

# 'AS' and Australian Health Practitioner Regulation Agency (Freedom of Information)



Decision and reasons for decision of the National Health Practitioner Privacy Commissioner, Richelle McCausland

Applicant	'AS'
Respondent	Australian Health Practitioner Regulation Agency (Ahpra)
Reference number	NHPO/16262024
Decision date	15 April 2025
Catchwords	FREEDOM OF INFORMATION — Whether documents contain deliberative matter prepared for a deliberative purpose – Whether disclosure would have a substantial adverse effect on the proper and efficient conduct of the operations of an agency – Whether disclosure of personal information is unreasonable – Whether it is contrary to the public interest to release a conditionally exempt document – Freedom of Information Act 1982 ss. 47C, 47E(d) and 47F

All references to legislation in this document are to the *Freedom of Information Act 1982* (Cwlth) (FOI Act) unless otherwise stated.

## Decision

1. Under s. 55K, I affirm Ahpra's decision of 24 September 2024.

## Background

2. The Medical Board of Australia (the Medical Board) has responsibilities relating to the regulation of medical practitioners. Ahpra provides administrative assistance and support to the Medical Board in exercising its functions.
3. The Applicant made a notification to Ahpra and the Medical Board about a medical practitioner (the Practitioner).
4. The Medical Board decided to take no further action in relation to the notification.
5. The Applicant made a request to Ahpra for access to certain documents. Following consultation with Ahpra, the Applicant requested:
  1. *Copies of all documents considered by the Medical Board of Australia in relation to Notification [notification number]*

2. *The Decisions and Actions paper outlining the Board's decision.*

6. In its decision letter dated 26 August 2024, Ahpra identified 3 documents that fell within the scope of the Applicant's request being the:
  - Notification Report prepared by Ahpra for the Medical Board's consideration of the notification (document 1). Ahpra decided to exempt document 1 from release in full under ss. 47C and 47E(d)
  - Attachments to the Notification Report (document 2). Ahpra decided to exempt document 2 from release in part under ss. 47E(d) and 47F
  - Decisions and Actions paper outlining the Medical Board's decision regarding the notification (document 3). Ahpra decided to release document 3 to the Applicant in full.
7. On 26 August 2024, the Applicant requested an internal review of Ahpra's decision.
8. In its internal review decision letter dated 24 September 2024, Ahpra affirmed its decision.
9. On 9 October 2024, the Applicant sought a review of Ahpra's internal review decision under s. 54L.

## Scope of the review

10. The issues I have decided in this review are:
  - Whether the document Ahpra found to be exempt under s. 47C is exempt under that provision, and if so, whether giving access would be contrary to the public interest
  - Whether the information Ahpra found to be exempt under s. 47E(d) is exempt under that provision, and if so, whether giving access would be contrary to the public interest
  - Whether the information Ahpra found to be exempt under s. 47F is exempt under that provision, and if so, whether giving access would be contrary to the public interest.
11. Where I have found that one exemption applies to the document, I have not considered whether any additional exemptions apply.
12. In a review of an access refusal decision, Ahpra bears the onus of establishing that its decision is justified or that I should give a decision adverse to the Applicant.<sup>1</sup> However, it is open to me to obtain any information from any person, make any inquiries that I consider appropriate, and change the basis on which the decision is made.<sup>2</sup>
13. The Applicant and Ahpra were invited to make written submissions about this review. I have considered all relevant communications and submissions received from the Applicant and Ahpra.
14. I have had regard to the object of the FOI Act, which is to give the Australian community access to information held by the Government, by requiring agencies to publish that information and by providing for a right of access to documents.<sup>3</sup>

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<sup>1</sup> s. 55D(1).

<sup>2</sup> ss. 55 and 55K.

<sup>3</sup> s. 3(1).

## Review of the exemptions

### Section 47E(d): Documents affecting certain operations of agencies

15. Ahpra found document 1 to be conditionally exempt in full under s. 47E(d). Ahpra also found document 2 to be conditionally exempt in part under s. 47E(d), to the extent it revealed the Practitioner's response to the notification and other personal information about the Practitioner including details of their practice.
16. A document is conditionally exempt under s. 47E(d) if disclosure would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.<sup>4</sup>
17. The Office of the Australian Information Commissioner's FOI Guidelines (FOI Guidelines) explain that the predicted effect needs to be reasonably expected to occur and that there must be more than merely an assumption or allegation that damage may occur if the document were to be released.<sup>5</sup>
18. The term 'substantial adverse effect' broadly means an adverse effect which is sufficiently serious or significant to cause concern to a properly concerned reasonable person.<sup>6</sup>
19. A decision-maker should clearly describe the expected effect and its impact on usual operations or activities in the statement of reasons.<sup>7</sup>

### Ahpra's operations

20. Under the *Health Practitioner Regulation National Law 2009* (as it applies in each State and Territory) (the National Law), the Medical Board oversees the receipt, assessment and investigation of notifications about persons who are or were registered as medical practitioners under the National Law.<sup>8</sup>
21. During the notification process, Ahpra supports the Medical Board by collecting and assessing relevant information. Ahpra provides this information to the Medical Board and the Medical Board is the regulatory decision maker.
22. Under the National Law, all 'protected information' must be treated confidentially, subject to specific exceptions.<sup>9</sup> 'Protected information' means any information that comes to a person's knowledge in the course of, or because of, the person exercising functions under the National Law.<sup>10</sup> This includes when handling notifications.

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<sup>4</sup> s. 47E(d).

<sup>5</sup> FOI Guidelines, [6.90].

<sup>6</sup> Ibid, [6.18].

<sup>7</sup> Ibid, [6.92].

<sup>8</sup> For more information about the Medical Board's functions see s. 35 of the National Law.

<sup>9</sup> National Law, s. 216.

<sup>10</sup> Ibid, s. 214 (definition of 'protected information').

## Ahpra's submissions

### 23. Ahpra said in its decision dated 26 August 2024:

The information in the documents that [Ahpra has] found to be conditionally exempt from disclosure under section 47E(d) are the Notification Report prepared by Ahpra to inform Board decision-making, and the practitioner submissions which form part of the Attachments to the Notification report. These are documents that were considered by the Notifications Committee: Assessment of the Medical Board of Australia on 6 April 2024.

[Ahpra is] satisfied that disclosure of this information would, or could, be reasonably expected to have a substantial adverse effect on the proper and efficient conduct of the operations of Ahpra and the Board for the following reasons:

- The FOI Act does not restrict the subsequent use of information released to an applicant under the FOI Act. In Australia there is case law relating to disclosure of information under the FOI Act, for example, the Administrative Appeals Tribunal (AAT) has stated that *'access to a document under the FOI Act must be considered not on the basis of the identity and the qualities of the person who seeks that access but on the basis that it may be seen by anybody. As it is usually expressed, access under the FOI Act, is access to the world at large'*.<sup>11</sup>
- Information received, generated, or otherwise held by Ahpra and the National Boards is held on the understanding that it will be treated in a confidential manner and used in accordance with the National Law and the *Privacy Act 1988* (Cth) (the Privacy Act). The information in this instance is protected information within the meaning of section 214 of the National Law. It is an offence to disclose protected information unless an exception applies;<sup>12</sup>
- Practitioner submissions and correspondence are provided to Ahpra and the Board in the context of responding to the issues raised in the notification. Submissions are provided on the understanding that the material would be used by Ahpra and the Board in certain contexts only and for the purposes of assisting the assessment of the matters raised. In *YJI v Australian Health Practitioner Regulation Agency* at [66], the Tribunal remarked that:

*"It is important that third parties such as notifiers, practitioners and other government bodies be willing to provide information necessary to facilitate Ahpra and the Board's efficient assessment of a notification. This allows the Board to determine whether regulatory action is required to manage any risks posed by the relevant health practitioner's health, conduct or performance on the basis of all relevant information."*<sup>13</sup>

It is integral to the efficient management of complaints that Ahpra can continue to meet an individual practitioner's expectation of confidentiality over the communications and documents comprising their correspondence and submissions, which are provided to Ahpra to assist in the assessment of notifications. This maintenance of confidentiality is critical to

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<sup>11</sup> *Meschino and Centrelink* [2002] AATA 627 [23].

<sup>12</sup> National Law, s. 216.

<sup>13</sup> *YJI v Australian Health Practitioner Regulation Agency* [2023] VCAT 206 at [66].

ensuring that the investigation process is carried out both efficiently and effectively. In *Spragg v Australian Health Practitioner Regulation Agency* at [78], the Tribunal remarked that:

*“The proper and efficient conduct of the operations of the agency are assisted by the circumstance that information provided to it by a registered health practitioner under compulsion is protected information and its disclosure is prohibited. The agencies operations are advanced when a registered health practitioner is forthright and frank in providing information when required. The Tribunal finds that the prospects of a forthright and frank answer are considerably enhanced in circumstances where the practitioner has confidence that the information provided is protected information.”<sup>14</sup>*

The Commissioner has considered these issues in several of its review decisions. In these review decisions, the Commissioner noted the strict confidentiality obligations imposed by section 216 of the National Law and commented on the reasonable expectation that correspondence shared with Ahpra or the National Boards while exercising their functions will be treated confidentially.

- In its role as a regulator, Ahpra receives and holds private information relating to health practitioners and their registration, employment, and education history. This information is held and relied upon for the primary purpose of regulating the health professions. Disclosure of personal information relating to an individual through the FOI process would frustrate the operations of the agency by undermining individuals’ faith in Ahpra’s ability to maintain confidence over the conditionally held information it possesses. This would in turn cause individuals to be more cautious in their disclosures and dealings with Ahpra out of concern that their information could be released more broadly;
- Similarly, Ahpra staff may be discouraged from keeping detailed and fulsome records of their deliberations or being more circumspect in their preliminary findings that are expressed to other officers or the Board because of public scrutiny. The maintenance of confidentiality over deliberative documents and communications is essential to ensure that staff are able to thoroughly discuss and deliberate on relevant issues in order to provide robust and defensible information to the decision makers; and
- As it is a core function of Ahpra under the National Law to regulate health professionals, damage to Ahpra’s ability to conduct such regulation properly and efficiently would have a substantial adverse effect on the proper and efficient conduct of the operations of the agency.

On this basis, [Ahpra considers] that disclosure of the Notification Report and the practitioner submissions that were included in the Attachment to the Notification Report could reasonably be expected to adversely affect the operations of Ahpra and the National Boards. [Ahpra finds] this adverse effect to be serious and not insubstantial.

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<sup>14</sup> Spragg, [78].

## The Applicant's submissions

24. In response to my office's preliminary view on this matter, the Applicant submitted:

[The National Health Practitioner Privacy Commissioner (NHPPC)] appear[s] to have applied a broad brush categorising the entirety of document 1 and a substantial part of document 2 as exempt...

...Details of [the Practitioner's] current practice, employment and registration are publicly listed. Why would such information, contained within a document, ever be considered exempt from disclosure under the FOI Act 1982 (Cth)?...

I contrast it to the letter I received on 20th December 2024 from Sean Morrison, Victoria's Information Commissioner. Mr Morrison was applying the FOI Act 1982 (Vic) provisions in reviewing the FOI decision of [a hospital] to refuse the release of documents....

...[The Office of the Victorian Information Commissioner (OVIC)] found that the exemption under section 30(1) of the FOI Act 1982 (Vic) in respect of documents that contain opinions, advice or recommendations, or consultation or deliberation where disclosure would be contrary to the public interest, does not apply to purely factual information. OVIC did separate out factual information which [the NHPPC] have stated is something which is "impossible" under your review.

OVIC also found that it was possible to release additional information which relates solely to [the patient] rather than the agency officers. For example, where personal information is contained within a document which purely relates to the medical treatment of the patient. I contrast this to your refusal to release to me information about [the Practitioner's] medical registration details when these are already in the public domain.

...[The NHPPC] state[s] that "the information AHPR found to be exempt in document 2 includes [the Practitioner's] response to your notification and other information about [the Practitioner's] practice, employment and registration." Surely...you must be aware that the medical registration details of every medical practitioner in Australia are listed in the Medical Board website.

## Application of the certain operations of agencies exemption

25. I have considered whether document 1 is conditionally exempt in full and document 2 is conditionally exempt in part under s. 47E(d).

26. After inspecting the documents, it is my view the documents were provided to or created by Ahpra while Ahpra was undertaking its functions under the National Law, namely to:

- Assess the notification about the Practitioner
- Provide information to the Medical Board to support the Medical Board's decision-making in relation to the notification.

27. Notifiers, practitioners, Ahpra officers and other third parties must be willing to provide information necessary to facilitate Ahpra and the Medical Board's assessment or investigation of a notification. This allows the Medical Board to determine whether regulatory action is required to manage any risks posed by the relevant health practitioner's health, conduct or performance.

28. There are two cases of note that considered the operation of the former s. 40(1)(d) of the FOI Act. This former section of the FOI Act is similar to s. 47E(d) in that it exempted a document if its disclosure

would, or could reasonably be expected to, have a substantial effect on the proper and efficient conduct of the operations of an agency unless, on balance, disclosure would be in the public interest.

29. In *Meschino and Centrelink* [2002] AATA 627, the AAT found this exemption applied to a document known as the 'CRAM Report'. CRAM reports were created specifically for audit purposes to identify who was accessing Centrelink records and were constantly run by Centrelink's investigation team to check for fraudulent behaviour. The concern in this case was that disclosure of CRAM reports would compromise investigations as it could identify access had occurred, leading to anyone behaving fraudulently adapting their behaviour. The AAT accepted those concerns and found that the value of CRAM reports would be substantially compromised as a result of disclosure, which would lead to a substantial adverse effect on the proper and efficient conduct of Centrelink's operations. This outweighed the benefit the Applicant felt they would gain by being able to see the investigation team had checked their file and taken action in relation to their complaints.
30. In *Hanes v Australian Health Practitioner Regulation Agency (Review and Regulation)* [2013] VCAT 1270 (19 July 2013) (Hanes), the Victorian Civil and Administrative Tribunal (VCAT) applied s. 40(1)(d). For example, VCAT found a note made by an officer gathering information from a potential witness during the investigation process was exempt under s. 40(1)(d).
31. Further, as outlined in my decisions of 'AA', 'AC', 'AD', 'AE', 'AF', 'AG', 'AI', 'JH', 'MS', 'AM', 'AN', 'AP' and 'AQ',<sup>15</sup> I draw on the Australian Information Commissioner's decision in *Graham Mahony and Australian Charities and Not-for-profits Commission (Freedom of information)* [2019] AICmr 64 (31 August 2019) (Mahony). In Mahony, the request was for access to all documents relevant to investigations conducted by the Australian Charities and Not-for-profits Commission (ACNC) into concerns relating to a particular building fund. The Australian Information Commissioner affirmed the ACNC's decision to exempt documents falling within the scope of the request. In discussing whether s. 47E(d) applied in that case, the Australian Information Commissioner stated:
- The fact that s. 150-25 of the Australian Charities and Not-for-profits Commission Act 2012 (ACNC Act) protects information provided to or obtained by the ACNC under the ACNC Act from disclosure, leads me to be satisfied that the ACNC, as it contends, relies on sensitive information being provided to it on a voluntary basis and on the understanding that the information will not be disclosed to third parties. As the ACNC explained in its reasons for decision..., I accept that the rationale for this secrecy provision is to establish a regulatory regime where the ACNC can discharge its regulatory functions in an environment of trust and engagement with the not-for-profit sector.<sup>16</sup>
32. It is my view that similarities can be drawn between provisions of the ACNC Act and the confidentiality provisions in the National Law. Section 216 of the National Law creates a reasonable expectation that information provided to Ahpra or the Medical Board in relation to a notification will be treated confidentially. If Ahpra discloses the information requested by the Applicant, a reasonable person could conclude that information prepared for the Medical Board in the future may not be treated confidentially. This in turn could reasonably be expected to affect how effectively Ahpra and the Medical Board can carry out their functions, as the information they are able to access may be less readily provided or more difficult to obtain.

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<sup>15</sup> The Commissioner's decisions are published on her office's website: <<https://www.nhpo.gov.au/foi-review-decisions>>.

<sup>16</sup> Mahony, [22].

33. In reaching my view, I also draw similarities between this matter and the case before the State Administrative Tribunal (SAT) in *Spragg and Australian Health Practitioner Regulation Agency* [2017] WASAT 103 (26 July 2017) (Spragg). Notably, in Spragg SAT considered the application of s. 47E(d) specifically in the context of Ahpra's operations. In that case, SAT found that disclosure of protected information could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of the agency.<sup>17</sup> In making its decision, SAT stated:
- ...the proper and efficient conduct of the operations of the agency are assisted by the circumstance that information provided to it by a registered health practitioner under compulsion is protected information and its disclosure is prohibited. The agencies [sic] operations are advanced when a registered health practitioner is forthright and frank in providing information when required. The Tribunal finds that the prospects of a forthright and frank answer are considerably enhanced in circumstances where the practitioner has confidence that the information provided is protected information...<sup>18</sup>
34. I have inspected the documents and compared the exempt information to the information that is publicly available about the Practitioner. I am satisfied that the documents contain information that is not publicly accessible or widely known.
35. Taking all relevant factors into consideration, I am satisfied that disclosing document 1 and the information exempt in document 2 could reasonably be expected to affect the future flow of information to Ahpra and the Medical Board. Ahpra and the Medical Board rely on candid communication from relevant parties to carry out their role in ensuring public safety.
36. In addition, the National Law imposes a duty of confidentiality in relation to protected information. I consider that release of the exempt information in documents 1 and 2 could reasonably be expected to reduce the confidence of relevant parties in Ahpra's ability to maintain the confidentiality of protected information.
37. I consider that disclosure of the exempt information would prejudice the integrity and robustness of the notification process and thereby have a substantial adverse effect on the proper and efficient conduct of the operations of Ahpra and the Medical Board.
38. Accordingly, I am satisfied that document 1 is conditionally exempt in full and document 2 is conditionally exempt in part under s. 47E(d).
39. I am now required to consider whether it would be contrary to the public interest to give the Applicant access to the conditionally exempt information at this time.

### Section 11A(5): The public interest test

40. Section 11A(5) provides that, if a document is conditionally exempt, it must be disclosed unless in the circumstances access to the document at this time would, on balance, be contrary to the public interest.

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<sup>17</sup> Spragg, [35] and [75].

<sup>18</sup> Spragg, [78].



41. In *Seven Network (Operations) Limited and Australian Competition and Consumer Commission (Freedom of Information)* [2019] AICmr 29 (6 June 2019) (Seven Network), the Australian Information Commissioner explained that:

...the public interest test does not require a decision-maker to consider whether disclosure of conditionally exempt material would be in the public interest. Rather, a decision-maker must start from the position that access to a conditionally exempt document must be given, unless giving access to the document, at the time of the decision would, on balance, be contrary to the public interest.<sup>19</sup>

### **Factors favouring disclosure**

42. The FOI Act provides public interest factors to be considered where relevant, including that disclosure would:

- Promote the objects of the FOI Act (including all the matters set out in ss. 3 and 3A)
- Inform debate on a matter of public importance
- Promote effective oversight of public expenditure
- Allow a person access to his or her personal information.<sup>20</sup>

43. The FOI Guidelines also provide a non-exhaustive list of public interest factors favouring disclosure.<sup>21</sup>

44. In forming its decision, Ahpra identified the following factors in favour of disclosure:

- Promoting the objects of the Act, particularly in increasing scrutiny, discussion, comment and review of the Government's activities
- Facilitating access to information to members of the public that allows them to be satisfied that proper processes have been followed by the agency (including assessment and investigation processes of Ahpra and National Boards)
- Allowing a person access to information relating to matters that concern them.

45. I agree that disclosure of documents 1 and 2 would promote the objects of the FOI Act and reveal information that informed a decision-making process, which may in turn improve the quality of advice and decision-making processes of Ahpra and the Medical Board.

46. While I agree there are public interest factors that favour disclosure of documents 1 and 2, these factors must be balanced against any public interest factors opposing disclosure when determining whether access should be given to a conditionally exempt information.

### **Factors against disclosure**

47. Ahpra put forward the following factors against disclosure:

- It is in the public interest to protect and maintain the integrity of Ahpra and the Medical Board's processes. Ahpra's ability to receive, assess and investigate notifications in respect of the health,

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<sup>19</sup> Seven Network, [47].

<sup>20</sup> s. 11B(3).

<sup>21</sup> FOI Guidelines, [6.231].

performance and/or conduct of registered health practitioners is integral to the maintenance and enforcement of the National Law

- It is in the public interest for Ahpra and the Medical Board to carry out their statutory functions as efficiently and effectively as possible. Disclosure could reasonably be expected to affect Ahpra's ability to obtain information from third parties in the future, thereby making the assessment and investigations of notifications more difficult
  - Disclosure could reasonably be expected to prejudice the conduct of future investigations, by discouraging staff from keeping detailed and fulsome records of their deliberations,<sup>22</sup> or being more circumspect in their preliminary findings that are expressed to Ahpra because of public scrutiny<sup>23</sup>
  - Disclosure of an officer's preliminary analysis, before it has been considered and tested by decision-makers, may generally undermine confidence in the health regulation system and health practitioners
  - It would prejudice an individual's right to privacy, particularly where the information is not well known or publicly available. Disclosure could also expose individuals to unfair scrutiny, in circumstances where there was a reasonable expectation of confidentiality, or where they otherwise understood their personal information would be confidential.
48. The Hanes decision is also relevant when considering factors against disclosure. In that case, VCAT accepted Ahpra's submissions that disclosure of the relevant material would be contrary to the public interest. Ahpra's submissions included that there is a public interest in protecting and maintaining the integrity of its investigative processes in relation to notifications and ensuring its ability to investigate notifications is not hampered by the disclosure of confidential information.
49. In Hanes, VCAT noted how disclosure of information relating to notifications would make investigations more difficult and suggested that broad public interest centres around Ahpra's role in protecting the public in terms of regulating the provision of medical services. I consider this to be a persuasive point.
50. Ahpra also referred to *Hassan v Australia Health Practitioner Regulation Agency* [2014] QCAT 414 (Hassan). In circumstances where the Ahpra investigator's findings and recommendations were not the relevant Board's findings or decision and it was up to the relevant Board to come to its own conclusions about the investigation with all of the other relevant information, QCAT found it would be contrary to the public interest to disclose the investigation documents.
51. I consider there is a strong public interest in protecting and maintaining the integrity of Ahpra and the Medical Board's assessment and investigative processes. Disclosure of the exempt information could have a significant adverse impact on the integrity and robustness of assessment and investigation processes, and the ability of Ahpra and the Medical Board to carry out their functions and duties in an effective manner.

### **Balancing the public interest factors**

52. In balancing the public interest in this case, I have considered the factors for and against disclosure, including relevant factors favouring disclosure set out in s. 11B(3).

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<sup>22</sup> Hanes, [30].

<sup>23</sup> *Hassan v Ahpra* [2014] QCAT 414 at [26].

53. In particular, I consider that releasing documents 1 and 2 would promote the objects of the FOI Act by:
- Facilitating access to documents generally
  - Facilitating access to information that allows individuals to be satisfied that proper processes have been followed
  - Revealing information that informed a decision-making process
  - Allowing a person to access their personal information or information relating to matters that otherwise concern them.
54. The factors against disclosure include the public interest in protecting and maintaining the integrity of Ahpra and the Medical Board's processes for receiving, assessing and investigating notifications about the health, conduct and/or performance of registered health practitioners. There is a strong public interest in Ahpra and the Medical Board being able to carry out their statutory functions as efficiently and effectively as possible.
55. The proper and efficient management and investigation of health practitioners is an integral function of Ahpra and the Medical Board under the National Law. It would be contrary to the public interest if these processes (and by extension, the core function to ensure the protection of the health and safety of the public) were prejudiced as a result of the disclosure of exempt information in document 1 and document 2 under the FOI Act. In addition, the prejudice to the protection of the Practitioner's privacy weighs heavily against disclosure.
56. Based on the available information, I am satisfied that the public interest factors against disclosure outweigh those in favour of disclosure.
57. I am satisfied that giving the Applicant access to the conditionally exempt information at this time would, on balance, be contrary to the public interest.

## Finding

58. I am satisfied that document 1 is conditionally exempt in full and document 2 is conditionally exempt in part under s. 47E(d).

## Section 47C: Documents subject to deliberative processes

59. I have found document 1 to be conditionally exempt in full under s. 47E(d). I will therefore not consider whether the document is also exempt under s. 47C.

## Section 47F: Documents affecting personal privacy

60. I have found document 2 to be exempt part under s. 47E(d). I will therefore not consider whether the document is also exempt under s. 47F.

## Conclusion

61. Under s. 55K I affirm Ahpra's decision of 24 September 2024.

**Richelle McCausland**

National Health Practitioner Privacy Commissioner

# Rights

## Review rights

If a review party is not satisfied with a review decision of the Commissioner, the party may apply to a relevant tribunal to have the decision reviewed. This application must be made within 28 days after the day the party receives the Commissioner's decision.<sup>24</sup>

Where an application for a review is made to the relevant tribunal, the proper respondent to such a proceeding is the agency to whom the freedom of information request was initially made (not the Commissioner). In this case, the respondent is Ahpra.<sup>25</sup>

## Appeal rights

A review party may appeal to the Supreme Court on a question of law from a decision of the Commissioner if the party believes the Commissioner incorrectly interpreted and applied the FOI Act.

An appeal must be made either:

- Within 28 days after the day a review party receives the Commissioner's review decision, or
- Within further time that the Supreme Court or another appropriate court allows, and
- In any way that is prescribed by rules of court made under the relevant legislation of the Supreme Court or another appropriate court.

In determining a question of law, the Supreme Court may make findings of fact if its findings of fact are not inconsistent with findings of fact made by the Commissioner (other than findings resulting from an error of law), and it appears to be convenient for the Supreme Court.

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<sup>24</sup> s. 57A.

<sup>25</sup> s. 60(3).