

ScriptCheckSA: Terms of Use

1. Introduction

The **ScriptCheckSA** website, www.scriptcheck.sa.gov.au, is your online access point to **ScriptCheckSA**, South Australia's real-time prescription monitoring system (referred to hereafter as "**this website**").

This website is operated by the Minister for Health and Wellbeing (as represented by the Department for Health and Wellbeing) (referred to hereafter as "**the Department**").

In these Terms of Use the words "you" and "your" refer to the person using this website.

2. Application of these Terms of Use

By using this website, you acknowledge and agree that you have read, understood and agree to be bound by these Terms of Use (as amended from time to time), you acknowledge and agree that your being granted access to use this website by the Department is good consideration and you acknowledge that your agreement to these Terms of Use constitutes a legally binding agreement between you and the Department. If you do not agree to be bound by any of these Terms of Use, you are not authorised to use this website and must refrain from accessing it.

These Terms of Use will apply in addition to any other obligations you may have in relation to **ScriptCheckSA** under law, including under the *Controlled Substances Act 1984 (SA)* (as amended) (hereafter referred to as "**the Act**"), the *Controlled Substances (Poisons) Regulations 2011 (SA)* (as amended) (hereafter referred to as "**the Regulations**"), the *Health Care Act 2008 (SA)* and the *Privacy Act 1988 (Cth)*. If these Terms of Use are inconsistent with your obligations under law, those obligations will prevail over these Terms of Use to the extent of the inconsistency.

The Department reserves for itself all rights and interests not explicitly granted under these Terms of Use.

The Department reserves the right to amend these Terms of Use at any time and from time to time as the Department sees fit and your continued use of this website will signify your acceptance of any amendment to these Terms of Use. The update information (appearing at the bottom of this document) indicates the date on which these Terms of Use were last amended.

3. Acceptable Use of Website

You must only use this website for the purposes of fulfilling your legal obligations under the Act and the Regulations, and for no other purpose.

You agree to use this website only for lawful purposes, and in a manner that does not infringe the rights of or inhibit the use of this website by any third party. This includes any conduct which is unlawful or which may harass or cause distress or inconvenience to any person and the transmission of obscene or offensive content or disruption to any part of the website.

You must only use text or information provided via this website, including datasets or data they contain, in a manner and for a purpose which is consistent with your legal obligations, including your obligations under the Act, the Regulations, the *Health Care Act 2008 (SA)* and the *Privacy Act 1988 (Cth)* (as amended).

You must not download or copy any text or data from this website which contains health records or Personal Information for any purpose other than those permitted under the Act or any other applicable law, including but not limited to the *Health Care Act 2008 (SA)* and the *Privacy Act 1988 (Cth)*.

You must not use text or information provided via this website, including datasets or data it contains, in any of the following ways:

- use the data in a misleading or incorrect manner;
- use the data for any purposes other than the lawful medical treatment or care of a patient or the authorised prescription or supply of monitored poisons in accordance with the Act;
- use the data or this website in or to support a criminal or illicit activity;
- use the data in any application, or in any other ways to defame any person.

You must not do anything that has an impact on the performance of this website nor interfere with the operation of this website or the display of information on the website pages. This includes attempting to gain unauthorised access to the secure areas of this website.

The inclusion of any email addresses on this website is not consent to receiving unsolicited commercial electronic messages or SPAM.

You must ensure that all data and information that you enter or upload through this website is true, accurate and complete.

When am I permitted to access a patient record in ScriptCheckSA?

Patient records in **ScriptCheckSA** may only be lawfully accessed when you are involved in that patient's medical care and in the context of the medicines which are monitored.

If you do access a patient's record in **ScriptCheckSA**, you will need to make sure you can substantiate this access in your capacity as their registered health practitioner.

The following is a non-exhaustive list of circumstances where accessing patient records in **ScriptCheckSA** would be permitted in law:

- when prescribing or supplying a medicine to the patient;
- when reviewing the patient's medication history as part of a patient consultation (e.g. when a doctor takes a patient history or a pharmacist conducts a medication review); or
- when discussing the patient's medication history with other registered health practitioners who are involved in that patient's care.

When am I not permitted to access a patient record in ScriptCheckSA?

The legislation does not permit you to view patient records if you are not involved in that patient's medical care.

For patients whom you are involved in their care, you are only authorised to use the information in **ScriptCheckSA** for the purposes of ensuring the safe prescribing and supply of prescription medicines to your patients.

You must not use the information for any other purpose. Any other purpose may include (but is not limited to) marketing or commercial purposes.

4. Unacceptable Use of Website

You agree that you must not:

- (a) upload or distribute of any files that contain Viruses (as defined in section 11 below), corrupted files, or any other similar software or programs that may damage the operation of this website;
- (b) probe, scan, test the vulnerability of, or circumvent any security mechanisms used by this website, servers, or networks connected to this website;
- (c) take any action that imposes an unreasonably or disproportionately large load on this website, servers, or networks connected to this website;
- (d) maliciously reduce or impair the accessibility of this website;

- (e) use this website to post, promote, or transmit any unlawful, harassing, libellous, abusive, threatening, harmful, hateful, or otherwise objectionable material;
- (f) transmit or post any material that encourages conduct that could constitute a criminal offense or give rise to civil liability;
- (g) directly or indirectly distribute, license, loan, or sell any data, information or content that is contained or displayed on this website;
- (h) directly or indirectly sell, license, or grant any access to or use of this website or any data or information contained or displayed on this website to any third party;
- (i) directly or indirectly use or access this website for any commercial time-sharing, rental, or service bureau purposes;
- (j) copy, reproduce, distribute, alter or modify this website in whole or in part;
- (k) copy, reproduce or distribute the whole or part of the information or data from this website for any purpose not permitted by these Terms of Use;
- (l) use any information or content from this website or any derivative work to compete with or displace the market for or use of, this website;
- (m) modify, reverse engineer, decompile, decode, decrypt, disassemble, or derive any source code from this website or in any other way interfere with this website in whole or in part;
- (n) combine or incorporate the whole or any part of this website in any other program, system or other website;
- (o) create or attempt to create or permit or help others to create, a source code for this website or an apparently similar website, computer program or service from this website; or
- (p) create or attempt to create any system to by-pass security devices including codes or passwords in this website or for the purposes of accessing or using this website.

5. Privacy

For the purposes of these Terms of Use “**Personal Information**” means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

You agree that you must not access, use or disclose any data or information (including Personal Information) contained in this website for any purpose other than the purpose of fulfilling your legal obligations under the Act and the Regulations.

You must comply with the *Privacy Act 1988 (Cth)* and the Australian Privacy Principles established under that Act in relation to all Personal Information received, created or held by you for the purposes of these Terms of Use.

To the extent that you are not bound by the *Privacy Act 1988 (Cth)* you must ensure that you have procedures in place to deal with all Personal Information received, created or held by you which comply at a minimum with the Australian Privacy Principles established under the *Privacy Act 1988 (Cth)*.

Without limiting any other provision of these Terms of Use, you must comply with the South Australian Government Information Privacy Principles (a copy of which can be found at

<https://www.dpc.sa.gov.au/resources-and-publications/premier-and-cabinet-circulars/DPC-Circular-Information-Privacy-Principles-IPPS-Instruction.pdf>

) (“IPPs”) as if you were an “agency” for the purposes of the IPPs, in relation to all Personal Information collected, received, created or held by you in connection with this website and these Terms of Use.

Without limiting any other provision of these Terms of Use, you must:

- (a) comply with the SA Health ‘Privacy Policy Directive’ as amended from time to time and available at www.sahealth.sa.gov.au (“Privacy Policy Directive”);

- (b) implement as far as practicable the Privacy Policy Directive, related policies, principles and guidelines or such directions as reasonably requested by the Department; and
- (c) use reasonable measures to prevent a breach of the Privacy Policy Directive to the reasonable satisfaction of the Department,

as the Privacy Policy Directive relates to Personal Information received, created or held by you in connection with this website.

You must promptly notify the Department if you fail to comply with this section 5 of these Terms of Use, or if you become aware of any actual or threatened disclosure of or unauthorised access to Personal Information.

You agree to allow the Department to undertake, and cooperate with any audit or investigation which the Department deems necessary to verify that you are complying with the *Privacy Act 1988 (Cth)*, the IPPs and the Privacy Policy Directive.

6. Copyright

The State of South Australia is the owner of the intellectual property rights (including copyright) in all of the data and information accessible from this website and will retain exclusive interest and ownership of the intellectual property rights in all such data and information.

You acknowledge and agree that all intellectual property rights (including copyright) in all data and information entered into or uploaded by you through this website vests in and will be owned by the State of South Australia.

You agree not to query, challenge or call into question the State of South Australia's ownership of intellectual property rights in any data or information contained on this website.

The State of South Australia owns or has been granted permission to the intellectual property rights in the contents of this website, including the images, graphics, text and their arrangement on this website, which are all subject to copyright and other intellectual property protection. You may access and display these pages on an internet enabled device, such as a computer, tablet or a monitor. All other use, copying or reproduction (including reproduction on any other website) of any part of this website, including these Terms of Use, is prohibited. This website contains content that is subject to the intellectual property rights of third parties.

7. Disclaimer

The website

The content of this website is made available for information purposes and to assist you to fulfil your legal obligations under the Act and the Regulations.

The information provided through this website has been collected through a number of sources. You acknowledge that the information in this website may not include a complete record of a patient's prescription history of monitored drugs controlled under the Act. Any information the Department communicates using this website is communicated in good faith as general information only, and is not in the nature of advice. The Department reserves the right to correct or update information and data at any time

The Department recommends that you exercise your own skill and care with respect to your use of this website and carefully evaluate the accuracy, currency, completeness and relevance of information on this website for your purposes. The Department is not liable for any loss or damage, howsoever caused (including but not limited to negligence), which you may directly or indirectly suffer in connection with your use of this website or any linked site or facility, including through use of a third party intellectual property (including but not limited to copyright material). Nor does the Department accept any responsibility for any such loss arising out of your use of, or reliance on, information, data or content accessed or communicated via this website.

The Department does not accept liability for any losses arising directly or indirectly from a failure to access this website, or any linked site or facility, any corruption or loss of data, errors or interruptions arising in relation to use of this website or any suspension or discontinuance of this website by the Department.

The Department is not liable for Viruses or other forms of interference that may damage your equipment. You must take your own precautions to ensure that the process you employ to access this website does not expose you to such risks.

Disclaimer as to use of information

To the extent permitted by law, the Department excludes liability for any loss (including loss from Viruses) caused by your use or reliance on the information, content and data contained within, or communicated using, this website.

Disclaimers and limitations of liability regarding external websites

This website provides links to external websites. Those links are provided for convenience only and may not remain current or active. The Department does not control and accepts no liability for the content of those websites or privacy practices of those websites or for any loss arising from your use or reliance on those websites. The Department does not endorse any external website and does not warrant that they are accurate, authentic or complete. Your use of any external website is governed by the terms of that website. The provision of a link on this website to an external website does not authorise you to reproduce, adapt, modify, communicate or in any way deal with the material on that external website.

8. No Representations or Warranties

No Representations

You agree that no representation, warranty or undertaking has been made to you about this website or these Terms of Use.

You agree that you have not relied on any representation, warranty or undertaking by the Department about:

- (a) these Terms of Use, this website or related matters; or
- (b) the merchantability, fitness for a particular purpose, condition, quality, suitability, accuracy, adequacy, completeness, availability, performance, reliability or usefulness of the whole or any part of this website for any purpose.

No Reliance

You agree that you have not relied on any representation made by the Department which has not been expressly stated in these Terms of Use.

You agree that to the extent that the Department has made any representations not expressly stated in these Terms of Use, you have been provided with an opportunity to independently verify the accuracy of that representation.

No Warranties

This website is provided on an “as is” and “as available” basis with all faults, defects, bugs and errors.

The Department makes no warranty, express or implied, that the data or other information included in, accessed or used through the website is correct, current or complete.

All express, implied and statutory warranties including (without limitation) any warranties of fitness for a particular purpose and merchantability are hereby excluded to the maximum extent possible at law.

9. Release and Indemnity

You agree that you access and use the website at your own risk in all things and you release and hold harmless to the full extent permitted by law, the Department, its officers, employees, contractors and agents, and the Crown in right of the State of South Australia from all actions, proceedings, claims and demands of every kind resulting from or in connection with, or in relation to:

- (a) any use or performance of this website;
- (b) the accuracy, completeness or integrity of any information or data;
- (c) any loss of or use of data;
- (d) any data security breaches; and
- (e) any data privacy breaches,

except to the extent that it is directly caused by the wrongful or negligent act of the Department.

You agree to indemnify and hold harmless the Department and the Crown in right of the State of South Australia at all times from and against any claim, action, suit, damage, cost, loss, expense or liability of any kind (whether in contract, tort or otherwise) including all legal costs on a full indemnity basis (howsoever suffered or incurred) in respect of any loss whatsoever, including loss of life, personal injury or disability, loss of or damage to property, or any other loss whatsoever arising as a result of or in connection with:

- (f) any use or misuse of this website or its content or data by you;
- (g) any use or performance of this website;
- (h) the accuracy, completeness or integrity of any information or data;
- (i) any loss of or use of data;
- (j) any data security breaches;
- (k) any data privacy breaches;
- (l) any breach of these Terms of Use by you;
- (m) any negligent or wrongful act or omission by you or your agents, invitees, employees and contractors in connection with or incidental to this Agreement,

except to the extent that it is directly caused by the wrongful or negligent act of the Department.

10. Limitation of Liability

To the extent permitted by law, you agree that any liability of the Department will be reduced to the extent that any loss or damage or expense was caused by you or a third party including through breach of these Terms of Use, negligence, fault, lack of care or through any other act or omission of you or your clients, employees, contractors, agents or a third party.

In any event and notwithstanding anything else contained in these Terms of Use, in no circumstances will the Department be liable in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever and whatsoever its cause for any Consequential Loss, even if the Department is advised of the possibility of such Consequential Losses.

The Department's total liability arising out of or in connection with these Terms of Use or any claim, action, suit, damage, cost, loss, expense or liability of any kind whether in contract, tort (including negligence or breach of statutory duty) or otherwise, including all legal costs (howsoever suffered or incurred) in respect of any loss whatsoever, including any loss of life, personal injury or disability, loss of or damage to property, or any other loss whatsoever is limited to an amount equal to ten dollars (\$10.00).

In these Terms of Use "Consequential Loss" means, consequential or indirect loss, any increased costs or expenses, loss of use or reputation, loss of profit, business contracts or revenues (actual or anticipated) or anticipated savings, or lost opportunities to enter into or complete any contracts or arrangements with third parties or any indirect, contingent, special, consequential claim or losses, damages or injury to any person or other entity of any nature whatsoever and whether or not foreseeable at the date of this Terms of Use;

11. Anti-Virus

You agree that you shall be responsible, at your own cost, for implementing, maintaining, and updating all necessary and proper procedures and software for safeguarding against computer infection, viruses, worms, Trojan horses, and other code that manifest contaminating or destructive properties (collectively "Viruses").

12. Security

Use of this website requires you to have an internet connection. The Department applies a range of security controls to protect this website from unauthorised access, including data encryption in transit and at rest, multi-factor authentication, routine penetration testing and access audit logs.

The Department accepts no liability for any interference with or loss or damage to your computer system, software or data (including loss from Viruses, disabling codes, worms or other devices or defects) occurring in relation to your internet connection or use of this website.

13. Your account

You are responsible for maintaining the confidentiality of your account and password. You agree to accept responsibility for all activities that occur under your account or password. You must only use your own account and password when accessing the **ScriptCheckSA** website. If you become aware of unauthorised access to your **ScriptCheckSA** account, you must notify the Department immediately via **ScriptCheckSA** technical support:

- phone: 1300 652 584; or
- email: Health.ITsupport.ScriptCheck@sa.gov.au

14. Website access

You agree that you will be responsible, at your own cost, for:

- (a) obtaining and maintaining all computer hardware, software, and communications equipment needed by you to access this website; and
- (b) paying all third party access charges incurred while using this website.

You acknowledge that access to this website: (a) may not be continuous or uninterrupted at all times; and (b) may be interfered with by factors or circumstances outside of the Department's control.

You agree that this website may be taken offline or otherwise be unavailable from time to time due to:

- (c) scheduled or urgent maintenance;
- (d) malicious attacks on the website;
- (e) issues associated with computing devices, local area networks or internet service provider connections;
- (f) inability to provide access to this website because of acts or omissions of the Department's suppliers; or
- (g) factors or circumstances beyond the Department's control.

If you experience problems with this website not related to your PC or other device, communications line or internet service provider, please contact **ScriptCheckSA** technical support for assistance:

- phone: 1300 652 584; or
- email: Health.ITsupport.ScriptCheck@sa.gov.au

You agree that the Department is not required to provide:

- (h) any support for software sourced from third parties;
- (i) maintenance of your hardware, attachments or associated equipment;
- (j) electrical, telecommunications or other environmental work external to the website; or
- (k) any on-site maintenance or support services.

15. Suspension or termination of access

The Department can suspend or terminate your access and use of this website at its sole discretion, for any reason, at any time, including if:

- (a) this website is used by you in breach of these Terms of Use;
- (b) there is a breach of security in respect of which the Department reasonably believes that the suspension of this website is necessary to protect this website or the Department's network or a third party network;
- (c) due to unavailability of third party networks and/or services, including without limitation telecommunications and ISP services; or
- (d) required by law, regulation or court order or as compelled by a law enforcement or government agency or other relevant regulatory agency.

Visit logs

Your use of this website is not private. The Department adheres to the South Australian Government Information Privacy Principles (a copy of which can be found at <https://www.dpc.sa.gov.au/resources-and-publications/premier-and-cabinet-circulars/DPC-Circular-Information-Privacy-Principles-IPPS-Instruction.pdf>), but no data transmitted over the internet can be guaranteed as totally secure. We use cookies and other technologies on this website.

When an individual visits the **ScriptCheckSA** website, the Department makes a record of your visit and logs the following information for statistical purposes:

- browser search engines
- hosts
- pages viewed
- number of visits
- access path, and
- platform used.

When an individual accesses the secure areas of the **ScriptCheckSA** website, records of the individual activity are logged and used by the Department for auditing purposes. This information is also accessible to users to assist with the co-ordination of patient care. The following is recorded:

- username of the individual
- time of access, and
- records that have been accessed.

16. Interstate access

Access to this website may be provided to users outside of the State of South Australia in which their State or Territory has expressly authorised their user access through an arrangement with the State of South Australia.

If you are accessing this website from outside of the State of South Australia, these Terms of Use will apply in addition to any other obligations you may have under any other applicable law in your jurisdiction, including the *Privacy Act 1988* (Cth). You may only access this website when providing medical care or treatment to a South Australian patient. The Department reserves the right to revoke your user access if the Department is made aware of or reasonably suspects any use contrary to these Terms of Use and to notify your state or territory health department in relation to this matter.

17. Downloadable documents

Where stated on this website, **ScriptCheckSA** allows you to download particular material from the website. By downloading material from this website, you agree to:

- comply with the terms of the copyright applying to that material, if any; and
- conduct such virus scanning and take appropriate and adequate precautions (including up-to-date firewall and anti-virus software) as may be necessary to ensure that the downloaded material is free of viruses or other contamination and will not corrupt or damage your property (including damage to software, hardware or data) or that of any other person; and
- only provide the downloaded material to a third party where clinically appropriate to do so and where permitted to do so pursuant to the Act and any other relevant laws.

18. Notification service

The Department will use all reasonable efforts to ensure that the information in notifications and alerts provided to you are accurate and up-to-date. However, events may occur that delay the transmission of notifications and alerts or otherwise cause the information in those notifications and alerts to be inaccurate or out-of-date. Accordingly, the Department makes no guarantee that notifications and alerts will be received in a timely manner.

19. ScriptCheckSA logo

The Department is the owner of the **ScriptCheckSA** logo. You must not copy, reproduce or use the **ScriptCheckSA** logo under any circumstances.

20. Cookies amended from website

This website will use session cookies when you access any part of the website. Session cookies enhance the experience of using the website.

21. General

These Terms of Use are governed by, and are to be construed in accordance with, the laws of the State of South Australia, Australia. You agree that the courts of the State of South Australia, Australia have exclusive jurisdiction to determine any legal proceedings in relation to any matter arising from these Terms of Use or this website.

If any provision of these Terms of Use is held to be invalid or unenforceable that provision may be:

- read down to the extent necessary to make it valid and enforceable; or
- severed and the remaining provisions of these Terms of Use enforced.

In the interpretation of these Terms of Use no rules of construction shall apply to the disadvantage of one party on the basis that that party put forward these Terms of Use or any part thereof.

The Department's:

- failure to exercise, or delay in exercising, a power or right does not operate as a waiver of that power or right;
- waiver or exercise of a power or right does not preclude its future exercise or the exercise of any other power or right; and
- waiver of any power or right will not be effective unless it is in writing and signed by the Department.

Last updated: 12 October 2020