How do I make referrals to external organisations?

Introduction
A referral is the process of providing information to external organisations for their information and/or action. The Aged Care Quality and Safety Commission (the Commission) may refer information to an external organisation when it is appropriate for that organisation to deal with a matter raised in a complaint.

A referral that requires the Commissioner to disclose protected information to an external organisation must be made in accordance with Part 7 Division 4 of the Aged Care Quality and Safety Commission Act 2018 (Quality and Safety Commission Act).

The decision to disclose information under Part 7 Division 4 of the Quality and Safety Commission Act can only be made by a person who has delegated authority to do so. For more information on disclosures of protected information, please see Factsheet 60 - How do I use or disclose protected information?.

We might refer complaints or enquiries that fall outside of our scope to other organisations. If we can’t help with a query, we can try to identify who may be able to help. A quick reference guide has been developed to assist you in recording out-of-scope referrals.

Where can I seek further advice as to whether a referral is necessary?
The Guidance Portal provide advice and guidance about whether a referral is warranted in the circumstances of a particular case.

They can be contacted via the Guidance Portal.

Complaints Directors can provide advice on all referrals. Further information about referrals can be found in Chapters 5 & 6 of the Complaints Resolution Guidelines.

When should I make a referral?
Referrals can be made at any stage of the complaints process and can occur concurrently with other actions.

The nature of the information being referred, and the purpose for which it is being referred will influence the decision about when you send the referral.
To whom can I make a referral?
The Commissioner can refer an issue to any external organisation better placed to deal with that issue. Typical organisations that the Commissioner may refer information to are discussed below. Please contact the Guidance Portal if you are contemplating making a referral to an organisation that is not listed below.

Note: All referrals that require the Commissioner to disclose protected information to an external organisation carry a degree of legal risk.

Some referrals will require advice from the Clinical Unit, Guidance Portal and/or Legal Services. This is set out below.

The Department of Health (the department)
During a complaint handling process, there may be instances where a referral to the department is needed. Referrals could be for information purposes or so that the Secretary can consider taking action, usually from a compliance perspective.

The department oversees the regulation of providers of aged care. Where a serious issue arises as part of a complaint handling process, the Commissioner may choose to refer the matter to the Secretary of the department for information purposes or for the Secretary to consider whether to initiate action under the Aged Care Act 1997 (Aged Care Act) or grant based agreement in relation to the issue.

There may be instances where issues within a complaint are out of scope for the Commissioner, but consideration should still be given to informing the department of these issues for intelligence purposes as they can be indicators of potential problems.

The National Manager – Complaints Operations (Viv Daniels) is the delegates for referrals to the department. When a referral is being considered, it should be drafted using the appropriate template and sent via email for clearance.

Note: A referral to the department does not require an instrument of release. The Commissioner may refer information to the department under paragraph 62(j) of the Quality and Safety Commission Act and section 22(1) of the Rules to the Secretary, to assist the Secretary to perform his or her functions relating to aged care.

You should address the referral to the relevant State Manager for compliance action under Grant Agreements or the Assistant Secretary, Prudential and Approved Provider Regulation Branch for compliance action under the Act. You are required to call the relevant state manager or Assistant Secretary to advise them of the referral if the information being referred requires urgent consideration by the department. If you are unsure of who to address your referral to, contact the Guidance Portal.

Please note: Providers and complainants cannot be informed that the Commissioner has referred an issue to the department.
Coroner
A coroner's court is established under state and territory legislation to investigate certain types of deaths. Coroners typically determine the cause and manner of the death and consider how similar deaths could be prevented in the future. Under state or territory law, any person who becomes aware of a reportable death must report it to the police or coroner.

Contact the Clinical Unit (email: clinical.advice@agedcarequality.gov.au) for advice and guidance if you believe you have become aware of a reportable death.

A referral to the coroner is only required if the coroner is not aware of the matter, however the coroner might request or require additional information to be provided to it. Complaints Officers can contact the coroner's office to enquire whether the death (of a person receiving aged care) has been reported.

Before making a referral to the Coroner complaints officers must consult with the Guidance Portal.

Police
Criminal matters that are beyond the jurisdiction of the Commission (e.g. fraud and theft) should be referred to the police. If a decision is made to continue with a complaint process after a referral to the police, officers should ensure their actions do not interfere with police investigations.

The Australian Health Practitioner Regulation Agency (AHPRA), the NSW Health Care Complaints Commission (HCCC) and Queensland Office of the Health Ombudsman (OHO)
AHPRA is responsible for the implementation of the National Registration and Accreditation Scheme across Australia. In New South Wales and Queensland the bodies that receive complaints on the professional conduct of a registered health practitioner are the NSW Health Care Complaints Commission (HCCC) and the Queensland Office of the Health Ombudsman (OHO). In all other states and territories, AHPRA is responsible.

If the issue relates to the professional conduct of a registered health practitioner, the delegate may decide that it is better handled by AHPRA. This type of referral will include disclosure of protected information under paragraph 61(1)(f) of the Quality and Safety Commission Act. The delegate must believe on reasonable grounds both that the practitioner’s conduct has breached the standards of professional conduct of the practitioner’s profession, and that the practitioner should be reported to AHPRA. A mere suspicion that standards have been breached is insufficient.

Before making a referral to AHPRA (HCCC/OHO) complaints officers must seek advice from the Clinical Unit and the Guidance Portal.
Please note: Providers and complainants cannot be informed that the Commissioner has referred an individual to AHPRA (or equivalent).

Who can approve a referral?
A referral that requires the Commissioner to disclose protected information to an external organisation must be made in accordance with Part 7 Division 4 of the Act.

Only a person in a position with delegated authority to disclose protected information can approve a referral.

Please see Factsheet 60 - How do I use or disclose protected information for guidance on how to correctly disclose protected information.

What sort of information should I include in my referrals?
All information and evidence that is relevant to the issues should be included in the referral.

Officers must complete the most appropriate letter of referral (template) found on NCCIMS. The fact sheet “How do I use or disclose protected information?” provides guidance on which template letter is most appropriate, and the role of the associated ‘instrument of release’.

Information in the letter should be specific and relate only to the issues being referred. For example, if there are concerns about additional fees being charged by the provider, precise details in the referral to the Department should be recorded.

The delegate must have sufficient relevant information to make an informed decision about the referral. Documents provided must include specific dates where available. For example:

- File notes
- Site visit reports, and
- Detailed resolution reports.

These documents may be included as attachments to the letter of referral. Information that is not relevant to the referral should be redacted.

What do I do with the original complaint?
Once an issue has been referred to another organisation the delegate may decide to:

- take no further action or to end a resolution process because the issue is better dealt with by another organisation, or
- continue the process if there are risks to the safety and wellbeing of persons receiving aged care.
If continuing a resolution process might interfere with the processes of the organisation receiving the referral, the delegate should take no further action or end the resolution process.

**How do I correctly end a case due to a referral during intake or early resolution?**

Where no further action will be taken following a referral during intake or detailed assessment, the correct way to end the process is by taking no further action under paragraph 13(1)(a) and paragraph 14(i) of the Aged Care Quality and Safety Commission Rules 2018 (the Rules).

**Note:** Referring an issue to another organisation is not something that the Rules contemplate should occur under paragraph 13(1)(b) - quickly resolve the issue to the satisfaction of the complainant. Paragraph 13(1)(b) should only be used where we have resolved the issue raised by the complainant to their satisfaction. However, if we refer an issue to another organisation, this process has not resolved the complaint.

**What feedback can I provide to the parties to the complaint after a referral has been made?**

If the matter has been referred to another organisation during intake or early resolution using paragraph 13(1)(a) and paragraph 14(i) of the Rules, the delegate is required under section 14(2) to provide written feedback to the complainant (taking into consideration the matters outlined below).

**Note:** If the complaint was made anonymously, the complainant has withdrawn or the complainant has requested not to be notified in relation to the complaint section 14(3) may apply.

If the matter has been referred to another organisation during the resolution phase and the process has been ended using section 17 of the Rules, the delegate is required under section 17(2) to provide written notice to the complainant and provider taking into consideration the matters outlined below.

**Note:** If the complaint was made anonymously, the complainant has withdrawn or the complainant has requested not to be notified in relation to the complaint section 17(3) may apply.

The level of detail to be provided in the notification depends on the organisation we refer the issue to.

**The Department**
The consideration to refer a case to the department should not be discussed with the complainant or provider. Disclosing information may impede the compliance activity. In
these instances, the delegate is only required to state ‘the issue is better dealt with by another organisation’.

**AHPRA or Police**

If a matter which identifies concerns about an individual’s conduct has been referred to AHPRA or the police there is a risk that the Commission could expose the identity of the individual by disclosing that a referral has been made in feedback. In turn, this could expose the Commission to liability for defamation.

When a matter concerning the conduct of an individual is being referred, their identity is protected information. Although there are occasions when the delegate may disclose protected information in a notification, this is a circumstance when the delegate should not disclose to any party the identity of the individual concerned or the organisation to which the matter is being referred.

In these instances, the delegate is only required to state ‘the issue is better dealt with by another organisation’.

**Coroner**

If a matter referred to the coroner identifies concerns about an individual’s conduct in relation to a reportable death, providing notification to either the complainant or provider is not appropriate due to the risks outlined above.

In these instances, the delegate is only required to state ‘the issue is better dealt with by another organisation’.

**Note:** If a matter is already a coronial inquiry and you are taking no further action on an issue using paragraph 14(g) of the Rules or ending a resolution process using subparagraph 17(h)(vi), providing notification to the complainant and provider is acceptable as the coronial inquiry is a matter of public record; however in most cases there will not be detailed feedback to provide.

**How can I manage the expectations of complaint parties about referral outcomes?**

Referrals to external organisations limit the information and feedback that can be provided to the parties of the complaint. To manage expectations, complaints officers should inform the parties to a complaint as soon as practicable about why they may not be given certain information or the details of the referral to external organisations. This information is available on our website and as an attachment that can be included in early correspondence to the complainant. Refer to template referrals to other organisations on SharePoint.
<table>
<thead>
<tr>
<th>Referral to:</th>
<th>Consultation required?</th>
<th>Detailed feedback to complainant</th>
<th>Detailed feedback to provider</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Department of Health</td>
<td><strong>Performance, Education and Policy - Complaints:</strong> Consult and provide referral of information via email to Viv Daniels <a href="mailto:viv.daniels@agedcarequality.gov.au">viv.daniels@agedcarequality.gov.au</a></td>
<td>No - the department cannot be named. Provide general information regarding referrals which is available on our website and in our feedback letters.</td>
<td>No – the organisation cannot be named. Provide general information regarding referrals which is available in our feedback letters.</td>
</tr>
<tr>
<td>AHPRA (NSW HCCC or Qld OHO)</td>
<td>Must consult with Clinical Unit (<a href="mailto:clinical.advice@agedcarequality.gov.au">clinical.advice@agedcarequality.gov.au</a>) and Guidance Portal (<a href="mailto:complaintsGuidance@agedcarequality.gov.au">complaintsGuidance@agedcarequality.gov.au</a>)</td>
<td>No – the organisation cannot be named. Provide general information regarding referrals which is available on our website and in our feedback letters.</td>
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<tr>
<td>Police</td>
<td>Must consult with Guidance Portal via <a href="mailto:complaintsGuidance@agedcarequality.gov.au">complaintsGuidance@agedcarequality.gov.au</a></td>
<td>No – the organisation cannot be named. Provide general information regarding referrals which is available on our website and in our feedback letters.</td>
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</tr>
<tr>
<td>Coroner 14(g) or 17(h)(vi)</td>
<td>Must consult with Guidance Portal via <a href="mailto:complaintsGuidance@agedcarequality.gov.au">complaintsGuidance@agedcarequality.gov.au</a></td>
<td>No – if the matter is not already part of a publicly known coronial inquiry, the organisation cannot be named. Provide general information regarding referrals which is available on our website and in our feedback letters.</td>
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