

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE COMMISSIONER for and on behalf of the **AGED CARE QUALITY AND SAFETY COMMISSION (the ACQSC)**

AND

THE HEALTH OMBUDSMAN (to include the Office of the Health Ombudsman).

BACKGROUND:

- A. The ACQSC is established under the *Aged Care Quality and Safety Commission Act 2018* (the **ACQSC Act**) to assist the Commissioner to perform functions under the Act that include dealing with complaints about an approved provider's responsibilities under the *Aged Care Act 1997* and Aged Care Principles and about the responsibilities of a service provider of a Commonwealth-funded aged care service under the funding agreement that relates to the service.
- B. Section 60 of the ACQSC Act prohibits the ACQSC from disclosing personal information and information about the affairs of approved providers ('Protected Information') in certain circumstances. However, section 61 of the ACQSC Act authorises the ACQSC to disclose Protected Information. Section 62 of the ACQSC Act limits the purposes for which a person to whom Protected Information was disclosed may legitimately make a record of, use or disclose the information. If the person uses the information for a different purpose than the purpose for which it was disclosed to them, they are liable to be prosecuted.
- C. The Health Ombudsman is an independent statutory officer, appointed pursuant to the *Health Ombudsman Act 2013* to receive and deal with health service complaints and other matters, including investigating systemic issues in the health system. The Office of the Health Ombudsman (OHO) is established pursuant to the *Health Ombudsman Act* to assist the Health Ombudsman to perform the Health Ombudsman's functions.
- D. Under s272(6)(c) of the *Health Ombudsman Act 2013* the Office of the Health Ombudsman is permitted to disclose confidential information to a government entity with functions that correspond to those of the Health Ombudsman or relate to protecting the health and safety of the public. The Health Ombudsman accepts that the ACQSC is such a government entity for the purposes of disclosing information pursuant to s272(6)(c) of the *Health Ombudsman Act 2013*.
- E. Under the *Information Privacy Act 2009*, Information Privacy Principle 11, the OHO is subject to a duty to maintain the privacy of personal information it holds. However, under IPP11 (1)(c) and (e)(iv) the Office of the Health Ombudsman may disclose personal information if it is necessary to:
 - (i) lessen a serious threat to the life, health, safety and welfare of an individual or to public health; or
 - (ii) for the prevention, detection, investigation or remedying of seriously improper conduct.

- F. For the avoidance of doubt, the word "information" in this Memorandum of Understanding also includes documents, video footage, photographs and audio recordings.
- G. This Memorandum of Understanding (MOU) documents the shared operational understandings and agreed protocols of the parties with respect to the exchange of information in the course of exercising their functions and powers under applicable legislation. The MOU also outlines the respective roles and responsibilities of, and the relationship between, the Parties in relation to:
- (i) Information disclosure relevant to the responsibilities of each party;
 - (ii) Referrals of information relevant to the responsibilities of each party
 - (iii) The administrative arrangements for the Parties to communicate with each other in respect of information disclosure;
 - (iv) Protocols to apply when a Party is compelled by law to disclose the other party's information to a third party (eg. in response to a subpoena);
 - (v) The governance arrangements in respect of this MOU.

The parties have reached the following understandings:

1. **TERM (Indefinite Term)**

This MOU takes effect from the date on which the last party signs the MOU and continues until it is either:

- (i) superseded by a subsequent MOU of the parties, or
- (ii) terminated, at the written request of one of the parties, provided that such termination should, whenever possible, only occur after some prior consultation with the other party.

2. **REVIEW and AMENDMENT**

The parties intend to review this MOU as follows:

- (i) every two years from the commencement date of this MOU, or
- (ii) if circumstances, legislative amendment or other matters so require the MOU to be reviewed or amended.

Any amendments to this MOU must be made in writing and signed by persons holding the equivalent offices of the original signatories.

3. **REQUESTING INFORMATION**

The parties agree to submit requests for information (MOU requests) to the designated MOU Information Officers listed in **Schedule 1**.

The requests will be submitted in an approved form and will state:

- (i) The date of the request

- (ii) Who is making the request
- (iii) The facts of the case
- (iv) The reasons why the information is necessary
- (v) The timescale for production of the information

4. PRODUCTION OF INFORMATION

Upon receipt of an MOU request through its MOU Information Officer the receiving party will:

- (i) Acknowledge receipt within three working days;
- (ii) Indicate within five working days whether there is an objection to producing some or all of the information;
- (iii) Within ten working days unless otherwise agreed either produce the information (with any specific restrictions to be placed on further disclosure) or full reasons for refusal of all or part of the request for information.

5. INFORMATION VERIFICATION

The parties will use their best endeavours to ensure the correctness and integrity of the information and material provided to the other party.

Each party will act upon or deal with information and material provided to it according to its own judgement and assessment of the information provided to it and at its own risk.

Should a party become aware that information that it has provided to the other party is inaccurate, incorrect or unreliable, where possible it will promptly inform the other party of the inaccuracy.

6. MAINTAINING CONFIDENTIALITY, SAFETY AND SECURITY OF MOU INFORMATION

The parties will keep confidential any MOU information, in accordance with all relevant legal obligations, save as required or permitted by law.

The parties will ensure that MOU information is stored securely and safely whether it is in physical or electronic form and in compliance with applicable law and standards in place from time to time.

A party will within five working days of a written request from the other party provide details of how MOU information is stored, security is in place and how confidentiality is maintained.

7. SUBPOENAS

Upon receipt of a valid subpoena requiring production of documents, which include documents obtained pursuant to this MOU, the party in receipt of the subpoena must, within 3 working days, give notice of the subpoena to the party from whom the documents were obtained (the source party).

The source party must within three working days of receiving the forwarded subpoena indicate whether it has any objections to the documents being disclosed under the subpoena and fully articulate those objections.

The party complying with the subpoena will, as far as is reasonable and lawful, convey the objections of the source party to the court.

The costs of raising an objection to the production of documents obtained under the MOU will be borne by the source party unless the party complying with the subpoena agrees to the source party's objection, in which case it will bear its own costs.

In cases where the period for compliance with the subpoena is so short the provisions cannot be applied the parties will use their best endeavours to consult so far as is reasonably appropriate.

8. DISPUTE RESOLUTION AND TERMINATION PROCESS

In the case that a dispute arises out of, or in relation to any operational arrangements, understandings or protocols in this MOU, the parties will endeavour in good faith to resolve such matters promptly.

A dispute may be referred to the parties' representatives, nominated in Schedule 2, who will use their best endeavours to resolve the dispute.

Where the dispute cannot be resolved, either party may terminate the MOU by giving the other party notice in writing.

9. NO CONTRACTUAL OR ENFORCEABLE LEGAL RELATIONS TO ARISE AND RELATIONSHIP WITH LEGISLATION

The parties do not intend this document to create legal relations or constitute a legally binding contractual agreement between them, or to be the subject of any court, mediation, or arbitration proceedings.

The parties expressly acknowledge that this MOU is not a substitute for any legislation and therefore cannot override any provision in legislation that is inconsistent with this MOU including any Schedule hereto.

10. NOTICES

Any notice in writing pursuant to this MOU is to be given to the persons specified in the Schedules or such other person as is specified in writing to the other party.

SIGNING PAGE

AGED CARE QUALITY & SAFETY COMMISSION

SIGNED by the Commissioner of the
Aged Care Quality and Safety Commission
Janet Anderson

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J. M. Anderson

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5.12.19

Dated

OFFICE OF THE HEALTH OMBUDSMAN

SIGNED by the Health Ombudsman of the
Office of the Health Ombudsman
Andrew Brown

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16-12-19

Dated

SCHEDULE 1

MOU OFFICERS

Referrals, Notices, including requests for information as specified in Schedules 2 and 3, pursuant to this MOU are to be served upon the following representatives or such other person as is nominated, from time to time, in writing to the other party.

IN RESPECT OF THE AGED CARE QUALITY & SAFETY COMMISSION:

Full name or title: Commissioner, or
National Manager Complaints Operations, or
Director Qld Complaints Resolution, or
Regional Director Qld Quality Assessment and Monitoring

Address for service: ACQSC
PO Box 9819
Brisbane Qld 4000

Email: ComplaintsQld@agedcarequality.gov.au

IN RESPECT OF THE HEALTH OMBUDSMAN:

Full name or title: Health Ombudsman, or
Director Corporate and Strategic Services (for notices and requests
for information) or
Director Complaints Intake, Triage and Referrals (for referrals to or
from OHO).

Address for service: Level 26 400 George Street Brisbane Qld

Email: executive@oho.qld.gov.au

SCHEDULE 2

MOU DISPUTE RESOLUTION OFFICERS

In the first instance a dispute should be managed and resolved directly between the relevant Directors. If however that cannot be done then the dispute should be forwarded to the following:

IN RESPECT OF THE HEALTH OMBUDSMAN:

Full name or title: Health Ombudsman,

Address for service: Level 26 400 George Street Brisbane Qld

Email: executive@oho.qld.gov.au

In Respect of the Aged Care Quality and Safety Commission

Full name or title: Commissioner

Address for Service: ACQSC
PO Box 9819
Brisbane Qld 4001

Email: ComplaintsQld@agedcarequality.gov.au