



Australian Government



**Ahpra
& National
Boards**

MEMORANDUM OF UNDERSTANDING

Aged Care Quality and Safety Commission

and

Australian Health Practitioner Regulation Agency

1. PARTIES

This MOU is made between the following Parties (the Parties):

- 1.1 Aged Care Quality and Safety Commission (the Commission)
(ABN 80 246 994 451), having its principal address at Level 11, 101 George Street, Parramatta, New South Wales, 2150; and
- 1.2 Australian Health Practitioner Regulation Agency (Ahpra)
(ABN 78 685 433429), having its principal address at Level 8, 111 Bourke Street, Melbourne VIC 3000.

2. RECITALS

- 2.1 The Commission is an Australian Government statutory authority within the Health and Aged Care portfolio. The Commission is the national regulator of aged care services, and the primary point of contact for consumers and providers in relation to quality and safety in Commonwealth funded aged care.
- 2.2 The Commission operates independently and objectively in performing its functions and exercising its powers as set out in the *Aged Care Quality and Safety Commission Act 2018* (Commission Act) and the *Aged Care Quality and Safety Rules 2018* (the Rules) to protect and enhance the safety, health, well-being and quality of life of aged care consumers who receive care and services provided by Commonwealth funded aged care providers.
- 2.3 Ahpra is incorporated under the Health Practitioner Regulation National Law (National Law) as in force in each State and Territory. Ahpra has general responsibility for administering the National Registration and Accreditation Scheme (National Scheme) under the National Law in conjunction with 15 National Boards established for the regulated Health Professions.
- 2.4 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. 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,
- 2.5 Ahpra is also responsible for enforcing breaches of the offences against the National Law. Persons who breach the Offence Provisions of the National Law can be investigated and prosecuted.

3. OPERATIVE PROVISIONS

This MOU records the mutually agreed understanding between the Parties, as follows:

4. PURPOSE AND SCOPE OF THIS MOU

4.1 Purpose

4.1.1 This is a non-binding MOU, established by the Parties to serve as a framework within which the Parties can jointly explore and work towards the purpose of this MOU.

4.1.2 This MOU has been established for the purpose of prompting a coordinated and cooperative relationship between the Parties through sharing information, in a way that is consistent with all relevant laws, to discharge their respective functions.

4.2 Non-binding nature of this MOU

4.2.1 This MOU does not establish any contract or agreement and does not create any legally valid, enforceable, or binding commitments, agreements, or obligations of any kind between the parties.

4.2.2 This MOU is not an offer and is not intended to, and does not, create any offer capable of being accepted or deemed accepted.

4.3 Scope

4.3.1 The scope and framework for cooperation and action between the Parties under this MOU is specified in Schedule 1 to this MOU.

5. TERM OF THIS MOU AND TERMINATION

5.1 Commencement

5.1.1 The MOU commences on the date the last Party signed this document and will continue until it is either superseded by a subsequent MOU made between the Parties or it is terminated.

5.2 Termination by notice

5.2.1 This MOU may be terminated at any time by either Party by giving the other Party thirty (30) days written notice.

5.2.2 Termination should, whenever possible, only occur after prior consultation with the other Party.

6. MOU ADMINISTRATION

6.1 The Parties will act in good faith and cooperate with each other in the performance of this MOU. The Parties will raise and discuss any issues that could affect the other Party in a prompt, open and honest way.

6.2 Each Party will use its best endeavours to:

- Provide the other Party with any information that the other Party may reasonably require to undertake the actions set out in this MOU.

- Ensure that any information provided to the other Party under this MOU is accurate, current, complete (and as soon as possible after becoming aware that any information is not accurate, current, complete or correct, advise the other Party of the deficiency in the information), and
- Ensure that its officers responsible for the administration and implementation of this MOU have the appropriate authority to give effect to the arrangements contained in those documents.

6.3 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.

7. REVIEW AND AMENDMENT

7.1 The Parties intend to review this MOU as follows:

- every two years from the commencement date of this MOU, or
- if circumstances such as legislative amendment, machinery of government changes or other matters require the MOU to be reviewed or amended.

7.2 Any amendments to this MOU must be made in writing and signed by persons holding the equivalent offices of the original signatories.

8. STRUCTURE OF THE MOU

8.1 This MOU comprises:

- this document; and
- the Schedule/s

8.2 The terms of this document will prevail to the extent of any inconsistency with the terms of a Schedule.

9. SCHEDULES

9.1 The Parties may establish a Schedule to this MOU by amending the MOU as set out in clause 7.2.

9.2 Schedules under this MOU will be numbered sequentially as Schedule 1, 2, 3 etc.

9.3 Each Schedule under this MOU will commence on the date of the last signature of that Schedule.

9.4 A Schedule to this MOU will continue in effect until:

- 9.4.1 the end date specified in the Schedule (if specified); or
- 9.4.2 the date the Schedule or the MOU is terminated.

9.5 A Schedule may be terminated or amended through the procedures set out in clauses 5 and 7.

10. EFFECT OF MACHINERY OF GOVERNMENT CHANGES

- 10.1 In this MOU, references to the parties are to be interpreted as including any entity that is (or entities that are), as a result of a machinery of government change, performing any relevant function or responsibility that is or was formerly performed at any relevant time by the parties referred to in this MOU.
- 10.2 In the event of a machinery of government change affecting either Party, the terms of the MOU will be reviewed as soon as possible to determine the need for changes to, or termination of, the MOU.

11. PRIVACY

- 11.1 Nothing in this MOU derogates from any obligation which either Party may have either under the Australian *Privacy Act 1988* (Cth) (Privacy Act) or any other law (including the Commission Act and the National Law) in relation to privacy or protection of personal information (including sensitive information) as amended from time to time.
- 11.2 The Parties will take reasonable steps to ensure access to information shared under this MOU is limited to those persons who require such information for the purpose of carrying out statutory functions or exercising powers under the Commission Act or the National Law.

12. DATA BREACH

- 12.1 In addition to obligations each Party has under the Privacy Act, if a Party becomes aware of a data breach it will notify the other Party as soon as practicable if the breach involves information collected from the other Party.
- 12.2 A notification under clause 13.1 should occur even if a data breach is not subject to notification requirements under the Privacy Act (e.g. a data breach is found not to be an 'eligible data breach' under the Privacy Act).

13. THIRD PARTY COMPLAINTS

- 13.1 If a Party receives a complaint from a third party in relation to a data breach or other information-related issue, that affects or is about the other Party to the MOU or information the other Party has provided, the first Party will notify the other Party as soon as practicable.

14. SUBPOENAS and COURT ORDERS

- 14.1 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), and that information was obtained from the other Party under this MOU, the first Party will:
- notify the other Party of the order or requirement as soon as practicable (unless legally compelled not to do so); and
 - to the extent 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 first Party to object).

15. DISPUTE RESOLUTION

- 15.1 Where a dispute arises between the parties arising from the operation of this MOU, the parties will make reasonable attempts to resolve the dispute at the Contact Officer level. Contact Officers are specified in Schedule 1.
- 15.2 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 Authorised Officer for each Party, for resolution.
- 15.3 Where the dispute cannot be resolved, either party may terminate the MOU through the procedure set out in clause 5.


16. NOTICES

- 16.1 Any notice in writing pursuant to this MOU is to be given to the Contact Officers specified in the Schedule 1 or such other person as is specified in writing to the other Party.

17. ENTIRE UNDERSTANDING

- 17.1 The MOU sets out the entire understanding and intention of the Parties and supersedes all prior or contemporaneous agreements, discussions, communications and representations, whether written, oral, or otherwise, of the Parties with respect to the subject(s) of this MOU.
- 17.2 The Parties acknowledge that as of the date hereof, no binding contracts, agreements or commitments exist between the Parties with respect to the subject(s) of this MOU.

Signed by the Commissioner of the **Aged Care Quality and Safety Commission**
in the presence of:

DocuSigned by:

ADA89860FB5A432
Signature of Janet Anderson PSM


DocuSigned by:

814C357DEBEE496
Signature of witness

21/8/2023 | 11:25 AEST
Date: _____

Signed by the Chief Executive Officer of the **Australian Health Practitioner Regulation Agency** in the Presence of:


Signature of Martin Fletcher


Signature of witness

Date: 28 September 2023

SCHEDULE 1: INFORMATION SHARING

1.0 Purpose

- 1.1 The Aged Care Quality and Safety Commission (Commission) and the Australian Health Practitioner Regulation Agency (Ahpra) are committed to supporting the achievement of the Parties' respective statutory objectives and the exercise of their functions.
- 1.2 The Parties recognise that the lawful sharing of information with each other is important in promoting the achievement of their respective statutory objectives. This includes the shared objective of protecting the public from harm through occupation and industry regulation in the health and aged care sectors.
- 1.3 This Schedule sets out arrangements for the sharing of information between the Parties.

2.0 Objectives

- 2.1 This Schedule aims to:
 - 2.1.1 promote a close and cooperative regulatory relationship between the Parties that is underpinned by the timely and lawful sharing of information;
 - 2.1.2 set out arrangements for making and responding to requests for access to information between the Parties; and
 - 2.1.3 encourage ongoing coordination and liaison in relation to regulatory matters in which both Parties maintain an interest.

3.0 Purposes for which information can be shared

- 3.1 Ahpra and the Commission both promote public safety through the provision of regulatory services.
- 3.2 Ahpra works with National Boards under the Health Practitioner Regulation National Law to regulate 16 health professions in Australia and have functions relating to registered health practitioners.
- 3.3 The Commission regulates the provision of aged care services. Aged care services are often provided by, or in conjunction with, a registered health practitioner.
- 3.4 The Parties recognise that situations will arise in which both entities have a regulatory interest. The information collected by one Party may be of assistance to the other in the efficient and effective resolution of regulatory concerns.
- 3.5 The Parties agree to work together to support their respective regulatory functions through the timely and lawful sharing of information.
- 3.6 A Party to this Schedule will notify the other Party of any information that indicates that an aged care or health service consumer or the broader community may be at significant risk of harm as a result of a regulated person's health, performance and/or conduct.

Example: Where information has been received that a registered health practitioner may have engaged in behaviour satisfying a ground for a mandatory notification within the meaning of the National Law. This includes where a registered health practitioner may have engaged in sexual misconduct, practised while intoxicated, experience a health condition or disability that seriously impacts on their ability to practice safely and where a person may have practiced a profession in a way that constitutes a significant departure from acceptable professional standards or may pose a serious risk to patients.

Example: Where information has been received that indicates that a regulated aged care worker may pose a serious or immediate risk to aged care consumers.

- 3.7 The Parties agree, wherever possible, to liaise with each other and share information to promote the effective and timely resolution of matters where an aged care worker may have contravened a relevant industry code of conduct or statutory provision.

4.0 Sharing information

- 4.1 A Party may request access to information by writing to the other Party. An information access request should:
- (i) clearly set out the scope of the information sought,
 - (ii) include an explanation of how the requested information will assist in the performance of a statutory function,
 - (iii) any law under which the request is made, and
 - (iv) be forwarded to the nominated Contact Officer. This may be a person nominated for the purpose of liaison in relation to a particular file or issue or a general contact set out at section 5 of this Schedule.
- 4.2 If a Party is concerned that it may not be able to meet a request for access to information then it will discuss this with the person who has made the request on behalf of the other Party and provide an explanation. Wherever possible, a Party will support the other to reframe a request into a form that supports the disclosure of information.
- 4.3 The Parties will make reasonable provision for sharing information about regulatory outcomes. This may include issuing statutory notices informing the other Party about regulatory action taken or drawing a Parties attention to existing information sharing services (e.g. Ahpra's Practitioner Information Exchange (PIE) service).
- 4.4 Compliance with clause 4.3 does not affect a Parties ability to seek reimbursement of its costs or to impose a fee in relation to access to an information service. Where legislation permits, but does not require, production of information, a Party will disclose the information unless an objection is raised.

5.0 Sharing data

- 5.1 Nothing in this Schedule provides for the routine sharing of bulk data sets.
- 5.2 The Parties will reflect any agreement to routinely share datasets by establishing a separate Schedule to this MOU or another agreement.

6.0 Storage, management and use of disclosed information

- 6.1 The Parties will store, use and disclose information in a manner that is compliant with their respective legal obligations.
- 6.2 The Parties will store disclosed information securely and take reasonable steps to prevent unauthorised access.
- 6.3 The Parties will notify each other of occasions where disclosed information is used for a purpose other than that for which it was collected.

Example: Where a Party is required to disclose information received from the other Party to comply with a third-party subpoena or compulsive notice.

6.4 However, a Party is not required to make a notification under clause 6.3 if the notification would be inconsistent with a legal obligation or otherwise not in the public interest.

7.0 Contact points

1	Commission Contact Officers and Delegates who can sign information requests and approve information releases to Ahpra on behalf of the Commission	Officers in the Code Team section Director code@agedcarequality.gov.au
2	Requests for access to information may be made to Ahpra via the National Information Release Unit (NIRU) unless a matter specific contact point has been advised.	The Proper Officer Australian Health Practitioner Regulation Agency niru@ahpra.gov.au