and the conduct of accreditation bodies relating to their responsibilities under the *Accreditation Grant Principles 1999*, or the conduct of persons carrying out audits or making support contacts under those Principles
- examining decisions made by the Secretary and mentioned in ss 16A.21 and 16A.22 and to make recommendations to the Secretary in relation to these examinations
- undertaking its own investigations
- the provision of advice to the Minister for Ageing on those matters and other functions set out in the Investigation Principles.

The Commissioner may examine a complaint in a manner that the Commissioner considers appropriate and may refuse to examine a complaint under circumstances described in s 16A.27(3).

The Aged Care Commissioner and delegates are 'representatives' for the purposes of the *Accountability Principles 1998*. Part 2 of the *Accountability Principles* sets out the responsibilities attributed to approved providers and the representatives' access to premises and documents as well as other functions.

The Agency's role is governed by the *Aged Care Act 1997*, the *Accreditation Grant Principles 1999* and the *Accountability Principles 1998*. The Agency's role is monitoring the compliance of residential aged care services with the Accreditation Standards as set out in the *Quality of Care Principles 1997* and promoting high quality care.

The core functions of the Agency are to:

- Manage the residential aged care accreditation process using the Accreditation Standards
- Promote high quality care and assist industry to improve service quality by identifying best practice, and providing information, education and training
- Assess and strategically manage services working towards accreditation
- Liaise with the Department of Health and Ageing about services that do not comply with the relevant Standards.

## **Purpose of the Protocol**

The protocol recognises the independence of the Aged Care Commissioner and the accreditation body and is designed to describe the processes and contacts between the Commissioner's Office and the Agency. The Commissioner's Office and the Agency will work cooperatively as part of the quality framework. This Protocol provides a framework to operationalised the legislation in a consistent and transparent manner. Both the Commissioner's Office and the Agency undertake to maximise an efficient use of resources and ensure that a timely, effective, coordinated and cooperative approach is taken.

## **Communication**

The Protocol is supported by regular communication between the Commissioner's Office and the Agency through the General Manager, Corporate Affairs or any other person nominated by the Chief Executive Officer (CEO) and the Director, or Investigations Manager, Office of the Aged Care Commissioner. This communication will be as and when required.

Oral communication will be through the nominated contact in the first instance unless the matter is urgent and the nominated person is unavailable. In such circumstances contact will be between the Aged Care Commissioner and the Agency CEO.

## **Communication with the public**

Private numbers will not be distributed. Members of the public seeking to communicate with either the Commissioner's Office or the Agency will be provided with the relevant free-call or fax numbers. That is;

- Aged Care Commissioner (T) 1800 500 294 (F) 03 9663 7369
- Aged Care Standards & Accreditation Agency (T) 1800 288 025 (F) 02 9633 2422

## **Examination of complaints**

The Commissioner may examine complaints made about the conduct of accreditation bodies relating to the *Accreditation Grant Principles 1999* or the conduct of persons carrying out audits, or making support contacts under those Principles. Division 6.2 of the *Investigation Principles 2007* discusses complaints to the Aged Care Commissioner and the Commissioner's discretion to examine complaints.

**Straight forward complaints** may be dealt with and resolved through informal contact. Initial contact will be with the General Manager, Corporate Affairs. Following resolution the Commissioner will provide correspondence to the Agency and the complainant outlining the actions undertaken and any agreements reached.

## **Commissioner's discretion to examine complaints**

Section 16A.27 sets out the circumstances in which the Commissioner may examine or must refuse to examine a complaint.

The general intent is that in most cases where a person has a concern with the Agency's processes for handling a complaint the Agency will be given an opportunity to address those concerns in the first instance.

However, it is acknowledged that there are circumstances where the person may go directly to the Commissioner. In these circumstances, the Commissioner will advise a person who is making a complaint of the legislative requirements.

If the complainant is unable or unwilling to communicate with the Agency, the Commissioner assess whether the complaint will be accepted or otherwise based on criteria set out in Section 16A.27. The Commissioner will not normally examine an anonymous complaint unless the complaint raises a serious matter and there is sufficient information in the complaint to enable the Commissioner to conduct an examination.

After receiving a written complaint about the conduct of the Agency or its assessors, staff in the Commissioner's Office will gather information sufficient to satisfy the Commissioner as to whether the requirements of 16A.26, 16A.27 are met.

If the complaint is accepted for examination, the Commissioner will advise the General Manager Corporate Affairs. The Commissioner will concurrently advise any individual, whose conduct is the subject of a complaint, in correspondence sent via the Agency.

After establishing an examination process the Commissioner's Office will email the General Manager Corporate Affairs. The email will include:

- the nature of the allegations/issues raised by the complainant
- a request for all documents held on a database or hard copy file, relevant to the complaint
- the names of individuals the Commissioner's Office wish to interview
- a request to identify any other individuals involved in the subject matter of the complaint
- a request to nominate a suitable date and time for the proposed interviews.

Both the Commissioner's Office and the Agency acknowledge the rights of a person being interviewed to be accompanied.

## **Report**

The Commissioner will provide the General Manager Corporate Affairs with a draft copy of the preliminary findings and recommendations.

The Commissioner will consider any comments provided and will prepare and distribute a final report, including any recommendations, to the General Manager Corporate Affairs, and any individual whose conduct has been the subject of a complaint.

The Agency will provide a response to the Commissioner's recommendations. The Agency will also advise the Commissioner of any action taken in response to the recommendations.

If, whilst performing its legislative functions the Commissioner considers that the conduct of an individual may be contrary to Australian law or the Assessor's Code of Conduct, the Commissioner will notify in writing the:

- Agency CEO
- individual/s concerned.

## **Own initiative Examination**

Depending on the nature and scope of the examination, and unless the examination would be compromised the Commissioner will advise the General Manager Corporate Affairs of the planned examination including:

- the issue/or issues to be examined;
- the jurisdiction/s involved
- estimated timeframes;
- if any additional documents are required and the nature of those documents; and
- whether it will be necessary to interview Agency staff.

At the conclusion of a formal examination the Commissioner will provide a preliminary statement of findings for consideration to the CEO and for consideration and comment. Where appropriate the Commissioner will meet with relevant Agency personnel to discuss the report and recommendations.

The Commissioner will consider any comments provided by the Agency prior to the preparation and distribution of a final report and recommendations. The final report, including any recommendations, will be provided to the CEO.

The Agency will provide a response to the Commissioner's recommendations. The Agency will also advise the Commissioner of any action taken in response to the recommendations.

## **Information sharing**

The Commissioner and Agency are performing functions and duties under the *Aged Care Act 1997*. The Agency may disclose protected information to the Commissioner under paragraph 86-3(j) of the *Aged Care Act* and 16.5(1)(e) of the *Information Principles 1997*.

## **Data**

In establishing a cooperative working relationship between the Agency and the Commissioner's Office data will be exchanged on a quarterly basis.

The Commissioner's Office will provide the following information to the General Manager, corporate Affairs:

- the number of complaints received and the number of complaints accepted for examination and the number of complaints finalised in relation to the conduct of the Agency relating to its responsibilities under the *Accreditation Grant Principles 1999*
- the number of complaints received, the number of complaints accepted and the number of complaints finalised in relation to the conduct of a person carrying out an audit or making support contacts under the *Accreditation Grant Principles 1999*
- the number of complaints relating to the conduct of a person carrying out an audit or making support contacts that have been finalised
- the number of own initiative examinations finalised relating to the Agency or its staff.

The Agency will provide the following information to the Commissioner:

- Annual trend data in relation to complaints received by the Agency
- The number of complaints received and the number of complaints resolved quarterly.

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Ms Rhonda Parker  
Aged Care Commissioner

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Mr Mark Brandon  
Chief Executive Officer  
Aged Care Standards & Accreditation Agency Ltd