



National Health Practitioner  
**Ombudsman and  
Privacy Commissioner**



**Ahpra**  
& National  
Boards

## **MEMORANDUM OF UNDERSTANDING**

BETWEEN

**NATIONAL HEALTH PRACTITIONER OMBUDSMAN AND PRIVACY  
COMMISSIONER**

AND

**AUSTRALIAN HEALTH PRACTITIONER REGULATION AGENCY**

## 1. Parties

- 1.1 This Memorandum of Understanding (**MOU**) has been entered into by the National Health Practitioner Ombudsman and Privacy Commissioner (**NHPOPC**) and the Australian Health Practitioner Regulation Agency (**Ahprra**). For the purposes of this MOU these entities are each 'a Party' and are collectively referred to as '**the Parties**'.

## 2. Purpose

- 2.1 The Parties are committed to supporting each other to achieve their statutory objectives through ongoing cooperation and the sharing of information. This MOU reflects that commitment and promotes the:
- 2.1.1 achievement of the objectives of the National Law;
  - 2.1.2 lawful sharing of information in a manner that is timely, cooperative and aimed to assist the other Party to exercise its functions; and
  - 2.1.3 ongoing implementation and continual improvement of the national registration and accreditation scheme for the regulation of health practitioners and the registration of students undertaking programs of study that provide a qualification for registration in a health profession or clinical training in a health profession (**National Scheme**).

## 3. Termination of prior agreement

- 3.1 The Parties agree to terminate the previous MOU that came into effect on 29 March 2016 and was extended on 29 March 2019.

## 4. Term

- 4.1 This MOU takes effect from the date it is executed by the Parties and continues until it is either:
- 4.1.1 superseded by a subsequent MOU between the Parties; or
  - 4.1.2 terminated in writing by one of the parties.
- 4.2 The Parties agree to consult with each other, wherever practicable, prior to terminating the MOU under clause 4.1.2.

## 5. Review and amendment

- 5.1 The Parties intend to review this MOU:
- 5.1.1 every three years from the commencement date; or
  - 5.1.2 where necessary to comply with a legislative amendment or another requirement.

## 6. Legal relationship

- 6.1 This MOU is not intended to, and does not, establish any contractual or other legally enforceable rights or obligations between the Parties.
- 6.2 The Parties agree that any disputes arising from the operation of the MOU must be addressed through the process provided for by the instrument under clause 13 below.

- 6.3 To remove any doubt, the Parties do not intend for any disputes arising from the operation of the MOU to be resolved through the unilateral commencement of proceedings before a Court, tribunal, mediator or arbitrator.
- 6.4 The Parties intend that this MOU be applied in meeting their respective obligations under the Health Practitioner Regulation National Law (**National Law**) and other statutory instruments. Nothing in this MOU seeks to modify or displace the legal obligations of either party.

## 7. Background

### The National Law

- 7.1 On 1 July 2010, the National Law was enacted in participating States and Territories. The National Law establishes the National Scheme.
- 7.2 The objectives and guiding principles of the National Scheme include:
  - 7.2.1 protection of the public by ensuring that only health practitioners who are suitably trained and qualified to practise in a competent and ethical manner are registered
  - 7.2.2 facilitating workforce mobility across Australia by reducing the administrative burden on health practitioners;
  - 7.2.3 imposing restrictions on the practice of health professionals only if it is necessary to ensure the safe provision of high-quality health care;
  - 7.2.4 ensuring the fair, transparent, accountable, efficient and effective operation of the National Scheme.

### Ahpra

- 7.3 Ahpra is the National Agency established under the National Law to perform functions including:
  - 7.3.1 providing administrative assistance and support to National Health Practitioner Boards (National Boards) to assist them in exercising their functions;
  - 7.3.2 establishing and administering an efficient procedure for dealing with applications for registration as a health practitioner and other matters related to registration;
  - 7.3.3 keeping up-to-date and publicly accessible national registers of registered health practitioners for each health profession;
  - 7.3.4 establishing an efficient procedure for receiving and dealing with notifications (concerns) about persons who are, or were, registered health practitioners or students.
- 7.4 The following National Boards have been established under the National Law:
  - 7.4.1 Aboriginal and Torres Strait Islander Health Practice Board of Australia.
  - 7.4.2 Chinese Medicine Board of Australia.
  - 7.4.3 Chiropractic Board of Australia.
  - 7.4.4 Dental Board of Australia.
  - 7.4.5 Medical Board of Australia.
  - 7.4.6 Medical Radiation Practice Board of Australia.

- 7.4.7 Nursing and Midwifery Board of Australia.
- 7.4.8 Occupational Therapy Board of Australia.
- 7.4.9 Optometry Board of Australia.
- 7.4.10 Osteopathy Board of Australia.
- 7.4.11 Paramedicine Board of Australia.
- 7.4.12 Pharmacy Board of Australia.
- 7.4.13 Physiotherapy Board of Australia.
- 7.4.14 Podiatry Board of Australia.
- 7.4.15 Psychology Board of Australia.
- 7.5 The primary role of National Board is to register suitably qualified and competent persons in the health profession and, if necessary, to impose conditions on the registration of persons in the profession.
- 7.6 National Boards also develop and approve standards, codes and guidelines for the health profession. This includes the development of accreditation and registration standards.
- 7.7 National Boards are also responsible for determining what action (if any) to take in response to notifications (concerns) about registered health practitioners and students.<sup>1</sup>

## **NHPOPC**

- 7.8 The National Law establishes the NHPOPC. The NHPOPC is an independent statutory officer appointed by the Council of Australian Governments (COAG) Health Council.
- 7.9 The powers of the NHPOPC are derived from the *Ombudsman Act 1976* (Cwlth), the *Privacy Act 1988* (Cwlth) and the *Freedom of Information Act 1982* (Cwlth). These Acts are modified by the Health Practitioner Regulation National Law Regulation 2018 to make them suitable for the National Scheme.
- 7.10 The primary role of the NHPOPC is to handle complaints and where appropriate, conduct investigations, into the administrative actions of Ahpra and the National Boards. The NHPOPC also deals with complaints about the handling of personal information and can review decisions made by AHPRA and the National Boards in relation to freedom of information requests.
- 7.11 The NHPOPC seeks to resolve individual complaints, as well as influence broader systemic change in the administrative actions of AHPRA and the National Boards. The NHPOPC's overarching goal is to ensure the public and health practitioners have confidence in the responsiveness and accountability of the National Scheme.
- 7.12 The office of the NHPOPC is located in Victoria and is hosted by the Victorian Department of Health and Human Services (DHHS).

## **9. Principles**

- 9.1 The Parties recognise the important contribution each other makes to the success of the National Scheme.
- 9.2 The Parties are committed to maintaining a constructive and co-operative relationship in the course of the NHPOPC exercising its independence and impartial oversight of Ahpra.

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<sup>1</sup> Co-regulatory arrangements are in place within New South Wales and Queensland. In these jurisdictions the role of National Boards in managing notifications is different than that in other jurisdictions.

- 9.3 The Parties respect each other's distinct and independent roles under the National Law.
- 9.4 The Parties agree that regulatory decisions should reflect the *Regulatory principles for the National Scheme*.<sup>2</sup>
- 9.5 The Parties agree to work together to provide consistent public information about their respective roles in relation to the National Scheme including by consulting with each other on the publication of information.
- 9.6 The Parties agree that interactions between each other should reflect:
  - 8.6.1 mutual respect;
  - 8.6.2 honesty;
  - 8.6.3 openness, and
  - 8.6.4 professionalism.

## 10. Information sharing and privacy

- 10.1 The Parties agree to assist each other to exercise their functions by disclosing information in a manner that is consistent with their legal, operational and policy obligations. It is acknowledged that the NHPOPC can compel Ahpra to provide information to it under the *Ombudsman Act 1976* (Cwlth), the *Privacy Act 1988* (Cwlth) and the *Freedom of Information Act 1982* (Cwlth).
- 10.2 The Parties agree to collect, use and disclose personal information in a manner that is consistent with the Australian Privacy Principles. Information received will be maintained within a secure environment and dealt with in a manner that is consistent with the Parties obligations with respect to personal privacy.
- 10.3 The information provided by one Party to this MOU to the other will only be used for the purpose of assisting that entity to exercise its statutory functions and/or powers.
- 10.4 The Parties agree that information exchanged or provided under this MOU should be treated as confidential unless further disclosure of the information is otherwise required or authorised by law.
- 10.5 The Parties will use their best endeavours to ensure that information shared under this MOU is accurate and correct.
- 10.6 Each Party will assess, deal with and use information provided under this MOU at its own risk.
- 10.7 In the event that a Party becomes aware that it has provided inaccurate, incorrect or unreliable information then it will, where possible, inform the other Party of the inaccuracy.

## 11. Subpoenas and court orders

- 11.1 If a Party is served with a binding legal order or requirement to provide information to a third party (e.g. a subpoena, warrant or other compulsive notice), and the requested information was obtained from the other Party under this MOU, then the receiving Party will:

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<sup>2</sup> *Regulatory principles for the National Scheme* (2014) Australian Health Practitioner Regulation Agency  
<<https://www.ahpra.gov.au/About-AHPRA/Regulatory-principles.aspx>>

- 11.1.1 notify the other Party of the order or requirement as soon as practicable. However, a Party is not required to comply with this requirement if providing notice would contravene a law; and
- 11.1.2 to the extent reasonably 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 receiving party to object).

## **12. Schedules**

- 12.1 This MOU may include a schedule that deals with an operational or other ancillary matter.
- 12.2 The Parties may, at any time during the term of this MOU, enter into a further agreement that forms a schedule to this MOU.
- 12.3 A schedule to the MOU comes into effect upon being signed by the responsible officer for both Parties.
- 12.4 The operation of a schedule to this MOU is subject to any rules or agreement contained within this document.

## **13. Disputes and termination**

- 13.1 The Parties agree to resolve any disagreement or dispute that arises in relation to the operation of this MOU by:
  - 13.1.1 raising any concerns in writing with the other Parties' nominated officer under Schedule 1; and
  - 13.1.2 working with the other Party in good faith to resolve concerns in the manner that is in the best interests of the National Scheme.
- 13.2 In the event that a dispute cannot be resolved, either Party may terminate the MOU by giving the other party notice in writing under clause 4 above.

## **14. Variation**

- 14.1 The Parties may agree to vary the terms of this MOU by exchanging correspondence.
- 14.2 Letters proposing and accepting variations to this MOU must be annexed to this document.

## 15. Publication

- 15.1 The Parties agree that this MOU may be made publicly available. Publication may include, for example, making the document publicly available on the website of a Party.

**Signed** by the National Health Practitioner  
Ombudsman and Privacy Commissioner



**Richelle McCausland**

Date: 28/11/2019

  
Witness:

**Signed** for the Australian Health Practitioner  
Regulation Agency



**Martin Fletcher**

Chief Executive Officer

Date: 28/11/19

  
Witness:

## Schedule 1

### Parties representatives

Notices issued by a Party under this MOU must be addressed to the officers nominated in this schedule or another person nominated, in writing, to the other Party for that purpose.

#### Contact officer for the NHPOPC

Position: Ombudsman and Commissioner  
Address: National Health Practitioner Ombudsman and Privacy Commissioner  
GPO Box 2630 Melbourne VIC 3001  
Email: [REDACTED]

#### Contact officer for AHPRA

Position: General Counsel  
Address: Australian Health Practitioner Regulation Agency  
Level 4, 192 Ann Street  
Brisbane QLD 4000  
Email: [REDACTED]

**Signed** by the National Health Practitioner  
Ombudsman and Privacy Commissioner

  
Richelle McCausland

Date: 28/11/2017


  
Witness:

**Signed** for the Australian Health Practitioner  
Regulation Agency

  
Martin Fletcher

Chief Executive Officer

Date: 28/11/17

  
Witness:



## Schedule 2

### Funding arrangements for the NHPOPC

1. This Schedule provides public information about how the NHPOPC is funded and the processes that have been established to ensure that funding decisions are made independently and objectively.
2. On 11 April 2014, Ministers of State, Territory and Commonwealth governments with portfolio responsibility for health agreed that the NHPOPC must be funded by health practitioner registrants. As health practitioner registration fees are received by Ahpra (on behalf of the National Boards), Ahpra must transfer the agreed funds to the NHPOPC. The NHPOPC submits an annual budget request by 1 March each year to the Australian Health Ministerial Advisory Council (AHMAC) for approval. AHMAC is the advisory and support body to the COAG Health Council.
3. On approval of the annual NHPOPC budget by AHMAC, the DHHS, on behalf of the NHPOPC, raises quarterly invoices payable by Ahpra totalling the approved annual budget.
4. If the costs payable by Ahpra are for a taxable supply, the DHHS, on behalf of the NHPOPC, must provide valid tax invoices as defined by the Australian Tax Office. In the event that costs payable by Ahpra are not a taxable supply, the tax invoice must record that the GST payable on the invoice is nil.
5. Ahpra must pay amounts invoiced by the DHHS on behalf of the NHPOPC within 30 days of receiving an invoice.
6. The DHHS has established a specific trust account for the NHPOPC for exclusive use by the NHPOPC in the performance of its functions pursuant to the National Law.
7. Any funds that are not used by the NHPOPC by the conclusion of the relevant financial year are retained by the NHPOPC in order to allow the NHPOPC to invest in relevant projects as identified through the budget process with AHMAC.
8. The NHPOPC's budget reconciliation and financial reporting obligations are detailed within the Health Practitioner Regulation National Law Regulation 2018. The NHPOPC is required to submit an annual report including audited financial statements to the COAG Health Council within 3 months of the end of each financial year.
9. The NHPOPC is required to use financial resources efficiently, effectively and economically.
10. The DHHS provides financial services to the NHPOPC and as such the financial operations of the NHPOPC are consolidated into those of the DHHS and are audited annually by the Victorian Auditor-General's Office. The DHHS in turn provides a financial summary of the NHPOPC's annual expenditure from the departmental audited accounts.

**Signed** by the National Health Practitioner  
Ombudsman and Privacy Commissioner

  
Michelle McCausland

Date: 28/11/2019

Witness:

**Signed** for the Australian Health Practitioner  
Regulation Agency

  
Martin Fletcher

Chief Executive Officer

Date: 28/11/19

Witness:

## Memorandum of Understanding between the NHPOPC and AHPRA