



Australian Health Practitioner Regulation Agency

Aboriginal and Torres Strait
Islander Health Practice
Chinese Medicine
Chiropractic
Dental
Medical
Medical Radiation Practice
Nursing and Midwifery
Occupational Therapy
Optometry
Osteopathy
Pharmacy
Physiotherapy
Podiatry
Psychology



National Health Practitioner
**Ombudsman and
Privacy Commissioner**

MEMORANDUM OF UNDERSTANDING

Australian Health Practitioner Regulation Agency

The Office of the National Health Practitioner Ombudsman and Privacy Commissioner

1. Parties

1.1. The parties to this Memorandum of Understanding (MOU) are:

- Australian Health Practitioner Regulation Agency (AHPRA), Level 7, 111 Bourke Street, Melbourne VIC 3000
- The Office of the National Health Practitioner Ombudsman and Privacy Commissioner (NHPOPC), Level 25, 50 Lonsdale Street, Melbourne VIC 3000.

2. Commencement

2.1. This MOU will commence on

29 March 2016

3. Background

3.1. The National Law

On 1 July 2010, the *Health Practitioner Regulation National Law* ('National Law') was enacted in participating States and Territories.

The purpose of the National Law is to establish a 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 (the National Scheme).

The objectives and guiding principles of the National Scheme include:

- protecting of the public by ensuring that only health practitioners who are suitably trained and qualified to practice in a competent and ethical manner are registered
- facilitating workforce mobility across Australia by reducing the administrative burden on health practitioners
- imposing restrictions on the practice of health professionals only if it is necessary to ensure the safe provision of high quality health care
- ensuring the fair, transparent, accountable, efficient, and effective operation of the National Scheme.

3.2. AHPRA

AHPRA is established under the National Law to exercise the following key functions:

- providing administrative assistance and support to the National Health Practitioner Boards (the National Boards) in exercising their functions
- establishing and administering an efficient procedure for receiving and dealing with applications for registration as a health practitioner and other matters related to registration
- keeping up-to-date and publicly accessible national registers of registered health practitioners (and students) for each health profession (in conjunction with the National Boards)
- establishing an efficient procedure for receiving and dealing with notifications against persons who are or were registered health practitioners or students.

The following National Boards have been established to regulate the corresponding health professions:

- Aboriginal and Torres Strait Islander Health Practice Board of Australia
- Chinese Medicine Board of Australia
- Chiropractic Board of Australia
- Dental Board of Australia

- Medical Board of Australia
- Medical Radiation Practice Board of Australia
- Nursing and Midwifery Board of Australia
- Occupational Therapy Board of Australia
- Optometry Board of Australia
- Osteopathy Board of Australia
- Pharmacy Board of Australia
- Physiotherapy Board of Australia
- Podiatry Board of Australia
- Psychology Board of Australia

The primary role of the National Boards 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. The National Boards also develop and approve standards, codes and guidelines for the health profession, particularly in relation to accreditation and registration standards. Further, National Boards are responsible for determining what action to take (if any) in relation to notifications relating to the health, conduct and performance of registered health practitioners and students who fall within their jurisdiction (noting that under co-regulatory arrangements currently in place, National Boards have no role in managing notifications where the ground for the notification occurred in New South Wales or Queensland).

The National Boards have delegated some of their functions to committees and AHPRA, as they are empowered to do under the National Law. This has included delegating certain powers and obligations relating to conducting preliminary assessments of notifications, as well as investigations relating to notifications or other matters, to AHPRA.

3.3. NHPOPC

The National Law establishes the NHPOPC. This arrangement ensures the accountability, transparency and responsiveness of the regulatory system administered by the following prescribed authorities under the National Law (the Prescribed Authorities):

- Australian Health Workforce Advisory Council
- The National Boards
- Australian Health Practitioner Regulation Agency Management Committee
- AHPRA

The primary role of the NHPOPC is to handle complaints and, where appropriate, conduct investigations into the administrative actions of a Prescribed Authority in order to assist people who believe they may have been treated unfairly or are dissatisfied with an outcome they have received under the National Scheme.

The NHPOPC can also review the handling of freedom of information requests and actions undertaken by a Prescribed Authority in the exercise of powers or the performance of functions under the *Freedom of Information Act 1982* (Cth).

Further to this, the NHPOPC (as the National Health Practitioner Privacy Commissioner) handles complaints from people who believe that an act or practice of a Prescribed Authority may have interfered with the privacy of an individual.

In general, the NHPOPC seeks to ensure that the objectives and guiding principles of the National Scheme are adhered to by providing an independent and impartial complaint handling mechanism to members of the Australian public, health practitioners and relevant students, in relation to Prescribed Authorities under the National Scheme.

Under the National Law, the NHPOPC is required to inform the Chief Executive Officer (CEO) of AHPRA of any proposed recommendations that are expressly or impliedly critical of the Agency and must give the principal officer the opportunity to be heard.

4. Purpose

4.1. The purpose of this MOU is to outline the respective roles and responsibilities of, and the relationship between, the parties to:

- (a) promote mutual understanding, respect and clarity about roles and responsibilities
- (b) promote co-operation in the public interest
- (c) promote timely and effective information sharing and communication
- (d) promote consistency in public information about roles and responsibilities
- (e) set out the funding arrangements for the NHPOPC.

4.2. Both parties agree that nothing within this MOU is intended to:

- (a) create any binding rights, powers, duties, liabilities or obligations beyond the commitment in clause 7 with respect to funding
- (b) waive, fetter, limit or affect the rights, powers, duties, liabilities or obligations of the parties
- (c) affect the due and proper performance of the parties' statutory functions or their ability to comply with all applicable statutory requirements, or
- (d) prohibit any party to the MOU entering into a separate agreement or protocol with another party to address operational matters not covered by this MOU.

5. Principles

5.1. The parties will have regard to the following principles in the application of this MOU:

- (a) independent oversight by the NHPOPC through its complaint handling and investigations into the administrative actions of Prescribed Authorities under the National Law can identify opportunities to improve administration of regulation and build public confidence in the regulation of health practitioners and relevant students
- (b) the parties have distinct and independent roles under the National Law
- (c) the parties have a common interest in, and/or responsibility for, ensuring that the National Scheme operates in a transparent, accountable, efficient, effective and fair way
- (d) the parties understand and respect each other's role and appreciate that the parties may reasonably hold different views from time to time
- (e) the public and stakeholders should be given consistent and clear information about the roles and responsibilities of each of the parties and how these responsibilities are exercised.

5.2. While the parties recognise each other's mandate and independent role, both parties are committed to maintaining a constructive and co-operative relationship based on the following values:

- (a) mutual respect
- (b) honesty
- (c) trust
- (d) openness, and
- (e) professionalism.

6. Senior officer contacts

6.1. The formal contact person for each party is the designated senior officer.

6.2. The details of the respective designated senior officers are:

NHPOPC

Samantha Gavel
Ombudsman
Office of the National Health Practitioner Ombudsman and Privacy Commissioner
Level 25, 50 Lonsdale St
Melbourne VIC 3000
Phone: 1300 795 265
Email: samantha.gavel@nhpopc.gov.au

AHPRA

Diana Newcombe
National Director, Legal Services
Australian Health Practitioner Regulation Agency
Level 11, 80 Grenfell Street
Adelaide SA 5000
Phone: (08) 7071 5518
Email: diana.newcombe@ahpra.gov.au

7. Funding

- 7.1. At the request of Australian governments and on behalf of the National Boards, AHPRA has agreed to provide funding to support the office of the NHPOPC in meeting its independent statutory function.
- 7.2. The NHPOPC will submit an annual budget request by 1 March to the Australian Health Ministerial Advisory Council (AHMAC) commencing 1 March 2016.
- 7.3. On approval of the annual NHPOPC budget by AHMAC, the Victorian Department of Health & Human Services (DHHS), on behalf of the NHPOPC, will raise quarterly invoices payable by AHPRA totalling the approved annual budget.
- 7.4. 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.
- 7.5. AHPRA will pay amounts invoiced by the DHHS on behalf of the NHPOPC within 30 days of receiving an invoice.

The DHHS has established a specific trust account for the NHPOPC funding for the exclusive use by the NHPOPC in the performance of its functions pursuant to the National Law. Any funds that are not used by the NHPOPC by the conclusion of the relevant financial year will be retained by the NHPOPC in order to allow the NHPOPC to invest in relevant projects as identified through the budget process with AHMAC. For example, current projects in addition to the ongoing investigation and project work include improving the NHPOPC's complaints management and reporting system, developing communication and information tools for stakeholders including a new website and legal advice as required. Noting that, Regulation 23 of the Health Practitioner Regulation National Law Regulation (the Regulations) provides that the NHPOPC's operations are to be carried out efficiently and effectively, where the NHPOPC anticipates that overspend may occur, the NHPOPC will provide to AHPRA a forecast detailing the anticipated overrun in expenditure at least 3 months in advance of when it is anticipated that the overspend may occur.

- 7.6. The NHPOPC's budget reconciliation and financial reporting obligations are detailed in Regulation 24 of the Regulations; in particular, the office of the NHPOPC is required to submit an annual report including audited financial statements to the Australian Health Workforce Ministerial Council (AHWMC) within 3 months after the end of each financial year.
- 7.7. It should be noted that 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.

8. Arrangements for the purposes of sections 7A, 8 and 12 of the Ombudsman Act

- 8.1. The National Law confers specified jurisdiction on the NHPOPC that is derived from the *Ombudsman Act 1976* (Cth) (the Ombudsman Act). The effect of ss 4(2) and 5 of the Ombudsman Act is that the NHPOPC:
- (a) may, of the NHPOPC's own motion, investigate any action that relates to a matter of administration taken by a Prescribed Authority (including AHPRA and/or the National Boards); and
 - (b) shall investigate action, being action that relates to a matter of administration by a Prescribed Authority (including AHPRA and/or the National Boards) in respect of which a complaint has been made to the NHPOPC.
- 8.2. The NHPOPC is provided with powers under the Ombudsman Act, including powers to:
- (a) make preliminary inquiries (s7A)
 - (b) obtain information from persons or make inquiries as the Ombudsman thinks fit (s8)
 - (c) require persons to furnish information or produce documents or records, and/or require persons to
 - (i) attend before a person specified by the NHPOPC to answer questions (s9)
 - (ii) enter premises that are occupied by a Prescribed Authority and carry on investigation at that place (s14)
 - (d) bring evidence of misconduct to the notice of a relevant Prescribed Authority (s8(10))
 - (e) decide not to investigate an action, or decide not to investigate an action further, for reasons specified in s6
 - (f) furnish comments or suggestions to any person, body or Prescribed Authority with respect to any matter relating to or arising out of an investigation (s12(4))
 - (g) make a report (as well as recommendations) to the relevant Prescribed Authority regarding an investigation undertaken by the NHPOPC where the NHPOPC is of the opinion that, amongst other things, the relevant action was contrary to law, unreasonable, based on a mistake of law or fact, or in all circumstances wrong, and furnish a copy of that report to the AHWMC (s15)
 - (h) prepare a report for presentation to the Parliament on the operations of the NHPOPC or in relation to any matter relating to, or arising in connection with, the exercise of the powers, or the performance of the functions, of the NHPOPC (s19)
 - (i) disclose information, make a statement to any person or the public with respect to the performance of the functions of the NHPOPC, or an investigation by the NHPOPC if, in the opinion of the NHPOPC, it is in the interests of a Prescribed Authority, person, or otherwise is in the public interest to disclose that information or make that statement (s35A).
- 8.3. On receipt of a complaint, the NHPOPC will review the complaint to determine whether it is within the jurisdiction of the NHPOPC, and if so, if there is any reason that the NHPOPC may choose to exercise discretion not to investigate the complaint pursuant to s6 of the Ombudsman Act (for example, if the complainant has not previously complained to AHPRA with respect to that complaint issue, or if the complainant became aware of the action more than 12 months before the complaint was made to the NHPOPC).
- 8.4. Where a matter falls outside the jurisdiction of the NHPOPC, the complainant will be informed that the NHPOPC cannot assist with the complaint for reason of lack of jurisdiction, and where appropriate, will be referred to a more appropriate complaint handling mechanism.
- 8.5. Where it is apparent that a complaint is within the jurisdiction of the NHPOPC but the complainant has not previously lodged a complaint with AHPRA in relation to the relevant Prescribed Authority, the NHPOPC will generally ask the complainant to use the AHPRA Complaints Process as published by AHPRA on the AHPRA website from time to time. However,

it is noted that, the NHPOPC may choose to make preliminary inquiries or commence an investigation into a complaint even where the complainant has not lodged a formal complaint with AHPRA if the particular circumstances of the complaint warrant such action.

- 8.6. Where the NHPOPC chooses to make preliminary inquiries under s 7A of the Ombudsman Act, AHPRA may be asked to provide information (including an answer to a question) to the NHPOPC or to produce a document or other record to the NHPOPC.
- 8.7. Unless the NHPOPC has reasonable grounds (such as, for example, unreasonable delay by AHPRA), the NHPOPC would not normally make preliminary inquiries or commence an investigation in relation to a notification that has not yet been determined by the relevant Board.
- 8.8. When making a request for information, documents or other records from AHPRA, the NHPOPC will state, in writing, the source of the power that the request is made pursuant to (for example, s7A of the Ombudsman Act where the NHPOPC is making preliminary inquiries, or, s8 of the Ombudsman Act in the case of an investigation).
- 8.9. Where a request for information, documents or other records is made by the NHPOPC, AHPRA will provide the NHPOPC with the requested information concerning the complaint including, where relevant:
 - (a) the preliminary assessment report
 - (b) the investigation report
 - (c) responses to specific questions
- 8.10. AHPRA will endeavour to respond promptly to any request for information, documents or other records from the NHPOPC within 14 days and will consult with the NHPOPC if this timeframe cannot be met. In the event that one party considers that there has been a failure to respond adequately or promptly to a request for information, documents or other records, written notice of this opinion should be provided to the other party.
- 8.11. If, based on the information obtained as a result of making preliminary inquiries, it does not appear that the complaint has been resolved, the NHPOPC will advise AHPRA of this assessment and the proposed actions to be taken in relation to the complaint, if any.
- 8.12. The NHPOPC may, from time to time, make with the CEO of AHPRA an arrangement with respect to the manner in which, and the period within which, the NHPOPC is to inform AHPRA of any proposed investigation.
- 8.13. AHPRA shall, in a timely manner, be notified in writing of a decision by the NHPOPC not to investigate or continue to investigate a complaint, and will be provided with reasons for the NHPOPC's decision. Where an investigation has been completed by the NHPOPC, the NHPOPC shall furnish to AHPRA particulars of the investigation at such times as the NHPOPC thinks fit.
- 8.14. The NHPOPC will not make a report in respect of an investigation that sets out opinions that are expressly or impliedly critical of a Prescribed Authority unless, before completing the investigation, the NHPOPC has afforded the Prescribed Authority opportunity to appear before the NHPOPC and make submissions in relation to the complaint.
- 8.15. The NHPOPC may discuss any matter relevant to an investigation with the AHWMC or any other Minister concerned with the matter.

9. Processes for formal investigations

- 9.1. Unless there are exceptional circumstances, the NHPOPC will notify the CEO of AHPRA as a matter of courtesy if questioning staff, members of the National Board or committees, or if inspecting records.

10. Written public information

- 10.1. The parties will work together to specify arrangements for consultation regarding public information (such as written publications and websites) produced by the parties to ensure that there is consistent information about the parties' respective roles and responsibilities. The information will be transparent and will outline in what circumstances it will generally be appropriate for people to complain to the NHPOPC.

11. Co-operation during investigations

- 11.1. All parties will co-operate to ensure, as far as practicable, that an investigation conducted by one party does not impede an investigation or function of another party, or unnecessarily duplicate investigation activities.
- 11.2. If any party considers an investigation conducted by the other party is creating an unreasonable impediment to the performance of their functions, they will raise the matter with the other party.
- 11.3. Each party will give priority to any request by the other party for specialist investigation support (such as independent medical advice, or specialist health care investigators) which may be required during the course of an investigation. This will be subject to the availability of resources to either party at that time.
- 11.4. Where the specialist investigation support constitutes a statutory function of a party, the party providing the support agrees to pay the full costs for the investigation support.

12. Information exchange

- 12.1. It is understood that the provision of all information will be subject to the confidentiality and the legal obligations governing that apply to each party.
- 12.2. Each party agrees that information received in confidence will not be distributed to any other entity without the prior knowledge of, and after consultation with, the party supplying the information and strictly in accordance with legislative obligations.

13. Senior Officers Working Group

- 13.1. The designated senior officers (and/or their delegated representatives) will endeavour to meet as a group (Senior Officers Working Group) at least quarterly, or by mutual agreement of the parties, to:
 - ensure ongoing activities are being conducted on a co-operative basis
 - follow-up on outstanding issues between the parties
 - discuss strategic issues
 - discuss matters of mutual interest.

14. Legislative compliance

- 14.1. Each party to this MOU has an obligation to comply with relevant Commonwealth, State and Territory laws and regulations that apply to its operations and activities.
- 14.2. Each party agrees to provide timely advice regarding any new or proposed legislative changes which may impact on this MOU and/or the legislative compliance obligations of the other parties.

15. Disputes

- 15.1. The parties will work together in a spirit of mutual trust and co-operation.
- 15.2. The parties will notify each other in writing of any difficulties which arise in the application of this MOU.
- 15.3. The parties agree to inform and educate their staff in relation to relevant matters covered by the MOU and any subsequent revisions. Where practicable, joint education process may be implemented.

16. Duration of and variations to this MOU

- 16.1. This MOU will apply for three years from the date of signing.

- 16.2. The parties agree to review the MOU no later than 1 April in each year of operation of this agreement or at such time as is mutually agreed by the parties.
- 16.3. This MOU may be extended, varied or terminated by the mutual agreement of the parties. A variation pursuant to this clause shall be in writing and signed by the parties to the MOU.



Martin Fletcher
Chief Executive Officer
Australian Health Practitioner Regulation
Agency



Samantha Gavel
Ombudsman
Office of the National Health Practitioner
Ombudsman & Privacy Commissioner

Appendix 1: Funding

1. In October 2013, AHMAC commissioned KPMG to undertake an independent review of the NHPOPC. KPMG provided the final report to AHMAC in February 2014. Following this review, AHMAC agreed on 7th March 2014 that to ensure a sustainable source of funds for the NHPOPC, the NHPOPC must be funded by registrants. AHMAC also agreed to recommend that the AHWMC immediately request AHPRA to contribute \$1.5 million, inclusive of GST, to resource the NHPOPC for the 2014-15 financial year.
2. On the 27th March 2015, the then Chair of AHMAC, Dr Peggy Brown, wrote to Martin Fletcher, CEO of AHPRA, confirming the ongoing funding arrangements for the NHPOPC office (see attached letter, Appendix 2).

Appendix 2



Australian Health Ministers' Advisory Council

AHMAC Secretariat
Post Office Box 344
RUNDLE MALL SA 5000
Telephone: (08) 8226 6191
Facsimile: (08) 8226 7244
Email: chcsecretariat@health.sa.gov.au

Mr Martin Fletcher
Chief Executive Officer
Australian Health Practitioner Regulation Agency
PO Box 9958
MELBOURNE VIC 3001

Dear Mr Fletcher,

I am writing to confirm the arrangements for the future ongoing funding for the office of the National Health Ombudsman and Privacy Commissioner (NHPOPC). I understand you had discussions with the interim NHPOPC, Ms Pauline Ireland and the AHMAC Secretary Ms Barbara Levings about these arrangements but they were not formalised in the AHPRA and NHPOPC operating arrangements or the MOU between the Victorian Department of Health and Human Services (DHHS), the host agency, and NHPOPC.

As you are aware at their 11 April 2014 meeting Health Ministers agreed that NHPOPC must be funded by registrants to ensure a sustainable source of funds.

AHMAC requires the NHPOPC and AHPRA to negotiate and formalise their financial arrangements so that AHMAC approves the budget for the office but does not provide or manage the funds. The following approach reflects your discussions with Ms Levings:

- NHPOPC will develop a budget for the upcoming financial year and provide it to AHMAC for approval at the first AHMAC meeting of the year, usually in March.
- Once AHMAC have approved the budget the AHMAC Secretary will provide a copy of the AHMAC decision to AHPRA and DHHS. Arrangements for the transfer of funds between AHPRA and DHHS can be negotiated in consultation with NHPOPC.
- NHPOPC and AHPRA should negotiate an arrangement for managing unspent funds.
- Any overspend would be the responsibility of the NHPOPC and AHPRA unless there were remarkable extenuating circumstances. AHMAC will not provide any funding.
- The details about budget reconciliations and the timing of financial reporting will need to be negotiated between NHPOPC and AHPRA.
- The financial arrangements will be reflected in the audit of the NHPOPC financial statements and included in the annual report to AHMAC.

This arrangement would need to be articulated in the Memorandum of Understanding (MOU) between NHPOPC and AHPRA and the NHPOPC and DHHS MOU.

I have arranged for a copy of this letter to be provided to Ms Samantha Gavel, the NHPOPC.

Please contact Ms Levings on 08 8226 6366 or on Barbara.Levings@health.sa.gov.au if you would like to discuss this matter further.

Yours sincerely



Dr Peggy Brown MBBS (Hons) FRANZCP
Chair, AHMAC

27 March 2015

Cc Ms Samantha Gavel, NHPOPC