



IHACPA

Ms. Janet Anderson PSM
Commissioner
Aged Care Quality and Safety Commission
GPO Box 9819
Sydney NSW 2000

By email: Commissioner@agedcarequality.gov.au

Dear Ms Anderson

I am writing to you regarding your 05 September 2023 correspondence outlining an Exchange of Letters between the Aged Care Quality and Safety Commission (ACQSC) and the Independent Health and Aged Care Pricing Authority (IHACPA).

This Exchange of Letters outlines the arrangements of agreement by which both parties, that is the ACQSC and the IHACPA agree for the operation of this exchange.

The proposal made in your Exchange of Letters is acceptable to IHACPA and shall constitute an Exchange of Letters between our two 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



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

Dear Professor Pervan

I am writing regarding the legislative changes on 12 August 2022 to establish the Independent Health and Aged Care Pricing Authority (IHACPA), which also included the assumption of new functions.

I note that the new functions of IHACPA include:

- provision of advice on aged care pricing and costing matters
- performing functions conferred by the *Aged Care Act 1997* (Aged Care Act)
- transfer of functions from the former Aged Care Pricing Commissioner to IHACPA giving IHACPA the power to approve prices for residential aged care accommodation and extra services.

In light of IHACPA's expanded role, the Aged Care Quality and Safety Commission (ACQSC) 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.

The ACQSC was established under the *Aged Care Quality and Safety Commission Act 2018* (ACQSC Act). The ACQSC is the national regulator of aged care services, and the primary point of contact for consumers and providers in relation to aged care quality and safety in Commonwealth funded aged care. It protects and enhances the safety, health, well-being and quality of life of aged care consumers through effective engagement, regulation and education of Commonwealth-funded aged care service providers and resolution of aged care complaints.

The ACQSC is committed to working with entities relevant to its functions to fulfil its statutory purpose and ensure that people receiving aged care have the best possible experiences and outcomes.

Under the Aged Care Act, the Minister for Health and Aged Care (the Minister) determines the maximum amount an Approved Provider can charge an aged care resident for a Refundable Accommodation Deposit (RAD). This amount currently stands at \$550,000. Under amendments to the *Aged Care Act 1997*, IHACPA is now responsible for the functions formerly undertaken by the Aged Care Pricing Commissioner including the power to approve a RAD amount higher than the amount determined by the Minister as well as to approve increases to Extra Service Fees. Decisions made by IHACPA relating to RADs are valid for four years and decisions relating to Extra Service Fees are valid until varied. Each is valid from the date of the approval letter.

The ACQSC and the IHACPA agree:

- that this Exchange of Letters is not intended to create any enforceable legal rights or obligations between them, however, parties will act 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 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
- to work in partnership, to support their respective roles, responsibilities and related functions
- the parties will take reasonable steps to ensure access to information shared under this Exchange of Letters and will comply with all laws applicable to each party to disclose information including Protected Information¹, for the purpose of performing their respective functions in accordance with the *Aged Care Act 1997*, the *Aged Care Quality Safety Commission (ACQSC) Act 2018*, the *Fees and Payments Principles 2014 (No. 2.)* and the *National Health Reform Act 2011* (NHR Act)

¹ As defined under section 86 of the Aged Care Act.

- 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 Australian *Privacy Act 1988* (Cth) (Privacy Act) or any other law (including the ACQSC Act, 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 fully cooperate with each other to ensure timely progress and fulfilment of this Exchange of Letters but in so doing, acknowledging that the legislative obligations of each party takes priority over responding to information and data requests from the other party
- 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 ACQSC Act, 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 is found not to be an 'eligible data breach' under the Privacy Act).
- to act reasonably and in good faith with respect to matters that relate to this Exchange of Letters
- to work with each other in a timely and collaborative manner
- 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 are or were 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.

- to consult and cooperate with each other in the event of any complaint or claim made against either party relating to the use of information shared in accordance with 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 confidentiality and 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
- Legal advice regarding the interpretation of each other's legislation will take place 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

J. M. Anderson

Janet Anderson PSM
Aged Care Quality and Safety Commissioner

5 September 2023