



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



MEMORANDUM OF UNDERSTANDING

BETWEEN:

AUSTRALIAN HEALTH PRACTITIONER REGULATION AGENCY

AND

WESTERN AUSTRALIA POLICE

For the exchange of information to assist each Party to perform their statutory functions

DATE: 30 November 2018

PARTIES: **Australian Health Practitioner Regulation Agency** of Level 1, 541 Hay Street, Subiaco, Western Australia (**AHPRA**)

Western Australia Police of 3rd floor, 16 St Georges Terrace, Perth, Western Australia

(each a **Party**, together **the Parties**)

BACKGROUND AND PURPOSE

AHPRA

- A AHPRA is established as a body corporate under the Health Practitioner Regulation National Law (**National Law**) as in force in each state and territory. AHPRA has general responsibility for administering the National Registration and Accreditation Scheme (**National Scheme**) established under the National Law in partnership with the **National Boards**. Each National Board is responsible for one or more different health professions.
- B The National Scheme aims to protect the public by ensuring that only suitably trained and qualified practitioners are registered. It also facilitates workforce mobility across Australia; the provision of high-quality education and training of health practitioners; and rigorous assessment of overseas-trained practitioners.
- C Guided by a nationally consistent law, AHPRA and the National Boards work to regulate the health professions in the public interest (see AHPRA's Regulatory Principles in Appendix 1). This includes taking immediate action to restrict a practitioner's practice where the National Board considers a practitioner poses a serious risk to public health and safety, and after investigation, the taking of disciplinary action.
- D AHPRA acts on behalf of the National Boards and manages the registration process, and publishes national registers of practitioners. AHPRA manages investigations¹ into the professional conduct, performance and health of registered health practitioners on behalf of the

¹ Under Schedule 5 of the National Law

National Boards (other than in NSW which is a co-regulatory jurisdiction) (**Notifications Function**).

- E AHPRA provides administrative assistance and support to the National Boards and their delegates in exercising their functions and establishing an efficient procedure for receiving and dealing with notifications against persons who are (or were) registered health practitioners and students.
- F AHPRA is also responsible for managing breaches of the offences described by the National Law (**Offence Provisions**). Persons who breach the Offence Provisions of the National Law can be investigated² and prosecuted³.

Western Australia Police

- G The role of Western Australia Police is to serve the West Australian community and uphold the law so as to promote a safe, secure and orderly society.
- H Western Australia Police is responsible for detecting and investigating offences, and apprehending offenders to bring them to justice and ultimately prevent harm to the public.

Performance of functions and achievement of mutual objectives

- I This Memorandum of Understanding (MOU) outlines the respective roles and responsibilities of, and the relationship between, the Parties in relation to:
- i. Information disclosure relevant to regulatory matters; managing, investigating or otherwise dealing with Offence Provisions under the National Law; and AHPRA's Notifications Function;
 - ii. The administrative arrangements for the Parties to communicate with each other in respect of information disclosure;
 - iii. Protocols to apply when a Party is compelled by law to disclose the other party's information to a third party (eg. In response to a subpoena);
 - iv. The governance arrangements in respect of this MOU.

² Under Schedule 5 or 6 powers of the National Law

³ Section 242 of the National Law

J The Parties will have regard to the following principles in the application of this MOU:

- i. The Parties have separate and independent mandates and roles under state and commonwealth legislation;
- ii. The Parties have a common interest in, and responsibility for, protecting the public and recipients of health services.

K The Parties agree to provide each other with mutual assistance in relation to the exchange of information and the appropriate referral of matters within the framework of this MOU and consistent with all relevant laws.

MOU not intended to be legally binding

L Nothing in this MOU is intended to create any binding rights, powers, duties, liabilities or obligations.

M While nothing in this MOU is intended to be legally binding, the Parties intend to carry out their obligations under clauses 3 – 10 in good faith as agreed under this MOU.

OPERATIVE PROVISIONS

1 Definitions

- a. In this MOU, terms defined in the Background have that meaning and the following terms in bold have the following meaning:

Business Day means a day from Monday to Friday (inclusive) that is not a public holiday in the relevant state or territory, but does not include 25 December, 26 December and 1 January in any year.

Effective Date means the date this MOU signed by both Parties.

Health Profession means the following professions and includes a recognised speciality under the National Law; Aboriginal and Torres Strait Islander Health, Chiropractic, Chinese Medicine, Dental, Medical, Medical Radiation, Midwifery, Nursing, Optometry, Occupational Therapy, Osteopathy, Paramedicine, Pharmacy, Physiotherapy, Podiatry and Psychology.

Harmful Code means any form of harmful code or other contaminant, including viruses, bugs, any software lock, software key, trojan horse, spyware or adware.

National Board means a National Health Practitioner Board established under s 31 of the National Law of which there are 15 as follows - Aboriginal and Torres Strait Islander Health, Chiropractic, Chinese Medicine, Dental, Medical, Medical Radiation, Nursing & Midwifery, Optometry, Occupational Therapy, Osteopathy, Paramedicine, Pharmacy, Physiotherapy, Podiatry and Psychology.

Offence Provisions means offences under Part 7, ss 113-123A, 133 and 136 of the National Law, as enacted in each state and territory.

Prurient Purpose means a person acting with the intention of satisfying his or her own desire for sexual arousal or gratification or of providing sexual arousal or gratification for someone else.

Reasonable Endeavours means the relevant Party must, acting in good faith, endeavour of take steps (as relevant) to meet the relevant obligation, but in doing so the Party may take into account all relevant operational matters, including any technical and resource constraints, and performance of any statutory obligations that may affect the Party's ability to make those Reasonable Endeavours.

Responsible Officer means the officers or persons nominated by the Parties in Schedule 1 to administer this MOU.

Statutory Offence means an offence(s) under Part 7, ss 113-123A, 133 and 136 of the National Law, as enacted in Western Australia.

2 Interpretation

a. Unless the context indicates a contrary intention, in this MOU:

- i Any terms defined in the National Law have the same meaning (for example "protected information" has the meaning specified in s 214 of the National Law);
- ii References to legislation include that legislation as in force from time to time;
- iii A word importing the singular includes the plural (and vice versa); and
- iv 'Includes' in any form is not a word of limitation.

3 Information disclosure

- a. The Parties agree to disclose information, where necessary and appropriate to do so, in accordance with legislation, taking into account the MOU, operational, and policy considerations as appropriate, to enable the Parties to undertake their respective functions.
- b. Requests for information will be made in writing and each Party agrees to use Reasonable Endeavours, subject to relevant legislative provisions and other obligations, to assist the other in the provision of information required during the course of an investigation or prosecution.
- c. Subject to the Parties' respective legislative and other obligations, the Parties agree to:
 - i Refer matters to each other that are relevant to their legislative powers and functions;
 - ii Liaise with each other in respect of matters of mutual interest; and
 - iii Liaise with each other when one Party proposes to comment publically on any matter that is the subject of an investigation, inquiry or other formal process that involves the other Party;as considered necessary and appropriate.
- d. Where one Party considers it necessary to exercise its powers to compel the provision of information, that Party agrees to engage with the other Party about the exercise of that power, as considered necessary and appropriate.
- e. Where an investigator or inspector appointed under the National Law considers it necessary to exercise their powers under Schedule 5 or 6 of the National Law, to issue a written notice to Western Australia Police to provide information, Western Australia Police will use Reasonable Endeavours to provide the information required by the notice.
- f. The persons holding or occupying the positions listed in Schedule 1 are the Responsible Officers for each Party managing information disclosure under this MOU.

4 AHPRA provision of information to Western Australia Police

- a. AHPRA may disclose information to Western Australia Police, where necessary and appropriate to do so and in accordance with legislation, that is considered to be allegations or evidence of an indictable or summary offence by a person or occurring in the course of a registered health practitioner's practice of a Health Profession, including but not limited to:
 - i Murder, which is the willful killing of a person either intentionally or with reckless indifference to life; or attempted murder;
 - ii Manslaughter, which is the unlawful killing of a person without intent to kill and which is usually the result of a careless, reckless or negligent act;
 - iii A threat or act to cause physical or mental harm, or an omission that causes or could cause physical or mental harm, to a person including stalking or self-harm;
 - iv Assault of a person, which may include touching, moving or applying force to a person without their consent;
 - v Sexual assault, which may include non-consensual sexual contact and inappropriate touching;
 - vi Sexual behaviour in respect of an adult, child or vulnerable person for a Prurient Purpose;
 - vii Production, dissemination or possession of exploitative material (including pornography) in respect of a child, adolescent or vulnerable person;
 - viii Production, dissemination or possession of exploitative material (including pornography) obtained in the course of the practice of a Health Profession;
 - ix Possession or theft of illegal or unauthorised drugs or poisons, dependent upon the type and amount of drugs or poisons involved;
 - x Possession of illegal or unauthorised firearms, weapons or explosives;
 - xi Dishonestly or improperly engaging in conduct to deceive or exploit another to obtain a benefit for him/herself or a third person or, which causes injury or detriment to another;
 - xii Conduct that may constitute a Statutory Offence including but not limited to the use of a title, words or actions to make someone believe they are registered in one of the Health Professions listed in the National Law.
- b. Nothing in clause 4(a) derogates from AHPRA's obligation to disclose information to Western Australia Police as required or permitted by law.

5 Western Australia Police provision of information to AHPRA

- a. Western Australia Police may disclose information, where necessary and appropriate to do so and in accordance with legislation, to AHPRA that:
 - i Is considered to be allegations or evidence of an indictable or summary offence of the nature set out in clause 4 of this MOU, which concerns a registered health practitioner or purported registered health practitioner; and/or
 - ii Concerns the health, performance or conduct of a registered health practitioner where (s)he has a physical or mental impairment (including substance abuse or dependence) that may, or is likely to, detrimentally affect his/her practice of a Health Profession.

6 Parties must comply with applicable laws, including privacy legislation

- a. Each Party will comply with all laws relating to the matters set out in this MOU, including in relation to privacy, confidentiality, information management and security.
- b. Nothing in this MOU is intended to require a Party to do anything that is inconsistent with its legal obligations in respect of the information it discloses or receives under this MOU.

7 Administrative arrangements for information disclosure

- a. Each Party must use all Reasonable Endeavours to ensure that:
 - i The transmission of information to the other Party does not introduce virus or Harmful Code into that other Party's information technology systems, including by using appropriate virus detection tools;
 - ii Information provided to them under this MOU is protected by security safeguards that are appropriate and reasonable to ensure the privacy of the persons to whom it relates, having regard to the nature of the information, to prevent misuse, interference, loss and/or unauthorised access, modification or disclosure.

- b. Where a Party becomes aware of an error or omission in information it has provided under this MOU, or that it has published, it must endeavour to notify the recipients and correct the information within two Business Days.
- c. If a Party detects an error or omission in information provided by the other Party, it must notify that Party of the error or omission as soon as practicable.

8 Third party disclosure

- a. If a Party is served with a binding legal order or requirement to provide information to a third party (eg. Under a subpoena, warrant or notice), and that information was obtained from the other Party under this MOU, the first party will:
 - i Notify the second Party of the order or requirement as soon as practicable (unless legally compelled not to do so); and
 - ii To the extent practicable, consult with the second Party as to how to respond to the order of requirement (eg. The second Party may wish to intervene or assist the first Party to object).

9 Dispute resolution

- a. Should an issue arise for either Party that has the potential to cause conflict regarding the terms or other matters relevant to this MOU, it is expected that the Party raising the issue immediately takes steps to discuss it openly with the other Party.
- b. The Parties agree to take all steps to resolve disputes in a spirit that will achieve a mutually satisfactory outcome for both Parties that is consistent with the purpose and mutual objectives of this MOU.
- c. Any matters that cannot be resolved by the Parties are to be referred to the Chief Executive Officer of AHPRA and the Commissioner of Police, Western Australia Police.

10 Governance

- a. The Parties agree to hold a governance meeting (Governance Meeting) at least once annually to review the operation of the MOU, on a date to be agreed by the Parties.

- b. The Parties agree to consider, in good faith, any changes to the MOU proposed at a Governance Meeting, and to consult to give effect to those changes if agreed.
- c. As a general principle, the Parties will notify each other of any proposed changes to their processes or policies that are likely to materially affect the operation of the MOU without waiting for an annual Governance Meeting to fall due, to ensure the Parties are able to accommodate the changes into the smooth operation of the MOU.
- d. Nothing in this sub-clause is intended to limit a Party's ability to raise an urgent problem or question with the other party's Responsible Officer as the need arises.

11 Term

- a. This MOU will commence on the Effective Date and will continue unless terminated by either Party.

12 Termination

- a. Either Party may terminate this MOU by giving 30 days written notice to the other Party.
- b. A Party may terminate this MOU with immediate effect by written notice to the other Party where the first mentioned Party would be in breach of any legal requirement, including under the National Law and the *Privacy Act 1988* (Cth), in continuing to perform its obligations under this MOU.

13 Amendment

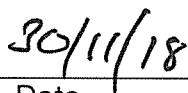
- a. The Parties may amend this MOU and any of its schedules by agreement in writing.

14 Execution of the Memorandum of Understanding

**Executed by Australian Health
Practitioner Regulation
Agency (AHPRA) ABN: 78 685
433 429 by its Chief Executive
Officer in the presence of:**



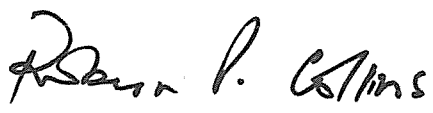
Martin Fletcher
Chief Executive Officer



Date



Signature of witness

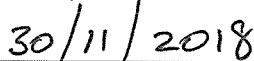


Full name of witness

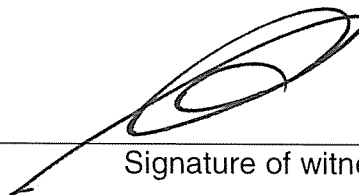
**Executed by Acting Deputy
Commissioner (Specialist
Services), Western Australia
Police Force in the presence of:**



Gary Budge APM
Acting Deputy Commissioner
Specialist Services



Date



Signature of witness



Full name of witness

SCHEDULE 1 – RESPONSIBLE OFFICERS

The persons holding or occupying the following positions will be responsible officers in respect of this MOU:

AHPRA

State Manager, WA Office
[REDACTED]

Director, Notifications, WA Office
[REDACTED]

National Director, Legal Services
[REDACTED]

National Manager, Legal Services
[REDACTED]

WESTERN AUSTRALIA POLICE

Assistant Commissioner
[REDACTED]

State Crime
[REDACTED]

Commander
[REDACTED]

State Crime
[REDACTED]

Detective Superintendent [REDACTED]
State Crime Sex Crime Division
[REDACTED]

For non-urgent police assistance or attendance call 131 444

For urgent matters requiring immediate police attendance call 000

APPENDIX 1 – AHPRA’S REGULATORY PRINCIPLES

Regulatory principles for the National Scheme

These regulatory principles underpin the work of the Boards and AHPRA in regulating Australia’s health practitioners, in the public interest. They shape our thinking about regulatory decision-making and have been designed to encourage a responsive, risk-based approach to regulation across all professions.

- 1** The Boards and AHPRA **administer and comply with the Health Practitioner Regulation National Law**, as in force in each state and territory. The scope of our work is defined by the National Law.
- 2** We protect the **health and safety 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.
- 3** While we balance all the objectives of the National Registration and Accreditation Scheme, **our primary consideration is to protect the public.**
- 4** When we are considering an application for registration, or when we become aware of concerns about a health practitioner, **we protect the public by taking timely and necessary action under the National Law.**
- 5** In all areas of our work we:
 - **identify the risks** that we are obliged to respond to
 - **assess the likelihood and possible consequences** of the risks, and
 - **respond in ways that are proportionate and manage risks** so we can adequately protect the public.This does not only apply to the way in which we manage individual practitioners but in all of our regulatory decision-making, including in the development of standards, policies, codes and guidelines.
- 6** When we take action about practitioners, **we use the minimum regulatory force appropriate to manage the risk** posed by their practice, to protect the public. Our **actions are designed to protect the public and not to punish practitioners.**

While our actions are not intended to punish, we acknowledge that practitioners will sometimes feel that our actions are punitive.
- 7** Community confidence in health practitioner regulation is important. Our response to risk considers **the need to uphold professional standards and maintain public confidence in the regulated health professions.**
- 8** **We work with our stakeholders**, including the public and professional associations, to achieve good and protective outcomes. **We do not represent the health professions or health practitioners.** However, we will work with practitioners and their representatives to achieve outcomes that protect the public.