



Australian Government
Department of Health and Aged Care

Memorandum of Understanding

between

Department of Health and Aged Care
and
Aged Care Quality and Safety Commission

June 2024

Contents

1.	Introduction	3
2.	Structure.....	4
3.	Objectives and Guiding Principles.....	5
4.	The Agreement.....	6
5.	Protocols for Communication	6
6.	Protocols for the Exchange of Information and Data.....	7
7.	Roles and Functions of the Department and Commission.....	7
8.	Schedules to this Agreement	9
9.	Application of this MoU	9
10.	Variation or Review of General Agreement or a Schedule.....	9
11.	Issues Resolution.....	10
12.	Term of MoU	10
13.	Signatories.....	11

PART 1 – GENERAL AGREEMENT

1. Introduction

- 1.1. This Memorandum of Understanding (MoU) has been jointly developed and endorsed by the Department of Health and Aged Care's (the Department) Ageing and Aged Care Group and the Aged Care Quality and Safety Commission (the Commission). It recognises and supports both the separate roles and responsibilities of each agency, and the many linked functions and responsibilities of both agencies.
- 1.2. The purpose of this MoU is to support both agencies working together to advance the Australian Government's aims relating to the aged care portfolio with a shared objective and purpose.
- 1.3. The success of this MoU will be evidenced through improved collaboration and improved clarity in relation to individual and shared responsibilities.
- 1.4. The Department has policy and program management responsibility for aged care. This includes developing and supporting the legislative and regulatory framework, and supporting funding arrangements (and proper use of funds by providers) for Commonwealth funded aged care services. The Department also supports the stewardship and delivery of aged care and health programs through a strong network of regional offices.
- 1.5. The Commission is an independent statutory agency pursuant to the *Aged Care Quality and Safety Commission Act 2018* (the Commission Act) and *Public Governance, Performance and Accountability Act 2013* (PGPA Act). The primary role of the Commission is to protect and enhance the safety, health, well-being and quality of life of people receiving aged care. To do this, the Commission is responsible for:
 - a) informing older people in Australia accessing aged care and their representatives about their right to quality and safe care and services
 - b) educating providers on their responsibilities to deliver safe and quality care and services
 - c) educating and guiding providers on their obligations under the Prudential Standards in relation to liquidity, records, governance and disclosure
 - d) dealing with complaints or information given to the Commissioner about a provider's responsibilities under the *Aged Care Act 1997* (Aged Care Act) or funding agreement
 - e) approving providers of aged care
 - f) regulating aged care providers by accrediting residential services, conducting quality reviews of home services and monitoring the quality of care and services

- g) regulating aged care workers and governing persons through monitoring compliance with the Code of Conduct for Aged Care and considering suitability of key personnel, including taking enforcement action such as making banning orders
 - h) dealing with reportable incidents under the Serious Incident Response Scheme
 - i) regulating aged care providers' compliance with the Prudential Standards
 - j) monitoring providers' financial viability and undertaking proactive engagement to build sector financial resilience
 - k) responding to providers' non-compliance with their aged care responsibilities, and taking regulatory and enforcement action as appropriate, and
 - l) publishing data and insights on sector and provider performance.
- 1.6. This MoU recognises the important roles that the Department and the Commission play in providing assurance for service quality, protecting the interests and safety of older people receiving Commonwealth funded aged care, identifying and managing risk, and working together on the implementation of the reforms.
- 1.7. This MoU builds on the work supported by both the Department and the Commission through earlier agreements.
- 1.8. This MoU describes the way that both agencies will work together in accordance with legislative requirements and administrative arrangements. Current respective responsibilities are set out in the Commission Act, the *Aged Care Quality and Safety Commission (Consequential and Transitional Provisions) Act 2018*, the Aged Care Act and the Principles and legislative Instruments made under those Acts. This framework may change with the passage of the new aged care act.
- 1.9. This MoU is not legally binding but represents the jointly agreed expectations and arrangements for engagement, as well as exchanging information to ensure each agency is able to discharge their responsibilities effectively. It aims to build on an existing strong foundation of communication between the two agencies.

2. Structure

2.1. This MoU consists of:

- a) Part 1 – the General Agreement which includes the objectives of the MoU and the principles that govern its operation, and
- b) Part 2 – Schedules to the General Agreement which set out specific operational arrangements across four areas of shared responsibility.

3. Objectives and Guiding Principles

- 3.1. 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.**
- 3.2. This MoU will achieve these objectives by:**
 - a) clearly articulating roles and responsibilities in relation to strategic and operational arrangements**
 - b) supporting timely engagement and liaison between the Department and the Commission to support these roles**
 - c) clearly describing arrangements for collaboration on communication sector education activities**
 - d) clearly describing data and information exchange protocols necessary to effectively undertake respective functions, and**
 - e) providing avenues for resolution of difficulties or any conflicts of interest that may arise.**
- 3.3. The guiding principles for this MoU are that the Department and the Commission will:**
 - a) prioritise a positive and collaborative inter-agency relationship with mutually observed behavioural expectations of respect, openness and transparency, accountability, understanding and recognition of the role of each agency consistent with the Australian Public Service Values**
 - b) use experience to inform and support continuous improvement and a commitment to learning**
 - c) ensure all staff recognise and respect the strategic context and operating pressures of each agency**
 - d) always have regard to their legislative and authorising environment, and**
 - e) exchange information and establish processes that support the Department and the Commission to undertake their statutory functions effectively, and to understand emerging risks.**
- 3.4. This MoU does not affect the core business of each agency, nor does it prohibit either agency from engaging or developing further partnership agreements, linkages or projects external to this MoU.**

4. The Agreement

- 4.1. The Department and the Commission agree that:
- a) communication and information exchange are based on the principle of openness and transparency to achieve shared aims within the aged care portfolio
 - b) communication will occur at a national and regional level
 - c) information exchange will be consistent with the applicable law or policies pertaining to information-handling, secrecy, confidentiality and privacy
 - d) communication of changes to policy, legislation, technology and personnel that could affect the way in which functions may be undertaken will be provided in a timely way
 - e) coordinated advice to government will be timely. Where information cannot be shared in accordance with the MoU principles due to restrictions in secrecy or privacy legislation, or if a conflict of interest or sensitive matter arises, each agency will inform each other about why information is not able to be shared
 - f) each agency 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
 - g) legal advice regarding the interpretation of each other's legislation will take place in accordance with the Legal Services Directions 2017.
- 4.2. The Agreement will be overseen by the Joint Strategic Committee (JSC) including processes for review, implementation, and escalated issues resolution.

5. Protocols for Communication

- 5.1. This MoU supports the timely and ongoing communication between the Commission and the Department to optimise outcomes for older people in Australia.

Cross-agency Communication

- 5.2. Communication will occur:
- a) nationally at a strategic level to discuss issues, exchange information and report on trends and emerging issues through the monthly JSC meetings
 - b) at the regional, state or territory level to facilitate engagement and information exchange
 - c) operationally, as required, to facilitate exchange of information and coordinated resolution of shared risks of the delivery of aged care, and

- 5.3. For ongoing project and policy development activities, joint governance structures such as Project Boards will be established with mutually agreed Terms of Reference. At a minimum, Project Boards will be approved by a Senior Executive officer from both agencies. Following the establishment of a Project Board, advice will be provided to the JSC.

Communication

- 5.4. Communication teams from both the Department and the Commission agree to communicate regularly and work together to ensure that sector and consumer focused communication and engagement activities are aligned and consistent where appropriate. This approach will be guided by the key principles of this MoU and may include sharing draft materials for review and amendment; providing advance notice of release dates and working together wherever possible on joint communication activities.
- 5.5. The Department and the Commission agree to work collaboratively to respond to enquiries when the recipient would benefit from content from both agencies or if there are shared responsibilities referenced. This Agreement extends to the preparation of ministerial and parliamentary documentation (see Schedule 2 for public communication and Schedule 4 for parliamentary).
- 5.6. Detailed operational requirements are outlined in Schedule 2.

6. Protocols for the Exchange of Information and Data

- 6.1. The Department and the Commission agree that:
 - a) all information requests will be considered with the intention and presumption of facilitating any request as completely and quickly as possible, and
 - b) a jointly owned and maintained electronic SharePoint page will be created to support the sharing of information and data. This will be hosted on the Department's network and comply with all legal and privacy requirements.
- 6.2. Detailed operational requirements are outlined in Schedule 2.

7. Roles and Functions of the Department and the Commission

- 7.1. Both agencies acknowledge that the full realisation of this MoU is dependent on a clear understanding and respect for the functions that each is individually and jointly responsible for.
- 7.2. The Department is primarily responsible for policy development, legislation, program management, and market strategy. Key activities include providing stewardship, leading

budget and parliamentary processes, managing grant arrangements, assuring proper use of program funds by providers, assuring the integrity of self-reporting by providers, maintaining the ICT infrastructure for the sector and consumers, and supporting key ministerial advisory groups such as the Council of Elders. In leading this work the Department commits to consult and engage with the Commission on activities related to implementation, regulatory practice and compliance practice.

- 7.3. The Commission's primary responsibility is to regulate the performance and compliance of approved providers and the workforce in accordance with legislative frameworks, as applicable to the Commission's scope as the national regulator for aged care. It also invests in education and engagement to empower people who use aged care and supports providers to understand and comply with their obligations and responsibilities. The Commission develops regulatory strategy and operational policy to guide the use of powers and decision making. The Commission will share its learned experience with the Department to advance shared aged care portfolio aims.
- 7.4. Both agencies support the independence of the Aged Care Quality and Safety Advisory Council. The Aged Care Quality and Safety Advisory Council reports directly to the Minister and the Commissioner.
- 7.5. Both agencies also acknowledge their responsibilities in respect to Closing the Gap and the importance of enhancing agency cultural capability within our workplaces and with all our stakeholders.
- 7.6. For the purposes of the PGPA Act, the Commission is a listed entity required to comply with the PGPA Act and consists of the Commissioner and the staff of the Commission. The Commission is independent of other government bodies and the Commissioner reports to the Minister.
- 7.7. Both agencies are committed to fulfilling their respective roles and responsibilities in accordance with the Minister's Statement of Expectations, and the Commission in accordance with the Commissioner's Statement of Intent. The Department supports the Minister in the development of the Statement of Expectation including consulting with the Commissioner prior to submission to the Minister for consideration.
- 7.8. This MoU acknowledges that while both the Department and the Commission have separate and well-defined roles and responsibilities, both agencies operate within the broader care and support sector including disability, veterans care and the health systems. The Department and the Commission work to achieve shared objectives of the care economy sector.

7.9. With the passage of the new aged care act, some of the key roles and responsibilities of the Department and the Commission, including shared responsibilities, may change. As such, this MoU may require amendment to reflect these changes.

8. Schedules to this Agreement

8.1. The Schedules to the General Agreement (Part 2 of the MoU) set out specific operational protocols between the two agencies.

8.2. The MoU contains four Schedules as follows:

- a) Schedule 1: Data and information sharing
- b) Schedule 2: External communication, sector engagement and education
- c) Schedule 3: Collaborating to manage issues and risk, and
- d) Schedule 4: Parliamentary mechanisms.

9. Application of this MoU

9.1. This MoU will be read in conjunction with the MoU Implementation Plan.

9.2. The Department and the Commission agree that monitoring and evaluating the MoU is a shared responsibility. These activities will be undertaken in accordance with regular reviews (per section 10 of this Agreement).

9.3. The Assistant Secretary, Strengthening Providers Branch of the Department and the Executive Director, Regulatory Strategy and Policy Group of the Commission should be approached in the first instance if the MoU is perceived by either agency as not working as intended.

10. Variation or Review of General Agreement or a Schedule

10.1. The MoU, comprising of the General Agreement and Schedules is to be assessed annually by the JSC.

10.2. The MoU can also be reviewed at the request of either agency or as a result of changes of circumstances such as legislative amendment, machinery of government changes or other matters requiring the MoU to be reviewed or amended. It is intended by the agencies that any variations as a result of a review under this paragraph are to be jointly agreed in writing by the Department and the Commission.

10.3. The 2025-26 review will reflect the passage of the new aged care act and include details on how complaints will be managed between agencies in line with changing roles and responsibilities.

- 10.4. Other 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, Strengthening Providers Branch of the Department and the Executive Director, Regulatory Strategy and Policy Group of the Commission.
- 10.5. Other amendments will be documented in a letter of variation and jointly agreed in writing by the Department and the Commission.

11. Issues Resolution

- 11.1. Early and constructive resolution of issues is expected between staff of the agencies with support from their relevant managers. If the matter cannot be resolved effectively and efficiently it will be escalated by taking the following steps:
- a) identifying the suitable governance forum where the matter can be further considered (for example a project or program board meeting or regional meeting), discussed and resolved. If no formal governance structure exists, the relevant teams involved will convene a meeting of all relevant agencies including a senior decision maker from each agency to discuss and resolve the matter
 - b) if the matter remains unresolved after following the steps in paragraph 11.1 a), it is to be referred to a relevant Executive Director of the Commission and Senior Executive of the Department, and
 - c) if the matter remains unresolved after following the steps in paragraph 11.1 b), it is to be escalated to the relevant First Assistant Secretary and Deputy Commissioner. All matters escalated to this level will be brought to the attention of the JSC.
- 11.2. Each agency will make an appropriate record of any issues and the corresponding resolution.

12. Term of MoU

- 12.1. This MoU comes into effect from 1 July 2024 or once both parties have signed.
- 12.2. The MoU will remain in effect until both agencies jointly agree in writing that it is to be terminated.

13. Signatories

Signed by the Commissioner of the Aged Care Quality and Safety Commission in the presence of:

J. M. Anderson
Signature of Janet Anderson PSM
Date 4.7.24

[Handwritten Signature]
Signature of witness
Date 4.7.24

Signed by the Deputy Secretary of the Department of Health and Aged Care in the presence of:

[Handwritten Signature]
Signature of Michael Lye
Date 2/7/24

[Handwritten Signature]
Signature of witness
Date 2/7/24