



**IHACPA**

Mr Blair Comley  
Secretary  
Department of Health and Aged Care  
GPO Box 9848  
Canberra ACT 2601

**By email:** [Blair.COMLEY@Health.gov.au](mailto:Blair.COMLEY@Health.gov.au)

Dear Mr Comley

I am writing to you regarding your 18 September 2023 correspondence outlining an Exchange of Letters between the Department of Health and Aged Care (the Department) and the Independent Health and Aged Care Pricing Authority (IHACPA).

This Exchange of Letters outlines the arrangements to support coordination, cooperation and information sharing between the Department and IHACPA for the purposes of undertaking our legislated responsibilities.

The proposal made in your Exchange of Letters is acceptable to IHACPA and shall constitute an Exchange of Letters between our agencies. This Exchange of Letters shall commence on 22 September 2023 and will continue until either party provides notice to vary or terminate the arrangement.

Yours sincerely

Professor Michael Pervan  
CEO  
Independent Health and Aged Care Pricing Authority

**22 September 2023**



**Australian Government**

**Department of Health and Aged Care**

Secretary

Professor Michael Pervan  
Chief Executive Officer  
Independent Health  
and Aged Care Pricing Authority  
PO Box 483  
Darlinghurst NSW 1300

*Michael*

Dear Professor Pervan

I am writing to you to establish arrangements to support coordination, cooperation and information sharing between our organisations for the purposes of undertaking our legislated responsibilities

Legislative changes on 12 August 2022 established the Independent Health and Aged Care Pricing Authority (IHACPA) and provided it with new functions including:

- provision of advice on aged care pricing and costing matters;
- performing functions conferred by the *Aged Care Act 1997* (Aged Care Act); and
- the transfer of functions from the former Aged Care Pricing Commissioner to IHACPA giving IHACPA the power to approve prices for residential aged care refundable accommodation deposits above the Minister's maximum and increases to extra service fees.

In light of IHACPA's expanded role, the Department of Health and Aged Care (Department) would like to establish arrangements for engagement with IHACPA which will focus on coordination, cooperation and information sharing between the parties for the purposes of undertaking their legislated responsibilities. In accordance with section 86-4A of the Aged Care Act, IHACPA may disclose protected information gathered during the performance of an Aged Care Act function to support the policy functions of the Department of Health and Aged Care as the system operator.

IHACPA will not provide regulatory advice or commentary on the information it shares.

The Department and the IHACPA agree:

- to fully cooperate with each other to ensure timely progress and fulfilment of the arrangements outlined in this Exchange of Letters but in so doing, acknowledging the legislative obligations of each party;
- to work in partnership, to support their respective roles, responsibilities and related functions;
- to work with each other in a timely and collaborative manner;
- to consult and cooperate with each other in the event of any complaint or claim made against either party relating to the use or disclosure of information shared in accordance with this Exchange of Letters;
- the parties will take reasonable steps to ensure access to information intended to be shared under this Exchange of Letters and will comply with all laws applicable to each party relating to the disclosure of information including protected information and personal information, for the purpose of performing their respective functions in accordance with the Aged Care Act, the *Fees and Payments Principles 2014 (No. 2)* and the *National Health Reform Act 2011 (NHR Act)*;
- that this Exchange of Letters is not intended to create any enforceable legal rights or obligations between them, however, parties will act reasonably and cooperate in good faith in accordance with the terms of this Exchange of Letters;
- that the Exchange of Letters 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 subject of any court, mediation or arbitration proceedings;
- that nothing in this Exchange of Letters seeks to displace or override the statutory and other legal obligations of either party;
- that nothing in this Exchange of Letters makes either party a partner or agent of the other party, nor does either party have the power or authority to bind the other party;
- that the information exchange and management of information will be consistent with the applicable law or policies pertaining to information-handling, secrecy, confidentiality and privacy;
- that nothing in this arrangement derogates from any obligation which either party may have either under the *Privacy Act 1988 (Privacy Act)* or any other law (including the NHR Act and the Aged Care Act in relation to privacy or protection of personal information (including sensitive information)) as amended from time to time;
- to follow agreed processes for the exchange of information and data, set out supporting process documents and to limit the sharing of information to those persons who require such information for the purpose of carrying out their statutory functions under the Aged Care Act or the NHR Act;
- in addition to each party's obligations under the Privacy Act, if either party becomes aware of a data breach that involves data provided by the other party, it will notify the other party as soon as practicable after identifying that a data breach has occurred;
- that a notification of a data breach by each party to the owner of the data 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 that is not an 'eligible data breach' under the Privacy Act);

- that references to the parties includes, as relevant, 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 Exchange of Letters;
- that in the event of a Machinery of Government change affecting either party, the terms of the Exchange of Letters will be reviewed as soon as practicable to determine the need for changes to, or termination of, this Exchange of Letters;
- that where a dispute arises between the parties regarding this Exchange of Letters, the parties will make all reasonable attempts to resolve the dispute at the Contact Officer level;
- that if a dispute cannot be resolved at the Contact Officer level, the dispute will be escalated to the Accountable Authority of each party, or to officers nominated by the Contact Officer for each party, for resolution;
- that this Exchange of Letters may be terminated at any time by either party advising in writing that the Exchange of Letters is no longer applicable;
- that on termination of this Exchange of Letters, the parties will:
  - manage all information shared under this Exchange of Letters in accordance with their obligations under law, including the *Archives Act 1983*;
  - continue to comply with the consultation requirements of this Exchange of Letters in relation to information received from the other party prior to termination of the Exchange of Letters;
- that this Exchange of Letters is subject to change at any given time, with the written and signed agreement of both parties at Executive Director level (or above) of both organisations;
- that any variation to this Exchange of Letters is to have regard to any risk or impact of the change which may affect this document;
- either party may change its Contact Officers by giving written notice to the other party's Contact Officer in writing; and
- that IHACPA will consult with the Department regarding requests for legal advice in relation to the interpretation of governing legislation, in accordance with the *Legal Services Directions 2017*.

Both parties agree to the website publication of this Exchange of Letters.

I propose that, if the above is acceptable to the IHACPA, this letter and your letter of confirmation in reply, shall together constitute an Exchange of Letters between our two agencies.

This Exchange of Letters shall commence on the date IHACPA provides the letter of confirmation and will continue until either party provides notice to vary or terminate the arrangement.

Yours sincerely



Mr Blair Comley PSM  
18 September 2023