

# MEMORANDUM OF UNDERSTANDING

## PROTECTING HEALTH CONSUMERS

- **the Australian Competition and Consumer Commission**
- **the State and Territory offices of the Health Consumer Complaints Commissions being:**
  - ◆ **New South Wales – Health Care Complaints Commission;**
  - ◆ **Victoria – Office of the Health Services Commissioner;**
  - ◆ **Queensland – Health Quality and Complaints Commission;**
  - ◆ **Western Australia – Health and Disability Services Complaints Office;**
  - ◆ **South Australia – Office of the Health & Community Services Complaints Commissioners;**
  - ◆ **Tasmania – Office of the Ombudsman and Health Complaints Commissioner;**
  - ◆ **Australian Capital Territory – Health Services Commissioner / Human Rights Commission; and**
  - ◆ **Northern Territory – Commissioner Health and Community Services Complaints Commission.**

A memorandum of understanding setting out a framework for cooperation between those agencies in Australia which share responsibility for ensuring health consumers enjoy the benefits of consumer protection and fair trading

# Protecting Health Consumers

## Memorandum of Understanding

### 1. Objectives

- 1.1 The object of this MOU is to set out a framework for communication, cooperation and coordination between the agencies so that they can, both collectively and within each of their own jurisdictions, effectively and efficiently resolve and/or investigate complaints about health service providers in relation to consumer protection issues.
- 1.2 The agencies each recognise that communication, cooperation and coordination are desirable and necessary to:
  - (a) discharge their respective functions;
  - (b) maximise the effective and consistent implementation of their regulatory powers; and
  - (c) promote efficient and streamlined resource allocation.
- 1.3. The agencies agree to provide each other with mutual assistance in relation to the exchange of information, appropriate referral of matters, and co-operation where practicable in compliance and enforcement activities within the framework of the MOU and which is consistent with all relevant laws.
- 1.4. This MOU is not intended to create legally binding obligations on the agencies.

### 2. Parties to the MOU

- 2.1 The Australian Competition and Consumer Commission (ACCC)
  - 2.1.1. The ACCC is a statutory authority responsible, under the *Competition and Consumer Act 2010 (CCA)* and other complementary legislation, for enforcing consumer protection and fair trading laws and promoting competition in the market place.
  - 2.1.2. The ACCC's approach to performing its roles and functions is set out in its *Compliance and Enforcement Policy*, which outlines that the ACCC exercises its discretion to direct resources to the investigation and resolution of matters that provide the greatest overall benefit for consumers. The ACCC is unlikely to become involved in resolving individual disputes and has a particular focus on addressing widespread consumer detriment.

## **2.2 Role and responsibilities of the health complaints entities**

**2.2.1 The functions of a health complaints entity (HCE) are imposed by the laws of the state or territory in which the HCE is established, and generally include:**

- (a) the resolution of health complaints, by conciliation or otherwise;**
- (b) investigating, in response to a complaint or on the HCE's own motion, systemic issues arising in relation to the provision of health services; and**
- (c) seeking to promote improved safety and quality in the delivery of health services.**

**2.2.2 The functions of a HCE may also extend to unregistered health practitioners.**

**2.2.3 The processes followed by HCEs may lead to the payment of compensation without course to litigation.**

**2.2.4 HCEs are required by law to conduct an assessment of a complaint, within a limited period of time, in order to determine how the complaint is best handled. Possible options can open to a HCE at this stage include:**

- (a) to take no further action;**
- (b) to seek to negotiate a resolution;**
- (c) to conciliate;**
- (d) to investigate;**
- (e) to refer the matter to the relevant Board to another entity which has power to deal with matter; or**
- (f) a combination of all or any of these options.**

## **3. Elements of understanding**

**3.1 Element 1: Communication, cooperation and coordination**

**3.1.1 The agencies agree that they will communicate, cooperate and coordinate with each other to:**

- (a) inform the general public and educate consumers and businesses about health consumer issues;**
- (b) coordinate efforts on ancillary or associated activities within the framework of this MOU and consistent with all relevant law; and**
- (c) develop publications and liaise with stakeholder groups on consumer protection matters of mutual interest.**

3.1.2 The agencies may also communicate and cooperate in relation to the carrying out of their enforcement activities concerning health consumers. This may include:

- (a) referring complaints;
- (b) informing one another regularly of their general compliance and enforcement activities and priorities;
- (c) cooperating on enforcement activities; and
- (d) consulting each other in relation to recent judgments, current law reform, policy issues and other matters of mutual interest.

### 3.2 Element 2: Complaint handling and referral

3.2.1 The agencies recognise that in some cases it may be appropriate to refer a consumer complaint or inquiry to another agency where:

- (a) it is clear from initial contact with the consumer that the complaint or inquiry relates to issues that would be more appropriately managed by the agency who has responsibility for a particular area of law; or
- (b) after assessment of a complaint, it becomes apparent that the complaint would be more appropriately managed by another agency.

3.2.2 When an agency considers that a consumer complaint or inquiry is appropriate for referral to another agency, the agencies agree that the referring agency will:

- (a) initiate the referral for consideration by the receiving agency as soon as practicable; and
- (b) provide the receiving agency with any information and documentation held by the referring agency that will assist the efficient management of the complaint or inquiry, subject to any legal restrictions on the disclosure of information.

### 3.3 Element 3: Information sharing and confidentiality

3.3.1 Subject to the requirements of each agency, agencies agree that the sharing of information is likely to facilitate increased legislative compliance in the health sector. The agencies agree to collaborate to ensure that, as far as possible, procedures exist to support the effective sharing of complaint and investigation information. This may include establishing frameworks for:

- (a) providing information to another agency on request;
- (b) providing information to another agency in circumstances where the providing agency considers that it is likely to assist the receiving agency to administer or enforce the particular area of law for which that agency is responsible; or
- (c) promoting legislative amendments, where appropriate, to enable information sharing between the agencies to occur more freely.

3.3.2 The agencies will have regard to the statutory privacy and confidentiality obligations governing the permitted disclosure of confidential or protected information and where appropriate seek to obtain information in such a way that can be shared with other agencies.

3.3.3 In considering requests, the providing agency will contact the requestor within a reasonable time. The timing of any disclosure will take into account the nature of the request, the amount of the information requested, the statutory requirements, and the operational requirements of the providing agency.

3.3.4 When an agency receives confidential or protected information from another agency it will observe any express conditions placed upon the release of the information by the providing agency and take all reasonable steps to ensure that such information is:

- (a) only used internally by the receiving agency in connection with carrying out its statutory functions or performing its duties, or
- (b) only disclosed where required or permitted by law or as otherwise authorised by the providing agency.

3.3.5 If an agency is required by law to disclose information provided to it in confidence by another agency, it must:

- (a) where possible, notify the providing agency of the disclosure requirement to allow the providing agency, in its discretion, to take all reasonable steps to maintain the confidentiality of the information required to be disclosed, including, if necessary and appropriate, making a claim for public interest immunity privilege or requiring confidentiality undertakings from the person or body to whom the information is required to be disclosed; and
- (b) disclose only the confidential information necessary to comply with the legal requirements.

#### 3.4 Element 4: Compliance strategies

3.4.1 The agencies agree to cooperatively develop compliance strategies to address actual or prospective consumer harm, particularly in circumstances where that harm affects, or is likely to affect, consumers across the jurisdiction of two or more agencies.

#### 3.5 Element 5: Enforcement activities

3.5.1 The agencies agree that where one or more agencies identify that some form of coordinated enforcement activity is the most appropriate strategy to address a particular actual or prospective consumer harm, the agencies concerned may enter into a cooperative working arrangement.

3.5.2 The cooperative working arrangement is subject to any confidentiality obligations and the elements of any such arrangement between two or more agencies will be flexible and contingent on the circumstances of the matter concerned, and subject to agreement between the agencies on a case by case basis.

#### **4. Management of the MOU**

##### **4.1 Commencement of the MOU**

4.1.1 This MOU shall take effect on and from the date that it is signed by all agencies.

##### **4.2 Review and amendment of the MOU**

4.2.1 Agencies will regularly review the operation of this MOU and consider, if appropriate, amendment of the MOU with a view to improving its operation.

4.2.2 The MOU may be amended at any time in writing by agreement of all the agencies.

The agencies have confirmed their commitment to this MOU as follows:

**Signed for and on behalf of the Australian  
Competition and Consumer  
Commission by**

**Signed for and on behalf of the Health Care  
Complaints Commission (New South  
Wales); by**



**Mr Rod Sims**

Chairman

Date: 30/10/12



**Mr Kieran Pehm**

Commissioner

Date: - 7 NOV 2012

**Signed for and on behalf of the Office of the  
Health Services Commissioner  
(Victoria) by**

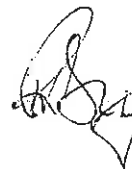
**Signed for and on behalf of the Health  
Quality and Complaints Commission  
(Queensland) by**



**Ms Beth Wilson**

Health Services Commissioner

Date:



**Adjunct Professor Russell Stitz**

Commissioner

Date:

**Signed for and on behalf of the Health and Disability Services Complaints Office (Western Australia) by**

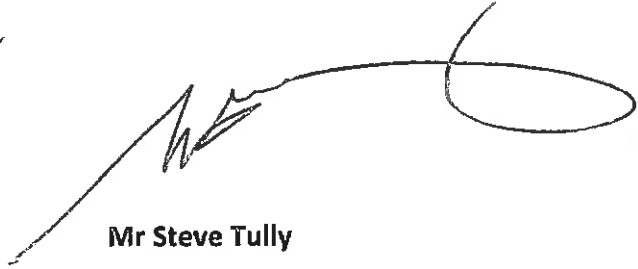


**Ms Linley Anne Donaldson**

Director

Date: 2/11/2012

**Signed for and on behalf of the Office of the Health & Community Services Complaints Commissioner (South Australia) by**

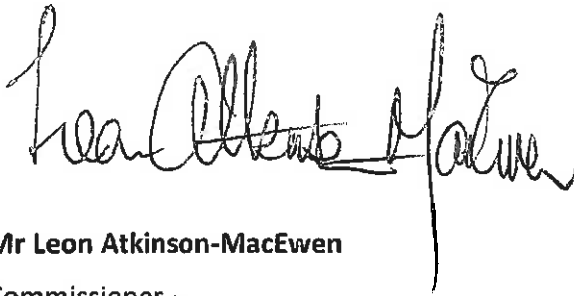


**Mr Steve Tully**

Commissioner

Date: 2/11/2012

**Signed for and on behalf of the Office of the Ombudsman and Health Complaints Commission (Tasmania) by**



**Mr Leon Atkinson-MacEwen**

Commissioner

Date: 2/11/12

**Signed for and on behalf of the Health Services Commissioner / Human Rights Commission (Australian Capital Territory) by**



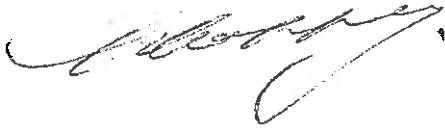
**Ms Mary Durkin**

Health Services Commissioner

Date: 2.11.12



**Signed for and on behalf of the Health and  
Community Services Complaints  
Commission (Northern Territory) by**



**Ms Lisa Coffey**

**Commissioner**

**Date:** 2/11/12