



**Australian Government**

**Aged Care Quality and Safety Commission**

**Office of the Inspector-General of Aged Care**

## **MEMORANDUM OF UNDERSTANDING**

**Aged Care Quality and Safety Commission (ACQSC)**

and

**Office of the Inspector-General of Aged Care (Office)**

## 1. PARTIES

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This MOU is made between the following Parties (the Parties):

Aged Care Quality and Safety Commission (ACQSC)

(ABN 80 246 994 451), having its principal address at Level XX, 101 George St, Parramatta, New South Wales, 2150

AND

Office of the Inspector-General of Aged Care (Office)

(ABN 27 478 662 745), having its principal address at Level 14 Scarborough House Woden ACT 2606.

## 2. RECITALS

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- 2.1 The ACQSC is an Australian Government statutory authority within the Health and Aged Care portfolio. The ACQSC is the national regulator of aged care services, and the primary point of contact for consumers and providers in relation to quality and safety in Commonwealth funded aged care.
- 2.2 The ACQSC operates independently and objectively 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 Rules 2018* (the Rules) 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 providers.
- 2.3 The Office is an independent statutory agency which supports the Inspector-General of Aged Care (IGAC) in performing their functions and exercising their powers as provided for in the *Inspector-General of Aged Care Act 2023* (IGAC Act). The Office supports the Inspector-General's oversight of the aged care system delivered through reviews, ongoing monitoring and reporting.
- 2.4 Each Party acknowledges that carrying out its respective roles will require effective consultation and cooperation with the other Party, and each Party is committed to ensuring such consultation and cooperation occurs.

## 3. OPERATIVE PROVISIONS

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This MOU records the mutually agreed understanding between the Parties, as follows:

## 4. PURPOSE AND SCOPE OF THIS MOU

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### 4.1 Purpose

- 4.1.1 This is a non-binding MOU, established by the Parties to serve as a framework within which the Parties can jointly explore and work towards the purpose of this MOU.
- 4.1.2 The purpose of this MOU is to:

- a. guide and facilitate the Parties' collaboration, cooperation and mutual assistance in the performance of their respective statutory functions;
- b. provide transparency about the Parties' efforts to coordinate activities and minimise duplication within the limitations placed on each by law; and
- c. allow for the exchange of relevant information and documents to the extent permitted by relevant legislation.

#### 4.2 **Non-binding nature of this MOU**

4.2.1 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.

4.2.2 This MOU is not an offer and is not intended to, and does not, create any offer capable of being accepted or deemed accepted.

#### 4.3 **Scope**

4.3.1 The scope and framework for cooperation and action between the Parties under this MOU is specified in Schedule 2 to this MOU.

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

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#### 5.1 **Commencement**

5.1.1 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 **Termination by notice**

5.2.1 This MOU may be terminated at any time by either Party by giving the other Party thirty (30) days written notice.

5.2.2 Termination should, whenever possible, only occur after 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 issues that could affect the other Party in a prompt, open and honest way.

6.2 Each Party will use its best endeavours to:

6.2.1 Provide the other Party with any information that the other Party may reasonably require in order to undertake the actions set out in this MOU.

6.2.2 Ensure that any information provided to the other Party under this MOU is accurate, current, complete (and as soon as possible after becoming aware that

any information is not accurate, current, complete or correct, advise the other Party of the deficiency in the information), and

6.2.3 Ensure that its officers responsible for the administration and implementation of this MOU have the appropriate authority to give effect to the arrangements contained in those documents.

6.3 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. REVIEW AND AMENDMENT**

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7.1 The Parties intend to review this MOU as follows:

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

7.1.2 if circumstances such as legislative amendment, machinery of government changes or other matters require the MOU to be reviewed or amended.

7.2 Subject to clause 7.3, any amendments to this MOU must be made in writing and signed by persons holding the equivalent offices of the original signatories.

7.3 Amendments to Schedule 2 of this MOU (except changes to the authorised officers) must be made in writing and signed by the persons listed in items 1.2 and 2.2 of Schedule 1 of this MOU.

The Parties may review the operation of the MOU at any time and will consult with each other with a view to improving its operation where necessary. Any term of this MOU may be amended at any time with the mutual written consent of each Party.

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

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8.1 This MOU comprises:

8.1.1 this document; and

8.1.2 Schedule 1 and Schedule 2

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:

9.4.1 the end date specified in the Schedule (if specified); or

9.4.2 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. EFFECT OF MACHINERY OF GOVERNMENT CHANGES**

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- 10.1 In this MOU, references to the parties are to be interpreted as including any entity that is (or entities that are), as a result of a machinery of government change, performing any relevant function or responsibility that is or was formerly performed at any relevant time by the parties referred to in this MOU.
- 10.2 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.

## **11. PRIVACY**

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- 11.1 Nothing in this MOU derogates from any obligation which either Party may have either under the Australian Privacy Act 1988 (Cth) (Privacy Act) or any other law (including the Commission Act or the IGAC Act) in relation to privacy or protection of personal information (including sensitive information) as amended from time to time.
- 11.2 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 IGAC Act.

## **12. DATA BREACH**

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- 12.1 In addition to obligations each Party has under the Privacy Act, if a Party becomes aware that there are reasonable grounds to suspect that there may have been a data breach it

will notify the other Party as soon as practicable if the breach involves information collected from the other Party.

- 12.2 A notification under clause 12.1 should occur even in the event that 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).
- 12.3 Where a suspected data breach is reported under clause 12.1, the Party suspecting the data breach involving information collected from the other Party must:
- 12.3.1 take all reasonable action to mitigate the risk of the data breach causing serious harm to any of the individuals to whom it relates;
  - 12.3.2 unless otherwise directed by the other Party, take all other action necessary to comply with the requirements of the Privacy Act; and
  - 12.3.3 take any other action as reasonably directed by the other Party.

### **13. THIRD PARTY COMPLAINTS**

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- 13.1 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.
- 13.2 Parties will, in good faith, use its best endeavours to resolve the complaint described under clause 13.1.

### **14. SUBPOENAS and COURT ORDERS**

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- 14.1 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:
- 14.1.1 notify the other Party of the order or requirement as soon as practicable (unless legally compelled not to do so); and
  - 14.1.2 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).

### **15. DISPUTE RESOLUTION**

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- 15.1 Where a dispute arises between the parties arising from 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.
- 15.2 If a dispute cannot be resolved by the parties' Contact Officers, the dispute will be escalated to the Accountable Authority of each Party, or to officers nominated by the Authorised Officer for each Party, for resolution.
- 15.3 Where the dispute cannot be resolved, either party may terminate the MOU through the procedure set out in clause 5.

### **16. NOTICES**

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

**17. COMMUNICATION AND MEETINGS**

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17.1 The Parties agree that meetings and communication between the Parties may occur as required, to discuss strategic issues that are relevant to and/or affect both Parties, subject to legislative responsibilities of the Parties.

17.2 Both Parties will be responsible for contributing to the agenda for all meetings, disseminating the outcomes across their organisations, and ensuring any disclosures of information during the meetings are consistent with the Parties' respective legislative responsibilities.

**18. PUBLICATION OF MOU**

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

**19. Costs**

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19.1 Each Party agrees to bear its own costs in performing its functions under this MOU.

**20. ENTIRE UNDERSTANDING**

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20.1 The MOU sets out the entire understanding and intention of the Parties and supersedes any and 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.

20.2 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:

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Signature of Janet Anderson PSM

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Signature of witness

**Signed** by the **Acting Inspector-General of Aged Care** in the Presence of:

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Signature of Ian Yates AM

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Signature of witness