

**MEMORANDUM OF UNDERSTANDING
AUSTRALIAN HEALTH PRACTITIONER REGULATION AGENCY
AND HEALTH COMPLAINTS ENTITIES**

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**MEMORANDUM OF UNDERSTANDING
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AND
HEALTH COMPLAINTS ENTITIES**

Parties

This Memorandum of Understanding (MOU) is made between the Australian Health Practitioner Regulation Agency (the National Agency) and the following health complaints entities (HCEs)¹:

- the Health Services Commissioner of the Australian Capital Territory, established by the *Human Rights Commission Act 2005* (ACT)
- the Health Quality and Complaints Commission of Queensland, established by the *Health Quality and Complaints Commission Act 2006* (Qld)
- the Commissioner for Health and Community Services Complaints of the Northern Territory, established by the *Health and Community Services Complaints Act 1998* (NT)
- the Health and Community Services Complaints Commissioner of South Australia, established by the *Health and Community Services Complaints Act 2004* (SA)
- the Health Complaints Commissioner for Tasmania, established by the *Health Complaints Act 1995* (Tas)
- the Health Services Commissioner for Victoria, established by the *Health Services (Conciliation and Review) Act 1987* (Vic)
- the Director of the Office of Health Review of Western Australia, established by the *Health Services (Conciliation and Review) Act 1995* (WA).

¹ The health complaints entity for NSW, the Health Care Complaints Commission, is not a party to the MOU because Part 8 of the National Law does not apply in NSW. (As stated in clause 1.1, the purpose of the MOU is to facilitate the operation of Division 5 of Part 8 of the National Law.) A reference in this MOU to an HCE or to HCEs does not therefore include the health complaints entity in NSW.

1. Purpose

- 1.1. The purpose of this MOU is to outline the respective roles and responsibilities of the National Agency and the HCEs, and the relationship between them, in order to facilitate the operation of Division 5 of Part 8 (particularly sections 149 and 150) of the *Health Practitioner Regulation National Law Act 2009* (Qld) (the National Law).
- 1.2. The MOU sets out procedures and working arrangements agreed between the National Agency and the HCEs to achieve timeliness and consistency in relation to:
 - a) notifying each other about the receipt of complaints and notifications;
 - b) consultation about the future management of a complaint or notification; and
 - c) the sharing of information.
- 1.3. Nothing in the MOU is intended to:
 - a) create any binding rights, powers, duties, liabilities or obligations;
 - b) waive, fetter, limit or affect the rights, powers, duties, liabilities or obligations of the parties; or
 - c) affect the due and proper performance of the statutory functions of any party, or their ability to comply with any applicable statutory requirements or common law obligations.
- 1.4. In the MOU, unless the contrary appears -
 - (a) a notification means a notification within the meaning of the National Law, and includes part of a notification; and
 - (b) a complaint means a complaint made to an HCE under the law of the State or Territory in which the HCE is established, and includes part of a complaint.

2. Roles and Responsibilities under the National Law

2.1 The National Boards for each profession

2.1.1 Australia is adopting a national scheme for the registration and accreditation of health professionals, through the adoption of the National Law by all States and Territories. A National Board has been established for each of the health professions. From 1 July 2010, the scheme will initially apply to:

Profession	Board
Chiropractic	Chiropractic Board of Australia
Dental ²	Dental Board of Australia
Medical	Medical Board of Australia
Nursing & Midwifery	Nursing and Midwifery Board of Australia
Optometry	Optometry Board of Australia
Osteopathy	Osteopathy Board of Australia
Pharmacy	Pharmacy Board of Australia
Physiotherapy	Physiotherapy Board of Australia
Podiatry	Podiatry Board of Australia
Psychology	Psychology Board of Australia

2.2 Role and responsibilities of the National Agency

2.2.1. The National Law establishes the National Agency. Its functions include -

- (a) providing administrative assistance and support to the National Boards, and the Boards' committees, in exercising their functions - section 25(a); and
- (b) establishing an efficient procedure for receiving and dealing with notifications against persons who are or were registered health practitioners and persons who are students - section 25(i).

² Covering dentists, dental therapists, dental hygienists, dental prosthetists and oral health therapists

2.3 Role and responsibilities of the National Boards

2.3.1 The responsibilities of a National Board under the National Law relate to the health, conduct and performance of registered health practitioners and students who fall within their jurisdiction, and to the maintenance of professional standards in the relevant profession.

2.3.2 The functions of a National Board include:

- (a) registering suitably qualified and competent persons in the health profession and, if necessary, imposing conditions on the registration of persons in the profession - section 35(a);
- (b) establishing panels to conduct hearings about health and performance and professional standards matters in relation to persons who are or were registered in the health profession; and health matters in relation to students registered by the Board - section 35(h);
- (c) referring matters about health practitioners who are or were registered to responsible tribunals for participating jurisdictions - section 35(i);
- (d) overseeing the management of health practitioners and students registered in the health profession, including monitoring conditions, undertakings and suspensions imposed on the registration of the practitioners or students - section 35(j).

2.3.3 The actions open to a National Board under Part 8³ of the National Law in relation to a notification or complaint include:

- (a) immediate action against the registered health practitioner or student, under Division 7 of the Part;
- (b) investigation of the health practitioner or student under Division 8⁴;
- (c) the imposition of a requirement under Division 9 that the health practitioner or student undergo a health assessment or performance assessment;
- (d) the taking of action under Division 10 with respect to the health practitioner or student;

³ Part 8 does not apply in NSW as the National Law as applied in that State leaves regulatory functions with the State's HCE. This is why the HCE in NSW is not a party to this MOU.

⁴ Part 8 has been modified in the ACT to maintain the role of the HCE in investigating health practitioner matters.

- (e) the establishment under Division 11 of a health panel or a performance and professional standards panel, to conduct a hearing into issues relating to the health practitioner or student; and
- (f) the referral of a matter relating to a health practitioner or student to a responsible tribunal, under Division 12.

2.4 Delegated Authority to National Agency

2.4.1 The functions of each of the National Boards under Division 5 of Part 8 of the National Law (which includes sections 149 and 150) has been:

- (a) delegated by each of the National Boards to the National Agency, and to members of staff of the National Agency - section 37(1); and
- (b) subdelegated by the National Agency to members of staff - section 37(2).

2.5 Role and responsibilities of HCEs

2.5.1 The functions of an HCE are imposed by the laws of the State or Territory in which the HCE is established, and generally include:

- (a) the resolution of health complaints, by conciliation or otherwise;
- (b) investigating, in response to a complaint or on the HCE's own motion, systemic issues arising in relation to the provision of health services; and
- (c) seeking to promote improved safety and quality in the delivery of health services.⁵

2.5.2 The functions of an HCE may also extend to unregistered health practitioners.

2.5.3 The processes followed by HCEs may lead to the payment of compensation without recourse to litigation.

2.5.4 HCEs are required by law to conduct an assessment of a complaint, within a limited period of time, in order to determine how the complaint

⁵ In the ACT, the HCE also investigates health practitioners.

is best handled. Possible options open to an HCE at this stage include:

- (a) to take no further action;
- (b) to seek to negotiate a resolution;
- (c) to conciliate;
- (d) to investigate;
- (e) to refer the matter to the relevant Board or to another entity which has power to deal with the matter; or
- (f) a combination of all or any of these options.

3. Sections 149 and 150 of the National Law

3.1 Under section 149 of the National Law, a National Board has up to 60 days from receipt of a notification to conduct a preliminary assessment of the notification and decide:

- (a) whether or not the notification relates to a person who is a health practitioner or a student registered by the Board; and
- (b) whether or not the notification relates to a matter that is a ground for notification; and
- (c) if the notification is a notification referred to in paragraphs (a) and (b), whether or not it is a notification that could also be made to an HCE.

3.2 Section 150 of the National Law governs the relationship between a National Board and an HCE in relation to -

- (a) a notification received by a National Board which would also provide ground for a complaint to the HCE; and
- (b) a complaint received by an HCE about a health practitioner who falls within the jurisdiction of the National Board -

and establishes procedures to be followed in this regard.

3.3 Section 150 in part addresses the question of whether a notification or complaint will be dealt with by the National Board or an HCE. There are two possible outcomes -

- (a) that the matter is resolved by agreement - section 150(3); and
- (b) that agreement is not possible, with the result that the most serious action proposed by either must be taken - section 150(4).

3.4 It will frequently be necessary for the purposes of section 150 to divide or split a notification or complaint into separate parts, treating each part differently. This might happen where a notification or complaint -

- (a) deals with more than one subject matter;
- (b) deals with more than one set of circumstances;
- (c) makes more than one allegation against a health practitioner;
- (d) makes allegations against more than one health practitioner or facility; or

(e) for any other reason is susceptible to being dealt with in separate parts.

3.5 A copy of sections 149 and 150 is attached to this MOU, as Schedule 1.⁶

⁶ A modified form of s 150 is in force in the ACT.

4. Contacts

- 4.1 For the purposes of the application of Division 5 of Part 8 of the National Law and this MOU:
- (a) communications with the National Agency should, in the absence of contrary agreement, be directed to the Director of Notifications in the relevant State or Territory Office of the National Agency;
 - (b) communications with an HCE should, in the absence of contrary agreement, be directed to the HCE or to the senior manager with the HCE who is responsible for the assessment of complaints made to the HCE;
 - (c) communications may be by email or other electronic communication.
- 4.2 The National Agency will make sure that each HCE is kept informed of the name and contact details of the Director of Notifications in each State or Territory Office of the National Agency.
- 4.3 Each HCE will make sure that the National Agency is kept informed of the name and contact details of the senior manager with the HCE who is responsible for the assessment of complaints made to the HCE.

5. Agreed procedures

5.1 Timeframes

- 5.1.1 The National Agency is required by section 149 of the National Law to determine within 60 days of receiving a notification whether a notification is also within the jurisdiction of an HCE. (In the ACT all notifications are within the jurisdiction of the HCE so will be forwarded to the HCE.)
- 5.1.2 The National Agency and the HCEs have a statutory obligation under sections 150(1) and 150(2) of the National Law to notify each other as soon as practicable of the receipt of, respectively, a notification or complaint.
- 5.1.3 In the case of a complaint made to an HCE and notified to the National Agency under section 150(2), the National Agency and the HCE will use their best endeavours to reach agreement under section 150(3) within any time limit imposed by law on the HCE for the assessment of the complaint.

5.2 Section 150(3) - relevant considerations

- 5.2.1 The parties agree that decisions under section 150(3) about how a notification or complaint should be dealt with are to be made with regard to the following considerations (which are not listed in any order of priority, and are not intended to be exclusive) -
- (a) the public interest;
 - (b) risk of harm to the public or to any individual;
 - (c) the respective functions, powers and responsibilities of the National Boards and the HCEs;
 - (d) the merits of the matter;
 - (e) the action which it is open to the National Board or the HCE to take in relation to the notification or complaint;
 - (f) whether the notification or complaint is susceptible to being divided or split into separate parts, to be dealt with differently;
 - (g) any views or wishes which may have been expressed by the notifier or complainant;

- (h) any need for urgency which may arise on the facts of the case; and
- (i) the past history of the practitioner, as known to the National Board or HCE.

5.3 Section 150(3) - preliminary enquiries and recommendations

5.3.1 For the purpose of facilitating agreement between the National Agency and an HCE under section 150(3), but subject to clause 5.3.3 of this MOU -

- (a) in the case of a notification, the National Agency will make preliminary enquiries, and provide the HCE with the information that it has gathered and a recommendation as to how the notification should be dealt with; and
- (b) in the case of a complaint, the HCE will make preliminary enquiries, and provide the National Agency with the information that it has gathered and a recommendation as to how the complaint should be dealt with.

5.3.2 If it is recommended under clause 5.3.1(a) or (b) that the relevant National Board deal with the notification or complaint, the recommendation will include a statement of the action which it is proposed that the National Board should take.

5.3.3 It is recognised that the extent to which preliminary enquiries are conducted for the purposes of clause 5.3.1 will depend on the nature of the case, and that there will be some cases in which no preliminary enquiries will be needed for agreement under section 150(3) to be reached.

5.3.4 The National Agency or HCE will have regard to the considerations set out in clause 5.2.1 in fulfilling its responsibilities under clause 5.3.1.

5.4 Section 150(3) - recommendation not accepted

5.4.1. If a recommendation made under clause 5.3.1 is not accepted, the recipient of the recommendation will within 7 days of its receipt write to the other party -

- (a) identifying each of the issues which it sees as arising from the notification or complaint; and

- (b) providing the other party with its views on the action which should be taken with respect to each of those issues, having regard to the considerations set out in clause 5.2.1.

5.4.2 If the views provided under clause 5.4.1 are not accepted, the relevant Director of Notifications (or other representative of the National Agency) and a senior officer from the HCE will consult within 14 days of the receipt of those views, to attempt to agree on how the notification or complaint is to be dealt with.

5.4.3 If this consultation does not result in agreement, the most serious action proposed by either of the parties is to be identified, and taken in accordance with section 150(4) of the National Law.

5.5 Section 150(4) - identifying the most serious outcome⁷

5.5.1 It is recognised that, in applying section 150(4) of the National Law, it may be necessary to split the notification or complaint. This may be because there has been a failure to agree about how part of the notification or complaint is to be dealt with, or because different parts of the notification or complaint require different treatment.

5.5.2 Identifying, for the purpose of section 150(4), the most serious of the actions proposed by either the National Agency or the HCE will necessarily depend upon the circumstances of the case. However, it is agreed that -

- (a) the most serious action to which section 150(4) refers is the most serious action proposed by either the National Agency or the HCE which is open, at that point in time, to the National Board in the case of a notification, and to the HCE in the case of a complaint;
- (b) the actions which will be open to a National Board at that point in time, listed in order of least serious action to most serious, are to -
 - (i) take no further action in relation to the notification (section 151);
 - (ii) refer the notification to the HCE (section 150(6));
 - (iii) investigate the notification (Part 8, Division 8); and
 - (iv) take immediate action (Part 8, Division 7).

⁷ This section of this MOU does not apply in the ACT, where section 150(4) of the National Law has been modified to provide a hierarchy of possible actions that may be taken, from most serious to least serious.

- (c) the actions which will be open to the HCE at that point in time, listed in order of least serious action to most serious, are to -
 - (i) take no further action in relation to the complaint;
 - (ii) refer the complaint to mediation or conciliation by the HCE, or to an attempt at a negotiated resolution by the HCE;
 - (iii) refer the complaint to another entity other than the National Board;
 - (iv) refer the complaint to investigation by the HCE;
 - (v) refer the complaint to the National Board.

5.6 Advice of outcome under sections 150(3) or (4)

5.6.1. In the case of a notification, the National Agency will inform the notifier and the relevant health practitioner in writing of the outcome of the interaction between the National Agency and the HCE under sections 150(3) or (4) of the National Law, and will provide a copy of this correspondence to the HCE.

5.6.2 In the case of a complaint, the HCE will inform the complainant and the relevant health practitioner in writing of the outcome of the interaction between the National Agency and the HCE under sections 150(3) or (4) of the National Law, and will provide a copy of this correspondence to the National Agency.

5.7 Flow chart

5.7.1 A flow chart which summarises the processes under sections 149 and 150 of the National Law, with reference to this section of the MOU, is included in Schedule 2.

6. Ongoing consultation

6.1. The National Agency and the HCE will maintain communication with respect to notifications and complaints following the application of sections 150(3) and (4), in order to:

- (a) keep under review the question of whether any part of the notification or complaint should be referred to the other by reason of any developments which may have subsequently taken place; and
- (b) be advised of how the notification or complaint was finally dealt with.

6.2 As part of the communications which take place under clause 6.1 of this MOU, the National Agency will advise the relevant HCE of any decision or action taken under Part 8 of the National Law with respect to a matter which has been the subject of consultation with the HCE under section 150, and will provide the HCE with a copy of any reports obtained.

6.3 Regular meetings should take place between representatives of the National Agency and of the HCE, in each State or Territory, with a view to:

- (a) maintaining the communication required by clause 6.1 of this MOU;
- (b) ensuring the effective implementation of this MOU; and
- (c) maintaining open communication between the National Agency and the HCE on matters relevant to the operation of the National Law.

7. Referral of matters which are outside the jurisdiction of a National Board

- 7.1 If a notification is outside the jurisdiction of a National Board and involves a matter which could be the subject of a complaint to an HCE, the National Agency will refer it to the HCE as soon as practicable, together with all information held by the National Agency which is relevant to the notification.

8. Review of MOU

- 8.1 The Parties will notify each other of any difficulties which arise in the application of this MOU, and agree to review the MOU at each of the biannual meetings of the HCEs during 2010 and 2011, and at other times if required.

The parties have confirmed their commitment to this MOU as follows.

SIGNED BY –

Martin Fletcher

.....
MARTIN FLETCHER, CEO, Australian Health Practitioner Agency

Date : 28-10-2010

Mary Durkin

.....
MARY DURKIN, Health Services Commissioner, Australian Capital Territory

Date : 27-10-2010

Michael Ward

.....
PROFESSOR MICHAEL WARD, Commissioner, Health Quality and Complaints Commission, Queensland

Date : 27/10/2010

Lisa Coffey

.....
LISA COFFEY, Acting Commissioner for Health and Community Services Complaints, Northern Territory

Date : 27/10/10

Leena Sudano

.....
LEENA SUDANO, Health and Community Services Complaints
Commissioner, South Australia

Date: *27-10-10*

Leena Sudano

.....
SIMON ALLSTON, Health Complaints Commissioner, Tasmania

Date: *27-10-2010*

Bethia Wilson

.....
BETHIA WILSON, Health Services Commissioner, Victoria

Date: *27-10-2010*

Don Donaldson

.....
ANNE DONALDSON, Director of the Office of Health Review, Western
Australia

Date: *27.10.2010*

SCHEDULE 1

SECTIONS 149 AND 150 (ALL JURISDICTIONS EXCEPT ACT)

149 Preliminary assessment

(1) A National Board must, within 60 days after receipt of a notification, conduct a preliminary assessment of the notification and decide--

(a) whether or not the notification relates to a person who is a health practitioner or a student registered by the Board; and

(b) whether or not the notification relates to a matter that is a ground for notification; and

(c) if the notification is a notification referred to in paragraphs (a) and (b), whether or not it is a notification that could also be made to a health complaints entity.

(2) Without limiting subsection (1)(b), the National Board may decide the notification relates to a matter that is a ground for notification under section 144 on the basis of--

(a) a single notification about a person; or

(b) a number of notifications about a person including--

(i) a number of notifications that suggest a pattern of conduct;
and

(ii) notifications made to a health complaints entity.

(3) If the National Board decides the notification relates to a person who is not registered by the Board but the Board reasonably suspects the person is registered by another National Board, the Board must refer the notification to that other Board.

150 Relationship with health complaints entity

(1) If the subject matter of a notification would also provide a ground for a complaint to a health complaints entity under a law of a participating jurisdiction, the National Board that received the notification must, as soon as practicable after its receipt--

(a) notify the health complaints entity that the Board has received the notification; and

(b) give to the health complaints entity--

- (i) a copy of the notification or, if the notification was not made in writing, a copy of the National Agency's record of the details of the notification; and
- (ii) any other information the Board has that is relevant to the notification.

(2) If a health complaints entity receives a complaint about a health practitioner, the health complaints entity must, as soon as practicable after its receipt--

(a) notify the National Board established for the practitioner's health profession that the health complaints entity has received the complaint; and

(b) give to the National Board--

- (i) a copy of the complaint or, if the complaint was not made in writing, a copy of the health complaints entity's record of the details of the complaint; and
- (ii) any other information the health complaints entity has that is relevant to the complaint.

(3) The National Board and the health complaints entity must attempt to reach agreement about how the notification or complaint is to be dealt with, including--

(a) whether the Board is to deal with the notification or complaint, or part of the notification or complaint, or to decide to take no further action in relation to it; and

(b) if the Board is to deal with the notification or complaint or part of the notification or complaint, the action the Board is to take.

(4) If the National Board and the health complaints entity are not able to reach agreement on how the notification or complaint, or part of the notification or complaint, is to be dealt with, the most serious action proposed by either must be taken.

(5) If an investigation or other action, other than conciliation, taken by a health complaints entity raises issues about the health, conduct or performance of a registered health practitioner, the health complaints entity must give the National Board that registered the practitioner written notice of the issues.

(6) If a notification, or part of a notification, received by a National Board is referred to a health complaints entity, the Board may decide to take no further action in relation to the notification or the part of the notification until the entity gives the Board written notice that the entity has finished dealing with it.

(7) If a National Board or an adjudication body takes health, conduct or performance action in relation to a registered health practitioner, the Board

that registered the practitioner must give written notice of the action to the health complaints entity for the participating jurisdiction in which the behaviour that provided the basis for the action occurred.

(8) A written notice under subsection (5) or (7) must include--

(a) sufficient particulars to identify the registered health practitioner;
and

(b) details of--

(i) the issues raised about the health, conduct or performance of the registered health practitioner; or

(ii) the health, conduct or performance action taken in relation to the registered health practitioner.

SCHEDULE 2 - FLOW CHART



