

MEMORANDUM OF UNDERSTANDING

IN RELATION TO INFORMATION SHARING BETWEEN THE NDIS QUALITY AND SAFEGUARDS COMMISSION AND THE AUSTRALIAN HEALTH PRACTITIONER REGULATION AGENCY

Between
The Commonwealth of Australia represented by the **NDIS Quality and Safeguards Commission (NDIS Commission)**

AND

The Australian Health Practitioner Regulation Agency (Ahpra)

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MEMORANDUM OF UNDERSTANDING

PARTIES

This MOU is made between the NDIS Commission and Ahpra. The contact details and functions of these entities is set out in the Details Schedule.

CONTEXT

This MOU is made in the following context:

- A. The NDIS Commission was established under section 181A of the *National Disability Insurance Scheme Act 2013* (**NDIS Act**) as an independent body responsible for regulating the providers of services and supports to people with a disability under the National Disability Insurance Scheme (**NDIS**). It works to improve the quality and safety of those services and supports, investigates associated complaints and incidents and takes action to promote and enforce NDIS providers' obligations under the NDIS Act and to strengthen their skills and knowledge relevant to those obligations.
- B. The functions and powers of the NDIS Commission are set out in the NDIS Act and the rules made under the NDIS Act, and include engaging in, promoting and coordinating the sharing of information to achieve the objects of the NDIS Act, and compliance monitoring and investigation functions relating to NDIS providers.
- C. The NDIS Commission is committed to working with Commonwealth entities, including those that may hold information or have an interest in information relevant to the performance of NDIS Commission functions to uphold the rights of, and promote the health, safety and wellbeing, of people with a disability. Ahpra is incorporated under the Health Practitioner Regulation National Law as in force in each state and territory (**National Law**). Ahpra has general responsibilities for administering the National Registration and Accreditation Scheme (**National Scheme**) under the National Law in conjunction with 15 National Boards established for the regulated health professions.
- D. The National Scheme aims to protect the public by ensuring that only suitably trained and qualified practitioners are registered. The National Scheme 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.

- E. Ahpra supports National Boards to make decisions in response to applications for registration and notifications (concerns) about the health, performance or conduct of registrants¹.
- F. Ahpra is also responsible for enforcing Part 7 of the National Law by investigating and prosecuting criminal offences.
- G. This MOU sets out a framework for the coordination of, and cooperation in, information sharing between the parties. This MOU reflects the parties' intention to maintain a proactive, open and collaborative relationship to assist each other perform their functions under relevant legislation.

1. Effect of this Memorandum of Understanding

1.1. MOU

- 1.1.1. This MOU comprises:
 - a. this document;
 - b. the Protocols; and
 - c. the Details Schedule.
- 1.1.2. The parties agree that this MOU is not intended to create legal obligations between them. However, the parties will act and cooperate in good faith in accordance with the terms of this MOU.
- 1.1.3. Nothing in this MOU seeks to displace or override the statutory and legal obligations of either party.
- 1.1.4. To the extent of any ambiguity or inconsistency between the three documents listed in clause 1.1.1, the document appearing higher in the list will have precedence to the extent of the ambiguity or inconsistency.

2. Interpretation

2.1. Definitions

- 2.1.1. Unless the contrary intention appears, a term in bold type has the meaning shown opposite it:

Accountable Authority has the meaning given in the *Public Governance, Performance and Accountability Act 2013* (Cth).

¹ Ahpra does not receive or administer notifications (complaints) about registered health practitioners in New South Wales. In Queensland, notifications (complaints) are first received by the Office of the Health Ombudsman and may then be referred to Ahpra and the relevant National Board.

Agency	means the Australian Health Practitioner Regulation Agency as listed at item 1 of the Details Schedule.
Authorised Officer	means, for a party, a person who is authorised to make information requests under this MOU, as specified in items 4 and 5 of the Details Schedule.
Contact Officer	for a party, means the person specified in the Details Schedule.
Details Schedule	means the Details Schedule attached to this MOU at Schedule 2.
Protocol	means the information sharing protocol annexed to this MOU at Schedule 1.

3. Term of this MOU

3.1. Term

- 3.1.1. This MOU commences on the date it is signed by the last party and continues unless it is terminated in accordance with clause 9.

4. Information sharing

- 4.1.1. The parties will, at all times:

- a. fully cooperate with each other to ensure timely progress and fulfilment of this MOU;
- b. act reasonably and in good faith with respect to matters that relate to this MOU;
- c. perform its responsibilities by the dates (if any) specified in this MOU and otherwise in a timely manner;
- d. work with each other in a collaborative manner; and
- e. comply with all laws applicable to them.

- 4.1.2. The parties will comply with the Protocol and any specific conditions in the Details Schedule.

5. Financial arrangements

5.1. Each party to bear own costs

- 5.1.1. Each party will be responsible for its own costs and expenses incurred in connection with information sharing obligations under this MOU and the Protocol.

6. Machinery of government changes

- 6.1.1. In this MOU, references to a party include, as relevant, any agency that is (or agencies that are), as a result of a machinery of government change or changes to the arrangements underpinning the National Registration and Accreditation Scheme (**NRAS**) for health professions, performing any relevant function or responsibility that is or was formerly performed at any relevant time by the relevant entity referred to in this MOU.

7. Claims or complaints

- 7.1.1. The parties agree to consult and cooperate with each other in the event of any complaint or claim made against a party relating to the use of information shared in accordance with this MOU.

8. Dispute resolution

8.1. Resolving disputes

- 8.1.1. Where a dispute arises between the parties regarding this MOU, the parties will make reasonable attempts to resolve the dispute at the Contact Officer level.
- 8.1.2. If a dispute cannot be resolved by the parties' Contact Officers, the dispute will be escalated to the Accountable Authority of each party, or to officers nominated by the Contact Officer for each party, for resolution.

9. Termination

- 9.1.1. Where a dispute cannot be resolved, either party may terminate this MOU by giving the other party written notice.
- 9.1.2. On termination of this MOU, the parties agree to:
- a. manage all information shared under this MOU in accordance with their obligations under law
 - b. continue to comply with the confidentiality and consultation requirements of this MOU (including those specified in the Protocol and Details Schedule) in relation to information received from the other party prior to termination of the MOU.

10. Variations

- 10.1.1. Subject to clauses ~~10.1.2 and 10.1.3~~ *MF.* and this MOU and Protocol may only be varied by the written agreement of the parties.
- 10.1.2. Either party may change its Contact Officer by giving written notice to the other party's Contact Officer.

11. Notices

11.1. Notices

11.1.1. Any notice in relation to this MOU is to be in writing and delivered to the Contact Officer specified in the Details Schedule.

11.2. When effective

11.2.1. A notice is deemed to be effected:

- a. *if delivered by hand* - upon delivery to the relevant address;
- b. *if sent by post* - upon delivery to the relevant address;
- c. *if transmitted electronically* - upon actual receipt by the addressee.

11.2.2. A notice received after 5.00 pm, or on a day that is not a business day in the place of receipt, is deemed to be effected on the next business day in that place.

12. Publication

12.1. The parties agree that this MOU may be made accessible to members of the community through publication or document release.

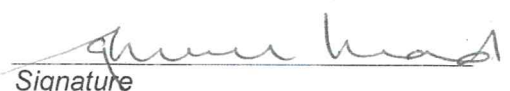
12.1.1. The names and contact details of officers of either party must be omitted or redacted from the MOU if it is made publicly accessible by a party.

SIGNED AS A MEMORANDUM OF UNDERSTANDING


SIGNATURES


SIGNED for and on behalf of the)
NDIS Quality and Safeguards)
Commission)
by:

Commissioner Graeme Head


Signature

In the presence of:


Melissa Ryan
^Name of witness^


Signature of witness


SIGNED for and on behalf of)
Australian Health Practitioner)
Regulation Agency by:)

MARTIN FLETCHER
Mr Martin Fletcher CEO


Signature

In the presence of:

SIMON SPENCE
^Name of witness^


Signature of witness

SCHEDULE 1: INFORMATION SHARING PROTOCOL

BACKGROUND

This Protocol has been established to support transparent and appropriate information sharing, with a focus on the shared objectives of the NDIS Commission and Ahpra.

The Protocol encourages sharing of data and information between the parties in order to discharge their respective roles and responsibilities and to support relevant two-way communication, particularly as it relates to matters that concern either party.

1. Responsibilities of parties

- 1.1. The parties mutually undertake to disclose information, where necessary and appropriate to do so, in accordance with applicable legislation and other legal, operational and policy considerations, to enable the parties to undertake their respective functions.
- 1.2. The parties will provide each other with assistance in relation to the exchange of information and the appropriate referral of matters in accordance with this Protocol and the Details Schedule and in a manner consistent with all relevant laws.
- 1.3. Information will only be shared to the extent that it is lawful.
- 1.4. The disclosing party is responsible for ensuring that the disclosure of the information by it to the recipient is lawful.
 - 1.4.1. The recipient is responsible for ensuring that its use of disclosed information, and any further disclosure of that information, is lawful.

2. Confidentiality and Privacy

- 2.1. Information sharing undertaken in accordance with this Protocol is subject to all applicable confidentiality, secrecy and privacy requirements under law, and in particular Part 2 of Chapter 4 of the *National Disability Insurance Scheme Act 2013*, section 216 of the Health Practitioner Regulation National Law as in force in each state and territory and the *Privacy Act 1988* (Cth).
- 2.2. All information received by a party under this Protocol will be treated as confidential, unless:
 - a. disclosure is authorised or required by law; or
 - b. where disclosure is required to be made to a Minister, House or Committee of Parliament in accordance with clause 2.2(b) of this Protocol the party complying with that request will notify the other party and take steps to

ensure that the recipient of the information understands that it is confidential.

- 2.3. The parties will ensure that the information exchanged or provided under this Protocol will only be used for the purposes specified in this Protocol and the Details Schedule.
- 2.4. Where the NDIS Commission provides information to Ahpra, the receiving entity will ensure that:
- a. it records the NDIS Commission as the source of the information;
 - b. the information is appropriately protected; and
 - c. policies are in place to ensure that access to the information is limited to persons who require the information to perform their lawful functions.
- 2.4.2. Where Ahpra provides information to the NDIS Commission, the NDIS Commission will ensure that access to the information will be limited to only those persons who require such information for the purpose of carrying out functions or exercising powers under the *National Disability Insurance Scheme Act 2013*.
- 2.5. The parties will comply with their obligations at law, including under the *Privacy Act 1988* (Cth), in relation to the collection, storage, security, use and disclosure of personal information.
- 2.6. If a party becomes aware of a breach or possible breach of:
- a. any of its confidentiality, secrecy or privacy obligations at law in relation to information shared under this Protocol; or
 - b. any of the terms of this Protocol,
- that party must immediately notify the other party and the parties will cooperate to resolve or mitigate the breach.

3. Subpoenas, Court Orders and other requests

- 3.1.1. If a party is served with a binding legal order or requirement to provide information to a third party (e.g. under a subpoena, warrant or notice, or Freedom of Information request), and that information was obtained from the other party under this Protocol, the first party will:
- a. notify the second party of the order or requirement as soon as practicable (unless legally compelled not to do so); and
 - b. to the extent practicable, consult with the second party as to how best to respond to the order or requirement (e.g. the second party may wish to intervene or assist the first party to object).

4. Information Verification

- 4.1.1. The parties will use their best endeavours to ensure the correctness and integrity of the information and material provided to the other party.
- 4.1.2. Each party will act upon or deal with information and material provided to it according to its own judgement and assessment of the information provided to it and at its own risk.
- 4.1.3. Should a party become aware that information that it has provided to the other party is inaccurate, incorrect or unreliable, where possible, it will inform the other party of the inaccuracy.

5. Information Exchange

5.1. Information Requests

- 5.1.1. Requests for information must be:
 - a. in writing;
 - b. signed by an authorised officer of the requesting party;
 - c. made for the purpose of the party's functions under the relevant legislation and carry a statement to that effect or otherwise specify the relevant purposes or functions for which the information is sought;
 - d. set out the information that is requested and how it will be used;
 - e. identify any individuals that are the subject of the request; and
 - f. forwarded to the relevant contact point as set out in the Details Schedule.

5.2. Disclosures

- 5.2.1. Having regard to the functions and powers of the Agency described in the Details Schedule, the NDIS Commission will disclose information to the Agency where it considers that disclosure of the information is:
 - a. necessary and appropriate;
 - b. permitted by law; and
 - c. consistent with the Objectives and purposes described in the Details Schedule.
- 5.2.2. Having regard to the functions and powers of the NDIS Commission described in the Details Schedule, the Agency will disclose information to the NDIS Commission where it considers that disclosure of the information is:
 - a. necessary and appropriate;
 - b. permitted by law; and

- c. consistent with the Objectives and purposes described in the Details Schedule.

5.2.3. At any time, a party may disclose information to the other party without a request having been made if it is satisfied that the disclosure may be made in accordance with applicable legislation.

5.3. Further disclosures

5.3.1. The recipient of information under this information sharing arrangement must not further disclose the information received from the other party unless that disclosure is required or permitted by law.

SCHEDULE 2: DETAILS SCHEDULE

1. Name of Agency	Australian Health Practitioner Regulation Agency
2. Agency's Contact Officer	Senior Legal Advisor, National Information Release Unit niru@ahpra.gov.au
3. NDIS Commission's Contact Officers	Chief Investigator Registrar Branch chief.investigator@ndiscommission.gov.au Director Compliance national.compliance@ndiscommission.gov.au
4. Authorised Officers who can sign information requests on behalf of the Agency	Officers performing functions under the Health Practitioner Regulation National Law in a manner consistent with Ahpra's delegations and authorisations framework
5. Authorised Officers who can sign information requests on behalf of the NDIS Commission	Officers performing functions as per Instrument of Delegations and authorisation within Directorates.

1. Objectives of information sharing arrangement

- 1.1. The objective of this arrangement is to facilitate the efficient and appropriate sharing of information between the parties where permitted by law and consistent with the Objectives and purposes described in this Details Schedule, with the overarching purpose being to promote the health, safety and wellbeing of people with a disability and access to safe and effective health care.

2. Functions and powers of NDIS Commission

- 2.1. The functions and powers of the NDIS Commission include:
- a. *Core functions*, including upholding the rights, safety and wellbeing of people with a disability receiving supports or services under the National Disability Insurance Scheme and developing a nationally consistent

approach to managing quality and safeguarding of supports and services for those people;

- b. *Registration and reportable incident functions*, including ensuring NDIS provider compliance with conditions of registration, and collecting, analysing and disseminating information relating to reportable incidents to identify trends and systemic issues;
- c. *Complaints functions*, including the investigation, management, conciliation and resolution of complaints made to the NDIS Commission, and collecting, analysing and disseminating information relating to complaints regarding the provision of services by NDIS providers.

2.2. The NDIS Commission is also responsible for engaging in, promoting and coordinating the sharing of information to achieve the objects of the *National Disability Insurance Scheme Act 2013*.

3. Functions and powers of Ahpra

3.1. Ahpra is incorporated under the Health Practitioner Regulation National Law as in force in each state and territory (**National Law**). Ahpra has general responsibilities for administering the National Registration and Accreditation Scheme (**National Scheme**) under the National Law in conjunction with 15 National Boards established for the regulated health professions.

3.2. The National Scheme aims to protect the public by ensuring that only suitably trained and qualified practitioners are registered. The National Scheme 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.

3.3. Ahpra supports National Boards to make decisions in response to applications for registration and notifications (concerns) about the health, performance or conduct of registrants.

3.4. Ahpra is also responsible for enforcing Part 7 of the National Law by investigating and prosecuting criminal offences.

4. Purposes for which information can be shared

4.1. The NDIS Commission will disclose to the Ahpra:

- a. information or reports that may assist in the investigation and resolution of alleged offenses against the National Law and concerns raised about the health, performance or conduct of registered health practitioners and students; and/or
- b. information which may be relevant in assisting Ahpra or a National Board to meet the objectives, or exercise a function of, the National Law.

4.2. Ahpra will disclose to the NDIS Commission:

- a. information or reports relating to the conduct of NDIS providers and workers that may assist the Commissioner's functions, including resolution of complaints, assessment of suitability of NDIS providers and key personnel and investigation into the conduct of NDIS providers and workers for breaches of the NDIS Code of Conduct or the NDIS Practice Standards.