INFORMATION SHARING PROTOCOL

Under the Regulatory Compact between

Australian Health Practitioner Regulation Agency (AHPRA)

And

State of Victoria as represented by the Department of Health and Human Services

GLOSSARY

AHPRA	Australian Health Practitioner Regulation Agency
Compact	The Regulatory Compact between AHPRA and DHHS
Department	The Department of Health and Human Services (Victoria)
IBAC	Independent Broad-based Anti-corruption Commission
ISP	Information Sharing Protocol
National Board	A National Board represents each health profession that is part of the National Registration and Accreditation Scheme
National Law	A reference to nationally consistent law governing registration and accreditation of health practitioners in Australia, enacted in Victoria through the *Health Practitioner Regulation National Law (Victoria) Act 2009*
The National Scheme	National Registration and Accreditation Scheme
VAGO	Victorian Auditor-General's Office

ABOUT THE INFORMATION SHARING PROTOCOL

The aim of this Information Sharing Protocol (ISP) is to facilitate information sharing between the Australian Health Practitioner Regulation Agency (AHPRA) and the Department of Health and Human Services (Victoria) (Department), in order to reduce the likelihood of harm to the community by health practitioners.

This ISP:

- Sets out the context in which AHPRA and the department use, manage and share information under the Regulatory Compact, the purpose of the ISP, and the prior development of a national Alert Protocol.
- Discusses why AHPRA and the department may seek to share information in order to facilitate the statutory responsibilities and functions of each party.
- Provides a process for sharing information which is consistent with those responsibilities and constraints.
- Explains how to share information appropriately so that the steps necessary to protect the public from risk of harm are taken in a timely and responsive manner, and coordinated effectively.

PRINCIPLES

Information sharing under this ISP is guided by the principles of:

- Aiming to actively identify patterns and trends of behaviour and systemic failures
- Timely information exchange
- Risk-based prioritisation and information exchange
- Regard for privacy laws

- Working towards a safe health system for all Victorians
- Regulatory principles for the National Scheme.

CONTEXT

On 30 November 2016, the department and AHPRA (the parties) entered into a Regulatory Compact (the Compact) (Appendix 1) to facilitate the two-way exchange of information between the parties.

The aim of this information exchange is to manage risks presented by registered health practitioners and other individuals who are regulated under the National Registration and Accreditation Scheme for the health professions (the National Scheme). The Regulatory Compact also creates a framework to strengthen the regulatory relationship between AHPRA and the department in order to protect public health and safety in Victoria.

This framework recognises that the statutory functions of the parties are related, and that both AHPRA and the department work to protect patients and the broader public. In the course of exercising their respective statutory functions, the parties come into possession of information about individuals that, if shared between them, could assist in the performance of those functions.

AHPRA is responsible for implementing the National Scheme across Australia, in partnership with the National Boards established for health professions required to be registered under the *Health Practitioner Regulation National Law* (National Law).

The department's mandate is to administer the Victorian health and human services system. The department's responsibilities include protecting the health of patients, the wider Victorian population, and the quality and safety of both health and human services. Occupational regulation is one aspect of the department's functions. These responsibilities are spelled out in more detail in Appendix 2.

However, while both parties have roles to play in promoting public health and patient safety, there are important differences in these roles.

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. Guided by a nationally-consistent law, AHPRA and the National Boards work to regulate the health professions in the public interest in keeping with its Regulatory Principles (Appendix 5). This includes taking immediate action to restrict a practitioner's practise where the National Board considers a practitioner poses a serious risk to public health and safety, and after investigation, the taking of disciplinary action.

AHPRA acts on behalf of the National Boards and manages the registration process, as well as publishing national registers of practitioners. AHPRA manages investigations[1] into the professional conduct, performance and health of registered health practitioners on behalf of National Boards (other than in NSW which is a co-regulatory jurisdiction); 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

[1] Under Schedule 5 of the National Law

practitioners or students; and is responsible for managing breaches of the offences described by the National Law. [2]

Consistent with these different responsibilities, there are constraints on the ability of AHPRA and the department to freely exchange information – particularly personal information relating to third parties. These constraints are also necessary and critical to retaining the trust and confidence of practitioners, people who make notifications about them and the broader public.

The Compact required the establishment of an Information Sharing Protocol (ISP). This is a shared procedure developed between AHPRA and the department to implement the Compact framework. It is intended to provide a guide to staff that will promote enhanced collaboration and ensure that risks are identified and managed.

This ISP complements the existing *Protocol for issuing an alert notice to health departments* (the Alert Protocol) (Appendix 3). The Alert Protocol was approved by the Australian Health Workforce Ministerial Council in late 2016 (Out-of-Session item 71).

As AHPRA and the department are each bound by their own unique laws, this ISP sets out separate procedures for staff in each organisation to follow when sharing information.

This ISP will be published on the websites of AHPRA and the department so it can be accessible to all staff.

WHY MIGHT AHPRA AND THE DEPARTMENT SHARE INFORMATION?

As AHPRA and the department have responsibilities that significantly overlap around protecting patients and the broader public, there is an expectation that the two agencies will share information where necessary and appropriate to do so, and in accordance with legislation.

The department frequently requires information about health practitioners, their practice and the settings in which they practice in order to fulfil its broad responsibilities and functions.

For example under the *Health Services Act 1988*, section 11A:

To ensure that the objectives of this Act are met, the Secretary may – encourage safety and improvement in the quality of health services provided by health care agencies and health service establishment.

Similarly, information that the department comes into possession of that relates to the performance of health practitioners may be relevant to AHPRA's role in the administration of the National Scheme and of assistance to the National Boards.

The next section outlines scenarios in which AHPRA and the department may seek to share information to assist the parties to fulfil their responsibilities and functions.

WHEN WILL AHPRA OR THE DEPARTMENT SEEK TO SHARE INFORMATION?

[2] Persons who breach the Offence Provisions of the National Law can be investigated and prosecuted

There are four broad scenarios where it may be necessary and appropriate for AHPRA or the department to share information:

1. **AHPRA discloses information to the department**

   AHPRA may come into possession of information that it considers may be relevant to the performance of departmental responsibilities and functions, and seek to disclose that information to the department. For example, AHPRA is investigating whether a practitioner who has a serious infectious disease has been practising without adequate precautions, or is in breach of relevant guidelines. AHPRA may consider that the department requires details of the case in order to undertake its own investigations and other actions under the *Public Health and Wellbeing Act 2008*, such as offering testing to patients of the practitioner and/or issuing public warnings to ensure any risk of transmission of infection is minimised.

2. **AHPRA requests information from the department**

   AHPRA may request information from the department that is relevant to AHPRA's responsibilities and functions. For example, AHPRA identifies an anomaly concerning a practitioner's employment address from an audit of compliance and seeks confirmation from the department of any information held by it about the place of employment.

3. **The department requests information from AHPRA**

   The department may request information from AHPRA in order to exercise departmental responsibilities and functions. For example, a private hospital or day procedure centre cannot commence (or continue operation), nor admit patients unless the premises are registered under the Health Services Act. The criteria for registration of premises include that the applicant (individual or corporate) must be a 'fit and proper' person. As part of its determination as to whether an applicant is a fit and proper person the department may seek advice from AHPRA as to the outcome of any notifications received by it against that practitioner.

   Another example may include where the department is asked to report on the performance of health practitioners at the state level as part of an independent inquiry like the Independent Broad-based Anti-corruption Commission (IBAC), or by the Victorian Auditor-General's Office (VAGO), or to provide policy advice to Ministers. This information would be shared in a de-identified way.

4. **The department discloses information to AHPRA**

   The department may come into possession of information that it considers may be relevant to AHPRA's responsibilities and functions, and seek to disclose that information to AHPRA. For example, the department has successfully prosecuted a practitioner under *the Drugs Poisons and Controlled Substances Act 1981 and/or Regulations 2017* for inappropriately prescribing drugs of dependence to patients. The department may provide information such as the Notice of Order and the final prosecution summary to AHPRA to assist AHPRA's assessment of the matter and if appropriate, facilitate any further necessary action under the National Law by the relevant National Board.

WHAT ALLOWS AHPRA AND THE DEPARTMENT TO SHARE INFORMATION?

The four scenarios described above indicate that it will often be desirable for AHPRA and the department to share information. Whether this information can be shared or not will depend on decisions made within the authorising environment. The various ways in which the parties may be authorised to share information include:

- **Specific information sharing provisions in relevant Victorian health legislation**

  In addition to section 11A of the Health Services Act, the department is responsible for other legislation that includes specific information sharing provisions. For example, provisions in the Public Health and Wellbeing Act both enable the department to request information from other parties, and authorise those other parties to disclose the requested information. It also specifically protects them from any prosecution or other liability for disclosing such information in compliance with the Act (section 227).

- **Specific information sharing provisions in Part 10 of the National Law**

  It is an offence under section 216(1) of the National Law to disclose *protected information*, which is defined as information that comes to a person's knowledge in the course of, or because of, the person exercising functions under the Law, unless an exception in section 216(2) or sections 217-221 applies.

  In the absence of consent, AHPRA and the National Boards may release information to the department where it is considered necessary for the department to exercise its functions (section 219); to protect the public health or patient safety (section 220); or where another exemption applies under section 216(2) of the National Law, provided that the disclosure does not offend the *Privacy Act 1988* (Cth), which is a law of a participating jurisdiction (section 213). The most relevant exception is disclosure with the agreement of the person(s) to whom the information relates (section 216(2) (d)).

- **Authorisation by the Australian Health Workforce Ministerial Council**

  The Alert Protocol described in 'Context' allows AHPRA to give early notice to any relevant Australian health department about any individual who has allegedly committed a high-risk offence under the National Law that is placing the public at risk of harm.

  The Alert Protocol defines high-risk as meaning:

  a title protection offence/s under sections 113 to 118 of the National Law and in South Australia an offence under section 120A relating to the use of the protected title 'paramedic', or a practice protection offence/s under sections 121 to 123 of the National Law, or a restricted act, by an unregistered person.

Further detail around the authorising environment for information exchange between AHPRA and the department can be found at Appendix 4.

ARE THERE ANY CONSTRAINTS ON WHAT AHPRA AND THE DEPARTMENT CAN SHARE?

As discussed above, there are a range of legislative and other mechanisms that authorise information sharing between AHPRA and the department. However, there are also constraints on the ability of the parties to freely share information, particularly personal information relating to third parties.

While it is in the public interest to mitigate risks to the health of the public and patient safety, it is also important to protect personal information relating to individuals.

The *Privacy and Data Protection Act 2014* (Vic) and the *Health Records Act 2001* (Vic) reflect these principles, and both inform the department's Privacy Policy (Appendix 6). These Acts and the Privacy Policy also set out principles for the safe sharing of personal information in appropriate circumstances, noting that each case must be assessed on its merits.

Similarly, AHPRA is obliged under the National Law to comply with the privacy and confidentiality regime set out in Part 10, and has the power to obtain information by coercive means (Sch 5&6 National Law). In respect of the two most relevant information disclosure provisions of the National Law, section 219(1)(e) and section 220, the decision maker is to be guided by specific thresholds that must be met before disclosure can occur.

HOW ARE THE RISKS BALANCED?

Parliament sometimes sets out in legislation how risks to public health and patient safety should be balanced during the exercise of statutory functions. This is the case with the National Law, which supports lawful disclosure of protected information under certain circumstances set out in sections 216(2) to 221.

Similarly, the department is subject to major legislation which provides clear guidance on how decisions should be made, including decisions around information sharing. For example, sections 5 to 11 of the Public Health and Wellbeing Act set out a series of guiding principles specifically for public health decision makers. One of these guiding principles is that decisions should be evidence based. This is modified by the 'precautionary principle' – that if a public health risk poses a serious threat, lack of full scientific certainty should not be used as a reason for postponing measures to prevent or control the public health risk.

In addition, a further principle establishes the primacy of prevention, i.e. that the prevention of disease, illness, injury, disability or premature death is preferable to remedial measures. Further safeguards are introduced by the principle of proportionality in terms of public health response, and the principle of accountability requiring that decision-making by persons who are engaged in the administration of this Act is as transparent, systematic and appropriate as is practicable.

Also, the department increasingly uses transparent, risk-based frameworks to inform the exercise of its regulatory responsibilities, and to balance competing public interests such as safety, quality and privacy. For example, the *Risk based regulation framework for private hospitals 2017*.

The use of these frameworks provides additional confidence to both the general public and to the agencies with whom the information is shared, because it is underpinned by a rigorous consideration of whether a) such information sharing is necessary, and b) the information which is shared will be appropriately protected.

The next section sets out the processes for information sharing by officers of AHPRA and the department in each of the four scenarios identified above. These processes are consistent with the variations in the

authorising environment, and constraints on the parties when exercising their functions as outlined above. The process sets out when, how and to whom information can be shared between AHPRA and the department.

SCENARIO 1: AHPRA DISCLOSES INFORMATION TO THE DEPARTMENT

AHPRA will consider notifying the department when it comes into possession of information that may be relevant to the performance of departmental responsibilities and functions. This is most likely to happen when AHPRA receives a complaint about a practitioner and it is assessed as high risk and requiring additional public safeguards.

There are different processes for referring information to the department depending on whether the practitioner is unregistered or registered.

Where the purported practitioner is unregistered, an alert notice will be issued to health departments as set out in the Alert Protocol approved by Australian Health Ministers in 2017 (Appendix 3). This protocol is used when issuing an alert notice prior to laying charges, and/or issuing a public statement if it will help to manage the risk of harm to the public. Flowchart A (below) concerns AHPRA disclosing information, where considered necessary and appropriate, to the department in circumstances where there are allegations that a statutory offence may have occurred under the National Law e.g. using a protected title.

When the complaint relates to a health practitioner registered under the National Law, a different process applies under this ISP as follows:

Step 1: AHPRA or a National Board receives information that it considers relates to the department's functions. For example, AHPRA is conducting an investigation and determines that areas of the department have relevant regulatory responsibilities and that a joint investigation should be considered; if AHPRA receives a complaint about a health practitioner registered under the National Law; or, if a National Board has imposed 'practice monitor' conditions on a registered practitioner who AHPRA is aware works at a licensed private hospital or day procedure centre, even in cases where this information is not in the public domain.

Step 2: AHPRA confirms the relevant legislation and principles for referring information about a registered health practitioner to the department, including that it does not breach the duty of confidentiality in section 216 of the National Law, and is in fact a lawful disclosure under Part 10, such as:

- Disclosure of protected information to a state entity that has functions relating to professional services provided by health practitioners, or the regulation of health practitioners under section 219(1)(e), if AHPRA is satisfied that:
    - the protected information will be collected, stored and used by the entity to which it is disclosed in a way that ensures the privacy of the persons to whom it relates is protected; and the provision of the protected information is necessary to enable the entity to exercise its functions;

    or

    - disclosure of protected information is allowed under section 220 where a health practitioner poses or may pose a risk to public health, or the health and safety of a patient or class of patients is or may be at risk because of a registered health practitioner's practice as a health practitioner, and
- The disclosure complies with the Privacy Act as applied to the National Scheme; and

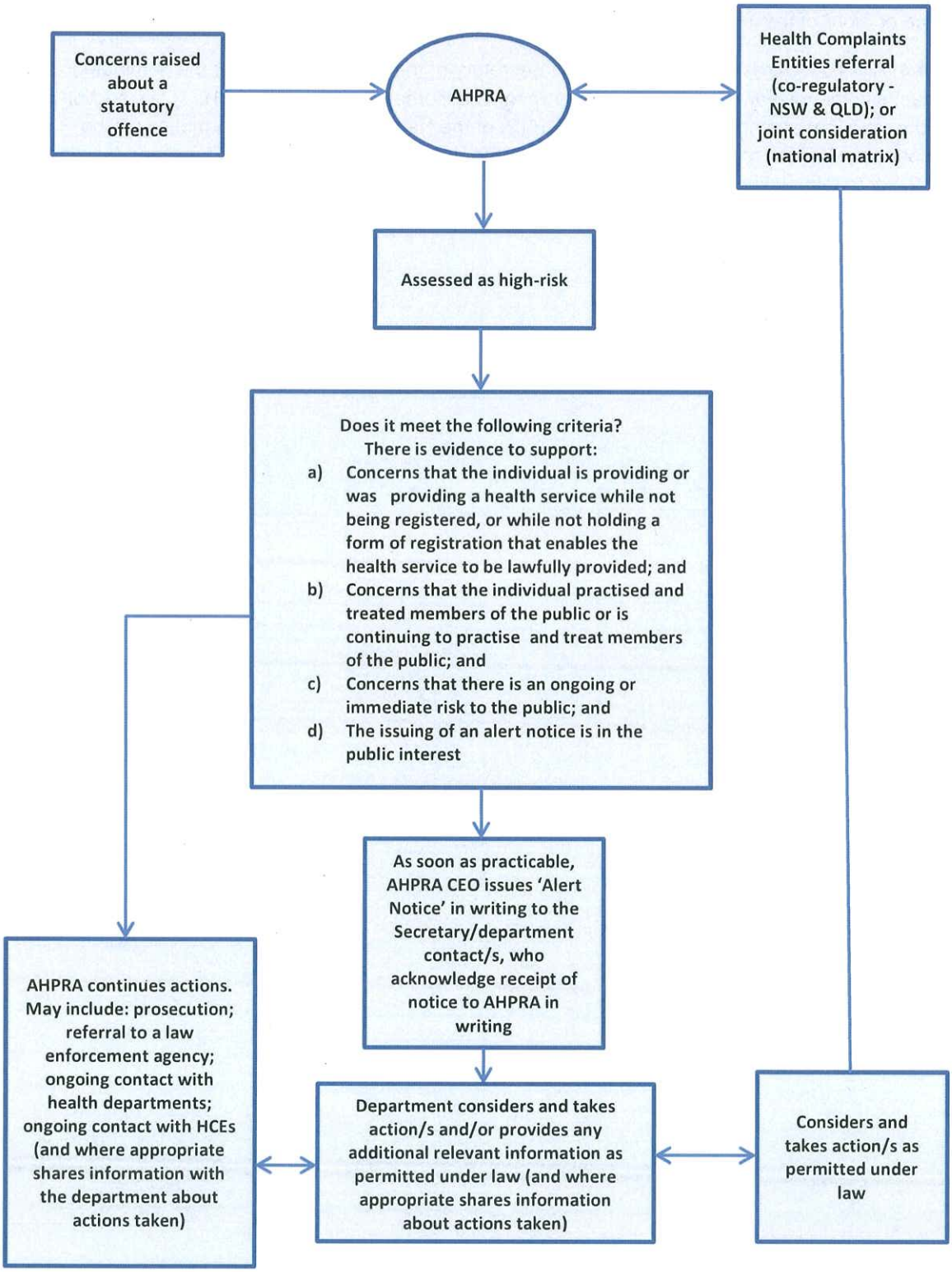
- The Regulatory Principles for the National Scheme (Appendix 5) as endorsed by all National Boards and AHPRA's Agency Management Committee apply and guide information sharing decision making under the National Scheme.

Step 3: AHPRA consults the appropriate department contact responsible for taking action in relation to one or more of these risks, as set out in Appendix 2, to discuss its decision.

Step 4: AHPRA shares information with the Secretary of the department and/or the nominated contact/s in the relevant area/s of the department in accordance with section 219(1) (e), section 220 or other relevant exemption under section 216(2) of the National Law. This information will be disclosed by AHPRA to the extent necessary for the department to exercise its functions (section 219(2)) or to take action in relation to the risk (section 220).

FLOWCHART A: PROCESS FOR AHPRA TO DETERMINE WHETHER TO REFER INFORMATION TO THE DEPARTMENT IN RESPECT OF A STATUTORY OFFENCE UNDER THE NATIONAL LAW

**Note: AHPRA can only take immediate action against a registered health practitioner, whereas the Health Complaints Commissioner can issue a prohibition order against an unregistered person providing a health service.*



SCENARIO 2: AHPRA REQUESTS INFORMATION FROM THE DEPARTMENT

Under the National Law, AHPRA and the National Boards are responsible for investigating any matter that might warrant action in relation to a practitioner's registration. Examples might include unsatisfactory practice, misconduct or impairment of a registered practitioner.

Step 1: AHPRA refers to Appendix 2 to ascertain relevant contact in the department.

Step 2: AHPRA confirms the request in writing to the department for information to support a specified function.

Step 3: AHPRA confirms that the legislative basis for this request is section 27(3) of the National Law, or section 32(5) in the case of a National Board. This provision permits AHPRA to ask the department to disclose information to it in order for AHPRA to undertake any of its functions. This is because the department is a 'government agency of a participating jurisdiction' under the National Law. The department is authorised under the above sections to provide the information to AHPRA or a National Board upon request. .

Step 4: AHPRA confirms that it will protect the shared information including that it will be collected, stored and used in a way that ensures the privacy of the persons to whom it relates is protected, consistent with AHPRA's obligations under the National Law to comply with the Privacy Act as it applies to the National Scheme.

SCENARIO 3: THE DEPARTMENT REQUESTS INFORMATION FROM AHPRA

The department may, for example, seek information during an investigation or intervention process. As indicated in flow chart B, AHPRA will provide requested information if the following conditions are met:

1. The information being sought is *necessary* for the department/branch to fulfil its functions; and

2. The department has identified the legislative basis for requesting this information; and

3. The department confirms how this information will be protected; and

4. AHPRA identifies a legislative basis allowing it to share this information with the department.

The steps taken by the department are detailed in each areas' Standard Operating Procedures. Key areas of the department that may request information are identified below but do not represent all areas in the department that may exchange information with AHPRA.

Medicines and Poisons Regulation

Medicines and Poisons Regulation is the branch of the department that is primarily responsible for investigations or interventions into possible contraventions of the Drugs Poisons and Controlled Substances Act. These may include concerns that:

- A registered health practitioner is practising in an unprofessional or negligent manner with respect to unsafe or unlawful possession, use, supply or prescribing of scheduled medicines for personal use

- A registered health practitioner is believed to have been prescribing scheduled medicines for personal use
- A registered health practitioner is believed to have been redirecting scheduled medicines for illicit use
- A person holding out as a registered health practitioner is found to be in possession of scheduled medicines and is believed to have supplied or administered these to 'patients'.

Health Protection Branch

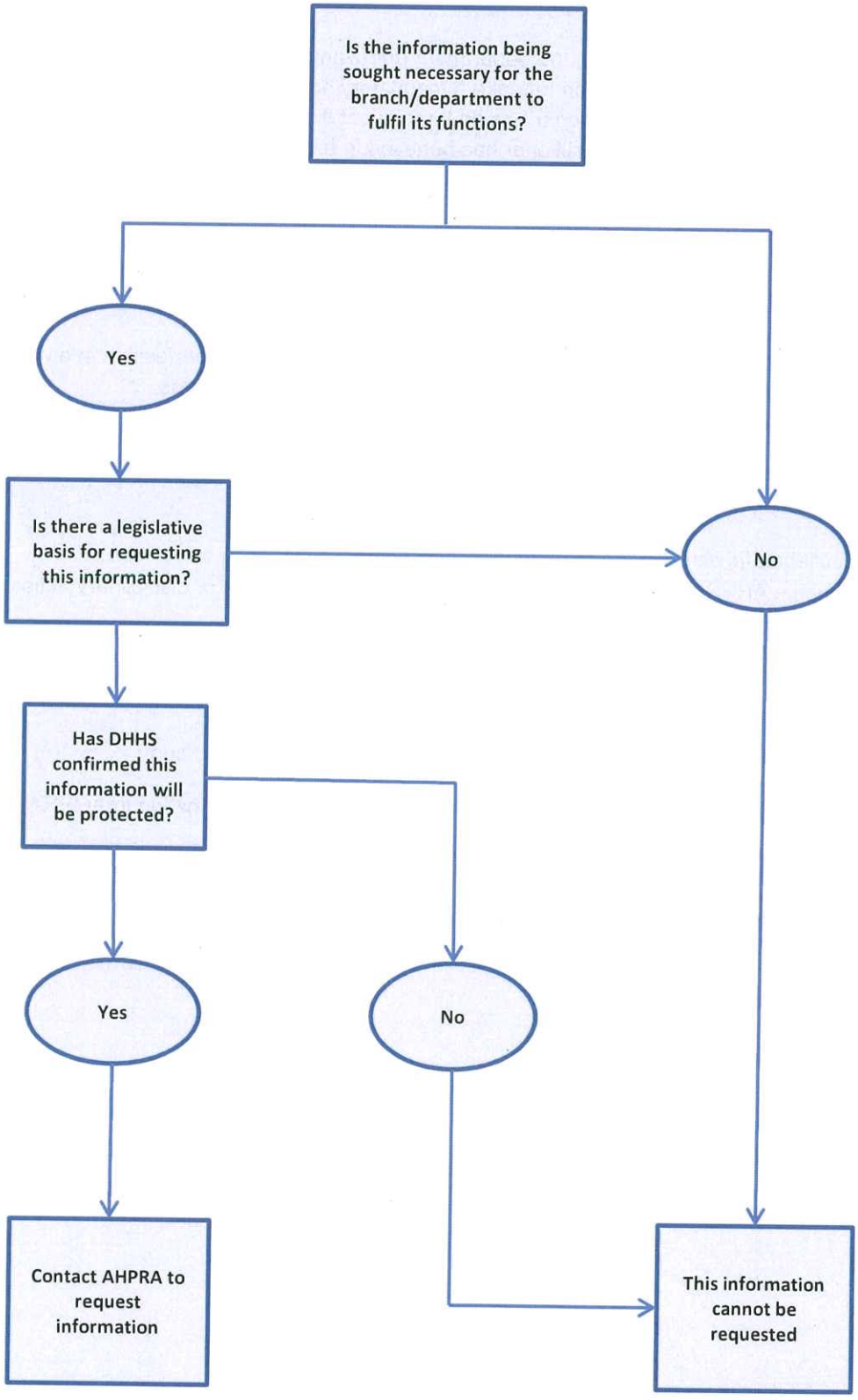
The Health Protection Branch administers the Public Health and Wellbeing Act, and investigates and can undertake a variety of measures when health practitioners may present a risk to the public health due for example to lack of infection control or poor management of a communicable disease, in order to mitigate the risks to the health of the public.

Commissioning, Performance and Regulation

The Commissioning, Performance and Regulation branch administers the Health Services Act and investigates and regulates the quality and safety of patient care in health services and hospitals. Concerns about a registered health practitioner may arise for example when:

- A single incident or pattern of substandard care at a health service or hospital gives rise to reasonable belief that there are significant deficiencies in clinical governance, or a significant risk of harm to patients; or
- Considering applications for registration of health premises and a determination is requires as to whether a practitioner is a fit and proper person to exercise control over a health service establishment and should or should not be granted approval in principle to establish a new premises as a health services establishment under section 71 of the Health Services Act.

FLOWCHART B: PROCESS FOR THE DEPARTMENT TO DETERMINE WHETHER TO REQUEST INFORMATION FROM AHPRA



SCENARIO 4: THE DEPARTMENT DISCLOSES INFORMATION TO AHPRA

There are occasions when the department may have information that it considers may be relevant to AHPRA's responsibilities and functions.

All registered health practitioners within the department (for example, the Chief Health Officer and the Chief Medical Officer) have an obligation to make a mandatory notification to AHPRA where there is a reasonable belief that a student practitioner has an impairment that may place the public at substantial risk of harm, or a registered health practitioner has behaved in a way that constitutes 'notifiable conduct' as defined in section 140 of the National Law. This includes where the practitioner has:

- Practised their profession while intoxicated by alcohol or drugs; or
- Engaged in sexual misconduct in connection with the practise of their profession; or
- Placed the public at risk of substantial harm in the practise of their profession due to an impairment; or
- Placed the public at risk of harm because they have practised their profession in a way that constitutes a significant departure from accepted professional standards.

In addition, the department may decide to make a voluntary notification to AHPRA if it believes the grounds under section 144 of the National Law have been met. The department may refer this information while an investigation is ongoing in order to:

- collaborate with AHPRA to meet joint investigative aims; or
- enable AHPRA to take mitigating actions such as prosecution or disciplinary action against a health practitioner.

As indicated in flowchart C, four things must be confirmed before the department can refer information to AHPRA:

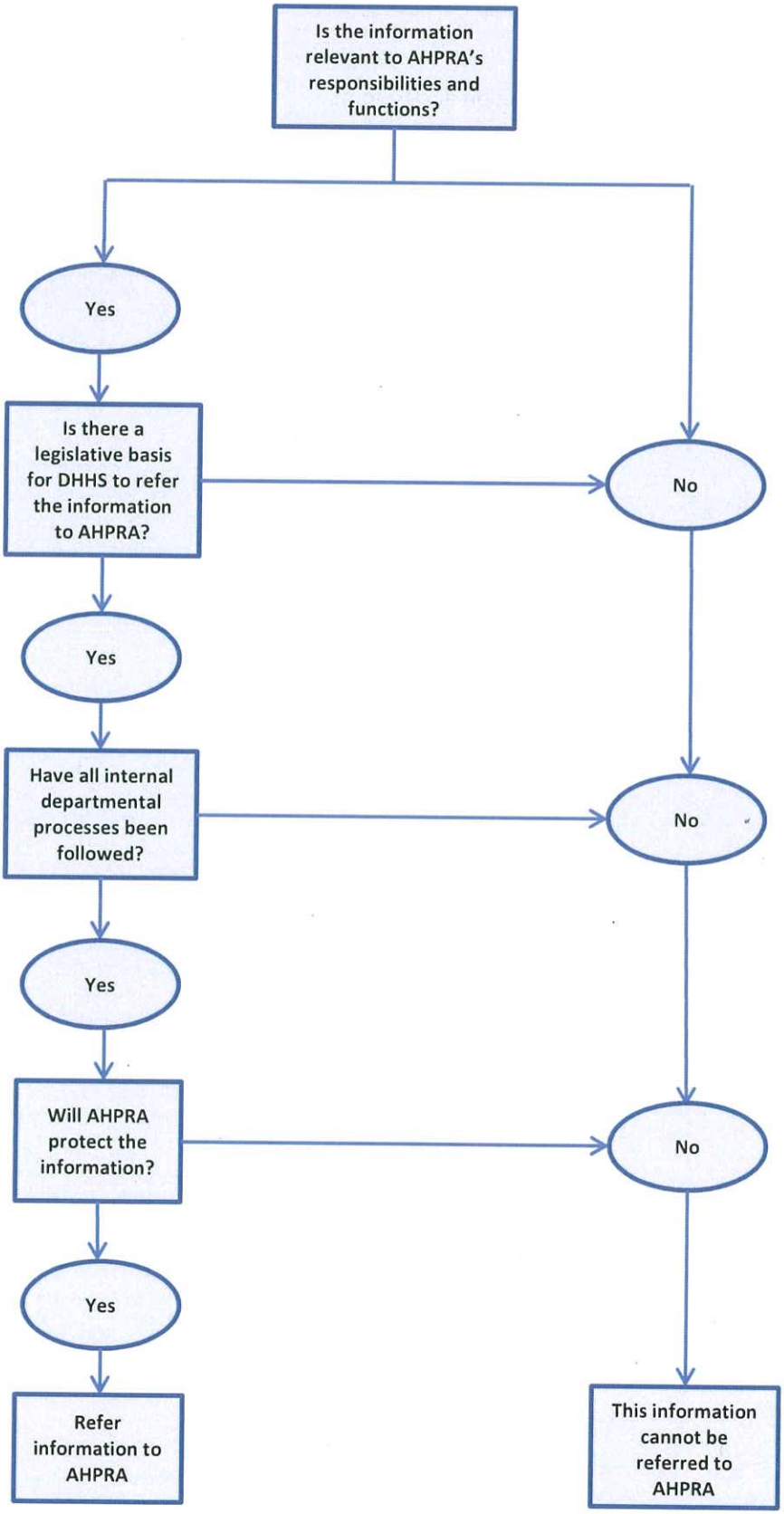
1. That the information is relevant to AHPRA's responsibilities and functions; and

2. That there is a legislative basis allowing the department to refer this information to AHPRA; and

3. All internal departmental processes have been followed; and

4. AHPRA has confirmed they will protect this information and how they will do this.

FLOWCHART C: PROCESS FOR THE DEPARTMENT TO DECIDE WHETHER TO REFER INFORMATION TO AHPRA



CONTACTS

The department

Director, Health and Human Services Regulation and Reform

[redacted]

or

[redacted]

AHPRA

Director, Notifications, AHPRA Victoria

[redacted]

or

State Manager, AHPRA Victoria

[redacted]

or

National Information Release Unit

[redacted]

EXECUTION OF THE INFORMATION SHARING PROTOCOL

Executed by AHPRA by its Chief Executive Officer:

Mark Fletcher — 21 November 2018

Signature of Martin Fletcher
Chief Executive Officer
AHPRA

Date

Executed by Deputy Secretary, Regulation, Health Protection and Emergency Management, to the Department of Health and Human Services for and on behalf of the State of Victoria:

M Skilbeck — 15 November 2018

Signature of Melissa Skilbeck
Deputy Secretary
Regulation, Health Protection and Emergency Management
Department of Health and Human Services

Date

Copy provided to:

Terry Symonds
Deputy Secretary
Health and Wellbeing
Department of Health and Human Services

REGULATORY COMPACT

BETWEEN

Australian Health Practitioner Regulation Agency (AHPRA)
Level 7, 111 Bourke Street, Melbourne

AND

The State of Victoria as represented by The Department of Health and Human Services (Department)
50 Lonsdale St, Melbourne

1. Statement of Purpose

1.1 This Regulatory Compact (Compact) sets out a framework for:

(a) strengthening and deepening our regulatory relationship;

(b) establishing information sharing protocols; and

(c) contributing to the protection of public health and safety in Victoria.

1.2 We both work to protect the public and the patients of health services. To this end, we collaborate to ensure that risks are identified and managed.

2. AHPRA

2.1 AHPRA is responsible for implementing the National Registration and Accreditation Scheme (NRAS) across Australia, in partnership with the National Boards established for the regulated health professions.

2.2 The NRAS 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. Guided by a nationally consistent law, AHPRA and the National Boards work to regulate the health professions in the public interest.

2.3 AHPRA is established as a body corporate under the *Health Practitioner Regulation National Law* (as in force in each state and territory) (National Law). As the National Agency for the purposes of that Law, AHPRA has responsibility for NRAS, in partnership with the National Boards.

2.4 In Victoria, AHPRA:

(a) acts on behalf of the National Boards to manage registration processes for health practitioners;

(b) keeps and publishes national registers of registered health practitioners on behalf of the National Boards;

(c) acts on behalf of the National Boards to maintain professional standards in the health professions by managing investigations into the professional conduct, performance and health of registered health practitioners; and

(d) enforces compliance with the National Law.

2.5 In the course of exercising its statutory functions, AHPRA and the National Boards come into possession of information that relates to the health, performance and conduct of employees of Department.

3. The Department

3.1 The Department administers the Victorian health and human services system, with responsibilities for planning, policy development, funding and regulation of health and human service providers.

3.2 The Department funds more than 500 organisations (funded agencies) to provide various health services to Victorians including:

(a) acute and subacute healthcare delivered by public hospitals and in community settings;

(b) primary health services delivered by a wide community of health services and others;

(c) mental health and alcohol and drugs services; and

(d) residential and community care and support for older people.

3.3 Health services and other agencies funded by the Department are separate legal entities and are responsible for employing their own staff.

3.4 The Department has regulatory, oversight and leadership functions over its funded agencies. It performs a statutory oversight and review role in relation to a range of health matters including medicines, drugs and poisons, and has a health protection role with a focus on clinical safety and quality. Receiving notice of notifications and notification outcomes concerning registered health practitioners in Victoria supports the Department to perform these functions.

3.5 In the course of its operations, the Department comes into possession of information pertaining to the health, performance and conduct of registered health practitioners, which may be relevant to AHPRA's role in assisting the National Boards.

4. Scope of Compact

Nothing within this Compact is intended to:

(a) create any binding rights, powers, duties, liabilities or obligations;

(b) waive, fetter, limit or affect our rights, powers, duties, liabilities or obligations;

(c) affect the due and proper performance of our respective statutory functions or compliance by us with all applicable legislation, regulations or internal policies; or

(d) prevent us from entering into a separate agreement or arrangement with another entity to address operational matters not covered by this Compact.

5. Compact Management Committee

5.1 Within 30 days of the Effective Date, we will establish the Compact Management Committee.

5.2 The Compact Management Committee will:

(a) comprise each of our respective Responsible Officers, and any other person(s) agreed in writing between us;

(b) meet in person at least 4 times annually;

(c) perform the functions set out in clause 5.3 and make any necessary decisions in this regard by way of unanimous resolution;

(d) otherwise organise its business as it sees fit, including by the establishment of sub-committees or consultative mechanisms if deemed appropriate; and

(e) receive our joint secretarial support.

5.3 The functions of the Compact Management Committee are to:

(a) facilitate our cooperative adherence to this Compact;

(b) consider issues of our mutual regulatory concern; and

(c) review the scope and terms of this Compact including the Information Sharing Protocols, from time to time and as considered necessary, but at least once every 12 months, and if considered appropriate, recommend to us that the Compact be:

(i) varied (in accordance with clause 10.3), including to add another party; or

(ii) terminated (in accordance with clause 10.2);

(d) foster and promote a strong and effective relationship between the parties; and

(e) undertake other activities or functions as agreed in writing between us.

6. Information Sharing

We agree to:

(a) co-operate in good faith and share relevant information in a timely and responsive manner and in compliance with all applicable laws; and

(b) adopt and implement the Information Sharing Protocols developed under this Compact, and implement necessary related administrative or procedural change.

7. Information Sharing Protocols

7.1 The provisions of this clause 7 are subject to clause 4(c) and to the disclosure principles set out in clause 8.

7.2 When sharing information pursuant to an Information Sharing Protocol, we will use Reasonable Endeavours to ensure that the information is:

(a) disclosed in response to a written request wherever practicable;

(b) expressly disclosed pursuant to a lawful power, including for example a statutory

power of compulsion or an express power of disclosure;

(c) collected, stored and used in a lawful manner and in a way that ensures the privacy of the persons to whom it relates is protected;

(d) disclosed to the receiving party only to the extent necessary to enable that the exercise of that party's functions;

(e) transmitted so as not to introduce any virus or harmful code into that other party's information technology systems, including by using appropriate virus detection tools;

(f) used in accordance with and subject to any limitation requested by the disclosing party at the time of disclosure in accordance with clause 8, to the extent that such a limitation is not inconsistent with the receiving party's lawful functions and obligations; and

(g) transmitted, maintained and protected by security safeguards that are appropriate and reasonable, having regard to the nature of the information, to protect the information against any inappropriate loss, unauthorised disclosure, unauthorised recording or duplication, or other misuse.

7.3 If one of us becomes aware of errors or omissions in information exchanged under this Compact, irrespective of which us provided the information, we will use Reasonable Endeavours bring these errors or omission to the attention of the other party.

8. Disclosure for limited use

8.1 This clause applies where one of us discloses information (Information) under this Compact.

8.2 **Limited use**

We will only use or disclose Information for the purposes for which it was disclosed unless we:

(a) receive express written authorisation from the disclosing party to do otherwise; and/or

(b) are otherwise required to by law.

8.3 **Conditional disclosure**

We may impose conditions on the use or disclosure of Information, in the least restrictive terms possible, for:

(a) legal or forensic purposes; and

(b) a stated, limited period of time, wherever practicable.

8.4 **Conditional use**

Where one of us imposes conditions upon the use of Information in accordance with clause 8.3, the other will observe those conditions unless:

(a) required by law to do otherwise; and/or

(b) they have been provided with release from the conditions for the relevant purpose.

8.5 If one of us intends to disclose information under clause 8.4(a) or (b), we will provide the other party with 3 Business Days' notice in writing.

9. Dispute resolution

9.1 We agree that if any issue or dispute (Issue) arises in the performance of this Compact, then the Responsible Officer of the party claiming there is an Issue (Moving Party) will:

(a) provide written notice of the Issue to the Responsible Officer of the other party;

(b) if the issue is considered urgent by the Moving Party, provide a reasonable period of time for resolution; and

(c) otherwise nominate a period for resolution of the Issue, being a period of no less than 5 business days.

9.2 If one of us raises an Issue or an Issue otherwise arises, and it is not resolved in accordance with clause 9.1, then the Issue may be referred by the Moving Party for:

(a) consideration by the Compact Management Committee; and

(b) Alternative Dispute Resolution at their cost, with consent of the other.

9.3 Notwithstanding the existence of an Issue, to the extent possible, we will continue to perform our obligations under this Compact.

10. Term, termination and variation

10.1 Term

This Compact will commence on the Effective Date and will continue unless terminated by either of us.

10.2 Termination

Either of us may terminate this Compact by giving 30 days' written notice to the other party.

10.3 Variation

We can vary the Compact by written Agreement.

11. Definitions and interpretation

11.1 Definitions

In this Compact, terms defined in the Background have that meaning and the following capitalised terms have the following meanings:

Alternative Dispute Resolution means mediation or expert determination undertaken by an independent person or body.

Business Day means a day from Monday to Friday (inclusive) that is not a public holiday in Victoria.

Compact means this Regulatory Compact on Information Sharing and includes the Information Sharing Protocols.

Compact Management Committee means the Committee established pursuant to clause 5.

Effective Date means the date this Compact is signed by both parties.

Information Sharing Protocols has the meaning ascribed in clause 6.

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

Responsible Officer for AHPRA will be the State Manager of AHPRA (Victoria) and for Department will be the Director, Health & Human Services Workforce, Portfolio Strategy & Reform (or equivalent position in the event of any relevant change to the Department's structure or position titles).

11.2 **Interpretation**

Unless the context indicates a contrary intention, in this Compact and any Information Sharing Protocols executed between us pursuant to this Compact:

(a) any terms defined in the National Law have the same meaning (for example "protected information" has the meaning specified in section 214 of the National Law);

(b) references to legislation include that legislation as in force from time to time;

(c) a word importing singular includes the plural (and vice versa);

(d) 'Includes' in any form is not a word of limitation.

12. Execution of the Compact

Executed by AHPRA by its Chief Executive Officer:

Signature of Martin Fletcher, Chief Executive Officer, AHPRA

Date: 25 October 2016

Executed by the Secretary to the Department of Health and Human Services for and on behalf of the State of Victoria:

Signature of Kym Peake, Secretary, Department of Health and Human Services

Date: 15 November 2016