This Exposure Draft is for consultative purposes only.

It is not intended to pre-empt the decisions of the Assistant Minister for Social Services in relation to the final Principles.

Accountability Principles 2014

I, Mitch Fifield, Assistant Minister for Social Services, make the following principles under section 96-1 of the Aged Care Act 1997.

Dated: 2014

[DRAFT ONLY—NOT FOR SIGNATURE]

Mitch Fifield
Assistant Minister for Social Services
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Part 1—Preliminary

1 Name of principles

These principles are the Accountability Principles 2014.

2 Commencement

These principles commence on 1 July 2014.

3 Authority

These principles are made under section 96-1 of the Aged Care Act 1997.

4 Definitions

In these principles:

*Act* means the Aged Care Act 1997.

*business hours* means the hours between 9 am and 5 pm on a business day.

*certification assessor* means a person or body authorised by the Secretary under subsection 39-4(3) of the Act to assess a residential care service for the purposes of a review of the certification of the service under section 39-4 of the Act.

*charge exempt resident* has the meaning given by clause 1 of Schedule 1 to the Aged Care (Transitional Provisions) Act 1997.

*CrimTrac* means the CrimTrac Agency, established as an Executive Agency by the Governor-General by order under section 65 of the Public Service Act 1999.

*police certificate*, for a person, means a report prepared by the Australian Federal Police, CrimTrac or the police force or police service of a State or Territory, about the person’s criminal conviction record.

*premises*:

(a) of a residential care service, means any place where the operation or administration of the service occurs; and

(b) of a home care service, means the premises of the approved provider of the service.

*Quality Agency* means the Australian Aged Care Quality Agency established by the Australian Aged Care Quality Agency Act 2013.

*quality assessor* means a person registered as a quality assessor in accordance with the Quality Agency Principles 2013.

*quality reviewer* has the meaning given by the Quality Agency Principles 2013.

*relevant official*: 

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Part 1 Preliminary

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(a) in relation to a residential care service, means:
   (i) a certification assessor; or
   (ii) the CEO of the Quality Agency; or
   (iii) a quality assessor; or
   (iv) the Aged Care Commissioner; and

(b) in relation to a home care service, means:
   (i) the CEO of the Quality Agency; or
   (ii) a quality reviewer.

**staff member**, of an approved provider, means a person who:
(a) is at least 16 years old; and
(b) is employed, hired, retained or contracted by the approved provider
   (whether directly or through an employment or recruitment agency) to
   provide care or other services under the control of the approved provider;
   and

(c) has, or is reasonably likely to have, access to care recipients.

Examples of persons who are staff members of an approved provider:
(a) key personnel of the approved provider; and
(b) employees and contractors of the approved provider who provide care to care
   recipients; and
(c) allied health professionals contracted by the approved provider to provide care to
   care recipients; and
(d) kitchen, laundry, garden and office personnel employed by the approved provider;
   and
(e) consultants, trainers and advisors for accreditation support or systems
   improvement who are under the control of the approved provider.

Examples of persons who are not staff members of an approved provider:
(a) visiting medical practitioners, pharmacists and other allied health professionals
   who have been requested by, or on behalf of, a care recipient but are not
   contracted by the approved provider; and
(b) tradespeople who perform work otherwise than under the control of the approved
   provider (that is, as independent contractors).

**volunteer**, for an approved provider, means a person who:
(a) is not a staff member of the approved provider; and
(b) offers his or her services to the approved provider; and
(c) provides care or other services on the invitation of the approved provider
   and not solely on the express or implied invitation of a care recipient; and

(d) has, or is reasonably likely to have, unsupervised access to care recipients;
   and

(e) is at least 16 years old or, if the person is a full-time student, is at least 18
   years old.

Note: A number of expressions used in these principles are defined in the Act, including the
following:
(a) daily payment;
(b) refundable deposit;
(c) reportable assault.
Part 2—Access to aged care services

Division 1—Access to residential care services

Subdivision A—Access by certification assessors

5 Purpose of this Subdivision

For paragraph 63-1(1)(j) of the Act, this Subdivision makes provision in relation to the responsibilities of an approved provider of a residential care service to allow a certification assessor access to the service in order to review the certification of the service under section 39-4 of the Act.

6 Notice of access

(1) If a certification assessor requires access to a residential care service for the purpose of a review of the certification of the service under section 39-4 of the Act, the certification assessor must give written notice of the requirement to the approved provider of the service.

(2) The notice must include the following statements:

(a) that the approved provider may refuse to give consent, or may withdraw consent, to the access to the service;

(b) that the approved provider may not be complying with its responsibilities under paragraph 63-1(1)(j) of the Act if it refuses to consent, or withdraws consent, to the access to the service;

(c) that failure to comply with a responsibility under paragraph 63-1(1)(j) of the Act may result in a sanction being imposed under Part 4.4 of the Act, but that an act referred to in paragraph 23(b) or (c) of these principles will not constitute non-compliance with a responsibility under paragraph 63-1(1)(j) of the Act.

7 Consent to access service

(1) A certification assessor must not access the premises of a residential care service unless the approved provider of the service has consented to the access.

(2) The approved provider must not unreasonably withhold consent if access to the premises of the service is required in circumstances where the certification assessor reasonably believes that there is a serious risk to the safety, health or wellbeing of a person who is being provided with care through the service.

(3) The approved provider may withdraw consent at any time.

(4) The certification assessor must leave the premises of the service if the approved provider asks the certification assessor to do so.
8 Certification assessor must show identification

Before accessing the premises of a residential care service, a certification assessor must show the approved provider of the service:

(a) evidence of the certification assessor’s name and position; and
(b) photographic identification of the certification assessor; and
(c) a copy of the notice given under section 6.

Subdivision B—Access by CEO of Quality Agency and quality assessors

9 Purpose of this Subdivision

For paragraph 63-1(1)(m) of the Act, this Subdivision makes provision in relation to the responsibilities of an approved provider of a residential care service to allow the CEO of the Quality Agency or a quality assessor access to the service for the purpose of performing functions or duties, or exercising powers, as the CEO of the Quality Agency or a quality assessor.

10 Consent to access service

(1) The CEO of the Quality Agency or a quality assessor must not access the premises of a residential care service for a purpose referred to in section 9 unless the approved provider of the service has consented to the access.

Note: The CEO of the Quality Agency or a quality assessor is not required to give the approved provider notice of a requirement to access the service.

(2) Before obtaining the approved provider’s consent, the CEO of the Quality Agency or the quality assessor must inform the approved provider of the following:

(a) that the approved provider may refuse to give consent or may withdraw consent at any time;
(b) that the approved provider may not be complying with its responsibilities under paragraph 63-1(1)(m) of the Act if it refuses to consent, or withdraws consent, to the access to the service;
(c) that failure to comply with a responsibility under paragraph 63-1(1)(m) of the Act may result in a sanction being imposed under Part 4.4 of the Act, but that an act referred to in paragraph 23(b) or (c) of these principles will not constitute failure to comply with a responsibility under paragraph 63-1(1)(m) of the Act.

(3) The approved provider must not unreasonably withhold consent if access to the premises of the service is required in circumstances where the CEO of the Quality Agency or the quality assessor reasonably believes that there is a serious risk to the safety, health or wellbeing of a person who is being provided with care through the service.

(4) The approved provider may withdraw consent at any time.

(5) The CEO of the Quality Agency or the quality assessor must leave the premises of the service if the approved provider asks the CEO of the Quality Agency or the quality assessor to do so.
11 CEO of the Quality Agency or quality assessor must show identification

Before accessing the premises of a residential care service, the CEO of the Quality Agency or a quality assessor must show the approved provider of the service:

(a) evidence of the name and position of the CEO or quality assessor; and

(b) photographic identification of the CEO or quality assessor.

Subdivision C—Access by the Aged Care Commissioner

12 Purpose of this Subdivision

For paragraph 63-1(1)(m) of the Act, this Subdivision makes provision in relation to the responsibilities of an approved provider of a residential care service to allow the Aged Care Commissioner access to the service for the purpose of performing functions or duties, or exercising powers, under the Act or the Complaints Principles 2014.

13 Notice of access

(1) If the Aged Care Commissioner requires access to a residential care service for a purpose referred to in section 12, the Commissioner must notify the approved provider of the service of the requirement.

(2) The Aged Care Commissioner must also inform the approved provider of the following:

(a) that the approved provider may refuse to give consent, or may withdraw consent, to the access to the service;

(b) that the approved provider may not be complying with its responsibilities under paragraph 63-1(1)(m) of the Act if it refuses to consent, or withdraws consent, to the access to the service;

(c) that failure to comply with a responsibility under paragraph 63-1(1)(m) of the Act may result in a sanction being imposed under Part 4.4 of the Act, but that an act referred to in paragraph 23(b) or (c) of these principles will not constitute non-compliance with a responsibility under paragraph 63-1(1)(m) of the Act.

14 Consent to access service

(1) The Aged Care Commissioner must not access the premises of a residential care service unless the approved provider of the service has consented to the access.

(2) The approved provider must not unreasonably withhold consent if access to the premises of the service is required in circumstances where the Aged Care Commissioner reasonably believes that there is a serious risk to the safety, health or wellbeing of a person who is being provided with care through the service.

(3) The approved provider may withdraw consent at any time.

(4) The Aged Care Commissioner must leave the premises of the service if the approved provider asks the Commissioner to do so.
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15 Aged Care Commissioner must show identification

Before accessing the premises of a residential care service, the Aged Care Commissioner must show the approved provider of the service:
(a) evidence of the Commissioner’s name and position; and
(b) photographic identification of the Commissioner.
Division 2—Access to home care services

16 Purpose of this Division

For paragraph 63-1(1)(m) of the Act, this Division makes provision in relation to the responsibilities of an approved provider of a home care service to allow the CEO of the Quality Agency or a quality reviewer access to the service for the purpose of performing functions or duties, or exercising powers, as the CEO of the Quality Agency or a quality reviewer.

17 Consent to access service

(1) The CEO of the Quality Agency or a quality reviewer must not access the premises of a home care service unless the approved provider of the service has consented to the access.

Note: Premises of a home care service means the premises of the approved provider of the service (see section 4).

(2) Before obtaining the approved provider’s consent, the CEO of the Quality Agency or the quality reviewer must inform the approved provider of the following:

(a) that the approved provider may refuse to give consent or may withdraw consent at any time;

(b) that the approved provider may not be complying with its responsibilities under paragraph 63-1(1)(m) of the Act if it refuses to consent, or withdraws consent, to the access to the service;

(c) that failure to comply with a responsibility under paragraph 63-1(1)(m) of the Act may result in a sanction being imposed under Part 4.4 of the Act, but that an act referred to in paragraph 23(b) or (c) of these principles will not constitute failure to comply with a responsibility under paragraph 63-1(1)(m) of the Act.

(3) The approved provider must not unreasonably withhold consent if access to the premises of the service is required in circumstances where the CEO of the Quality Agency or the quality reviewer reasonably believes that there is a serious risk to the safety, health or wellbeing of a person who is being provided with care through the service.

(4) The approved provider may withdraw consent at any time.

(5) The CEO of the Quality Agency or the quality reviewer must leave the premises of the service if the approved provider asks the CEO of the Quality Agency or the quality reviewer to do so.

18 CEO of the Quality Agency or quality reviewer must show identification

Before accessing the premises of a home care service, the CEO of the Quality Agency or a quality reviewer must show the approved provider of the service:

(a) evidence of the name and position of the CEO or quality reviewer; and

(b) photographic identification of the CEO or quality reviewer.

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Part 2 Access to aged care services
Division 3 General provisions relating to access

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Division 3—General provisions relating to access

19 Purpose of this Division

For subsection 63-1(1) of the Act, this Division:

(a) specifies other responsibilities that an approved provider of a residential care service or a home care service must comply with if the approved provider has given consent to a relevant official, under Division 1 or 2, to access the service; and

(b) provides that certain acts by an approved provider of a residential care service or a home care service do not constitute non-compliance with the approved provider’s responsibilities under paragraph 63-1(1)(j) or (m) of the Act.

Note: Relevant official is defined in section 4.

20 Hours of access

(1) An approved provider of a residential care service or a home care service must allow a relevant official access to the premises of the service:

(a) during business hours; and

(b) at any time outside business hours if:

(i) the official is acting on a serious complaint where a care recipient’s safety, health or wellbeing may be at risk; or

(ii) the official needs to examine a process or practice of the service that does not occur during business hours; or

(iii) access during that time is undertaken by the official in a manner that does not unreasonably disrupt the quality of care and services being provided through the service.

(2) If an approved provider of a residential care service or a home care service refuses to allow a relevant official access to the premises of the service at any time outside business hours, in circumstances other than those set out in subparagraph (1)(b)(i) or (ii), because access during that time, and in the manner proposed by the official, would unreasonably disrupt the quality of care and services being provided through the service, the approved provider and the official must agree on an alternative time for the official to access the premises that is suitable for the purposes of the access.

21 Access to premises, documents etc.

(1) An approved provider of a residential care service or a home care service must allow a relevant official to do any of the following:

(a) inspect any part of the premises of the service;

(b) take photographs (including a video recording), or make sketches, of the premises or any substance or thing at the premises;

(c) inspect, examine and take samples of, any substance or thing on or in the premises;

(d) inspect any document or record kept by the approved provider;
(e) take extracts from, or copies of, any document or record kept by the approved provider;

(f) operate any equipment on the premises to see whether the equipment, or a disk, tape or other storage device on the premises that is associated with the equipment, contains any information relevant to the performance of the functions of the official;

(g) take copies, in documentary form or on a disk, tape or other storage device, of information obtained under paragraph (f) that is relevant to the performance of the functions of the official.

(2) The approved provider must allow a relevant official to take onto the premises of the service any equipment or material reasonably necessary for the purpose of doing a thing referred to in paragraph (1)(a), (b), (c), (d), (e) or (g).

(3) However, the approved provider may refuse to allow a relevant official to do a thing referred to in paragraph (1)(b), (c), (d), (e) or (g) if the substance, thing, document or record referred to in the paragraph is not relevant to the operation or administration by the approved provider of the service.

(4) Also, the approved provider may refuse to allow a relevant official to do:

(a) a thing referred to in paragraph (1)(b), (c), (d), (e) or (g) in relation to a care recipient, or a care recipient’s property, if the care recipient has not consented to the thing being done; or

(b) a thing referred to in paragraph (1)(b) in relation to a staff member, or a staff member’s property, if the staff member has not consented to the thing being done.

22 Access to staff members and other persons

An approved provider of a residential care service or a home care service must not obstruct a relevant official from accessing or questioning any person (including staff members, care recipients and visitors) on the premises of the service, if:

(a) the access or questioning is relevant to the official’s functions; and

(b) the official considers that the access or questioning:

(i) is relevant to the operation or administration by the approved provider of the service; or

(ii) is necessary to obtain information about whether the approved provider is meeting its obligations under the Act.

23 Refusal of access

None of the following acts by an approved provider of a residential care service or a home care service constitutes non-compliance with the approved provider’s responsibilities under paragraph 63-1(1)(j) or (m) of the Act:

(a) refusing to allow a relevant official access to the premises of the service because the official has not complied with (as the case requires):

(i) section 6 or 8; or

(ii) subsection 10(2) or section 11; or
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(iii) section 13 or 15; or
(iv) subsection 17(2) or section 18;
(b) refusing to allow a relevant official access to the premises of the service outside business hours, other than in circumstances referred to in subparagraph 20(1)(b)(i) or (ii), because access during that time, and in the manner proposed by the official, would unreasonably disrupt the quality of care and services being provided through the service;
(c) refusing to allow a relevant official to do a thing under subsection 21(3) or (4);
(d) refusing to allow a relevant official to access or question a person on the premises of the service in circumstances other than those referred to in paragraph 22(a) or (b).
Part 3—Information to be given to Minister or Secretary

Division 1—Information about residential care services

24 Purpose of this Division

This Division specifies:

(a) for paragraph 63-1(1)(m) of the Act—the responsibilities of an approved provider of a residential care service to give certain information to the Secretary or the Minister about the service; and

(b) for subsection 63-1B(2) of the Act—the period within which an approved provider of a residential care service must notify the Secretary of the entry of a care recipient into the service.

25 Information about unexplained absence of care recipients

(1) For paragraph 63-1(1)(m) of the Act, an approved provider of a residential care service must inform the Secretary if:

(a) a care recipient is absent from the service; and

(b) the absence is unexplained; and

(c) the absence has been reported to the police.

(2) The information must be given to the Secretary as soon as reasonably practicable, but not later than 24 hours after the care recipient’s absence was reported to the police.

26 Information about accommodation payments, contributions, bonds and charges

(1) This section applies if the Minister requests, in writing, an approved provider to give the Minister information about any of the following:

(a) accommodation payments;

(b) accommodation contributions;

(c) accommodation bonds;

(d) accommodation charges;

that the Minister needs to prepare a report under section 63-2 of the Act.

(2) For paragraph 63-1(1)(m) of the Act, the approved provider must comply with the request within the time specified in the request (provided the time specified is reasonable).

(3) The information given under subsection (1) may relate to any of the following:

(a) the amount (which may be nil) of accommodation payments and accommodation contributions paid as refundable deposits and daily payments;

(b) the repayment of refundable deposits;

(c) the amount (which may be nil) of accommodation bonds paid;
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(d) the repayment of accommodation bonds;
(e) the amount (which may be nil) of accommodation charges paid.

(4) The Minister must not request, and the approved provider must not give the Minister, personal information relating to an individual care recipient.

Note: The disclosure of personal information is, generally speaking, prohibited (see section 62-1 of the Act).

27 Information about building, upgrading and refurbishment

(1) This section applies if the Minister requests, in writing, an approved provider of an aged care service to give the Minister information about the extent of building, upgrading and refurbishment of the service that the Minister needs to prepare a report under section 63-2 of the Act.

(2) For paragraph 63-1(1)(m) of the Act, the approved provider must comply with the request within the time specified in the request (provided the time specified is reasonable).

28 Period for notifying Secretary about entry of care recipient to residential care service

For subsection 63-1B(2) of the Act, the period within which an approved provider of a residential care service must notify the Secretary of the entry of a care recipient (other than as a recipient of respite care) into the service is 28 days after the day on which the care recipient enters the service.
Division 2—Information about home care services

29 Purpose of this Division

For paragraph 63-1(1)(m) of the Act, this Division specifies the responsibility of an approved provider of a home care service to notify the Secretary of certain information about care recipients who start to be provided with home care through the service on or after 1 July 2014.

30 Notification of start of home care

(1) An approved provider of a home care service must notify the Secretary, in writing, of each care recipient who starts to be provided with home care through the service on or after 1 July 2014.

(2) The notice under subsection (1) must:
   (a) be in a form approved by the Secretary; and
   (b) be given within 28 days after the care recipient starts to be provided with home care through the service.
Part 4—Responsibilities in relation to certain staff members and volunteers

31 Purpose of this Part

For paragraph 63-1(1)(m) of the Act, this Part specifies the responsibilities of an approved provider to ensure:

(a) that each person who is a staff member of the approved provider, or a volunteer for the approved provider, has been issued with a police certificate and, if necessary, has made a statutory declaration stating that the person has not been convicted of certain offences; and

(b) that persons with certain criminal convictions do not provide aged care.

32 Requirements in relation to new staff members and volunteers

An approved provider must not allow a person to become a staff member of the approved provider, or a volunteer for the approved provider, unless the approved provider is satisfied that:

(a) subject to section 33, there is for the person a police certificate that is dated not more than 3 years before the day on which the person would first become a staff member or volunteer; and

(b) the police certificate does not record that the person has been:

(i) convicted of murder or sexual assault; or

(ii) convicted of, and sentenced to imprisonment for, any other form of assault; and

(c) if the person has been, at any time after turning 16, a citizen or permanent resident of a country other than Australia—the person has made a statutory declaration stating that the person has never been:

(i) convicted of murder or sexual assault; or

(ii) convicted of, and sentenced to imprisonment for, any other form of assault.

33 Arrangements for new staff members or volunteers who do not yet have police certificates

Despite paragraph 32(a), an approved provider may allow a person to become a staff member of the approved provider, or a volunteer for the approved provider, if:

(a) a police certificate has not been issued for the person; and

(b) the care or other service to be provided by the person is essential; and

(c) an application for a police certificate for the person has been made before the day on which the person would first become a staff member or volunteer; and

(d) until the police certificate is issued, the person will be subject to appropriate supervision during periods when the person has access to care recipients; and
Responsibilities in relation to certain staff members and volunteers

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(e) the person makes a statutory declaration stating that the person has never been:
   (i) convicted of murder or sexual assault; or
   (ii) convicted of, and sentenced to imprisonment for, any other form of assault.

34 Continuing responsibilities of approved providers

(1) An approved provider must ensure that, except for any period during which a person did not have a police certificate as permitted by section 33:
   (a) there is a police certificate for each person who is a staff member of the approved provider or a volunteer for the approved provider; and
   (b) the certificate is not more than 3 years old; and
   (c) the certificate does not record that the person has been:
      (i) convicted of murder or sexual assault; or
      (ii) convicted of, and sentenced to imprisonment for, any other form of assault.

(2) An approved provider must ensure that each person who is a staff member of the approved provider, or a volunteer for the approved provider, is not allowed to continue as a staff member or volunteer unless the approved provider is satisfied that a police certificate issued for the person, or a statutory declaration made by the person, does not record that the person has been:
   (a) convicted of murder or sexual assault; or
   (b) convicted of, and sentenced to imprisonment for, any other form of assault.

(3) An approved provider must take reasonable measures to require each person who is a staff member of the approved provider, or a volunteer for the approved provider, to notify the approved provider if the staff member or volunteer is:
   (a) convicted of murder or sexual assault; or
   (b) convicted of, and sentenced to imprisonment for, any other form of assault.

(4) An approved provider must ensure that a staff member of the approved provider, or a volunteer for the approved provider, is not allowed to continue as a staff member or volunteer if the approved provider is satisfied on reasonable grounds that the staff member or volunteer has been:
   (a) convicted of murder or sexual assault; or
   (b) convicted of, and sentenced to imprisonment for, any other form of assault.

35 Spent convictions

Nothing in this Part affects the operation of Part VIIC of the Crimes Act 1914 (which includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them).
Part 5—Circumstances in which requirement to report allegation or suspicion of reportable assault does not apply

Section 36

36 Purpose of this Part

For subsection 63-1AA(3) of the Act, this Part specifies:
(a) circumstances in which an approved provider is not responsible for reporting an alleged or suspected reportable assault under subsection 63-1AA(2) of the Act; and
(b) requirements that the approved provider must comply with in relation to those circumstances or an alleged or suspected reportable assault.

Note: Subsection 63-1AA(2) of the Act states that if the approved provider receives an allegation of, or starts to suspect on reasonable grounds, a reportable assault, the approved provider is responsible for reporting the allegation or suspicion as soon as reasonably practicable, and in any case within 24 hours, to:
(a) a police officer with responsibility relating to an area including the place where the assault is alleged or suspected to have occurred; and
(b) the Secretary.

37 Circumstances in which approved provider is not required to report alleged or suspected reportable assault

(1) Subsection 63-1AA(2) of the Act does not apply to an approved provider in relation to an allegation or suspicion of a reportable assault if:
(a) within 24 hours after the receipt of the allegation, or the start of the suspicion, the approved provider forms an opinion that the assault was committed by a care recipient to whom the approved provider provides residential care; and
(b) before the receipt of the allegation or the start of the suspicion, the care recipient had been assessed by an appropriate health professional as suffering from a cognitive or mental impairment; and
(c) within 24 hours after the receipt of the allegation or the start of the suspicion, the approved provider puts in place arrangements for management of the care recipient’s behaviour; and
(d) the approved provider has:
(i) a copy of the assessment or other documents showing the care recipient’s cognitive or mental impairment; and
(ii) a record of the arrangements put in place under paragraph (c).

Examples of appropriate health professional for paragraph (b):
(a) geriatrician;
(b) other medical practitioner;
(c) registered nurse (in Victoria, Division 1 registered nurse).

Note: Under the Records Principles 2014, an approved provider must also keep consolidated records of all incidents involving allegations or suspicions of reportable assaults.
Circumstances in which requirement to report allegation or suspicion of reportable assault does not apply Part 5

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(2) Subsection 63-1AA(2) of the Act does not apply in relation to an allegation or suspicion (the later allegation or suspicion) of a reportable assault if:

(a) the later allegation or suspicion relates to the same, or substantially the same, factual situation or event as an earlier allegation or suspicion of a reportable assault; and

(b) the earlier allegation or suspicion was reported to a police officer and the Secretary under subsection 63-1AA(2) of the Act.