Exchange of letters between

Aged Care Complaints Commissioner

and

Health and Community Services Complaints Commissioner,
South Australia

May 2017

Australian Government

Aged Care Complaints Commissioner
PART 1: GENERAL AGREEMENT

1.1 Introduction

1.1.1 An exchange of letters between the Aged Care Complaints Commissioner (Complaints Commissioner) and the Health and Community Services Complaints Commissioner South Australia (HCSCC) will encourage information sharing between our staff and ensure that the most appropriate organisation is dealing with an issue.

1.1.2 This in turn will ensure that aged care service users are well cared for and protected and may also lead to improved complaints handling for both organisations.

1.1.3 This agreement is not legally binding, but represents agreed expectations and approach to engaging, referring and exchanging information to ensure each party is able to discharge their responsibilities effectively. It aims to build a strong foundation of communication between the two parties.

PART 2: ROLES AND RESPONSIBILITIES

2.1 The Aged Care Complaints Commissioner

2.1.1 The Complaints Commissioner has responsibility for handling complaints about Australian Government funded aged care services. The Complaints Commissioner power comes from the Aged Care Act 1997 (the Act) and the Aged Care Principles.

2.1.2 The Complaints Commissioner has jurisdiction to manage complaints about:

- residential aged care services, including permanent care and respite care,
- Home Care Packages delivered on a Consumer Directed Care basis,
- flexible care where a person is receiving 'residential care' or 'home care' this includes services provided through transition care, innovative care or multi-purpose services (MPS),
- Commonwealth Home Support Programme (CHSP), and
- National Aboriginal and Torres Strait Islander Flexible Aged Care Programme (NATSIFACP).

2.1.3 The Complaints Commissioner also has a legislative responsibility to educate people about the best way to handle complaints and the issues they raise.

2.2 Health and Community Services Complaints Commissioner, South Australia

2.2.1 The HCSCC operates under the provisions of the Health and Community Services Complaints Act 2004 (HCSC Act). The HCSC Act allows HCSCC to accept individual complaints and/or to conduct own motion investigations to address systemic safety and quality concerns about services under HCSCC’s jurisdiction.
2.2.2 The HCSCC jurisdiction covers the following services in South Australia:

- health services in the government, non-government and private sectors
  - for example: hospitals, alternative health providers, individual registered health practitioners, counsellors, ambulance services.
- community services in the government, non-government and private sectors
  - for example: disability services, services for the relief of social disadvantage, child protection services.

2.2.3 The HCSCC and the Complaints Commissioner

Section 29 (3) of the HCSC Act states: *If a complaint is against or directly involves an approved provider under the Aged Care Act 1997 of the Commonwealth—*

(a) the Commissioner must consult with the relevant complaints resolution bodies under that Act about the management of the complaint; and
(b) the Commissioner may refer the complaint to another authority for investigation or resolution under that Act; and
(c) the Commissioner may provide information and assistance to another authority concerned with the investigation or resolution of the complaint under that Act.

2.2.4 The HCSCC Code of Conduct for Unregistered Health Practitioners (the Code) covers individual health workers not covered by the Australian Health Practitioner Regulation Agency (AHPRA).

2.2.5 All individuals working in public, private and non-government South Australia health and community services are legally obliged to adhere to the Code. For example:

- Workers in South Australia aged care services - the Code covers all non-medical care staff in aged care services, and
- disability support workers, masseuses, natural therapists, social workers and similar workers.

If HCSCC determines the Code has been breached, HCSCC can impose interim or permanent conditions or prohibition orders on the individual worker.

2.2.6 HCSCC and AHPRA are required by law to:

- consult on complaints about registered health practitioners
- decide which organisation will deal with the complaints, and
- share information about investigations.

PART 3: INFORMATION SHARING
3.1 Informal information sharing

3.1.1 The Complaints Commissioner and HCSCC agree to an informal approach to communication between our organisations.

3.1.2 In determining whether information should be referred, or to determine the finer points of jurisdiction, officers within our organisations are able to contact each other by telephone or email, as necessary, on a case by case basis. A low threshold for informal contacts will promote a freer flow of information and will also ensure that referrals are made only where appropriate.

3.2 Formal information sharing

3.2.1 Where formal referrals are being made, or information that is protected under either the Act or other legislation is being released, this should occur via email to the nominated contact point below. The email should clearly indicate that the information is being shared as part of a referral for consideration of further action.

3.3 Contact details:

Director, Complaints Operations SA/WA/NT
Aged Care Complaints Commissioner
P: 1800 550 552
E: sa@agedcarecomplaints.gov.au

HCSCC Manager Assessment Service
P: (08) 8226 8652
E: info@hcscc.sa.gov.au

PART 4: RELEASE OF INFORMATION

4.1 Release of information by the Complaints Commissioner to HCSCC

4.1.1 The HCSCC agrees to properly manage information provided by the Complaints Commissioner, including information that is protected under division 86 of the Aged Care Act 1997 (the Act).

4.1.2 The HCSCC acknowledges that there are restrictions related to the use of this information and this means that a person may be guilty of an offence under section 86-5 of the Act if they make a record of, disclose or otherwise use protected information disclosed to them under subsection 86-3(2) or section 86-4 of the Act, in a manner which does not align with the purpose for which the information was disclosed.
4.1.3 The HCSCC agrees to use the information provided by the Complaints Commissioner only for the purpose for which it was disclosed to the HCSCC.

4.1.4 Where identified and considered warranted, the Complaints Commissioner agrees to provide the HCSCC information about concerns regarding the conduct and/or competence of individual workers in South Australian aged care services at the earliest possible convenience.

4.1.5 This will ensure that public safety interests are attended to under the provision of the HCSC Act.

4.2 Release of information by HCSCC to the Complaints Commissioner

4.2.1 The Complaints Commissioner acknowledges that section 29 (3) of the HCSC Act:

- requires the HCSCC to consult with the Complaints Commissioner about the management of complaints the HCSCC receives about approved providers under the Act
- enables the HCSCC to refer complaints about approved providers to the Complaints Commissioner, and
- enables the HCSCC to provide the Complaints Commissioner with information and assistance to resolve a complaint under the Act.

4.2.2 The Complaints Commissioner agrees to properly manage information provided by the HCSCC, including information that is protected under section 86A of the HCSC Act - Assistance to other agencies.

PART 5: ONGOING RELATIONSHIP

5.1 The Complaints Commissioner and HCSCC agree to build on longstanding collegial relationships. Annual visits between the offices will provide an opportunity for a staff refresh about what each organisation does and to talk about lessons learned over the past year. It will also provide an opportunity to discuss the roles and work of each organisation.