

**MEMORANDUM OF UNDERSTANDING**

**ARRANGEMENTS FOR REGULATORY COOPERATION AND INFORMATION  
SHARING**

Between

**The Tasmanian Department of Health**

**AND**

**The Australian Health Practitioner Regulation Agency (Ahpra)**

## MEMORANDUM OF UNDERSTANDING

### PARTIES

This Memorandum of Understanding (MOU) is made between the Tasmanian Department of Health (the Department) and Australian Health Practitioner Regulation Agency (Ahpra) (the Parties). The contact details and functions of the Parties is set out in the Details Schedule.

### CONTEXT

This MOU is made in the following context:

- A. The Department is established under the *State Service Act 2000* as an agency of the Government of Tasmania and, under the *Administrative Arrangements Act 1990*, assigned the administrative responsibilities of assisting the Minister for Health and the Minister for Mental Health to perform their portfolio responsibilities with the purpose of ensuring the health of Tasmanians and persons seeking health services in Tasmania.
  
- B. To achieve this purpose, the statutory functions and powers of the Department include the administration and, in relation to ensuring their effectiveness in meeting the purpose of the Department, monitoring of:
  - a. *Ambulance Service Act 1982* to ensure that effective ambulance services are provided throughout the State;
  - b. *End-of-Life Choices (Voluntary Assisted Dying) Act 2021* to ensure the safe access to, and effective and robust provision of, lawful voluntary assisted dying for eligible persons;
  - c. *Health Act 1997* to provide for the assessment and evaluation of the quality of health services provided in Tasmania, including the review of the clinical practices or clinical competence of persons providing those services;
  - d. *Health Practitioner Regulation National Law (Tasmania) Act 2010* to ensure that health practitioners registered under the National Law are appropriately regulated;
  - e. *Health Service Establishments Act 2006* to ensure the quality and safety of services provided at private health establishments and that services are effectively provided, and meet the needs of Tasmanians, in accordance with clinical practice guidelines;
  - f. *Poisons Act 1971* to implement controls relating to the quality, safety, efficacy and timely availability of certain poisons and medicines by registered health practitioners, and to provide for the safe administration of research, cultivation, manufacture, or refinement of certain poisons and medicines;
  - g. *Public Health Act 1997* to ensure the protection, promotion, and improvement of public health in Tasmania; and

- h. *State Service Act 2000* to ensure the accountability, fairness, and effective performance of the Tasmanian State Service in accordance with the State Service Principles and Code of Conduct.
- C. A key function of the Department is to provide safe, high quality, consumer centred care for Tasmanians.
- D. Any information sought or received by the Department under this MOU will relate to the purpose of the Department, and its commitment to supporting the Tasmanian Government in promoting public safety, and may relate to one or more statutory functions and powers.
- E. 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.
- F. 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.
- G. Ahpra supports National Boards to make decisions in response to applications for registration and notifications (concerns) about the health, performance or conduct of registrants<sup>1</sup>.
- H. Ahpra is also responsible for enforcing Part 7 of the National Law by investigating and prosecuting criminal offences.
- I. 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.

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<sup>1</sup> 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.

## 1. Effect of this Memorandum of Understanding

### 1.1. MOU

#### 1.1.1. This MOU comprises:

- a. this document;
- b. the Information Sharing Protocol – attached at Schedule 1; and
- c. the Details Schedule – Schedule 2.

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:

<b>Department</b>	means the Tasmanian Department of Health.
<b>Department employee</b>	means a health practitioner employed by the Department of Health and/or working within a public health service within Tasmania.
<b>Ahpra</b>	means the Australian Health Practitioner Regulation Agency.
<b>Contact Officer</b>	for a party, means the person specified in the Details Schedule at Schedule 2.
<b>Details Schedule</b>	means the Details Schedule attached to this MOU at Schedule 2.
<b>Joint operations</b>	means activities the Parties may agree to undertake from time to time to promote effective regulatory oversight of the public sector health workforce registered under the National Scheme.
<b>Practice information</b>	means practice information as defined in section 132 of the National Law.
<b>Protocol</b>	means the Information Sharing Protocol attached to this MOU at Schedule 1.

**Public sector health service** means the Tasmanian Health Service.

**Registered health practitioner** means a person holding registration under the Health Practitioner Regulation National Law.

### **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 10.

### **4. Information sharing**

#### **4.1.1. The Parties will:**

- a. 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 to promote the achievement of statutory objectives and the public interest;
- e. comply with all laws applicable to them; and
- f. share information that may assist the other party to perform its functions to the extent authorised or required by law.

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

### **5. Joint operations**

#### **5.1. Parties will work together to promote public sector workforce accountability**

5.1.1. To the extent permitted by their respective legislation, the Parties may take part in joint operations from time to time to coordinate and promote the effective regulatory oversight of registered health practitioners working in the public sector in Tasmania.

5.1.2. When the Parties take part in a joint operation, the nature and scope of the joint operation must be agreed in writing, and should focus on:

- a. promoting public awareness in Tasmania about complaints mechanisms relating to the health, performance and conduct of registered health practitioners;
- b. training people working within public sector health services about voluntary and mandatory reporting obligations in Tasmania; and
- c. publishing and distributing information resources about professional obligations to registered health practitioners working in the Tasmania public sector.

### **6. Financial arrangements**

#### **6.1. Each party to bear own costs**

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

## **7. Machinery of government changes**

7.1.1. 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.

## **8. Claims or complaints**

8.1.1. 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.

## **9. Dispute resolution**

### **9.1. Resolving disputes**

9.1.1. 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.

9.1.2. 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.

## **10. Termination**

10.1.1. Either party may terminate this MOU by giving the other party written notice.

10.1.2. On termination of this MOU, the Parties agree to:

- a. manage all information shared under this MOU in accordance with their obligations under law; and
- 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.

## **11. Variations**

11.1.1. Subject to clauses 11.1.3 and 11.1.4, this MOU and any attached Schedules may only be varied by the written agreement of the Parties.

11.1.2. To remove any doubt, a variation to this agreement may include the development of new Schedules which will form part of this MOU.

11.1.3. The Parties may vary the Protocol by giving written notice to the other Party's Contact Officer.

11.1.4. Either party may change its Contact Officer by giving written notice to the other party's Contact Officer.

## **12. Notices**

### **12.1. Notices**

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

### **12.2. When effective**

12.2.1. 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.

12.2.2. 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.

**13. Publication**

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

**14. Review**

- 14.1. The Parties agree that they will review the operation of this MOU and, in particular, the Information Sharing Protocol every 12 months or as otherwise agreed by the Parties to ensure that it remains appropriate for the effective sharing of information.

**SIGNED AS A MEMORANDUM OF UNDERSTANDING**

**SIGNATURES**

SIGNED for and on behalf of the )  
Department by: )

Kathrine Morgan-Wicks, Secretary  
^Name of signatory^

  
Signature

In the presence of:

  
^Name of witness^

  
Signature of witness

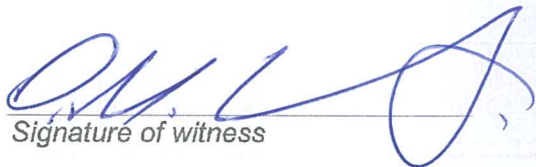
SIGNED for and on behalf of the )  
Australian Health Practitioner )  
Regulation Agency by: )

Martin Fletcher, CEO  
^Name of signatory^

  
Signature

In the presence of:

  
^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 Ahpra and the Tasmanian Department of Health.

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, 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, 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.
- 2.4. Where the Department provides information to Ahpra, Ahpra will ensure that:

- a. it records the Department 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.
- 2.4.1. Where Ahpra provides information to the Department, the Department will ensure that access to the information will be limited to only those persons who require such information for the purpose of carrying out the statutory functions or exercising the powers of the Department, whether directly or indirectly.
- 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 or Right to 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. Either party may request information from the other. 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 by the Department

- 5.2.1. Registered practitioners employed by the Department have a statutory obligation to make a mandatory notification under the National Law in respect of the health, performance or conduct of another practitioner in certain situations. Provision of information by the Department to Ahpra does not relieve such registered practitioners of their statutory obligations of disclosure.
- 5.2.2. The Department will proactively release information to Ahpra when it becomes aware of information that may be relevant to the exercise of Ahpra's statutory functions. Specifically, if the Department becomes aware of any information in respect of the health, performance or conduct of a registered practitioner (whether a Department employee or not) that may give rise to a serious risk to the public or the safety of patients, the Department will release such information to Ahpra as soon as practicable.

## 5.3. Disclosures by Ahpra

- 5.3.1. Ahpra will release information to the Department in the circumstances set out in the table below, if Ahpra is aware that the person to whom the information relates is a Department employee (where relevant) and when the threshold requirements for the particular release are met:

Type of information	To whom the information will be disclosed	When the information will be shared
1. Where, following preliminary assessment by Ahpra, a notification relating to an alleged boundary violation by a person known to be, or a person reasonably believed to be, a Department employee is referred for further investigation.	The Statewide Complaints Management Oversight Unit.	As soon as practicable once referral is made or, where practice information is relied on to form the threshold belief, as soon as practicable once relevant information is obtained.

<p>Ahpra will release the information if practice information has been received, or if Ahpra:</p> <ul style="list-style-type: none"> <li>• reasonably believes that person to be a Department employee; and/or</li> <li>• considers that either there is a public health risk or the health and safety of a patient or patients is at risk due to a registered health practitioner, or other person providing or purporting to provide a health service, and that the Department may be required to take action in relation to that risk; and/or</li> <li>• considers that the provision of the information to the Department is necessary to enable the Department to exercise its functions.</li> </ul> <p>Despite one or more of the above thresholds applying, in extraordinary circumstances Ahpra may still decide to delay release of the information to the Department, if Ahpra believes that the release of the information to the Department will result in a greater risk to the public than not releasing the information.</p>		
<p>2. If a National Board decides that regulatory action is to be taken in respect of a person known, or reasonably believed to be, a Department employee arising out of an alleged boundary violation - details of that action, including any immediate actions (such as suspension of the health practitioner or the placement of conditions on the health practitioners practice).</p>	<p>The Statewide Complaints Management Oversight Unit.</p>	<p>As soon as practicable once decision to take regulatory action is reached.</p>
<p><b>Threshold requirements</b></p> <p>Ahpra will release any regulatory information to the Department as soon as practicable once a decision to take regulatory action is made.</p>		
<p>3. Where a notification relating to an alleged boundary violation by a person known, or reasonably believed to be, a Department employee is referred for further investigation, and further information is obtained by Ahpra or the National Board that the Department should be aware of in order to perform its function to provide safe and high quality care.</p>	<p>The Statewide Complaints Management Oversight Unit.</p>	<p>As soon as practicable once relevant information is obtained.</p>
<p><b>Threshold requirements</b></p>		

<p>Ahpra will release the information if practice information has been received, or if Ahpra:</p> <ul style="list-style-type: none"> <li>• reasonably believes the person is a Department employee; and/or</li> <li>• considers that either there is a public health risk or the health and safety of a patient or patients is at risk due to a registered health practitioner, or other person providing or purporting to provide a health service, and that the Department may be required to take action in relation to the risk; and/or</li> <li>• considers that the provision of the information to the Department is necessary to enable the Department to exercise its functions.</li> </ul>		
<p>4. The outcome of any investigation of a notification relating to an alleged boundary violation by a Department employee or a person who is reasonably suspected to be a Department employee.</p>	<p>The Statewide Complaints Management Oversight Unit.</p>	<p>As soon as practicable once outcome of investigation is reached.</p>
<p><b>Ahpra ability to share information</b></p> <p>Ahpra will release the information if practice information has been received or if Ahpra:</p> <ul style="list-style-type: none"> <li>• reasonably believes that person is a Department employee; and/or</li> <li>• considers that either there is a public health risk or the health and safety of a patient or patients is at risk due to a registered health practitioner, or other person providing or purporting to provide a health service, and that the Department may be required to take action in relation to the risk; and/or</li> <li>• considers that the provision of the information to the Department is necessary to enable the Department to exercise its functions.</li> </ul>		

5.3.2. Ahpra will also release information to the Department if:

5.3.2.1. the information is relevant to the performance of the Department's responsibilities and functions;

5.3.2.2. Ahpra forms a reasonable belief that such release is necessary to protect the public; and

5.3.2.3. the release of the information is lawful.

**SCHEDULE 2: DETAILS**

Ahpra Contact Officer	Senior Legal Advisor, National Information Release Unit <a href="mailto:niru@ahpra.gov.au">niru@ahpra.gov.au</a>
Department's Contact Officers	Manager, Statewide Complaints Management Oversight Unit <a href="mailto:doh.complaints@health.tas.gov.au">doh.complaints@health.tas.gov.au</a> (03) 61662374
Accountable Authority on behalf of Ahpra	The Chief Executive Officer of Ahpra.
Accountable Authority on behalf of the Department	The Secretary of the Tasmanian Government Department of Health.

