Dear Ms Lamb

Thank you for your letter dated 14 April 2016 regarding an exchange of letters relating to information sharing arrangements between your office and the Health and Disability Services Complaints Office (HaDSCO) to ensure that complaints are managed by the most appropriate organisation. Thank you also for discussing this matter with me on the telephone on 13 May 2016.

Jurisdiction

HaDSCO is established under the Health and Disability Services (Complaints) Act 1995 (the Act). HaDSCO is an independent statutory authority offering an impartial resolution service for complaints relating to health, disability and mental health services in Western Australia and the Indian Ocean Territories. HaDSCO deals with complaints about public and private service providers.

Our functions include the following:

- To deal with complaints;
- In collaboration with groups of providers or groups of users or both, to review and identify the causes of complaints, and to suggest ways of removing and minimising those causes and bringing them to the notice of the public;
- To take steps to bring to the notice of users and providers details of complaints procedures under the Act;
- To assist providers in developing and improving complaints procedures and the training of staff in handling complaints;
- With the approval of the Minister, to inquire into broader issues of health care arising out of complaints received;
- To publish the work of HaDSCO from time to time;
- To provide advice generally on any matter relating to complaints under the Act, and in particular:
  - Advice to users on the making of complaints to registration boards; and
  - Advice to users as to other avenues available for dealing with complaints; and
  - Advice about removing or minimising the causes of complaints; and
- Any other function conferred on the Director by the Act or another written law.
A "health service" is defined to mean any service provided by way of:

- Diagnosis or treatment of a physical or mental disorder or suspected disorder;
- Health care, including palliative health care;
- A preventative health care programme, including a screening or immunization programme; and,
- Medical or epidemiological research.

Health services also include ambulance services, welfare services which are complimentary to health care services and services provided by persons who hold themselves out as health care providers.

The Director also has responsibilities under Part 6 of the Disability Services Act 1993 to manage complaints relating to the provision of disability services and responsibilities under Part 19 of the Mental Health Act 2014 to manage complaints about mental health services.

Complaints resolution

HaDSCO takes a resolution based approach to managing complaints. Under the Act, HaDSCO may resolve complaints through negotiated settlement, conciliation or investigation.

A decision can be made to take no further action where a complaint:

- Is vexatious, trivial or without substance;
- Does not warrant further action;
- Does not comply with the Act;
- Has already been determined by a court, the State Administrative Tribunal or a registration board;
- Relates to an incident that occurred more than two years ago; or,
- Is more appropriate for another agency.

Other legislation

The following legislation is also relevant to HaDSCO's operations:

- Health Practitioner Regulation National Law (WA) Act 2010 (the National Law)
  In accordance with section 150 of the National Law, HaDSCO consults with the Australian Health Practitioner Regulation Agency (AHPRA) to manage complaints relating to the health, performance or conduct of registered health practitioners. This consultation process determines the more appropriate agency to manage a complaint. There are a number of options to manage matters through this process:
    - HaDSCO may retain the complaint;
    - HaDSCO may refer the complaint to AHPRA in its entirety; and/or,
    - The complaint may be split between both agencies so that AHPRA manages the aspect of the complaint pertaining to the practitioner and HaDSCO manages the system related issues.
• Carers Recognition Act 2004
Under this Act, service providers are required to comply with the WA Carers Charter. HaDSCO may manage complaints about health, disability or mental health service providers that do not comply with this Charter.

Information sharing and confidentiality

As we discussed in our telephone conversation on 13 May 2016, both our organisations deal with elements of the health sector and there may be some overlap in our jurisdictions and in the nature of the complaints we receive. In relation to your proposal about establishing an informal approach to communication, I recognise the benefits of effective communication between the relevant parties to ensure that individuals who make complaints are directed to the most appropriate complaint organisation at the earliest opportunity.

While I support your proposal in principle, the Act imposes a statutory obligation of confidentiality on staff at HaDSCO. The Act requires that, among other things, staff cannot disclose information except in the course of duty or as required or allowed by the Act or any other law. Further, the Act requires that a person or body to whom the Director refers a complaint, must not disclose or make use of the information except in the course of duty or as required by the Act or any other law. The Act contains a limited number of express provisions which allow for the disclosure of information. This includes for the referral of complaints to a relevant body with the consent of a complainant.

Any communication by HaDSCO staff with staff in the Aged Care Complaints Commission (the Commission) must therefore be conducted in accordance with the relevant provisions of the Act. For example, the circumstances where communication might occur include general enquiries for the purpose of determining jurisdiction. There may also be circumstances where, with the consent of the complainant, a complaint might be referred to the Commission as the more appropriate body to deal with the matter.

Any enquiries of this nature may be directed to the Assistant Director, Complaints and Systemic Improvement who can be contacted at:

The Health and Disability Services Complaints Office
GPO Box B61
Perth WA 6838
Telephone: (08) 6551 7600
Email: mail@hadsco.wa.gov.au

Having noted your comments regarding the management of information we might receive from your office, we will observe the express conditions placed upon the release of the information and take all reasonable steps to ensure that such information is only used internally to carry out our statutory functions, or only disclosed where required or permitted by law.
Ongoing relationship

As discussed on the telephone on 13 May 2016, I welcome the opportunity to build upon the relationship between our respective organisations. It would be beneficial for our staff to understand more about our respective roles which will enable us to ensure that complaints are being managed by the most appropriate body, at the earliest opportunity. Thank you for putting me in touch with your Director, Complaints Operations for Western Australia, Claire Witham. I had a telephone conversation with Ms Witham on 30 May 2016 and plan to meet with her when she is next in Perth.

I would also be delighted to meet with you should you be in Perth. In the meantime, if you have any enquiries about the information contained in this letter, please do not hesitate to contact me on (Direct).

Yours sincerely

Sarah Cowie
DIRECTOR
HEALTH AND DISABILITY SERVICES COMPLAINTS OFFICE
16 June 2016