

MEMORANDUM OF UNDERSTANDING

BETWEEN

AGED CARE QUALITY AND SAFETY COMMISSION (ACQSC)

AND

AUSTRALIAN HEALTH PRACTITIONER REGULATION AGENCY (AHPRA)

For the exchange of information to assist each Party to perform their statutory functions.

Memorandum of Understanding (MOU)

Dated: The.....9th.....day ofJuly..... 2019

Parties **Aged Care Quality and Safety Commission** (ABN 80 246 994 451)
of Level 3, 10 Rudd St Canberra ACT 2601 (**ACQSC**)
Australian Health Practitioner Regulation Agency (ABN 78 685 433
429) of Level 8, 111 Bourke Street, Melbourne VIC 3000 (**AHPRA**)
(each a **Party**, together the **Parties**)

BACKGROUND

- A. The ACQSC is an independent statutory agency established under the *Aged Care Quality and Safety Commission Act 2018* to protect and enhance the safety, health, well-being and quality of life of aged care consumers who receive care and services provided by Commonwealth funded aged care service providers. The ACQSC also has an education function and responsibility for engaging consumers and providers to develop and promote best practices models of care.
- B. AHPRA is incorporated under the *Health Practitioner Regulation National Law (National Law)* as in force in each State and Territory. AHPRA has general responsibility for administering the National Registration and Accreditation Scheme (**National Scheme**) under the National Law in conjunction with 15 National Boards established for the regulated Health Professions.
- C. The National Scheme aims to protect the public by ensuring that only suitably trained and qualified practitioners are registered. The National Scheme also facilitates workforce mobility across Australia, the provision of high-quality education and training of health practitioners, and rigorous assessment of overseas-trained practitioners. Guided by a nationally consistent law, AHPRA and the National Boards work to regulate the Health Professions in the public interest (see AHPRA's Regulatory Principles in **Appendix 1**).
- D. AHPRA is also responsible for enforcing breaches of the offences against the National Law. Persons who breach the Offence Provisions of the National Law can be investigated and prosecuted.

Purpose

- E. This Memorandum of Understanding (**MOU**) has been established to support transparent and appropriate information sharing, with a focus on the shared objectives of AHPRA and the Commission. The MOU encourages sharing of data and information between the two parties in order to discharge their respective roles and responsibilities and to support relevant two-way communication, particularly as it relates to matters that concern either party and those with particular public sensitivity.
- F. The MOU formalises the shared operational understanding and agreed protocols of the parties with respect to:

- a) exchange of information in the course of exercising their functions
- b) exchange of information in exercising powers under applicable legislation
- c) roles and responsibilities of each party in relation to:
 - i. Information disclosure relevant to the responsibilities of each party;
 - ii. The administrative arrangements for the Parties to communicate with each other in respect of information disclosure;
 - iii. Protocols to apply when a Party is compelled by law to disclose the other party's information to a third party (e.g. in response to a subpoena);
 - iv. Privacy and confidentiality arrangements for information shared under this MOU
 - v. The governance arrangements in respect of this MOU.

G. The parties will apply the following principles in the application of this MOU:

- i. The parties have separate and independent mandates and roles under State and Commonwealth legislation;
- ii. The parties have a common interest in, and responsibility for, protecting the public and recipients of Commonwealth funded aged care;
- iii. The parties have separate privacy requirements under State and Commonwealth legislation, with which they will comply in the course of fulfilling their obligations under this MOU. For the avoidance of doubt, should any conflict arise, compliance with the legislative privacy requirements takes precedence over this MOU.

H. The parties mutually undertake to provide each other with assistance in relation to the exchange of information and the appropriate referral of matters within the framework of this MOU and consistent with all relevant laws.

1. RESPONSIBILITIES OF PARTIES

1.1 The operational arrangements, understandings and protocols reached between the parties are contained in this MOU, which includes the Schedule.

2. NO CONTRACTUAL OR ENFORCEABLE LEGAL RELATIONS TO ARISE and RELATIONSHIP WITH LEGISLATION

2.1 This MOU does not create any enforceable rights between the Parties. The MOU is not intended to establish a legal relationship or to give rise to a legally binding agreement, whether contractual or otherwise, between the Parties, or to be the subject of any court, mediation, or arbitration proceedings.

2.2 This MOU is intended to be applied in the course of each Party meeting its respective obligations under its guiding legislation and other Acts. Nothing in this agreement seeks to displace or override the statutory and legal obligations of either Party.

3. TERM (Indefinite Term)

3.1. This MOU takes effect from the above mentioned date and continues until it is either:

3.1.1. superseded by a subsequent MOU of the parties;

3.1.2. terminated, at the written request of one of the parties, provided that such termination should, whenever possible, only occur after prior consultation with the other party.

4. REVIEW and AMENDMENT

4.1. The parties intend to review this MOU as follows;

4.1.1. every two years from the commencement date of this MOU, or

4.1.2. if circumstances, legislative amendment or other matters so requires the MOU to be reviewed or amended.

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

5. CONFIDENTIALITY & PRIVACY

5.1. This MOU is subject to any applicable legislative confidentiality and privacy requirements.

5.2. The parties hereby undertake to keep all information obtained under this MOU confidential, subject to disclosure being required by law, in which case the Parties will comply with the terms of this MOU in respect of the release.

5.3. The parties will ensure that the information exchanged or provided under this MOU will only be used for the purposes specified herein and that further access to such information will be limited to only those persons who require such information for the purpose of carrying out functions or exercising powers under the ACQSC Act or the National Law.

5.4. The parties acknowledge and will comply with their obligations under law in relating to the collection, recording, use or disclosure of personal information under this MOU.

6. SUBPOENAS AND COURT ORDERS

6.1. If a party is served with a binding legal order or requirement to provide information to a third party (e.g. under a subpoena, warrant or notice), and that information was obtained from the other party under this MOU, the first party will:

6.1.1. notify the second party of the order or requirement as soon as practicable (unless legally compelled not to do so); and

6.1.2. to the extent practicable, consult with the second party as to how best to respond to the order of requirement (e.g. the second party may wish to intervene or assist the first party to object).

6.2. The parties intend to honour the undertaking, set out in this sub-clause, in respect of information provided to them under this MOU even after the expiry or termination of this MOU.

7. INFORMATION VERIFICATION

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

7.2. 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.

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

8. DISPUTE RESOLUTION and TERMINATION PROCESS

8.1. 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.

8.2. A dispute may be referred to the parties' representatives, nominated in Schedule 1, who will use their best endeavours to resolve the dispute.

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

9. INFORMATION EXCHANGE

9.1. The parties mutually undertake to disclose information, where necessary and appropriate to do so, in accordance with applicable legislation and other legal, operational and policy considerations, to enable the parties to undertake their respective functions.

9.2. In particular:

9.2.1. ACQSC will disclose information to AHPRA, where necessary and appropriate to do so and in accordance with legislation, that is considered to be relevant to the functions and powers of AHPRA, including but not limited to:

- a) Information which may raise a concern about the health, performance or conduct of a registered health practitioner; and/or

- b) Information, which may be relevant to a possible offence under the National Law.

9.2.2. AHPRA will disclose information to ACQSC, where necessary and appropriate to do so and in accordance with legislation, that is considered to be relevant to the functions and powers of ACQSC, including but not limited to:

- a) Information which may raise a possible or actual concern about the care and safety of someone receiving aged care that is being delivered by a provider who receives Commonwealth funding; and/or
- b) Broader information relating to possible or actual concerns of quality or safety of care from an aged care provider; and/or
- c) Any other information AHPRA deems suitable to disclose to ACQSC for the purposes of carrying out its functions

9.2.3. A party may disclose information to the other party without a request having been made if it is satisfied that the circumstances in paragraph 9.2 apply and that such release may be made in accordance with applicable legislation.

9.2.4. Should a Party request information from the other party, then the request will be:

- a) in writing,
- b) signed by an authorised officer of the requesting party,
- c) made for the purpose of the party's functions under the relevant legislation and carry a statement to that effect,
- d) set out the information that is requested and how it will be used,
- e) identify any health practitioner(s) and/or aged care workers who are the subject of the request, and
- f) forwarded to the relevant party's representative as set out in the schedule.

10. USE OF INFORMATION

10.1. Each party will:

10.1.1. maintain information received by it from the other party under this MOU in a secure environment, and

10.1.2. ensure that access to such information will be limited to only those persons who require such information for the purpose of administering the party's functions under the *Aged Care Quality and Safety Commission Act 2018* (CTH) or the National Law as the case may be.

10.1.3. Where information released in accordance with this MOU relates to a matter that is under investigation, or is the subject of disciplinary, criminal or other litigation, by the party that has released the information, the receiving party is not to make any active use of that information without first consulting with the agency that has released the information.

10.2. A party that receives information from the other party pursuant to the terms of this MOU shall provide regular updates to the party that provided the information as to the use of that information.

11. NOTICES

11.1. 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.

12. LIAISON

12.1. The Parties will hold a liaison meeting at least quarterly to discuss:

12.1.1. The operation of this MOU,

12.1.2. The nature of information being shared,

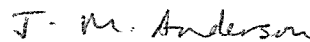
12.1.3. Any other matters that may assist the cooperation between the parties and otherwise progress the aims of this MOU.

12.2. The Commissioner of the ACQSC and the Chief Executive of AHPRA shall each nominate two representatives to attend the quarterly liaison meetings.

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

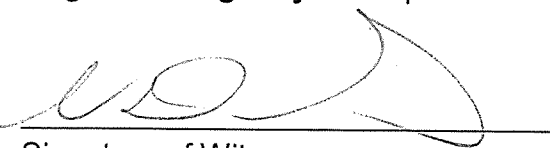


Signature of Witness




Signature of Janet Anderson PSM

Signed by the Chief Executive Officer of the **Australian Health Practitioner Regulation Agency** in the presence of:



Signature of Witness



Signature of Martin Fletcher

SCHEDULE

PARTIES REPRESENTATIVES

Notices, including requests for information, 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 AND SAFETY COMMISSION:

Full name or title: National Manager Complaints Operations or
Director (of the relevant State) Complaints
Resolution Group

Address for service: Level 3, 10 Rudd Street
Canberra ACT 2601

Email: complaintscoord@agedcarequality.gov.au

IN RESPECT OF THE AUSTRALIAN HEALTH PRACTITIONER REGULATION AGENCY:

Full name or title: Senior Legal Advisor
National Information Release Unit

Address for service: National Information Release Unit
AHPRA
Level 4, 192 Ann Street
Brisbane QLD 4000

Email: robert.green@ahpra.gov.au