



Australian Government

Aged Care Quality and Safety Commission



OFFICE OF THE  
**HEALTH**  
OMBUDSMAN

## **Memorandum of Understanding**

between the

Aged Care Quality and Safety Commission

and the

Health Ombudsman Queensland

SEPTEMBER 2024

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## **Aged Care Quality and Safety Commission**

**And**

## **The Health Ombudsman (including the Office of the Health Ombudsman)**

### **1. PARTIES**

This Memorandum of Understanding (MOU) is made between the following parties (the Parties):

**1.1 Aged Care Quality and Safety Commission (the Commission)**

(ABN 80 246 994 451), having its principal address at Level 11, 101 George Street, Parramatta, New South Wales, 2150; and

**1.2 The Health Ombudsman and Office of the Health Ombudsman (the OHO)**

(ABN 57 742 927 739 7) having its principal address at Level 12, 400 George St, Brisbane City QLD 4000.

### **2. RECITALS**

- 2.1 The Commission is an Australian Government statutory authority within the Health and Aged Care portfolio. The Commission is the national regulator of the providers of Commonwealth subsidised aged care services including residential care, home care, and flexible care (as defined in the *Aged Care Act 1997*).
- 2.2 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. The Commission receives and resolves complaints about aged care providers, services and workers. It also invests in education and engagement to empower people who use aged care services, supports providers to understand their obligations and responsibilities, and holds providers to account for their performance.
- 2.3 The Commission operates independently in performing its functions and exercising its powers as set out in the *Aged Care Quality and Safety Commission Act 2018* (Commission Act) and the *Aged Care Quality and Safety Commission Rules 2018* (the Rules) to protect and enhance the safety, health, well-being and quality of life of older people who receive care and services provided by Commonwealth funded aged care providers.
- 2.4 The Commission's functions under the Aged Care Quality and Safety Rules 2018 include:
- (i) approving providers and ensuring they are compliant with the Aged Care Act 1997
  - (ii) consumer engagement with older people and their supporters
  - (iii) resolving complaints about aged care providers (including aged care worker board members and volunteers)
  - (iv) accrediting aged care providers, conducting quality reviews, and monitoring providers and workers
  - (v) educate providers and inform older people and their supporters.

- 2.5 The Commission regulates approved providers of residential, home care and flexible care providers, their governing persons and board members, volunteers and their aged care workers under the Code of Conduct (the Code). Individuals are regulated under the suitability provisions of the Code.
- 2.6 The OHO is a statutory body providing a single point of entry for health service complaints and notifications in Queensland. The OHO plays a critical role in protecting the health and safety of the public in Queensland, by promoting high standards in the delivery of health services by health service providers and health services organisations and maintaining public confidence in the health service complaints management system.
- 2.7 Under the *Health Ombudsman Act 2013* (the HO Act) and the *Health Practitioner Regulation National Law (Queensland)* (the National Law), the OHO has broad powers to deal with complaints and other matters relating to the health, conduct and performance of registered and unregistered health practitioners, and the services provided by health service organisations. In handling complaints and matters about registered practitioners in Queensland, the OHO shares co-regulatory responsibility with the Australian Health Practitioner Regulation Agency (AHPRA), and the 15 health practitioner National Boards under the National Law.
- 2.8 The OHO applies the National Code of Conduct for Health Care Workers (Queensland) when managing complaints and matters about unregistered practitioners in Queensland.

### **3. OPERATIVE PROVISIONS**

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- 3.1 This MOU records the mutually agreed understanding between the Parties.

### **4. PURPOSE AND SCOPE OF THIS MOU**

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#### **4.1 Purpose**

- 4.2 This MOU has been established for the purpose of facilitating a coordinated and cooperative relationship between the Parties, through requesting, sharing and referring information, in a way that is efficient and consistent with all relevant laws, to enable each party to effectively discharge their respective statutory functions.

#### **4.3 NON-BINDING NATURE OF THIS MOU**

- 4.4 This MOU does not establish any contract or agreement and does not create any legally valid, enforceable, or binding commitments, agreements, or obligations of any kind between the Parties.
- 4.5 This MOU is not an offer and is not intended to, and does not, create any offer capable of being accepted or deemed accepted.

#### **4.6 SCOPE**

- 4.7 The scope and framework for consultation, cooperation and action between the Parties under this MOU is specified in Schedule 1 and Schedule 2 to this MOU.

### **5. TERM OF THIS MOU AND TERMINATION**

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- 5.1 The MOU commences on the date the last Party signed this document and will continue until it is either superseded by a subsequent MOU made between the Parties or it is terminated.
- 5.2 This MOU may be terminated at any time by either Party by giving the other Party thirty (30) days written notice.
- 5.3 Notice of Termination should, whenever possible, only occur after sufficient prior consultation with the other Party.

## **6. MOU ADMINISTRATION**

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- 6.1 The Parties will act in good faith and cooperate with each other in the performance of this MOU. The Parties will raise and discuss any relevant issues that could affect the other Party and/or their ability to discharge their statutory functions and exercise powers, in a prompt, open and honest way.
- 6.2 Each Party will use its best endeavours to:
  - (i) provide the other Party with any information that the other Party may reasonably require to undertake the actions set out in this MOU
  - (ii) ensure that any information provided to the other Party under this MOU is accurate, current, complete, and correct (and as soon as possible after becoming aware that any information is not accurate, current, complete or correct, advise the other Party of, and rectify, the deficiency in the information)
  - (iii) ensure that their officers responsible for the administration and implementation of this MOU have the appropriate authority to give effect to the terms contained in Schedule 1 and any additional schedules established by the Parties under clause 9 of this MOU.
- 6.3 Each Party will act upon or deal with information and material provided to them according to their own judgement and assessment of the information provided to them and at their own risk.

## **7. REVIEW AND AMENDMENT**

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- 7.1 The Parties intend to review this MOU:
  - (i) every three years from the commencement date of this MOU
  - (ii) if circumstances such as legislative amendment, machinery of government changes or other matters require the MOU to be reviewed or amended.
- 7.2 Any amendments to this MOU must be made in writing and signed by persons holding the equivalent offices of the original signatories.

## **8. STRUCTURE OF THE MOU**

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- 8.1 This MOU comprises all of the following:
  - (i) this document
  - (ii) Schedules 1
  - (iii) any additional Schedule(s) established by the Parties under clause 9.

- 8.2 The terms of this document will prevail to the extent of any inconsistency with the terms of a Schedule.

## **9. SCHEDULES**

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- 9.1 The Parties may establish a Schedule to this MOU by amending the MOU as set out in clause 7.2.
- 9.2 Schedules under this MOU will be numbered sequentially as Schedule 1, 2, 3 etc.
- 9.3 Each Schedule under this MOU will commence on the date of the last signature of that Schedule.
- 9.4 A Schedule to this MOU will continue in effect until:
- (i) the end date specified in the Schedule (if specified) or
  - (ii) the date the Schedule or the MOU is terminated.
- 9.5 A Schedule may be terminated or amended through the procedures set out in clauses 5 and 7.

## **10. PRIVACY**

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- 10.1 Nothing in this MOU derogates from any obligation either Party has to comply with provisions under the *Privacy Act 1988* (Cth) (Privacy Act) or any other law (including, but not limited to, the Commission Act,<sup>1</sup> the Rules, the HO Act, *Information Privacy Act 2009* (IP Act) and the National Law) in relation to privacy or protection of personal information (including sensitive information), as amended from time to time.
- 10.2 The Parties will take reasonable steps to ensure access to information shared under this MOU is limited to those persons who require such information for the purpose of carrying out statutory functions or exercising powers under the Commission Act or the HO Act or the National Law.

## **11. DATA BREACH**

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- 11.1 In addition to obligations each Party has under the Privacy Act and/or other legislation outlined in clause 10, if a Party becomes aware of a data breach, they will notify the other Party as soon as practicable if the breach involves information collected from the other Party.
- 11.2 A notification under clause 12.1 should occur even if a data breach is not subject to notification requirements under the Privacy Act (e.g. a data breach is found not to be an 'eligible data breach' under the Privacy Act).
- 11.3 Where a suspected data breach is reported under clause 11.1, the Party suspecting the data breach involving information collected from the other Party must:
- (i) take all reasonable action to mitigate the risk of the data breach causing serious harm to any of the individuals to whom it relates
  - (ii) unless otherwise directed by the other Party, take all other action necessary to comply with the requirements of the Privacy Act
  - (iii) take any other action as reasonably directed by the other Party.

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## **12. THIRD PARTY COMPLAINTS**

- 12.1 If a Party receives a complaint from a third party in relation to a data breach or other information-related issue, that affects or is about the other Party to the MOU or information the other Party has provided, the first Party will notify the other Party as soon as practicable.
- 12.2 Parties will, in good faith, use its best endeavours to resolve the complaint described under clause 12.1.

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## **13. SUBPOENAS and COURT ORDERS**

- 13.1 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, or under a request to the Inspector-General of Aged Care), and that information was obtained from the other Party under this MOU, the first Party will:
- (i) notify the other Party of the order or requirement as soon as practicable (unless legally compelled not to do so)
  - (ii) to the extent practicable, consult with the other Party as to how best to respond to the order or requirement (e.g. the other Party may wish to intervene or assist the first Party to object to providing the information).

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## **14. DISPUTE RESOLUTION**

- 14.1 Where a dispute arises between the Parties due to the operation of this MOU, the Parties will make reasonable attempts to resolve the dispute at the Contact Officer level. Contact Officers are specified in Schedule 1.
- 14.2 If a dispute cannot be resolved by the Parties' Contact Officers, the dispute will be escalated to the Authorised Officer of each Party, or to officers nominated by the Authorised Officer for each Party, for resolution.
- 14.3 Where the dispute cannot be resolved, either Party may terminate the MOU through the procedure set out in clause 5.

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## **15. NOTICES**

- 15.1 Any notice in writing pursuant to this MOU is to be given to the Contact Officers specified in Schedule 1 or such other person as is specified in writing to the other Party.

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## **16. PUBLICATION OF MOU**

- 16.1 The Parties agree that this MOU may be publicised as each Party considered appropriate including by placing it on the Party's website.

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## **17. ENTIRE UNDERSTANDING**

- 17.1 The MOU sets out the entire understanding and intention of the Parties and supersedes all prior or contemporaneous agreements, discussions, communications, and representations, whether written, oral, or otherwise, of the Parties with respect to the subject(s) of this MOU.

17.2 The Parties acknowledge that as of the date hereof, no binding contracts, agreements or commitments exist between the Parties with respect to the subject(s) of this MOU.

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

in the presence of:

J. M. Anderson

Signature of Janet Anderson PSM

6 August 2024

Date

[Handwritten Signature]

Signature of witness

6 August 2024

Date

**Signed** by the Health Ombudsman Queensland

in the Presence of:

[Handwritten Signature]

Signature of

Dr Lynne Coulson Barr OAM

10<sup>th</sup> September 2024

Date

[Handwritten Signature]

Signature of witness

10 / 9 / 24

Date

## **SCHEDULE 1: INFORMATION SHARING AND REFERRAL**

### **1.0 PURPOSE**

- 1.1 The Commission and the OHO are committed to supporting the achievement of the Parties' respective statutory objectives and the exercise of their functions.
- 1.2 The Parties recognise the lawful sharing of information and referral with each other is important in promoting the achievement of their respective statutory objectives.
- 1.3 This Schedule sets out arrangements for the sharing of information and referral of information between the Parties.

### **2.0 OBJECTIVES**

- 2.1 This Schedule aims to:
  - (i) promote a close and cooperative regulatory relationship between the Parties that is underpinned by the timely and lawful sharing and referral of information
  - (ii) set out arrangements for making and responding to requests for access to information between the Parties
  - (iii) set out arrangements for referring information between the Parties
  - (iv) encourage ongoing coordination and liaison in relation to regulatory matters in which both Parties maintain an interest.

### **3.0 PURPOSES FOR WHICH INFORMATION CAN BE SHARED OR REFERRED**

- 3.1 The Commission regulates the providers of Commonwealth-funded aged care. Aged care is often provided by, or in conjunction with, registered and unregistered health practitioners.
- 3.2 The OHO regulates the delivery of health services (defined in section 7 of the *Health Ombudsman Act 2013*), which includes services involving the provision of aged care by organisations, and by individuals (who can be registered or unregistered practitioners).
- 3.3 The Parties recognise that situations will arise in which both entities have a regulatory interest and that there may be some circumstances in which one entity is also an appropriate entity to handle information and take regulatory action. The information collected by one Party may be of assistance to the other to enable regulatory matters to be efficiently and effectively resolved.
- 3.4 The Parties agree to work together to support their respective regulatory functions through the timely and lawful sharing of information and referral of matters.



- 3.5 A party to this schedule may notify the other party of relevant information relating to an individual's conduct or a service or provider's performance which may result or has resulted in an unacceptable risk to an aged care consumer<sup>2</sup> in Queensland. This could include information where a party has taken, or proposes to take, regulatory action against this individual, service or provider.
- 3.6 The Parties agree wherever possible to liaise with each other and share information to promote the effective and timely resolution of matters where an aged care worker may have contravened a relevant code of conduct or statutory provision.<sup>3</sup>
- 3.7 There are health service organisations within the OHO's jurisdiction which are also approved aged care providers within the Commission's jurisdiction. The Parties agree to work together and may share information about organisations where there are potential or actual concerns of a systemic and or serious nature.

#### **4.0 SHARING INFORMATION**

- 4.1 A Party may request access to information by writing to the other Party. An information access request should:
- (i) state the date of the request and who is making the request
  - (ii) clearly set out the scope of the information sought
  - (iii) include an explanation of how the requested information will assist in the performance of a statutory function or exercise of a power<sup>4</sup>
  - (iv) reference any legislation under which the request for information is made
  - (v) be forwarded to the nominated Contact Officer. This may be a person nominated for the purpose of liaison in relation to a particular file or issue or a general contact set out in this Schedule.
- 4.2 Upon receipt of a request the receiving party will endeavour to:
- (i) acknowledge receipt within five working days, and within ten working days (or as soon as is reasonably practicable) produce the information<sup>5</sup> or give full reasons for refusal of all or part of the request.

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<sup>2</sup> Defined section 7 of the ACQSC Act to mean: (a) a care recipient; or (b) a person who is a recipient of a Commonwealth-funded aged care service.

<sup>3</sup> For OHO – so the Health Ombudsman can perform functions under s25 and s26 of the HO Act; For ASCQSC – so Commissioner can perform functions under s16 of ACQSC Act.

<sup>4</sup> For OHO – so the Health Ombudsman can perform functions under s25 and s26 of the HO Act; For ASCQSC – so Commissioner can perform functions under s16 of ACQSC Act.

<sup>5</sup> For **OHO** under s272(6) of the HO Act, s27 of the Information Privacy Act 2009 and Information Privacy Principle 11; For **ACSQC** under s 61 of ACQSC Act to prevent or lessen a serious risk to the safety, health or well-being of an aged care consumer, or where person's conduct may or does breach professional standards and should be reported to responsible body

(ii) If a Party is concerned that it may not be able to meet a request for access to information then it will discuss this with the person who has made the request on behalf of the other Party and provide an explanation. Wherever possible, a Party will support the other to revise a request into a form that enables the disclosure of information.

- 4.3 The Parties may share information with each other without being requested to do so under 4.1 where either entity deems that the other should be provided the information to assist them in the performance of a statutory function. The provision of information should be made in writing as soon as is reasonably practicable.
- 4.4 The Parties will make reasonable provision for sharing information which may include informing the other Party about regulatory action taken about a relevant service or provider of concern.
- 4.5 Compliance with clause 4.4 does not affect a Party's ability to seek reimbursement of its costs or to impose a fee in relation to disclosure of information in exceptional circumstances<sup>6</sup>.
- 4.6 Non-compliance with clause 4.2 may be raised with the Contact Officer but does not incur any penalty, cost, fee or other finding or sanction. Repeated non-compliance may be a basis for termination under clause 5 of the MOU.

## **5.0 REFERRING INFORMATION**

- 5.1 In circumstances where one entity determines it may be appropriate to refer information to the other, the referring entity must consult with the other and reach an agreement regarding the referral as soon as is reasonably practicable<sup>7</sup>.
- 5.2 Upon agreement being reached about the referral, the referring entity should issue a referral in writing to the other entity. An information referral should:
- (i) state the date of the referral and who is making the referral;
  - (ii) clearly set out the scope of the information being referred;
  - (iii) reference any legislation under which the referral of information is made; and
  - (iv) be forwarded to the nominated Contact Officer. This may be a person nominated for the purpose of liaison in relation to a particular file or issue or a general contact set out in this Schedule.

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<sup>6</sup> Such as in complex matters involving production of voluminous documentation and increased resourcing needs.

<sup>7</sup> The Health Ombudsman may refer a matter to ACQSC under section 92 of the HO Act.

- 5.3 Upon receipt of a referral, the receiving party will acknowledge receipt within five working days.
- 5.4 The Parties will make reasonable provision for reporting about outcomes when information has been referred.<sup>8</sup>

## **6.0 STORAGE, MANAGEMENT AND USE OF DISCLOSED INFORMATION**

- 6.1 The Parties will store, use and disclose information in a manner that is compliant with their respective legal obligations.
- 6.2 The Parties will store disclosed information securely and take reasonable steps to prevent unauthorised access.
- 6.3 The Parties will notify each other of occasions where disclosed information is used for a purpose other than that for which it was collected – for example, where a Party is required to disclose information received from the other Party to comply with a third-party subpoena or compulsive notice.
- 6.4 However, a Party is not required to make a notification under clause 6.3 if the notification would be inconsistent with a legal obligation or in the Commission's case, not in the public interest.

## **7.0 CONTACT POINTS**

- 7.1 Commission contact officers and delegates who can sign information requests and approve information releases to the Office of the Health Ombudsman Queensland on behalf of the Commission:

Assistant Directors in the Worker Regulation Team  
Director, Worker Regulation Team  
code@agedcarequality.gov.au  
1800 951 822

- 7.2 Office of the Health Ombudsman contact officers:

### **Requests for and provision of information release to the Commission:**

Senior Right to Information Officer

[rti@oho.qld.gov.au](mailto:rti@oho.qld.gov.au)<sup>9</sup>

+61 7 3158 1094

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<sup>8</sup> While there is no legislative obligation for ACQSC to report back to the OHO under section 93 of the HO Act (given they are not a state entity), ACQSC will provide this information in accordance with s61(ia)(i) of ACQSC Act.

<sup>9</sup> The OHO RTI Officer will distribute to relevant OHO Officers to action where it is an active matter.

**Referral of information to OHO**

[complaints@oho.qld.gov.au](mailto:complaints@oho.qld.gov.au)

**Escalation/Queries**

Maree Hill – Executive Director - Assessment & Resolution

[Maree.Hill@oho.qld.gov.au](mailto:Maree.Hill@oho.qld.gov.au)

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