



National Health
Practitioner
Ombudsman



Ahpra
& National
Boards

MEMORANDUM OF UNDERSTANDING

BETWEEN

**NATIONAL HEALTH PRACTITIONER OMBUDSMAN AND NATIONAL HEALTH
PRACTITIONER PRIVACY COMMISSIONER**

AND

AUSTRALIAN HEALTH PRACTITIONER REGULATION AGENCY

1. Parties

- 1.1 This Memorandum of Understanding (**MOU**) has been entered into by the National Health Practitioner Ombudsman and National Health Practitioner Privacy Commissioner (together known as the **NHPO**) and the Australian Health Practitioner Regulation Agency (**Ahpra**). For the purposes of this MOU these entities are each 'a **Party**' and are collectively referred to as 'the **Parties**'.

2. Purpose

- 2.1 The Parties are committed to supporting each other to achieve their statutory objectives through ongoing cooperation and the sharing of information. This MOU reflects that commitment and promotes the:
- 2.1.1 achievement of the objectives of the Health Practitioner Regulation National Law (**National Law**).
 - 2.1.2 lawful sharing of information in a manner that is timely, cooperative and aimed to assist the other Party to exercise its functions; and
 - 2.1.3 ongoing implementation and continual improvement of the 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 (**National Scheme**).

3. Termination of prior agreement

- 3.1 The Parties agree to terminate the previous MOU that came into effect on 28 November 2019.

4. Term

- 4.1 This MOU takes effect from the date it is executed by the Parties and continues until it is either:
- 4.1.1 superseded by a subsequent MOU between the Parties; or
 - 4.1.2 terminated in writing by one of the Parties.
- 4.2 The Parties agree to consult with each other, wherever practicable, prior to terminating the MOU under clause 4.1.2.

5. Review and amendment

- 5.1 The Parties intend to review this MOU:
- 5.1.1 every three years from the commencement date; or
 - 5.1.2 where necessary to comply with a legislative amendment or another requirement.

6. Legal relationship

- 6.1 This MOU is not intended to, and does not, establish any contractual or other legally enforceable rights or obligations between the Parties.
- 6.2 The Parties agree that any disputes arising from the operation of the MOU must be addressed through the process provided for by the instrument under clause 12 below.
- 6.3 To remove any doubt, the Parties do not intend for any disputes arising from the operation of the MOU to be resolved through the unilateral commencement of proceedings before a Court, tribunal, mediator or arbitrator.

- 6.4 The Parties intend that this MOU be applied in meeting their respective obligations under the National Law and other statutory instruments. Nothing in this MOU seeks to modify or displace the legal obligations of either Party.

7. Background

The National Law

- 7.1 On 1 July 2010, the National Law was enacted in participating States and Territories. The National Law establishes the National Scheme.
- 7.2 The main guiding principle of the National Scheme is that the protection of the public, and public confidence in the safety of services provided by registered health practitioners and students, are paramount.
- 7.3 The other guiding principles of the National Scheme include:
- 7.3.1 the National Scheme is to operate in a transparent, accountable, efficient, effective and fair way
 - 7.3.2 the National Scheme is to ensure the development of a culturally safe and respectful health workforce
 - 7.3.3 fees required to be paid under the National Scheme are to be reasonable having regard to the efficient and effective operation of the scheme
 - 7.3.4 restrictions on the practice of a health profession are to be imposed under the National Scheme only if it is necessary to ensure health services are provided safely and are of an appropriate quality.

Ahpra

- 7.4 Ahpra is the National Agency established under the National Law to perform functions including:
- 7.4.1 providing administrative assistance and support to National Health Practitioner Boards (National Boards) to assist them in exercising their functions
 - 7.4.2 establishing and administering an efficient procedure for dealing with applications for registration as a health practitioner and other matters related to registration
 - 7.4.3 keeping up-to-date and publicly accessible national registers of registered health practitioners for each health profession
 - 7.4.4 establishing an efficient procedure for receiving and dealing with notifications (concerns) about persons who are, or were, registered health practitioners or students.
- 7.5 The following National Boards have been established under the National Law:
- 7.5.1 Aboriginal and Torres Strait Islander Health Practice Board of Australia.
 - 7.5.2 Chinese Medicine Board of Australia.
 - 7.5.3 Chiropractic Board of Australia.
 - 7.5.4 Dental Board of Australia.
 - 7.5.5 Medical Board of Australia.
 - 7.5.6 Medical Radiation Practice Board of Australia.
 - 7.5.7 Nursing and Midwifery Board of Australia.

- 7.5.8 Occupational Therapy Board of Australia.
 - 7.5.9 Optometry Board of Australia.
 - 7.5.10 Osteopathy Board of Australia.
 - 7.5.11 Paramedicine Board of Australia.
 - 7.5.12 Pharmacy Board of Australia.
 - 7.5.13 Physiotherapy Board of Australia.
 - 7.5.14 Podiatry Board of Australia.
 - 7.5.15 Psychology Board of Australia.
- 7.6 The primary role of 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.
- 7.7 National Boards develop and approve standards, codes and guidelines for the health profession. This includes the development of accreditation and registration standards.
- 7.8 National Boards are also responsible for determining what action (if any) to take in response to notifications (concerns) about registered health practitioners and students.¹

NHPO

- 7.9 The National Law establishes the NHPO. The NHPO is an independent statutory officer appointed by the Ministerial Council.
- 7.10 The powers of the NHPO are derived from the *Ombudsman Act 1976 (Cwlth)*, the *Privacy Act 1988 (Cwlth)*, the *Freedom of Information Act 1982 (Cwlth)* and the *Australian Information Commissioner Act 2010 (Cwlth)*. These Acts are modified by the Health Practitioner Regulation National Law Regulation 2018 to make them suitable for the National Scheme.
- 7.11 The primary role of the NHPO is to handle complaints and where appropriate, conduct investigations, into the administrative actions of Ahpra, the National Boards, accreditation authorities and specialist medical colleges in relation to approved programs of study. The NHPO also deals with complaints about the handling of personal information, receives notifications about eligible data breaches, and can review decisions made by Ahpra and the National Boards in relation to freedom of information (FOI) requests.
- 7.12 The NHPO seeks to resolve individual complaints, as well as influence broader systemic change in the administrative actions of Ahpra and the National Boards. The NHPO has the power to conduct 'own motion' investigations or independent reviews to consider possible areas for improvement in the National Scheme. This is generally through considering an issue of interest, drawing attention to common issues or trends arising from the NHPO's work (such as complaint handling, media monitoring or stakeholder engagement activities) and/or providing comments, suggestions or recommendations to address an issue and prevent future occurrences. The NHPO can conduct an own motion investigation into an issue of interest even if the NHPO has not received a complaint specifically about that issue. This includes if an issue is referred to the NHPO by an external body or person (such as Ahpra or a health minister).

¹ Co-regulatory arrangements are in place within New South Wales and Queensland. In these jurisdictions the role of National Boards in managing notifications is different than that in other jurisdictions.

- 7.13 The NHPO's overarching goal is champion fairness through investigating complaints, facilitating resolutions and making recommendations to improve the regulation of Australia's registered health practitioners.
- 7.14 The office of the NHPO is located in Victoria and is hosted by the Victorian Department of Health (DH).

8. Principles

- 8.1 The Parties recognise the important contribution each other makes to the success of the National Scheme.
- 8.2 The Parties are committed to maintaining a constructive and co-operative relationship in the course of the NHPO exercising its independence and impartial oversight of Ahpra and the National Boards.
- 8.3 The Parties respect each other's distinct and independent roles under the National Law.
- 8.4 The Parties recognise that it is in the best interest of complainants, staff and other relevant stakeholders for complaints to be resolved in a timely fashion.
- 8.5 The Parties agree that regulatory decisions should reflect the *Regulatory principles for the National Scheme*.²
- 8.6 The Parties agree to work together to provide consistent public information about their respective roles in relation to the National Scheme including by consulting with each other on the publication of information about the other Party's role.
- 8.7 The Parties agree that Ahpra manages complaints involving the National Boards on behalf of the National Boards. Ahpra will consult with National Boards when it considers that it may be necessary or useful to do so in the course of seeking to resolve a complaint.
- 8.8 The Parties agree that interactions between each other should reflect:
- 8.8.1 mutual respect;
 - 8.8.2 honesty;
 - 8.8.3 openness, and
 - 8.8.4 professionalism.
- 8.9 The Parties agree that there is benefit in Ahpra being provided with an opportunity to make comments and provide further information about proposed negative or adverse findings immediately prior to the NHPO concluding an investigation so as to ensure that all relevant information has been taken into account.

9. Information sharing and privacy

- 9.1 The Parties agree to assist each other to exercise their functions by disclosing information in a manner that is consistent with their legal, operational and policy obligations. It is acknowledged that the NHPO can compel Ahpra to provide information to it under the

² *Regulatory principles for the National Scheme* (2021) Australian Health Practitioner Regulation Agency <<https://www.ahpra.gov.au/About-AHPRA/Regulatory-principles.aspx>>

Ombudsman Act 1976 (Cwlth), the Privacy Act 1988 (Cwlth) and the Freedom of Information Act 1982 (Cwlth).

- 9.2 The Parties agree to collect, use and disclose personal information in a manner that is consistent with the Australian Privacy Principles. Information received will be maintained within a secure environment and dealt with in a manner that is consistent with the Parties obligations with respect to personal privacy.
- 9.3 The information provided by one Party to this MOU to the other will only be used for the purpose of assisting that entity to exercise its statutory functions and/or powers.
- 9.4 The Parties agree that information exchanged or provided under this MOU should be treated as confidential unless further disclosure of the information is otherwise required or authorised by law.
- 9.5 The Parties will use their best endeavours to ensure that information shared under this MOU is accurate and correct.
- 9.6 Each Party will assess, deal with and use information provided under this MOU at its own risk.
- 9.7 In the event that a Party becomes aware that it has provided inaccurate, incorrect or unreliable information then it will, where possible, inform the other Party of the inaccuracy.

10. Subpoenas and court orders

- 10.1 If a Party is served with a binding legal order or requirement to provide information to a third party (e.g. a subpoena, warrant or other compulsive notice), and the requested information was obtained from the other Party under this MOU, then the receiving Party will:
 - 10.1.1 notify the other Party of the order or requirement as soon as practicable. However, a Party is not required to comply with this requirement if providing notice would contravene a law; and
 - 10.1.2 to the extent reasonably practicable, consult with the other Party as to how best to respond to the order or requirement (e.g. the other Party may wish to intervene or assist the receiving Party to object).

11. Schedules

- 11.1 This MOU may include a schedule that deals with an operational or other ancillary matter.
- 11.2 The Parties may, at any time during the term of this MOU, enter into a further agreement that forms a schedule to this MOU.
- 11.3 A schedule to the MOU comes into effect upon being signed by the responsible officer for both Parties.
- 11.4 The operation of a schedule to this MOU is subject to any rules or agreement contained within this document.

12. Disputes and termination

- 12.1 The Parties agree to resolve any disagreement or dispute that arises in relation to the operation of this MOU by:
 - 12.1.1 raising any concerns in writing with the other Parties' nominated officer under Schedule 1; and

12.1.2 working with the other Party in good faith to resolve concerns in the manner that is in the best interests of the National Scheme.

12.2 In the event that a dispute cannot be resolved, either Party may terminate the MOU by giving the other Party notice in writing under clause 4 above.

13. Variation

13.1 The Parties may agree to vary the terms of this MOU by exchanging correspondence.

13.2 Letters proposing and accepting variations to this MOU must be annexed to this document.

14. Publication

14.1 The Parties agree that this MOU may be made publicly available. Publication may include, for example, making the document publicly available on the website of a Party.

Signed by the National Health Practitioner
Ombudsman and National Health
Practitioner Privacy Commissioner

Signed for the Australian Health Practitioner
Regulation Agency


Richelle McCausland


Martin Fletcher
Chief Executive Officer

Date: 1 DECEMBER 2023

Date: 1 DECEMBER 2023


Witness:


Witness:

Schedule 1

Parties representatives

Notices issued by a Party under this MOU must be addressed to the officers nominated in this schedule or another person nominated, in writing, to the other Party for that purpose.

Contact officer for the NHPO

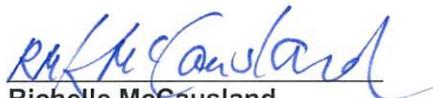
Position: Ombudsman and Commissioner
Address: National Health Practitioner Ombudsman
GPO Box 2630 Melbourne VIC 3001
Email: richelle.mccausland@nhpo.gov.au

Contact officer for AHPRA

Position: General Counsel
Address: Australian Health Practitioner Regulation Agency
Level 4, 192 Ann Street
Brisbane QLD 4000
Email: jamie.orchard@ahpra.gov.au

Signed by the National Health Practitioner
Ombudsman and National Health
Practitioner Privacy Commissioner

Signed for the Australian Health Practitioner
Regulation Agency


Richelle McCausland


Martin Fletcher
Chief Executive Officer

Date: 1 DECEMBER 2023

Date: 1 DECEMBER 2023


Witness:

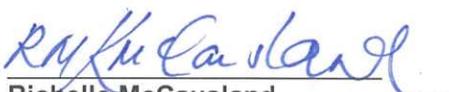

Witness:

Schedule 2

Funding arrangements for the NHPO

1. This Schedule provides public information about how the NHPO is funded and the processes that have been established to ensure that funding decisions are made independently and objectively.
2. On 11 April 2014, Ministers of State, Territory and Commonwealth governments with portfolio responsibility for health agreed that the NHPO must be funded by health practitioner registrants. As health practitioner registration fees are received by Ahpra (on behalf of the National Boards), Ahpra must transfer the agreed funds to the NHPO.
3. The NHPO submits an annual budget request by 1 March each year to the Health Chief Executives Forum (HCEF) for approval.
4. On approval of the annual NHPO budget by HCEF, the DH, on behalf of the NHPO, raises quarterly invoices payable by Ahpra totalling the approved annual budget.
5. If the costs payable by Ahpra are for a taxable supply, the DH, on behalf of the NHPO, 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.
6. Ahpra must pay amounts invoiced by the DH on behalf of the NHPO within 30 days of receiving an invoice.
7. The DH has established a specific trust account for the NHPO funding for exclusive use by the NHPO in the performance of its functions pursuant to the National Law.
8. Any funds that are not used by the NHPO by the conclusion of the relevant financial year are retained by the NHPO in order to allow the NHPO to invest in relevant projects as identified through the budget process with HCEF.
9. The NHPO's budget reconciliation and financial reporting obligations are detailed within the Health Practitioner Regulation National Law Regulation 2018. The NHPO is required to submit an annual report including audited financial statements to the Ministerial Council within 3 months of the end of each financial year.
10. The NHPO is required to use financial resources efficiently, effectively and economically.
11. The DH provides financial services to the NHPO and as such the financial operations of the NHPO are consolidated into those of the DH and are audited annually by the Victorian Auditor-General's Office. The DH in turn provides a financial summary of the NHPO's annual expenditure from the departmental audited accounts.

Signed by the National Health Practitioner
Ombudsman and National Health
Practitioner Privacy Commissioner


Richelle McCausland

Date: 1 DECEMBER 2023


Witness:

Signed for the Australian Health Practitioner
Regulation Agency


Martin Fletcher
Chief Executive Officer

Date: 1 DECEMBER 2023


Witness:

Schedule 3

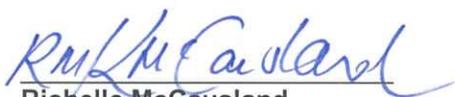
Early resolution complaint transfer arrangement

1. This Schedule provides public information about the 'early resolution' complaint transfer arrangement between the Parties.
2. The Parties are committed to efficiently resolving complaints by minimising delay and focusing on achieving practical outcomes.
3. The NHPO may decide it is appropriate to make an early resolution transfer of a complaint to Ahpra if:
 - the complainant has not yet made a formal complaint to Ahpra
 - the issues appear to be able to be resolved quickly and easily because they are clearly identifiable and uncomplicated in nature, or an outcome is likely to be reached in a short time, either by mutual agreement, or after Ahpra has responded
 - the matter that the complaint relates to is open or ongoing with Ahpra
 - the complainant is seeking a response from Ahpra related to delay, or
 - prompt resolution of the complaint is unlikely unless the NHPO begin the transfer process.
4. In circumstances where the NHPO has decided that an early resolution transfer is likely to be the best and most appropriate way to progress a complaint, the NHPO will seek the complainant's consent to transfer their complaint to Ahpra.
5. If the complainant consents to the transfer, the NHPO will transfer the complaint to Ahpra, including relevant information about the complaint and noting any specific actions that the NHPO recommends Ahpra takes.
6. If upon review of a transferred complaint Ahpra considers that the best option to resolve the complaint is for the NHPO to handle it, Ahpra will immediately liaise with the NHPO and may formally request that the NHPO take carriage of the complaint.
7. The complaint will remain open with the NHPO while Ahpra responds to it. Ahpra has two business days after the date it receives the complaint to acknowledge receipt. Ahpra is then required to respond in full to the complaint within 20 business days. If Ahpra is unable to meet the required deadline, it must contact the NHPO to request an extension of time.
8. Once the complainant receives a response from Ahpra, the NHPO will assess the response to consider whether fair and reasonable steps have been taken by Ahpra to resolve the matter. As part of this assessment, the NHPO will seek the complainant's view on whether their concerns have been addressed. The complainant's satisfaction with the complaint response is a factor considered during the NHPO's assessment, though it is not the deciding factor.
9. After assessment, the NHPO may decide to take no further action and finalise the complaint or decide that the complaint requires further examination. The outcome will depend on the individual circumstances of the complaint and may include:
 - a remedy for the complainant
 - agreed arrangements between the complainant and Ahpra to progress the matter
 - improvements to Ahpra's processes

Memorandum of Understanding between the NHPO and Ahpra

- the NHPO committing to consider the complaint as part of an own motion investigation or other analysis of systemic issues
 - the NHPO deciding that Ahpra has appropriately responded to the concerns raised.
10. If the NHPO concludes that a complaint requires further consideration following an early resolution transfer, the NHPO may decide to make preliminary inquiries with Ahpra or commence an investigation into the complaint.
11. The NHPO will advise the complainant and Ahpra of the outcome of an early resolution transfer process (in writing wherever possible) with a detailed explanation of why this decision was made.

Signed by the National Health Practitioner Ombudsman and National Health Practitioner Privacy Commissioner



Richelle McCausland

Date: 1 DECEMBER 2023



Witness:

Signed for the Australian Health Practitioner Regulation Agency



Martin Fletcher
Chief Executive Officer

Date: 1 DECEMBER 2023



Witness:

Schedule 4

Agreed timeframes for responses

1. Ahpra recognises the importance of sharing information with, and responding to correspondence from, the NHPO in a timely manner.
2. The NHPO recognises and values the time and resources invested by Ahpra in order to provide information to the NHPO. The NHPO will ensure that it only requests from Ahpra information or responses necessary for the NHPO to meet its statutory objectives.
3. Ahpra will aim to respond to the NHPO as set out below:

NHPO activity	Timeframe for Ahpra to respond
Early resolution transfer	Acknowledgement: 2 business days Response: 20 business days
Notice of preliminary inquiries	10 business days
Notice of commencement of investigation	10 business days
Notice of commencement of FOI review	10 business days
Request for further information during investigation or FOI review	10 business days
Consultation on proposed investigation outcome or preliminary view regarding FOI review	15 business days
Informal feedback provided at the closure of a complaint	30 business days
Formal comments and/or suggestions for improvement made at the conclusion of an investigation	30 business days

4. The NHPO and Ahpra agree that public holidays in all jurisdictions are recognised when calculating the expected timeframe for Ahpra to respond to the NHPO.
5. The NHPO recognises that Ahpra may require additional time to respond to requests or correspondence in certain circumstances, including where the matter is complex and involves time consuming tasks, or if a relevant Ahpra staff member is on leave. Where Ahpra is unable to provide a response by the expected date, it is agreed that Ahpra will contact the NHPO and agree a revised date.
6. The NHPO will aim to take steps in the timeframes set out below:

NHPO activity	Timeframe
Finalise complaint or FOI review	Approximately 3 to 6 months
Finalise complex complaint or FOI review	Approximately 9 to 12 months

Memorandum of Understanding between the NHPO and Ahpra

Provide update on ongoing complaint or FOI review	Every six weeks
---	-----------------

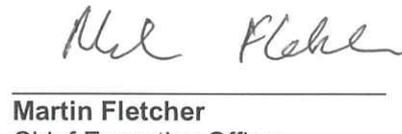
Signed by the National Health Practitioner Ombudsman and National Health Practitioner Privacy Commissioner


Richelle McCausland

Date: 1 DECEMBER 2023

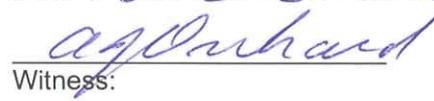

Witness:

Signed for the Australian Health Practitioner Regulation Agency


Martin Fletcher

Chief Executive Officer

Date: 1 DECEMBER 2023

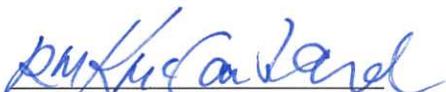

Witness:

Schedule 5

Information Publication Scheme

7. The *Freedom of Information Act 1982* (Cwlth) establishes the Information Publication Scheme (IPS). The IPS promotes accessibility to government information and requires Australian Government agencies to publish certain information, including operational information.
8. The Health Practitioner Regulation National Law Regulation 2018 requires Ahpra, the Ahpra Board and each National Board to participate in the IPS from 1 June 2019.
9. Ahpra must, in conjunction with the NHPO, complete a review of the operation (within Ahpra) of the IPS at least every five years.
10. The NHPO and Ahpra have agreed that the first review will be completed by 1 June 2024.

Signed by the National Health Practitioner
Ombudsman and National Health
Practitioner Privacy Commissioner


Richelle McCausland

Date: 1 DECEMBER 2023


Witness:

Signed for the Australian Health Practitioner
Regulation Agency


Martin Fletcher

Chief Executive Officer

Date: 1 DECEMBER 2023


Witness: