



Australian Government

Department of Health

Memorandum of Understanding

between

Department of Health

and

Aged Care Quality and Safety Commission

April 2019

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Part 1 – General Agreement

1. Introduction

This Memorandum of Understanding (MoU) has been jointly developed and endorsed by the Department of Health's (the Department) Population Health, Sport and Aged Care Quality Group and the Aged Care Quality and Safety Commission (the Commission). It recognises and supports linked functions and responsibilities across the two organisations.

The Department has policy responsibility for aged care, including legislation, funding of aged care services, approval of aged care providers, compliance functions and the regulatory framework that underpins aged care safety and quality. The Department collaborates with the Commission in the application of the regulatory framework.

The Commission is an independent statutory agency under the *Aged Care Quality and Safety Commission Act 2018* responsible for the accreditation assessment, resolution of complaints and monitoring of Commonwealth-funded aged care providers.

This MoU recognises the important roles that the Department and the Commission play in identifying and managing risk, providing assurance of service quality and protecting the interests of older Australians receiving Commonwealth funded aged care.

This MoU describes the way the two organisations will work together under legislative requirements and administrative arrangements. Namely, respective responsibilities as set out in the *Aged Care Quality and Safety Commission Act 2018*, the *Aged Care Quality and Safety Commission (Consequential and Transitional Provisions) Act 2018*, the *Aged Care Act 1997* and the Principles and legislative instruments made under those Acts.

This MoU is not legally binding, but represents agreed expectations and approaches to engaging with each other and referring and exchanging information to ensure each party is able to discharge their responsibilities effectively. It aims to build on an existing strong foundation of communication between the two organisations.

2. Structure

This MoU consists of:

- Part 1 – the General Agreement which includes the objectives of the MoU and the principles that govern its operation; and
- Part 2 – a schedule to the General Agreement which set out specific operational protocols for the relationship.

3. Objectives and Guiding Principles

The MoU's key objective is to support the Department and the Commission to undertake their statutory functions effectively through the exchange of information and regular engagement.

This MoU will achieve these objectives by:

- a) supporting timely engagement and liaison between the Department and the Commission;

- b) clearly describing communication and data exchange protocols necessary to effectively undertake respective functions; and
- c) providing avenues for resolution of difficulties or any conflicts of interest that may arise.

The guiding principles for this MoU are that the Department and the Commission will:

- a) have regard to their legislative and authorising environment at all times;
- b) exchange relevant information and establish processes that support the Department and the Commission to undertake their statutory functions effectively and to understand emerging risks; and
- c) behave in a manner consistent with the APS Values – to be impartial, committed to service, accountable, respectful and ethical.

This agreement does not affect the core business of each organisation, nor does it prohibit either party from engaging or developing further partnership agreements, linkages or projects external to this agreement.

4. The Agreement

The Department and the Commission agree that:

- a) communication and information exchange is based on the principle of openness and transparency
- b) advice to government will be timely and, where appropriate coordinated
- c) communication will occur at a national and regional level including at:
 - o a strategic level on at least a quarterly basis, in line with mutually agreed Terms of Reference; and
 - o an operational level consistent with the Communication Schedule.
- d) information exchange will be consistent with the applicable law or policies pertaining to information-handling, secrecy, confidentiality and privacy;
- e) information exchange outside the Communication Schedule and Data Schedule will be considered on a case-by-case basis and at the discretion of the Department and the Commission;
- f) where either organisation sees a conflict of interest or a reason not to disclose information within the scope of this MoU, they will advise each other of this issue;
- g) communication of changes to policy, legislation or personnel that may affect the way in which functions may be undertaken will be provided in a timely way;
- h) each organisation will, wherever, possible, avoid duplicating the other's resources and efforts and will look to each other for information and data in their respective areas of expertise; and
- i) legal advice regarding the interpretation of each other's legislation will take place in accordance with the *Legal Services Directions 2017*.

5. Term of MoU

This MoU comes into effect from April 2019 and confirms the arrangements that exist between the Department and the Commission from that date. The MoU will remain in effect until it is terminated or a new MoU is signed.

6. Schedules

The Schedule to the General Agreement (Part 2 of the MoU) set out specific operational protocols between the two organisations. The Schedule is subject to change in response to the operational requirements at any given time with the agreement of both organisations.

The Schedule will be signed off by the Deputy Secretary, Ageing and Aged Care Group and the Aged Care Quality and Safety Commissioner.

7. Variation or review of General Agreement or a Schedule

The MoU (General Agreement and Schedules) will be reviewed annually or sooner at the request of either party or as a result of substantial policy changes that impact the relationship between the Department and the Commission.

Minor amendments to a Schedule (separate to amendments made as a result of annual review or substantial policy changes mentioned above) can be approved by the Assistant Secretary, Aged Care Quality and Regulatory Reform Branch and the Executive Director, Regulatory Policy and Performance of the Commission.

Minor amendments will be documented in a letter of variation and agreed in writing by the Department and the Commission.

In the event of a Machinery of Government change affecting either party, the terms of the MoU will be reviewed as soon as possible to determine the need for changes to, or termination of, the MoU. Both parties will make reasonable efforts to ensure continuity of services in this circumstance.

8. Issues Resolution

Early and constructive resolution of issues is expected between operational staff with support from their relevant manager. If the matter cannot be resolved effectively and efficiently it will be escalated by taking the following steps:

- operational issues should where ever possible be resolved at the relevant state or territory office between the Commission's Regional Directors and the relevant Director in the Department. These parties will discuss the matter to resolve the issues.
- if the matter is still unresolved at this level, or if the issue is of significance due to public interest, significant risk, exposure, or policy implications it is to be referred to the First Assistant Secretary, Aged Care Reform and Compliance Division of the Department and the Executive Director, Quality Assessment and Monitoring Operations or the National Manager Complaints Operations of the Commission.

Each organisation will make an appropriate record of any issues and the corresponding resolution.

9. Governance

The Executive Director, Regulatory Policy and Performance of the Commission and the Assistant Secretary, Aged Care Quality and Regulatory Reform Branch of the Department are

the nominated persons who will be approached in the first instance if the MoU is perceived by either entity as not working as intended.

The Strategic Management Committee (the Committee) is the senior governance body responsible for overseeing the relationship between the Department and the Commission. The Committee will review this MoU on a regular basis to ensure it remains contemporary. The Committee membership includes the following:

- Aged Care Quality and Safety Commissioner;
- Deputy Secretary, Ageing and Aged Care Group, Department of Health; and
- Chief Operating Officer, Department of Health.

10. Key Contacts

Each organisation will keep the other informed of key personnel changes in a timely matter.

Signatories



Dr Lisa Studdert
Deputy Secretary
Ageing and Aged Care Group
Department of Health

Date: 8/4/19



Ms Janet Anderson
Commissioner
Aged Care Quality and Safety Commission

Date: 10.4.19