



VICTORIA POLICE



Australian Health Practitioner Regulation Agency

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

MEMORANDUM OF UNDERSTANDING

BETWEEN:

AUSTRALIAN HEALTH PRACTITIONER REGULATION AGENCY

AND

THE STATE OF VICTORIA (through Victoria Police)

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

DATE: June 2018

PARTIES: **Australian Health Practitioner Regulation Agency**, of Level 7, 111 Bourke Street, Melbourne, Victoria (**AHPRA**) (ABN 78 685 433 429)

The State of Victoria (through Victoria Police) (Victoria Police)
of 637 Flinders Street, Docklands, Victoria

(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 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.

Victoria Police

- G The role of Victoria Police is to serve the Victorian community and uphold the law so as to promote a safe, secure and orderly state.
- H Victoria 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:

- i. create any binding rights, powers, duties, liabilities or obligations.
- ii. waive, fetter, limit or affect the rights, powers, duties, liabilities or obligations of the Parties.
- iii. affect the due and proper performance of the statutory functions of the Parties, or their ability to comply with any applicable statutory requirements or common law obligations.
- iv. prevent a Party to the MOU entering into a separate agreement or protocol with another party to address operational matters not covered by this MOU.

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 Victoria.

Effective Date means the last date this MOU is 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 (pending), 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.

Information Commissioner means the Information Commissioner appointed under section 6C of the *Freedom of Information Act 1982* (Vic).

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 and Midwifery, Optometry, Occupational Therapy, Osteopathy, Paramedicine, Pharmacy, Physiotherapy, Podiatry and Psychology.

LED means law enforcement data, as defined under the PDP Act.

National Law means in respect of the law applicable to AHPRA under this MOU, the *Health Practitioner Regulation National Law (Victoria) Act 2009*.

Offence Provisions means offences under Part 7, ss 113-123A, 133 and 136 of the National Law.

PDP Act means the *Privacy and Data Protection Act 2014* (Vic)

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.

Standards means the protective data security standards issued by the Information Commissioner under section 86 or amended or re-issued under section 87 of the PDP Act.

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

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).
 - 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.

- 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 Victoria Police to provide information, Victoria 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 or relevant contacts for each Party managing information disclosure under this MOU.

4 AHPRA provision of information to Victoria Police

- a. AHPRA may disclose information to Victoria Police, in accordance with law, in particular, the National Law and *Privacy Act 1988* (Cth), where there are allegations or evidence of an indictable or summary offence by a person, or an offence 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 wilful 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 offending, 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 Victoria Police as required or permitted by law and, AHPRA will comply with any positive legislative obligation to disclose information to Victoria Police.

5 Victoria Police provision of information to AHPRA

- a. Victoria Police may disclose information to AHPRA, where necessary and appropriate to do so and in accordance with the PDP Act and Standards and, any other relevant legislation as the case may be, 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.
- b. Victoria Police agrees to disclose information to AHPRA under this MOU subject to AHPRA undertaking:
- i notwithstanding clause 8, not to release LED to any other party or individual unless authorised by Victoria Police, the Standards or by applicable law.
 - ii to establish policy and protocols to ensure that LED is adequately protected.

- iii not to disclose or allow access to LED to any employees or contractors other than for the purposes of carrying out statutory functions and / or information exchange under this MOU.
 - iv to store documents containing LED only in a secure facility that is physically protected against unauthorised access, including the use of lockable containers, cabinets, and restricted access rooms.
 - v to electronically store LED only on a computer and/or system which is appropriately protected against unauthorised access, including the use of passwords, encryption, firewalls, and other appropriate protections.
 - vi to ensure that transmission of LED via electronic messaging (including email) is subject to appropriate routing, encryption and auditing in order to protect the data from being viewed or altered by anyone other than the intended recipient.
 - vii not to transmit LED via insecure consumer applications, such as file sharing and instant messaging.
 - viii to implement strict security measures to protect LED during storage, handling and transport, particularly information contained on portable computing devices or portable data storage devices.
 - ix unless otherwise required at law, to as soon as practicable, securely destroy all physical copies of LED in its possession or control and to ensure that LED in the possession or control of any other authorised party is as soon as practicable securely destroyed, when no longer required for the purpose as indicated by Victoria Police.
 - x unless otherwise agreed in writing, or required at law, to delete all electronic copies of LED in its possession or control and sanitise the storage device such that no LED can be recovered and to ensure that LED in the possession or control of any other authorised party is deleted and the storage device sanitised, when no longer required for the purpose.
 - xi to implement procedures for managing and reporting LED security incidents to Victoria Police and provide security awareness training to all employees, agents and contractors involved with Confidential Information.
 - xii to ensure that its employees, agents and contractors comply with this MOU.
- c. Victoria Police will release LED to AHPRA with a marking classification of either; 'For Official Use Only', 'Sensitive: Personal', or 'Sensitive: in accordance with any relevant statute (noted)' as the case may be.

6 Parties must comply with applicable laws, including privacy legislation

- a. Each Party agrees to comply with all laws which apply to it, relating to the subject matters set out in this MOU, including privacy, confidentiality, information management and security.
- b. Where a Party becomes aware of the loss or mislaying of any record containing LED or personal / protected information provided by the other Party, it agrees to:
 - i notify the other Party immediately that it becomes aware of the loss and
 - ii cooperate fully with the other Party in any and all investigations into such loss or mislaying and in any and all attempts to find and recover the affected record.
- c. 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. It is understood that the provision of all information will be subject to the confidentiality and the legal obligations that apply to each Party.
- b. Each Party will 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.
- c. Where a Party becomes aware of an error or erroneous 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.

- d. 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. Each Party agrees that information received in confidence will not be distributed to any other entity without the prior knowledge and permission of the Party supplying the information and strictly in accordance with legislative obligations.

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 Assistant Commissioner, Crime Command, Victoria 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. Governance Meeting will be attended by two nominees from each Party.
- c. The Governance Meeting may consider:
 - i any issues relating to the management of this MOU.
 - ii proposed changes to the MOU.
 - iii the outcome of any dispute resolution regarding the MOU.
 - iv feedback from interested parties (eg. Ministers, Boards) regarding the operation of the MOU.
 - v any changes to a Party's systems, procedures, policies or rules that may affect the operation of the MOU.

- vi any changes to relevant legislation that affects the operation of the MOU.
- d. 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.
- e. 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.
- f. 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 or via the relevant contact as the need arises.

11 Term

- a. This MOU will commence on the Effective Date and will continue, subject to annual reviews (pursuant to clause 10), 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, *Privacy Act 1988* (Cth), Standards and the PDP Act 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 Signing of the Memorandum of Understanding

**Signing by Australian Health
Practitioner Regulation
Agency (AHPRA) by its Chief
Executive Officer in the
presence of:**



Martin Fletcher
Chief Executive Officer



Date

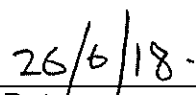
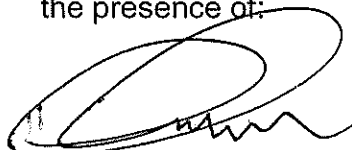


Signature of witness

Brett Curran
Commander

Full name of witness

**Signed by Chief
Commissioner Graham
Ashton AM Victoria Police in
the presence of:**



Date



Signature of witness

Brett Curran
Commander

Full name of witness

SCHEDULE 1 – RESPONSIBLE OFFICERS

AHPRA

State Manager, Victoria Office
[REDACTED]

Director, Notifications, Victoria Office
[REDACTED]

National Director, Legal Services
[REDACTED]

National Manager, Legal Services
[REDACTED]

VICTORIA POLICE

Sexual Offences and Child Abuse Investigation Teams (SOCIT):

http://www.police.vic.gov.au/content.asp?document_id=36448

Officer in Charge, Sexual Crimes Squad, Crime Command (unknown offenders):

Phone: 03 8690 4383

Email: xcrscs@police.vic.gov.au

Submission of information reports for non-urgent, non-sexual conduct (including drugs): External Agency Liaison, Intelligence Collection and Liaison Unit, Intelligence and Covert Support Command

Email: ICS-EXTERNAL-AGENCY-@police.vic.gov.au

Urgent matters requiring immediate police response: Dial 000

Governance Meetings:

1. Superintendent, [REDACTED] Family Violence Command
[REDACTED]

2. Detective Superintendent [REDACTED] Serious Crime Division, Crime Command
[REDACTED]

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.

