

## Health Insights

### Police in Victoria and Western Australia, to share information with AHPRA

In July 2018 the Australian Health Practitioner Regulation Agency (**AHPRA**) and Victoria Police announced a Memorandum of Understanding (**MOU**) regarding information sharing. Under the Victorian agreement, AHPRA can disclose information to Victoria Police where there are allegations or evidence of criminal offending including physical harm, sexual offending, production of exploitative material, or drug offences.

The MOU, available on the AHPRA website, is the first of its kind in Australia.

In December 2018, AHPRA announced an MOU with the Western Australian Police. The details of this agreement have not yet been released.

The MOU establishes a mechanism for the release of information by AHPRA when it identifies information relating to criminal offences such as an indictable or summary offence, such as assault, sexual offending, sexual behaviour for a prurient purpose and possession or theft of illegal or unauthorised drugs. The MOU recognises the existing co-operation between the agencies.

Victoria Police may disclose information to AHPRA that concerns the health, performance or conduct of a registered health practitioner where they have a physical or mental impairment (including substance abuse or dependence) that may detrimentally affect their practice. Information on practitioners who Victoria Police suspect may pose a risk of substantial harm to the public or individuals posing as medical practitioners when they are not, will be shared by Victoria Police with AHPRA.

#### Why was the change introduced?

The MOU was prompted by the Paterson Review and the recommendations published in the final report (**Paterson report**).<sup>1</sup> The MOU sets out procedures for timely and appropriate information sharing within the law, where AHPRA or Victoria Police uncover information in the course of an investigation.

Under the *Health Practitioner Regulation Agency National Law* (2009) (**National Law**), AHPRA works with health complaints organisations (HECs) in each state and territory to decide which organisation should take responsibility for and manage the complaint or concern raised about a registered health practitioner. AHPRA

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<sup>1</sup> Prof Ron Paterson, Independent review of the use of chaperones to protect patients in Australia, Feb 2017, accessed at <https://nhpopc.gov.au/chaperone-review>.

manages and investigates,<sup>2</sup> on behalf of the National Boards,<sup>3</sup> the conduct, health or performance of a registered health practitioner. Statutory offences<sup>4</sup> are managed nationally by AHPRA and include unlawful advertising and someone falsely claiming to be a registered health practitioner. AHPRA has investigation and prosecution powers under the National Law.<sup>5</sup>

The Paterson report also noted the importance of AHPRA being kept up to date with recent developments in police investigations, which in turn, may trigger the need for AHPRA to review the risk posed to the public and take immediate action on a registered health practitioner's ability to practise their profession. There is a recognised need to address practitioners (both registered and unregistered by AHPRA) who place the public at risk by repeat offending. A recent Council of Australian Governments (COAG) Health Council consultation paper has proposed greater powers for AHPRA to ensure the National Law is up to date and fit for purpose. Suggested changes include the way in which information is shared between agencies, and with Police in each State and Territory.<sup>6</sup>

### What has changed?

The MOU arrangement facilitates formal sharing of information between AHPRA and Victorian Police, because AHPRA is no longer reliant on the notifier reporting allegations to police of their own accord. The Paterson report highlighted that when allegations of indecent or sexual assault are raised, there needed to be greater clarity regarding whether AHPRA should contact police or whether the notifier is relied upon to report to Police. A benefit of the MOU is that the requirement for a witness to give two separate statements to both AHPRA and the Police is now avoided.<sup>7</sup>

Section 237 of the National Law provides protection from civil, criminal and administrative liability for people who make a complaint or raise concerns in good faith with AHPRA. For an individual, making a notification does not constitute a breach of professional etiquette or ethics, does not depart from accepted standards of professional conduct and incurs no liability for defamation.<sup>8</sup>

Detailed security protocols are included in the MOU for the transmission, storage, use and disclosure of information that is shared between Victoria Police and AHPRA.

Under the MOU, AHPRA and Victoria Police may disclose information to each other, in accordance with the *Privacy Act 1988* (Cth), *Privacy and Data Protection Act 2014* (Vic) and Standards, and the National Law, where

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<sup>2</sup> Under Schedule 5 of the National Law.

<sup>3</sup> The exceptions are NSW and Queensland which are co-regulatory States. Complaints are managed; in NSW by the NSW Health Professional Council, or the NSW Health Complaints Commissioner; in Qld the Office of the Health Ombudsman.

<sup>4</sup> Statutory offences under the National Law, Part 7, ss113-123A,133 and 136.

<sup>5</sup> Under Schedule 5 or 6 and section 242, of the National Law.

<sup>6</sup> COAG, 'Progressing reforms to the Health Practitioner Regulation National Law' at [www.coaghealthcouncil.gov.au/projects/Health-Practitioner-Regulation-National-Law](http://www.coaghealthcouncil.gov.au/projects/Health-Practitioner-Regulation-National-Law)

<sup>7</sup> AHPRA, True partnership recognised through AHPRA and Victoria Police MOU, 12 July 2018, accessed at [www.ahpra.or.au](http://www.ahpra.or.au).

<sup>8</sup> Section 237 (3) National Law.

there are allegations of summary and indictable offences. Requests must be made in writing. Any data released by Police to AHPRA will be classified according to degree of sensitivity.

While the MOU states it is not intended to be legally binding, the sensitive nature of information disclosure is reflected by the seniority of those responsible for the MOU within each agency. For example, the AHPRA contacts are the State Manager and State Director of Notifications, and National Director and Manager of Legal Services. Victorian Police contacts include the teams responsible for Sexual Offences and Child Abuse (SOCIT), Sexual Crimes Squad, and those investigating non-sexual crimes including drug offences.

There is however, some discretion as to when information should be provided, suggesting that illegitimate allegations may not be subject to disclosure. It is not clear what level of information may be shared, raising doubts about the amount of information or whether documents obtained during a current or past investigation may be produced. The MOU stipulates that the disclosure obligations of both parties under legislation, has not been altered by the MOU. The agreement ensures that at least some level of evidence will be available for use across the entities' respective investigations.

Regardless of the MOU, a National Board may at any time obtain a written report about a registered health practitioner's criminal history or check practitioner statements made on a renewal of registration, from the ACIC (Australian Criminal Intelligence Commission), a Police Commissioner, or similar entity outside Australia that has access to records about the criminal history of individuals.<sup>9</sup> All registered practitioners are required to report to AHPRA, within 7 days of becoming aware of a 'relevant event' such as being charged or convicted with an offence punishable by imprisonment, or withdrawal or restriction of a right to practice at a hospital.

The MOU will continue indefinitely but is subject to review of its operation at least annually, but can be terminated unilaterally with written notice of 30 days. Whether other state follow the lead of Victoria and Western Australia, remains to be seen.

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<sup>9</sup> Section 135, the National Law.