New Starter Training
Brisbane 26 June 2019

1800 951 822
agedcarequality.gov.au
Housekeeping
Today’s Topics

- Process of a complaint
- Issues Framing
- Role of the delegate
- Resolution
- Notice of intention to give Directions and Directions
- DRRs – Notification – Finalisation
- Decision Making
- Referrals to external organisations
- Reviews
What do you want from today?
Who are we and where did we come from?

Complaints Resolution Service

Complaints Investigation Scheme

Aged Care Complaints Scheme

Aged Care Complaints Commissioner

Aged Care Quality and Safety Commission
The Commission’s Role

- Protect and enhance the safety, health, well-being and quality of life of people receiving aged care
- Promote high quality care and services
- Independently accredit, assess and monitor aged care services
- Resolve complaints
- Engagement, education and empower consumers, support providers to comply with quality standards, and promote best practice service provision
Our Values

Impartial
We are apolitical and provide the Government with advice that is frank, honest, timely and based on the best available evidence.

Committed to service
We are professional, objective, innovative and efficient, and work collaboratively to achieve the best results for the Australian community and the Government.

Accountable
We are open and accountable to the Australian community under the law and within the framework of the Ministerial responsibility.

Respectful
We respect all people, including their rights and their heritage.

Ethical
We demonstrate leadership, are trustworthy, and act with integrity, in all that we do.
Our Organisation

- Complaints Resolution group
- Quality Assessment and Monitoring group
- Corporate Services group
- Compliance – January 2020
Aged Care Programs

- Residential care (including permanent and respite)
- Home care
- CHSP
- Flexible care (includes MPS, NATSIFLEX and STRC)
Overview of the complaint process

- Intake
- Early Resolution
- Resolution
- Outcome

Complaints Management process flow chart
How do I handle a complaint through provider assisted early resolution
During this phase, complaints officers:
- receive, provide and classify information
- finalise routine out-of-scope information
- undertake a preliminary risk assessment to inform escalation to a manager
- collect additional information to assess risk and resolve the complaint
- consider whether there are grounds for no further action
- support the early resolution of complaints
- plan the resolution of the complaint where early resolution has not been possible
- take immediate action to mitigate major or significant risk

Early Resolution or Resolution?
- All complaints are considered for early resolution
- in line with best practice complaint handling
- Complaints that are high risk, complex or where there are concerns a provider may not be meeting their responsibilities may move straight to resolution
- Complaints where it is immediately clear formal conciliation approach is the best approach may immediately progress to conciliation
- Complaints that are unsuitable or cannot be resolved through early resolution and the criteria for NFA are not applicable will be progressed to resolution
- Factors like the severity/complexity/contentiousness of issues, risk levels, provider complaint and compliance history, quality of the provider’s engagement and response will all be taken into account

OUTCOME PHASE
During this phase the resolution outcome is decided, the complaint is finalised and feedback is provided to the parties of the complaint. Where appropriate and beneficial, the feedback may take the form of a post-resolution conference.

RESOLVED
Provider and the complainant decide the issues in the complaint are resolved.

ADDRESSED
The Commissioner is satisfied the provider has addressed the issues in the complaint.

NO FURTHER ACTION (NFA)
The Commissioner decides to NFA.

COMPLIANCE ACTION
The department has initiated compliance action under Part 4A of the Act.

REVIEW
The outcomes are subject to review from the complainant (all) or from the provider (all except NFA). If the review delegate decides that a new resolution process will be undertaken, the new process follows this complaints management process, beginning in the detailed assessment phase.
**Snapshot 2017 - 2018**

<table>
<thead>
<tr>
<th>SNPASHOT 2017-2018</th>
<th>Received</th>
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<tr>
<td></td>
<td>National</td>
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<tr>
<td>Total contacts received</td>
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<tr>
<td>Out of Scope</td>
<td>3046</td>
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<tr>
<td>Complaints</td>
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<tr>
<td>Enquiries</td>
<td>3479</td>
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<tr>
<td>Own Initiative</td>
<td>68</td>
</tr>
<tr>
<td>Review Process</td>
<td>26</td>
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</table>
National contact totals 2017 - 2018

NSW/ACT - 3789
VIC/TAS - 3664
QLD - 2627
SA/WA/NT - 2298
Complaint Process – Intake/Early Resolution

• Receiving information – In scope – out of scope - enquiries
• Risk assessments – assessing information
• Drafting issues – Q A
• Early resolution
• Resolution
Confidentiality

A complaint is where a person expresses dissatisfaction with any aspect of a provider’s responsibilities and we are required to facilitate the resolution of that complaint.

A complainants privacy status is either:

- OPEN
- CONFIDENTIAL
- ANONYMOUS
Types of Contacts

- Enquiries and complaints about care and services provided to people receiving aged care by approved providers
- Out of scope enquiries that relate to matters which are not within our jurisdiction
- Referrals from external organisations
Classifying information

Information classified as in-scope

**FROM**
- Care recipient or other person*
- Any person
- Any person or body
- The Commission

**TYPE**
- Complaint
- Enquiry
- Information from another source
- Own initiative concern

Open Confidential Anonymous

Information classified as out-of-scope

**FROM**
- Any person or organisation

**TYPE**
- Enquiry

*Other person – refers to a care recipient's representative, family, friend or any person concerned about care and services provided to the care recipient who is a party to a complaint.
In Scope – Out of Scope

• How do I confirm in scope information?
• What is out of scope?

Enquiries

How do I manage out of scope cases?
Service provider-assisted early resolution (SPAER)

- Encourages service providers to resolve concerns directly with complainants
- Before considering SPAER a risk assessment is required
- Issue that may be suitable include:
  - Food preferences and menus
  - Cleaning
  - Clothing and laundry
  - Showering times
- The complainant needs to agree to the approach
- A timeframe needs to be agreed upon
- There are no review rights if the complaint is finalised under 13(b) of the Rules
Early Resolution

• Finalising complaints through early resolution
  o Timely-Efficient-Effective-Proportionate-Appropriate
• Which issues are suitable?
• How does it work in practice?
• How to finalise a case?
• Review rights and NCCIMS?
Assessment information

• Collecting additional information
• Clinical advice
• Early resolution of complaints
• Consider NFA
• Referrals to other organisations

How do I make referrals to external organisation?
Key actions in the intake phase

- Recording of initial call in NCCIMS – includes capturing issues
- Contact service
- Collect and confirm EPOA/Guardian/Decision maker details
- Do you need to issue a further Notice of Collection?
- Acknowledgement letter (1a) to complainant
- Request relevant documents from service
Assessing Risk

- Initial escalation rating
- General risk assessment
- RARP
- Notices/Directions
- Escalating media interest or other risk factors
- Referring to the QAMG, Coroner, AHPRA, Police
Issues framing

- Complaints can be made up of more than one issue
- The framing of issues directly impacts the outcome of a resolution process
- Well framed issue enable the complainant's concerns to be clearly explained to the provider
Issues framing

• Be specific
• Use the complainant’s words or language style
• Ensure there's is a clear link between the issue and the provider legislative responsibility
• Ask another officer to look over the issues
• Confirm the issues with the complainant
Issue 1

On the morning of 22 April 2018, the Mrs Jones and other family members visited the John Smith (CR) and observed the CR to be experiencing respiratory problems, in that it appeared he was having trouble taking breath. They alerted staff who took no action and advised them that CR was "OK". When leaving at 1.45pm, the family requested that the CR be checked regularly and that at about 2.30pm, the Service contacted the Mrs Jones advising her that the CR had been taken to hospital. The CR passed away at 8.15pm that night with the listed cause of death being "Aspiration Pneumonia". The family believe the outcome for the CR may have been different if their concerns had been taken more seriously when first mentioned.
Issue 2

Mrs Brown (CR) was for full nursing care and unable to self administer medications. On or about 22 May 2018, the COMP and her sister went to visit the CR and observed pink yoghurt with crushed medications within it to be around the outside of the CR’s mouth, forming a hard crust. The COMP immediately questioned a staff member (Jenny Peters) who advised that the CR was supposed to have been monitored to take his medications and that this had not been done.
Issue 3

Concern that “the food is barely edible”.
RARP
Definition and responsibilities of a delegate

A delegate is:

- a legislated position under section 76(1) of the *Aged Care Quality and Safety Commission Act 2018* (Quality and Safety Commission Act)
- required to make decisions under the Quality and Safety Commission Act on behalf of the Commissioner
- accountable for all decisions
Delegated decisions

- No Further Action (NFA) on an issue no further action under paragraph 13(1)(a) of the *Aged Care Quality and Safety Commission Rules 2018* (the Rules)
- Finalisation of a case under section 17 of the Rules
- Release of protected information under paragraph 61(1) of the *Aged Care Quality and Safety Commission Act 2018* (the Quality and Safety Commission Act)
## Resolution phase

1. Service provider resolution
2. Conciliation
3. Investigation
4. Mediation

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<tr>
<th>Number of approaches finalised</th>
<th>457</th>
<th>8%</th>
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<tbody>
<tr>
<td>Provider resolution approach used</td>
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<tr>
<td>% of approaches finalised at provider resolution</td>
<td>31%</td>
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</tr>
<tr>
<td>Conciliation approach used</td>
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<td>-18%</td>
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<tr>
<td>% of approaches finalised at conciliation</td>
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<td></td>
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<tr>
<td>Investigation approach used</td>
<td>271</td>
<td>7%</td>
</tr>
<tr>
<td>% of approaches finalised at investigation</td>
<td>59%</td>
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Steps in a resolution

• Determining the appropriate resolution approach
• Initial and ongoing communication – outlining expectations
• Collecting and assessing information
• Site visits
• Obtaining internal advice – legal/clinical
• Referrals to other organisations
• Documenting the recommendations and decisions
• Notifying the parties of a decision to finalise a case
Service Provider Resolution

• We refer a complaint or specific issues to a provider
• Allows the provider to investigate the issue or meet with the complainant and any other relevant parties to discuss and resolve the issues in a complaint
Conciliation

- What is conciliation?
- Your and your colleagues roles
- Note: You cannot allow parties to agree to something contrary to a provider's responsibilities under the *Aged Care Act 1997*, the *Aged Care Principles* or the Comprehensive Grant Agreement.

How do I conduct a conciliation meeting
Conciliation meeting plan
Investigation

- Requesting and reviewing documents from all relevant parties
- Talking to any relevant parties about the issues
- Conducting site visits to obtain independent observations
Planning Tool

Investigation Matrix

- What it is?
- Why it is important?
- How it is used throughout the process?
Site Visits

A site visit involves officers exercising their authorised complaints officer powers when visiting:
• a residential care service
• the offices of a provider, or
• the home of a person receiving a home care package or a complainant.

Important – you need to consider and coordinate your visit the Quality Monitoring Group
Site Visits

Announced Site Visit
• Announced visits are any visits where notice is provided in relation to the visit. The notice can be anything from a number of weeks, days or a matter of hours.

Unannounced Site Visit
• An unannounced site visit is one where no notice is given before officers arrive at the service.
Authorised Complaints Officers

- Appointed by the Aged Care Quality and Safety Commissioner – Section 73 of the Quality and Safety Commission Act

- May enter a premises with consent and exercise search powers in relation to complaints – Part 8 of the Quality and Safety Commission Act

- You must carry your identity card at all times when performing functions or exercising powers as an Authorised Complaints Officer – Section 74 of the Quality and Safety Commission Act
Search Powers

• The power to search the premises and any thing on the premises
• The power to examine or observe any activity conducted on the premises;
• The power to inspect, examine, take measurements of or conduct tests on any thing on the premises;
• The power to make any still or moving image or any recording of the premises or any thing on the premises;
Search Powers

- The power to inspect any document on the premises;
- The power to take extracts from, or make copies of, any such document;
- The power to take onto the premises such equipment and materials as the officer or official (as the case may be) requires for the purpose of exercising powers in relation to the premises;
- The powers set out in subsections 72(1) and (4).
Consent for entry

You must:

• Identify/announce yourselves when you arrive on site;
• Ask to speak to someone who is ‘key personnel’ of the provider, the occupier of the premises or the person in charge;
• Advise the representative that the provider has a responsibility under paragraph 63-1(1)(ba) of the Aged Care Act 1997 to cooperate with the Authorised Complaints Officer;
Consent for entry

You must:

- Advise that consent for access to the premises can be withdrawn at any time under, however failure to comply may result in a Sanction being imposed under Part 4.4 of the *Aged Care Act 1997*;
- Advise about the purpose of the visit including the nature of the complaint or issues being examined, and ask for consent to enter; and
- If the visit is unannounced, give the provider a letter advising of the issues in the case.
Consent is declined or withdrawn, what now?

- Ask if there is a specific reason for declining entry or withdrawing consent
- Advise that by declining entry or withdrawing consent that the provider may not be complying with their responsibilities under the Act
- Advise that you will escalate the matter to the delegate and that further action may be taken in respect to declining entry or withdrawing consent
- Thank the representative for their time and withdraw
- Document and discuss with your delegate and the Guidance portal
Home visits

May be appropriate in the following circumstances:

- Where an interview with the complainant or care recipient is essential and this cannot be completed somewhere else or over the phone
- Where there is evidence relevant to the case in a care recipient’s home, or
- For reasons which might include the preferences of the complainant care recipient or their representative.
Home visits

When entering the care recipient’s home, you should:
• follow them, never walk in front
• be alert for any risks
• be aware of exits, in case you need to leave quickly, and
• attempt to choose seating which ensures you are closest to the exit, but avoid sitting where the door cannot be seen.
Dealing with evidence

- Remember to identify and deal with all relevant evidence. Triangulate the evidence. Don’t ignore conflicting information or evidence provided.
- Site visit reports contain evidence that should be reflected in the final report.
- If a matter of the complaint is not in contention:
  - All evidence doesn’t need to be listed to support a conclusion
  - Include sufficient evidence to establish the point

How do I collect, test and weigh evidence
Notice of Intention to Give Directions and Directions

Notice of Intention to Give Directions (Notice)
A Notice MUST be issued before issuing Directions
• What should a Notice include?
• Satisfactory/unsatisfactory responses

Directions
• What should Directions include?
• Communication

How do I issue a notice of intention to give direction and directions?
Detailed Resolution Reports and Draft Notification Letters (DRRs)

Purpose of a DRR and Draft Notification Letter

A DRR is made up of two parts.

Part 1 briefly describes the resolution process and the complaints officers recommendations to the delegate regarding the grounds on which to end the process.

Part 2 is the draft Notification letter.
DRR – Key Elements

- Case details including case id, service/approved provider
- Context and Issue/s raised
- Resolution process
- Issues and recommendations
- Other matters for consideration
- Instructions of the delegate
- Notification letter – Resolution outcome
DRRs – Helpful Hints

• Don’t use emotive language
• Don’t use absolute terms
• Don’t provide great lists of evidence without explaining and analyzing what it is telling you
• For each piece of information you include, be clear on why you are including it
• Summarise the findings in each issue

Top tips for speaking in plain English
Draft Notification

When writing the draft notification letter, keep in mind the following:

• Information sources (e.g., file note of conversations, other documentation and site visit report)
• What information does the delegate need to know to make an informed decision?
• Is the information relevant to resolving the issues?
• What questions need to be answered?
• What is the legislative basis for action and is it referenced correctly?
Draft Notification Key Elements

A well written Notification letter:
• Flows in a logical sequence
• Tells a story
• Address only relevant matters
• Is evidence based
• Is objectively based
• Reaches a conclusion

(Notification letter examples)
Notification and finalisation

• Notification must be provided to parties
• When and why do we withhold information in Notification?
• Finalising and closing cases are different

How do I write a notification and reasoning behind a decision
What is the decision to be made and who can make it?

- Within any case, there are a range of decisions that we will make.
- Are you clear on which decisions are informed by legislation and which decisions are informed by policy?
- There needs to be sufficient information to make each decision.
- The decision maker needs to be authorised to make the decision.
Principles of Procedural Fairness?

- There are two primary rules of procedural fairness (or natural justice) – the ‘hearing rule’ and the ‘bias rule’. Do you understand what these rules mean for us?
- Hearing Rule: is that people who will be affected by a proposed decision must be given an opportunity to express their view to the decision maker.
- Bias Rule: is that the decision maker must be impartial and have no personal stake in the matter to be decided.
Quality of the Decisions?

A decision maker must do the following:

- Determine all questions of fact that are necessary for a decision
- Not base a decision on a fact without evidence for that fact
- Ensure that every finding of fact is based on evidence that is relevant and logically supports the finding
- Not base a decision on a finding that is manifestly unreasonable
- Observe natural justice
- Comply with any statutory duty to give a statement of reasons for the decision

Reasons?

- A statement of reasons affords a person affected by a decision the opportunity to have the decision explained.
- The person can then decide whether to exercise their rights of review, and, if they decide to do so, they are then able to act in an informed manner.
Reasons?

- A statement of reasons should contain:
  - A description of the decision
  - The name of the decision maker and what gives them the authority to make the decision
  - A description of the evidence
  - Specifics on the main facts and findings on which the decision is based
  - Includes information on review rights
Accountability?

Admin law makes administrators accountable for their decisions through external scrutiny, review and transparency measures that:

- Require them to provide reasons for their decisions
- Empower bodies such as the Ombudsman to investigate complaints about administrative actions and to conduct investigations
- Give people and organisations the right to apply to a court or tribunal for review of a decision that affects them
- Give individuals and organisations the right of access to agency records under freedom on information legislation.
Delegated decisions – ending a resolution process

Decision to end a resolution process under section 17 of the Rules

a) if the issue was raised in a complaint—the issue has been resolved because the complainant and the relevant provider for the issue have agreed on an outcome; or

b) the relevant provider for the issue has addressed the issue to the satisfaction of the Commissioner; or

c) the Commissioner has given a direction under section 19 to the relevant provider for the issue; or
Delegated decisions – ending a resolution process

d) if the relevant provider for the issue is the approved provider of an aged care service—the Commissioner has been notified that the Secretary has initiated action under Part 4.4 of the Aged Care Act that relates to the issue; or

e) if the relevant provider for the issue is the service provider of a Commonwealth-funded aged care service—the Commissioner has been notified that the Commonwealth has initiated, under the funding agreement that relates to the service, action that relates to the issue; or
Delegated decisions – ending a resolution process

f) the complaint has been withdrawn under section 12; or

g) the issue is better dealt with by another person or body; or

h) the continuation of the resolution process is not required because:
   i. despite reasonable inquiries by the Commissioner, the circumstances giving rise to the issue cannot be determined; or
   ii. the issue is frivolous, vexatious or not raised in good faith; or
   iii. the issue is, or has been, the subject of legal proceedings; or
Delegated decisions – ending a resolution process

iv. the issue is already being dealt with, or has already been dealt with, under this Part or a former complaints scheme; or

v. the issue is better dealt with, or is already being dealt with, under this instrument (other than this Part); or

vi. the issue is subject to a coronial inquiry; or

vii. an aged care consumer identified in the complaint, or in the provider responsibility information, does not wish the issue to be considered by the Commissioner; or

i) having regard to all the circumstances, the continuation of the resolution process is not required.
Referrals and disclosure of protected information

- Decision to make a referral
- What happens to a case when a referral is made?
- Notification to parties
Sharing information with Quality Assessment and Monitoring group

There are three ways that the Complaints Group share information with the QAMG.

Type 1: Relevant issue/concern
Type 2: Significant issues/concerns
Type 3: Major issues/concerns

How do I share information to the Quality Assessment and Monitoring Group?
Referrals to other areas or organisations

Activity (group discussion): What organisations do you think we would refer information to?
Referrals to other areas or organisations

Referrals of information or complaints issues can be made to areas or organisations including:

- The department
- State and territory governments
- Public Health Units
- The police
- The coroner
- The Australian Health Practitioner Regulation Agency
- Health care complaints bodies
Review processes

- Centralised process
- Review of decisions
  - Complainants – NFA under paragraph 13(1)(a) or ending under Section 17
  - Providers – ending under Section 17
- Application made within 42 days of notification of original decision
- 28 days to decide whether to confirm the decision or undertake a new resolution process
- New process must be completed within 90 days of the date of application
- 13(1)(b) decisions are not reviewable
Ombudsman reviews

- Ombudsman role
- What can the Ombudsman examine
Did we cover off everything?
Resources

- Complaints Guidelines
- Factsheets
- Templates
- SharePoint
- Guidance inbox
- Website
- Training inbox
Questions and Evaluation