

Response to Questions on Notice: Inquiry into Growing evidence of an emerging tick-borne disease that causes a Lyme like illness for many Australian patients

Question: 1

Hansard page reference: 63

Hansard extract:

Senator MADIGAN: Thank you, Professor Bradshaw and Mr Fletcher. You said that you do get complaints referred to AHPRA and the medical board from patients. Do GPs or specialists also refer colleagues to the board and AHPRA?

Prof. Bradshaw: Without going to the specifics of specific cases, we certainly have had referrals from all the fields you mentioned.

Senator MADIGAN: I am not asking for specific cases, of course, but are you able to furnish the committee with some statistics? Is the ratio of referrals, complaints from patients to GPs or specialists, 80-20 or 60-40 or 50-50, for example?

Mr Fletcher: Do you mean across the board generally, in terms of all the complaints we have received?

Senator MADIGAN: No, I am speaking specifically in relation to Lyme-like illness and the ratio of general complaints from patients and/or doctors and specialists in reference to other doctors who are treating patients. I would like to see if there is a consistency in the number of complaints or if it is higher in this area that we are speaking about today. I am not asking for specifics. I am just asking for statistics.

Response:

For notifications received by AHPRA/Medical Board of Australia in the two financial years 2013/14 and 2014/15 relating to treatment of Lyme-like symptoms:

- 9.3% were made by medical practitioners as mandatory notifications under the National Law.
- 90.7% were made by patients or members of the public.

These data do not include NSW which has separate arrangements for the receipt and management of notifications.

Question: 2

Hansard page reference: 64

Hansard extract:

Senator MADIGAN: Finally, Mr Fletcher, on notice would you be able to furnish the committee with the guidelines governing the people that conduct investigations and the processes and rules that are in place to protect confidentiality and potential conflicts of interest? Would you be able to take that on notice and furnish to the committee the rules governing these people who conduct these investigations? Also, if the person that is being investigated is charged a fee for auditing or inspection, what are the rates of fees?

Mr Fletcher: Just to clarify, are you are talking about what our procedures are within AHPRA around these sorts of matters and with the boards, what the legislation says, or both?

Senator MADIGAN: Both.

Response:

Confidentiality

Legislation:

Division 2 of Part 10 of the Health Practitioner Regulation National Law 2009 provides, relevantly:

214 Definition

In this Division—

protected information means information that comes to a person's knowledge in the course of, or because of, the person exercising functions under this Law.

216 Duty of confidentiality

(1) A person who is, or has been, a person exercising functions under this Law must not disclose to another person protected information.

Maximum penalty—

(a) in the case of an individual—\$5,000; or

(b) in the case of a body corporate—\$10,000.

(2) However, subsection (1) does not apply if—

(a) the information is disclosed in the exercise of a function under, or for the purposes of, this Law; or

(b) the disclosure—

(i) is to a co-regulatory authority; or

(ii) is authorised or required by any law of a participating jurisdiction; or

(c) the disclosure is otherwise required or permitted by law; or

(d) the disclosure is with the agreement of the person to whom the information relates; or

(e) the disclosure is in a form that does not identify the identity of a person; or

(f) the information relates to proceedings before a responsible tribunal and the proceedings are or were open to the public; or

(g) the information is, or has been, accessible to the public, including because it is or was recorded in a National Register; or

(h) the disclosure is otherwise authorised by the Ministerial Council.

AHPRA Staff:

All employees, including contracted and agency staff, are required to complete and return confidentiality agreement on commencement of employment. The AHPRA Privacy Policy, the Information and Acceptable Use Policy and the Confidentiality Policy are also a component of induction training required to be undertaken by staff on an annual basis.

Board members:

Extract from *Manual for Boards and Committees* (page 10):

Confidentiality The papers, discussions and records of the Board are confidential unless otherwise agreed by the Board. A person who is, or has been, exercising functions under the National Law must not disclose any protected information to another person. The National Law includes penalties if this requirement is breached: \$5,000 for a contravention by an individual. For further information in relation to confidentiality, refer to *Appendix 1: Guidelines for Board and committee members with respect to duty of confidentiality*.

Relevant documents (attached):

- Attachment 1: HR001: AHPRA Confidentiality Policy
- Attachment 2: HR041: Confidentiality Agreement
- Attachment 3: Guidelines for Boards and Committee Members with respect to confidentiality
- Attachment 4: Manual for Boards and their Committees

Conflict of Interest

Legislation:

Clauses 7 and 8 of Schedule 4 of the National Law provides, relevantly with respect to Board members (including members of all local boards and committees of National Boards):

7 Members to act in public interest

(1) A member of a National Board is to act impartially and in the public interest in the exercise of the member's functions as a member.

(2) Accordingly, a member of a National Board is to put the public interest before the interests of particular health practitioners or any entity that represents health practitioners.

8 Disclosure of conflict of interest

(1) If—

(a) a member has a direct or indirect pecuniary or other interest in a matter being considered or about to be considered at a meeting of the National Board; and

(b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter;

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the National Board.

(2) Particulars of any disclosure made under this clause must be recorded by the National Board in a book kept for the purpose.

(3) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Ministerial Council or the National Board otherwise determines—

(a) be present during any deliberation of the National Board with respect to the matter; or

(b) take part in any decision of the National Board with respect to the matter.

(4) For the purposes of the making of a determination by the National Board under subclause (3), a member who has a direct or indirect pecuniary or other interest in a matter to which the disclosure relates must not—

(a) be present during any deliberation of the National Board for the purpose of making the determination; or

(b) take part in the making of the determination by the National Board.

(5) A contravention of this clause does not invalidate any decision of the National Board.

(6) This clause applies to a member of a committee of a National Board and the committee in the same way as it applies to a member of the National Board and the National Board.

Staff:

If an AHPRA notifications officer identifies a potential conflict of interest, the notifications officer notifies the relevant Director of Notifications in their State or Territory and the following actions occur:

The Director of Notifications organises an immediate transfer of the file to another jurisdiction (confirming that there is also not a conflict of interest in that jurisdiction). Access to the file is restricted on AHPRA data and electronic records management systems.

Board members:

Extract from Manual for Board and Committees:

Conflict of interest and bias: The National Law includes extensive provisions in relation to conflict of interest, particularly at schedule 4, clause 8. In accordance with clause 8(1) of schedule 4 of the National Law, Board members must declare any actual and possible conflict of interest in relation to matters to be considered at a meeting. For further detailed information in relation to conflict of interest, refer to *Appendix 2: Guidelines for Board and committee members with respect to conflict of interest*. All Board members must also declare and exclude themselves from decision-making in relation a matter in which they are biased, or might be perceived to be biased (refer to the National Scheme's *Governance Charter* for further detail).

Record of conflict of interest The Chair, or AHPRA on behalf of the Chair, holds a copy of conflict of interest statements provided by Board members on their appointment to the Board. Records of disclosures will be kept in a folder clearly identified for this purpose. In addition, a record of conflict of interest discussions must be recorded at each meeting.

Relevant Documents (attached):

- Attachment 5: AHPRA Conflict of Interest Procedures
- Attachment 6: Guidelines for Board and Committee Members with Respect to Conflict of Interest
- Attachment 7: Conflict of interest form for Board members to complete
- Attachment 4: Manual for Boards and their Committees

Question: 3

Hansard page reference: 66-67

Hansard extract:

CHAIR: Can a committee refer things to you?

Mr Fletcher: Do you mean about a registered health practitioner?

CHAIR: A complaint, yes.

Mr Fletcher: Anyone can make an application. The only thing I would add is just to remember that in New South Wales, they have a slightly different arrangement. A New South Wales based practitioner would need to go to the Health Care Complaints Commission.

CHAIR: Could you take on notice whether a committee has ever done that?

Mr Fletcher: Whether a committee has ever made a notification to us?

CHAIR: Yes.

Response:

Section 145 of the Health Practitioner Regulation National Law 2009 provides:

145 Who may make voluntary notification

Any entity that believes that a ground on which a voluntary notification may be made exists in relation to a registered health practitioner or a student may notify the National Agency.

There have been instances where committees, including clinical governance committees of local health and hospital services, have made notifications regarding concerns about the health, conduct or performance of a practitioner.



Aboriginal and Torres Strait Islander Health Practice	Occupational Therapy
Chinese Medicine	Optometry
Chiropractic	Osteopathy
Dental	Pharmacy
Medical	Physiotherapy
Medical Radiation Practice	Podiatry
Nursing and Midwifery	Psychology

Australian Health Practitioner Regulation Agency

Confidentiality policy HR001

Purpose and scope

The Health Practitioner Regulation National Law (the National Law) imposes a duty of confidentiality on people who work for the Australian Health Practitioner Regulation Agency (AHPRA). This policy applies to all AHPRA staff members.

Policy

1. Protected information

- 1.1. A person who is, or has been, exercising functions under the National Law must not disclose protected information.
- 1.2. 'Protected information' means information that comes to a person's knowledge in the course of, or because of, exercising functions under the National Law.
- 1.3. This means that AHPRA staff members have a duty to keep confidential the information received when working for AHPRA. This duty applies during and after employment with AHPRA.
- 1.4. Serious penalties and disciplinary action may apply if this duty is breached.
- 1.5. The general law also imposes a duty of confidentiality on all AHPRA staff members during and after their time with AHPRA. This duty may prohibit the staff member, for example from disclosing sensitive information about AHPRA's internal operations.
- 1.6. Protected information may be disclosed in circumstances set out in the national Law that include:
 - 1.6..1. For the purpose of the National Law
 - 1.6..2. Where permitted or authorised by law (for example, see ss.217-221 of the National Law)
 - 1.6..3. The person the information is about agrees to the disclosure
 - 1.6..4. The disclosure does not identify any person
 - 1.6..5. The disclosure relates to public court or tribunal proceedings, or
 - 1.6..6. The information is already public.
- 1.7. A staff member must not disclose protected information unless it is confirmed that one of these exceptions applies.

2. Unauthorised disclosure

- 2.1. The National Law imposes maximum penalties for a breach of confidentiality regarding protected information:
 - 2.1..1. In the case of an individual - \$5,000 or
 - 2.1..2. In the case of a body corporate - \$10,000.

Procedure

All new employees are required to complete and return the [confidentiality agreement HR041](#) as part of the pre-employment process and is covered during induction.

Related documents

Related documents include:

- [Confidentiality agreement HR041](#)
- [Code of Conduct HR040](#)
- [Induction procedure HR017](#)
- [New employee induction checklist HR011](#)
- [Staff induction booklet HR016](#)
- [Manager's guide to induction and probation HR063](#)
- [Manager's checklist for induction and probation HR064](#)
- [Staff Privacy Guide](#)

Relevant legislation

This policy should be read in conjunction with the following:

- Health Practitioner Regulation National Law 2009

Definitions

The following definitions apply:

Term	Definitions
Staff member	Staff member includes contractors and consultants.

Document control

Approver	National Manager, Human Resources
Policy number	HR001
Date approved	7 May 2013
Date commenced	7 May 2013
Date for review	May 2017
Responsible officer	National Manager, Human Resources
Sections modified	1 July 2010, Created March 2013, revised and updated by Legal. March 2014, updated to reflect new policy template and revised by Legal.

HR041

AHPRA confidentiality agreement



Duty of confidentiality

The Health Practitioner Regulation National Law (the National Law) imposes a duty of confidentiality on anyone who exercises functions under the National Law.

This includes people who work for AHPRA, as well as board, committee and panel members.

A person who is, or has been, exercising functions under the National Law must not disclose protected information.

What is protected information?

Protected information' means information that comes to a person's knowledge in the course of, or because of, exercising functions under the National Law.

This means you have a duty to keep confidential the information you receive when working as part of the National Scheme. This duty applies during and after your time with the National Scheme. Serious penalties and disciplinary action may apply if you breach this duty.

The general law also imposes a duty of confidentiality on AHPRA employees during and after their time with AHPRA. If you work for AHPRA, for example, this duty prohibits you from disclosing sensitive information about AHPRA's internal operations. If you breach this duty, legal and disciplinary action may be taken against you.

When may you disclose protected information?

Protected information may be disclosed in circumstances set out in the National Law that include:

- for the purposes of the National Law
- where permitted or authorised by law (for example, see ss.217-221 of the National Law)
- the person the information is about agrees to the disclosure
- the disclosure does not identify any person
- the disclosure relates to public court or tribunal proceedings, or
- the information is already public.

You must not disclose protected information unless it is confirmed that one of these exceptions applies.

What are the penalties for unauthorised disclosure?

The National Law imposes maximum penalties for a breach of confidentiality regarding protected information:

- in the case of an individual—\$5,000, or
- in the case of a body corporate—\$10,000.

Declaration

I, PRINT NAME, POSITION OR ROLE

have read and understand that the National Law and the general law impose a duty of confidentiality regarding protected information and sensitive information regarding AHPRA's operations. I will comply with these requirements.

Signed on the DAY day of MONTH 20

by NAME OF PERSON SIGNATURE
 POSITION

in the presence of SIGNATURE OF WITNESS
 NAME OF WITNESS

Complete this section if you are a third party contractor or a consultant

Organisation
Contact phone number
Contact email
Contracts of interest



Aboriginal and Torres Strait Islander Health Practice	Occupational Therapy
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Medical Radiation Practice	Podiatry
Nursing and Midwifery	Psychology

Australian Health Practitioner Regulation Agency

GUIDELINES FOR BOARD & COMMITTEE MEMBERS WITH RESPECT TO DUTY OF CONFIDENTIALITY

These guidelines have been prepared for National Board Members, State/Regional Board Members and Committee Members. They are intended for the use of such Members only.

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Prepared: Legal Adviser, South Australia AHPRA

Endorsed: General Counsel

Approved: National Boards

Date: July 2011

In the discharge of their duties and functions under the *Health Practitioner Regulation National Law* ("the National Law"), Members of the National Boards and/or State/Regional Boards (however called) ("the Board") and its committees ("the Committee") (hereafter referred collectively as "Members") will be privy to sensitive and confidential information pertaining to individuals and organisational policies and affairs. Members will be privy to such information via numerous avenues, including, but not limited to, occasions where information is acquired as part of:-

- Registration and renewal of registration applications;
- Reports submitted by health professionals, employers and individuals pertaining to a registrant's conduct, health or performance;
- Investigations conducted by investigators into a registrant's conduct, health or performance;
- Information or evidence supplied at proceedings before the Board; and
- Internal documents with respect to policies, strategies, and business and financial affairs of the Board and AHPRA.

Information pertaining to an individual is private in nature and has the potential for causing harm or violating the privacy of the individual if not appropriately handled. As a matter of good governance, the Board and the Committee should ensure that they sensitively and securely collect and safeguard personal information of individuals with whom they deal in accordance with relevant legislation and guidelines.

Another essential aspect of good governance is that Members maintain confidentiality in respect of all information pertaining to internal board and committee meetings, policies and affairs.

DUTIES ON MEMBERS

The National Law imposes a number of duties on Members with respect to information obtained or received in the course of the discharge of their duties. Section 234(3) of the National Law provides:-

A person exercising functions under this Law must not make improper use of the person's position or of information that comes to the person's knowledge in the course of, or because of, the person's exercise of the functions –

- (a) to gain an advantage for himself or herself or another person; or
- (b) to cause detriment to the development, implementation or operation of the national registration and accreditation scheme.

The National Law further imposes a duty of confidentiality or secrecy upon Members of the Board and the Committee who obtain information in the performance of duties. Section 216(1) provides:

A person who is, or has been, a person exercising functions under this Law must not disclose to another person protected information.

It is important to note that the scope of section 216(1) extends to persons who cease to be Members of the Board or the Committee. In other words, the duty to maintain confidentiality will survive the expiry or termination of a Member's appointment.

PURPOSE OF SECTIONS 234(3) AND 216(1)

The purpose of sections 234(3) and 216(1) of the National Law is to protect against inappropriate use and disclosure of information obtained in the course of official duties under the National Law. Section 216(1) in particular is designed to ensure that, subject to certain exceptions, information obtained in the course of administration of the National Law must not be divulged or made accessible to others.

Sections 234(3) and 216(1) seek to protect people from unwarranted invasions of their privacy and from use of information for a purpose for which it was never intended. The basic premise is that protected information is given, collected or recorded for a specific reason and that, unless there is an overriding justification, the information should not be disclosed or used for other purposes.

WHAT IS “PROTECTED INFORMATION”?

The term “**protected information**” is given a very expansive meaning under the National Law. It is defined to mean “**information that comes to a person’s knowledge in the course of, or because of, the person’s functions under the National Law**” (section 214).

This definition is wide enough to capture all information that comes within a Member’s knowledge in the course of, or because of, his or her exercising a function under the National Law, including, but not limited to:

- personal information pertaining to an individual;
- any intellectual property rights of the National Board, Board, the Committee, and AHPRA;
- policies and strategies of the National Board, Board, the Committee, and AHPRA;
- the financial and business affairs of the National Board, Board, the Committee, and AHPRA

However, the duty of confidentiality does not apply if the information is, or has been, accessible to the public.

WHEN CAN PROTECTED INFORMATION BE DISCLOSED?

Section 216(1) is broad in its scope, providing for a blanket prohibition against disclosure of protected information, subject to the exceptions listed in subsection (2). The prohibition applies unless one of the following exceptions comes to the fore:

- **The disclosure is made in the exercise of a function or for the purposes of the National Law.**
This exception covers all disclosures which occur as a result of Members fulfilling their functions and exercising powers delegated to them. It permits disclosure for the purposes of the administration of the National Law.
- **The disclosure is to be made to a co-regulatory authority.**
This exception permits the disclosure of protected information to the following entities:
 - Chiropractic Council of New South Wales
 - Dental Council of New South Wales
 - Medical Council of New South Wales
 - Nursing and Midwifery Council of New South Wales

- Optometry Council of New South Wales
 - Osteopathy Council of New South Wales
 - Pharmacy Council of New South Wales
 - Physiotherapy Council of New South Wales
 - Podiatry Council of New South Wales
 - Psychology Council of New South Wales
- **The disclosure is required or permitted by law.**
This exception would also allow the disclosure of protected information if permitted by the National Law or some other law. Protected information may be disclosed if, for example, it is subpoenaed by a Court.
 - **The person to whom the information relates has consented to the release.**
This exception permits the disclosure of protected information pertaining to an individual with his or her consent. It is advisable that such consent be obtained in writing.
 - **The disclosure is in a form that does not identify the identity of a person.**
This exception permits the disclosure of statistical or other data that could not reasonably be expected to lead to the identification of any person to whom it relates.
 - **The information relates to proceedings before a responsible tribunal and the proceedings are or were open to the public.**
For example, under this exception, information relating to proceedings before the South Australian Health Practitioners Tribunal may be disclosed if such proceedings were open to public.
 - **The information is, or has been, accessible to the public, including because it is or was recorded in a National Register.**
This exception permits the disclosure of information that is available to the public on the National Register including:-
 - a health practitioner's sex;
 - the suburb and postcode of a practitioner's principal place of practice;
 - the registration number of a practitioner;
 - the date in which a practitioner was first registered in a health profession in Australia, whether under the National Law or a corresponding prior Act;
 - the date on which a practitioner's registration expires;
 - the type of registration held by a practitioner;
 - if the register includes divisions, the division in which the practitioner is registered;
 - if a practitioner holds specialist registration, the recognised speciality in which the practitioner is registered;
 - if a practitioner has been reprimanded, the fact that the practitioner has been reprimanded;
 - if a condition has been imposed on a practitioner's registration or if a practitioner has entered into an undertaking with the board, details of an undertaking or undertaking;
 - if a practitioner's registration is suspended, the fact that the practitioner's registration has been suspended and, if the suspension is for a specified period, the period during which the suspension applies;
 - if a practitioner's registration has been endorsed, details of that endorsement; and

- details of any qualifications relied on by a practitioner to obtain registration or to have the practitioner's registration endorsed.
- **The disclosure is otherwise authorised by the Ministerial Council.**

CONSEQUENCES FOR BREACH OF SECTION 216(1)

This type of secrecy provision is usually strictly interpreted to require the utmost confidentiality with respect to information, unless its disclosure is expressly required in accordance with one of the exceptions in section 216(2). A maximum penalty of \$5,000 in the case of an individual, or \$10,000 in the case of a body corporate, may apply for a breach of this section. A person disgruntled with an unauthorized disclosure could insist on a summary prosecution of the person releasing information, and also claim damages for breach of confidence, or possibly defamation.

A breach of section 216(1) by a Member may be grounds for his/her removal from office.

FURTHER EXCEPTIONS

In addition to the exceptions provided in section 216(2), the National Law permits disclosure of protected information by Members in the following circumstances;

- Where disclosure is made for the purpose of planning the workforce of health practitioners at the request of the Ministerial Council. Note, however, that information disclosed pursuant to this exception must be done in way that does not identify any registered practitioner (section 217).
- Where disclosure is made to an information management agency subject to authorisation being provided by the Ministerial Council (section 218).

Where disclosure is made to relevant Commonwealth, State and Territory entities having functions relating to professional services provided by health practitioners or the regulation of health practitioners (section 219).

- Where disclosure is made to a relevant Commonwealth, State and Territory entity so that relevant action can be taken by such an entity in circumstances where there is a reasonable belief that a registered health practitioner poses or may pose a risk to public health or that the health or safety of patients is or may be at risk (section 220).
- Where disclosure is made to a registration authority (whether within or outside Australia) if the information is necessary to the exercise of the registration authority's functions (section 221).

APPLICABILITY OF THE NATIONAL PRIVACY PRINCIPLES

The Board and the Committee are required to comply with the National Privacy Principles ("NPP") set out in Schedule 3 to the Commonwealth *Privacy Act 1988*. The NPP governs the collection, storage, correction, use and disclosure of personal information and access to records of **personal information**, defined to mean:

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 an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

The principles set out in the NPP with respect to the disclosure of personal information complements sections 216 and 234 of the National Law. In essence, it provides that the Board and the Committee must not use or disclose personal information about an individual for a purpose (the secondary purpose) other than the primary purpose of collection unless one of the stated exceptions applies. To a large extent, these exceptions mirror those provided for under the National Law.

A copy of the NPP is annexed hereto. Members are encouraged to familiarise themselves with the principles within.

GUIDELINES FOR MEMBERS

Members should:

- Ensure that information gained by virtue of their roles as Members of the Board or the Committee is only used for purposes which are referable to their duties as Board or Committee Members;
- Ensure all information provided to them will be kept secure at all times and stored in a way that its confidentiality is assured; and
- Inform the Board of any unauthorised disclosure of information if they become aware of such disclosure; and
- upon the expiry or termination of their appointment to the National, State or Territory Board and/or the Committee, return or destroy (as the Board may instruct) all documents of a confidential nature received whilst serving as a Member.

Members should not:

- directly or indirectly disclose protected information unless otherwise authorised or permitted by law;
- use any information gained by virtue of their roles as Members of the Board or the Committee with intent of securing a benefit for themselves or another person, or to cause detriment to the national registration and accreditation scheme; or
- make any statements to the public or to unauthorized persons regarding matters which are dealt with by the Board or the Committee.

Schedule 3—National Privacy Principles

1 Collection

- 1.1 An organisation must not collect personal information unless the information is necessary for one or more of its functions or activities.
- 1.2 An organisation must collect personal information only by lawful and fair means and not in an unreasonably intrusive way.
- 1.3 At or before the time (or, if that is not practicable, as soon as practicable after) an organisation collects personal information about an individual from the individual, the organisation must take reasonable steps to ensure that the individual is aware of:
 - (a) the identity of the organisation and how to contact it; and
 - (b) the fact that he or she is able to gain access to the information; and
 - (c) the purposes for which the information is collected; and
 - (d) the organisations (or the types of organisations) to which the organisation usually discloses information of that kind; and
 - (e) any law that requires the particular information to be collected; and
 - (f) the main consequences (if any) for the individual if all or part of the information is not provided.
- 1.4 If it is reasonable and practicable to do so, an organisation must collect personal information about an individual only from that individual.
- 1.5 If an organisation collects personal information about an individual from someone else, it must take reasonable steps to ensure that the individual is or has been made aware of the matters listed in subclause 1.3 except to the extent that making the individual aware of the matters would pose a serious threat to the life or health of any individual.

2 Use and disclosure

- 2.1 An organisation must not use or disclose personal information about an individual for a purpose (the *secondary purpose*) other than the primary purpose of collection unless:
 - (a) both of the following apply:
 - (i) the secondary purpose is related to the primary purpose of collection and, if the personal information is sensitive information, directly related to the primary purpose of collection;
 - (ii) the individual would reasonably expect the organisation to use or disclose the information for the secondary purpose; or
 - (b) the individual has consented to the use or disclosure; or
 - (c) if the information is not sensitive information and the use of the information is for the secondary purpose of direct marketing:
 - (i) it is impracticable for the organisation to seek the individual's consent before that particular use; and
 - (ii) the organisation will not charge the individual for giving effect to a request by the individual to the organisation not to receive direct marketing communications; and
 - (iii) the individual has not made a request to the organisation not to receive direct marketing communications; and
 - (iv) in each direct marketing communication with the individual, the organisation draws to the individual's attention, or prominently displays a notice, that he or

she may express a wish not to receive any further direct marketing communications; and

- (v) each written direct marketing communication by the organisation with the individual (up to and including the communication that involves the use) sets out the organisation's business address and telephone number and, if the communication with the individual is made by fax, telex or other electronic means, a number or address at which the organisation can be directly contacted electronically; or
- (d) if the information is health information and the use or disclosure is necessary for research, or the compilation or analysis of statistics, relevant to public health or public safety:
 - (i) it is impracticable for the organisation to seek the individual's consent before the use or disclosure; and
 - (ii) the use or disclosure is conducted in accordance with guidelines approved by the Commissioner under section 95A for the purposes of this subparagraph; and
 - (iii) in the case of disclosure—the organisation reasonably believes that the recipient of the health information will not disclose the health information, or personal information derived from the health information; or
- (e) the organisation reasonably believes that the use or disclosure is necessary to lessen or prevent:
 - (i) a serious and imminent threat to an individual's life, health or safety; or
 - (ii) a serious threat to public health or public safety; or
- (ea) if the information is genetic information and the organisation has obtained the genetic information in the course of providing a health service to the individual:
 - (i) the organisation reasonably believes that the use or disclosure is necessary to lessen or prevent a serious threat to the life, health or safety (whether or not the threat is imminent) of an individual who is a genetic relative of the individual to whom the genetic information relates; and
 - (ii) the use or disclosure is conducted in accordance with guidelines approved by the Commissioner under section 95AA for the purposes of this subparagraph; and
 - (iii) in the case of disclosure—the recipient of the genetic information is a genetic relative of the individual; or
- (f) the organisation has reason to suspect that unlawful activity has been, is being or may be engaged in, and uses or discloses the personal information as a necessary part of its investigation of the matter or in reporting its concerns to relevant persons or authorities; or
- (g) the use or disclosure is required or authorised by or under law; or
- (h) the organisation reasonably believes that the use or disclosure is reasonably necessary for one or more of the following by or on behalf of an enforcement body:
 - (i) the prevention, detection, investigation, prosecution or punishment of criminal offences, breaches of a law imposing a penalty or sanction or breaches of a prescribed law;
 - (ii) the enforcement of laws relating to the confiscation of the proceeds of crime;
 - (iii) the protection of the public revenue;
 - (iv) the prevention, detection, investigation or remedying of seriously improper conduct or prescribed conduct;

- (v) the preparation for, or conduct of, proceedings before any court or tribunal, or implementation of the orders of a court or tribunal.

Note 1: It is not intended to deter organisations from lawfully co-operating with agencies performing law enforcement functions in the performance of their functions.

Note 2: Subclause 2.1 does not override any existing legal obligations not to disclose personal information. Nothing in subclause 2.1 requires an organisation to disclose personal information; an organisation is always entitled not to disclose personal information in the absence of a legal obligation to disclose it.

Note 3: An organisation is also subject to the requirements of National Privacy Principle 9 if it transfers personal information to a person in a foreign country.

2.2 If an organisation uses or discloses personal information under paragraph 2.1(h), it must make a written note of the use or disclosure.

2.3 Subclause 2.1 operates in relation to personal information that an organisation that is a body corporate has collected from a related body corporate as if the organisation's primary purpose of collection of the information were the primary purpose for which the related body corporate collected the information.

2.4 Despite subclause 2.1, an organisation that provides a health service to an individual may disclose health information about the individual to a person who is responsible for the individual if:

- (a) the individual:
 - (i) is physically or legally incapable of giving consent to the disclosure; or
 - (ii) physically cannot communicate consent to the disclosure; and
- (b) a natural person (the *carer*) providing the health service for the organisation is satisfied that either:
 - (i) the disclosure is necessary to provide appropriate care or treatment of the individual; or
 - (ii) the disclosure is made for compassionate reasons; and
- (c) the disclosure is not contrary to any wish:
 - (i) expressed by the individual before the individual became unable to give or communicate consent; and
 - (ii) of which the carer is aware, or of which the carer could reasonably be expected to be aware; and
- (d) the disclosure is limited to the extent reasonable and necessary for a purpose mentioned in paragraph (b).

2.5 For the purposes of subclause 2.4, a person is *responsible* for an individual if the person is:

- (a) a parent of the individual; or
- (b) a child or sibling of the individual and at least 18 years old; or
- (c) a spouse or de facto partner of the individual; or
- (d) a relative of the individual, at least 18 years old and a Member of the individual's household; or
- (e) a guardian of the individual; or
- (f) exercising an enduring power of attorney granted by the individual that is exercisable in relation to decisions about the individual's health; or
- (g) a person who has an intimate personal relationship with the individual; or
- (h) a person nominated by the individual to be contacted in case of emergency.

2.6 In subclause 2.5:

child: without limiting who is a child of an individual for the purposes of this clause, each of the following is the **child** of an individual:

- (a) an adopted child, stepchild, ex-nuptial child or foster child of the individual; and
- (b) someone who is a child of the individual within the meaning of the *Family Law Act 1975*.

de facto partner has the meaning given by the *Acts Interpretation Act 1901*.

parent: without limiting who is a parent of an individual for the purposes of this clause, someone is the **parent** of an individual if the individual is his or her child because of the definition of **child** in this subclause.

relative of an individual means a grandparent, grandchild, uncle, aunt, nephew or niece, of the individual.

sibling of an individual includes a half-brother, half-sister, adoptive brother, adoptive sister, step-brother, step-sister, foster brother and foster sister, of the individual.

stepchild: without limiting who is a stepchild of an individual for the purposes of this clause, someone is the **stepchild** of an individual if he or she would be the individual's stepchild except that the individual is not legally married to the individual's de facto partner.

- 2.7 For the purposes of the definition of **relative** in subclause 2.6, relationships to an individual may also be traced to or through another individual who is:
 - (a) a de facto partner of the first individual; or
 - (b) the child of the first individual because of the definition of **child** in that subclause.
- 2.8 For the purposes of the definition of **sibling** in subclause 2.6, an individual is also a sibling of another individual if a relationship referred to in that definition can be traced through a parent of either or both of them.

3 Data quality

An organisation must take reasonable steps to make sure that the personal information it collects, uses or discloses is accurate, complete and up-to-date.

4 Data security

- 4.1 An organisation must take reasonable steps to protect the personal information it holds from misuse and loss and from unauthorised access, modification or disclosure.
- 4.2 An organisation must take reasonable steps to destroy or permanently de-identify personal information if it is no longer needed for any purpose for which the information may be used or disclosed under National Privacy Principle 2.

5 Openness

- 5.1 An organisation must set out in a document clearly expressed policies on its management of personal information. The organisation must make the document available to anyone who asks for it.
- 5.2 On request by a person, an organisation must take reasonable steps to let the person know, generally, what sort of personal information it holds, for what purposes, and how it collects, holds, uses and discloses that information.

6 Access and correction

- 6.1 If an organisation holds personal information about an individual, it must provide the individual with access to the information on request by the individual, except to the extent that:
- (a) in the case of personal information other than health information—providing access would pose a serious and imminent threat to the life or health of any individual; or
 - (b) in the case of health information—providing access would pose a serious threat to the life or health of any individual; or
 - (c) providing access would have an unreasonable impact upon the privacy of other individuals; or
 - (d) the request for access is frivolous or vexatious; or
 - (e) the information relates to existing or anticipated legal proceedings between the organisation and the individual, and the information would not be accessible by the process of discovery in those proceedings; or
 - (f) providing access would reveal the intentions of the organisation in relation to negotiations with the individual in such a way as to prejudice those negotiations; or
 - (g) providing access would be unlawful; or
 - (h) denying access is required or authorised by or under law; or
 - (i) providing access would be likely to prejudice an investigation of possible unlawful activity; or
 - (j) providing access would be likely to prejudice:
 - (i) the prevention, detection, investigation, prosecution or punishment of criminal offences, breaches of a law imposing a penalty or sanction or breaches of a prescribed law; or
 - (ii) the enforcement of laws relating to the confiscation of the proceeds of crime; or
 - (iii) the protection of the public revenue; or
 - (iv) the prevention, detection, investigation or remedying of seriously improper conduct or prescribed conduct; or
 - (v) the preparation for, or conduct of, proceedings before any court or tribunal, or implementation of its orders;by or on behalf of an enforcement body; or
 - (k) an enforcement body performing a lawful security function asks the organisation not to provide access to the information on the basis that providing access would be likely to cause damage to the security of Australia.
- 6.2 However, where providing access would reveal evaluative information generated within the organisation in connection with a commercially sensitive decision-making process, the organisation may give the individual an explanation for the commercially sensitive decision rather than direct access to the information.
- Note: An organisation breaches subclause 6.1 if it relies on subclause 6.2 to give an individual an explanation for a commercially sensitive decision in circumstances where subclause 6.2 does not apply.
- 6.3 If the organisation is not required to provide the individual with access to the information because of one or more of paragraphs 6.1(a) to (k) (inclusive), the organisation must, if reasonable, consider whether the use of mutually agreed intermediaries would allow sufficient access to meet the needs of both parties.
- 6.4 If an organisation charges for providing access to personal information, those charges:
- (a) must not be excessive; and
 - (b) must not apply to lodging a request for access.

- 6.5 If an organisation holds personal information about an individual and the individual is able to establish that the information is not accurate, complete and up-to-date, the organisation must take reasonable steps to correct the information so that it is accurate, complete and up-to-date.
- 6.6 If the individual and the organisation disagree about whether the information is accurate, complete and up-to-date, and the individual asks the organisation to associate with the information a statement claiming that the information is not accurate, complete or up-to-date, the organisation must take reasonable steps to do so.
- 6.7 An organisation must provide reasons for denial of access or a refusal to correct personal information.

7 Identifiers

- 7.1 An organisation must not adopt as its own identifier of an individual an identifier of the individual that has been assigned by:
- (a) an agency; or
 - (b) an agent of an agency acting in its capacity as agent; or
 - (c) a contracted service provider for a Commonwealth contract acting in its capacity as contracted service provider for that contract.

7.1A However, subclause 7.1 does not apply to the adoption by a prescribed organisation of a prescribed identifier in prescribed circumstances.

Note: There are prerequisites that must be satisfied before those matters are prescribed: see subsection 100(2).

- 7.2 An organisation must not use or disclose an identifier assigned to an individual by an agency, or by an agent or contracted service provider mentioned in subclause 7.1, unless:
- (a) the use or disclosure is necessary for the organisation to fulfil its obligations to the agency; or
 - (b) one or more of paragraphs 2.1(e) to 2.1(h) (inclusive) apply to the use or disclosure; or
 - (c) the use or disclosure is by a prescribed organisation of a prescribed identifier in prescribed circumstances.

Note: There are prerequisites that must be satisfied before the matters mentioned in paragraph (c) are prescribed: see subsections 100(2) and (3).

7.3 In this clause:

identifier includes a number assigned by an organisation to an individual to identify uniquely the individual for the purposes of the organisation's operations. However, an individual's name or ABN (as defined in the *A New Tax System (Australian Business Number) Act 1999*) is not an **identifier**.

8 Anonymity

Wherever it is lawful and practicable, individuals must have the option of not identifying themselves when entering transactions with an organisation.

9 Transborder data flows

An organisation in Australia or an external Territory may transfer personal information about an individual to someone (other than the organisation or the individual) who is in a foreign country only if:

- (a) the organisation reasonably believes that the recipient of the information is subject to a law, binding scheme or contract which effectively upholds principles for fair handling of the information that are substantially similar to the National Privacy Principles; or
- (b) the individual consents to the transfer; or
- (c) the transfer is necessary for the performance of a contract between the individual and the organisation, or for the implementation of precontractual measures taken in response to the individual's request; or
- (d) the transfer is necessary for the conclusion or performance of a contract concluded in the interest of the individual between the organisation and a third party; or
- (e) all of the following apply:
 - (i) the transfer is for the benefit of the individual;
 - (ii) it is impracticable to obtain the consent of the individual to that transfer;
 - (iii) if it were practicable to obtain such consent, the individual would be likely to give it; or
- (f) the organisation has taken reasonable steps to ensure that the information which it has transferred will not be held, used or disclosed by the recipient of the information inconsistently with the National Privacy Principles.

10 Sensitive information

10.1 An organisation must not collect sensitive information about an individual unless:

- (a) the individual has consented; or
- (b) the collection is required by law; or
- (c) the collection is necessary to prevent or lessen a serious and imminent threat to the life or health of any individual, where the individual whom the information concerns:
 - (i) is physically or legally incapable of giving consent to the collection; or
 - (ii) physically cannot communicate consent to the collection; or
- (d) if the information is collected in the course of the activities of a non-profit organisation—the following conditions are satisfied:
 - (i) the information relates solely to the Members of the organisation or to individuals who have regular contact with it in connection with its activities;
 - (ii) at or before the time of collecting the information, the organisation undertakes to the individual whom the information concerns that the organisation will not disclose the information without the individual's consent; or
- (e) the collection is necessary for the establishment, exercise or defence of a legal or equitable claim.

10.2 Despite subclause 10.1, an organisation may collect health information about an individual if:

- (a) the information is necessary to provide a health service to the individual; and
- (b) the information is collected:
 - (i) as required or authorised by or under law (other than this Act); or
 - (ii) in accordance with rules established by competent health or medical bodies that deal with obligations of professional confidentiality which bind the organisation.

10.3 Despite subclause 10.1, an organisation may collect health information about an individual if:

- (a) the collection is necessary for any of the following purposes:
 - (i) research relevant to public health or public safety;

- (ii) the compilation or analysis of statistics relevant to public health or public safety;
- (iii) the management, funding or monitoring of a health service; and
- (b) that purpose cannot be served by the collection of information that does not identify the individual or from which the individual's identity cannot reasonably be ascertained; and
- (c) it is impracticable for the organisation to seek the individual's consent to the collection; and
- (d) the information is collected:
 - (i) as required by law (other than this Act); or
 - (ii) in accordance with rules established by competent health or medical bodies that deal with obligations of professional confidentiality which bind the organisation; or
 - (iii) in accordance with guidelines approved by the Commissioner under section 95A for the purposes of this subparagraph.

10.4 If an organisation collects health information about an individual in accordance with subclause 10.3, the organisation must take reasonable steps to permanently de-identify the information before the organisation discloses it.

10.5 In this clause:

non-profit organisation means a non-profit organisation that has only racial, ethnic, political, religious, philosophical, professional, trade, or trade union aims.



MANUAL FOR NATIONAL BOARDS AND THEIR COMMITTEES

JULY 2015



Aboriginal and Torres Strait
Islander Health Practice
Chinese Medicine
Chiropractic
Dental
Medical
Medical Radiation Practice
Nursing and Midwifery

Occupational Therapy
Optometry
Osteopathy
Pharmacy
Physiotherapy
Podiatry
Psychology

Australian Health Practitioner Regulation Agency

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This document has undergone rebranding to reflect ownership by AHPRA. Along with design changes, content in Appendix 4 and 5 has been updated to reflect current details. The remaining content or intent of the original document has not changed, unless indicated otherwise.

Authorised by: Executive Director Strategy and Policy

Version: 2

Effective date: 1 September 2012

Review date: 1 September 2013

Glossary of terms

Accrediting Authorities	An external accreditation entity approved by a National Board or an accreditation committee established by a National Board
AHMAC	Australian Health Ministers' Advisory Council
AHPRA	Australian Health Practitioner Regulation Agency
AManC	Agency Management Committee
ATO	Australian Tax Office
Board	all Boards inclusive of National Boards and their committees
Board member/s	all Board members inclusive of National Boards, state, territory and regional Boards, and all committees
Chair	Chair of a National Board, state, territory and regional Board, or a committee (or as referred to in the document)
COAG	Council of Australian Governments
HCE	Health Complaints Entity
HPA	Health Profession Agreement
IGA	Intergovernmental agreement
Ministerial Council	Australian Health Workforce Ministerial Council
National Board/s	National Health Practitioner Board/s
National Board member/s	members of the National Health Practitioner Board/s
National Law	Health Practitioner Regulation National Law as in force in each state and territory
National Scheme	National Registration and Accreditation Scheme
National Scheme bodies	National Boards (inclusive of National Boards, state, territory and regional Boards, and all committees), the Agency Management Committee and the Australian Health Practitioner Regulation Agency
NPP	National Privacy Principles
Ombudsman and Privacy Commissioner	The Office of the National Health Practitioner Ombudsman and Privacy Commissioner established under the National Law

Introduction

This guide is for all Board members to assist both newly-appointed and continuing Chairs and members in successfully undertaking the important role of regulation in the National Registration and Accreditation Scheme (the National Scheme). This manual should be read in conjunction with the *National Registration and Accreditation Scheme Governance Charter*.

Part 1 – Governance

1.1 The National Law

Background

The National Scheme represents the culmination of many years of development in policy and the approach to regulation of health practitioners in Australia.

One of the most significant developments leading to the National Scheme was the Productivity Commission's research report, *Australia's Health Workforce*,¹ which was published in January 2006. The Productivity Commission recommended significant changes to the existing registration and accreditation arrangements for health professions, as part of its broader consideration of institutional, regulatory and funding arrangements for Australia's health workforce.

Following considerable consultation, at its meeting on 26 March 2008, the Council of Australian Governments (COAG) agreed it would establish a single national registration and accreditation scheme for health practitioners, to commence on 1 July 2010, to improve safety and quality, facilitate workforce mobility and reduce red tape. An intergovernmental agreement (IGA) was signed by the Commonwealth and all states and territories to formalise this historic agreement.²

The National Scheme is not a Commonwealth scheme; rather it is established via state and territory laws, using an 'adoption of laws' model. Under this model, each state and territory implements a uniform piece of legislation known as the National Law. This model is used for matters where national consistency is desired,

but is generally within the states' and territories' legislative powers, and not the Commonwealth's.

Ministers decided to implement the legislation to create the National Scheme in three stages.

The first stage, the Health Practitioner Regulation (Administrative Arrangements) National Law Act 2008 (Act A), was passed through the Queensland Parliament and received Royal Assent on 25 November 2008. This Act encompassed the COAG agreement and provided for the establishment of the administrative framework and national bodies for the scheme – the Australian Health Workforce Ministerial Council (the Ministerial Council), the Australian Health Workforce Advisory Council, the National Boards and the National Agency – without giving full effect to their substantive functions.³

The second stage legislation (Act B), the Health Practitioner Regulation National Law Act 2009 (Qld), agreed by all health ministers, was passed through the Queensland Parliament and received Royal Assent on 3 November 2009.⁴ This Act repealed Act A from 1 July 2010, and re-enacted the provisions relating to the national bodies, but also specified their full powers and functions, as well as other matters. Transitional provisions provided for the previous disparate state and territory schemes and registrants to be legally transitioned to the National Scheme.

The third stage legislation (Act C) involved each jurisdiction passing legislation to adopt the scheme through their Parliament or, in the case of Western Australia, introduce corresponding laws, which repealed all relevant existing state and territory legislation with respect to health practitioner regulation.

In New South Wales (NSW), the Health Practitioner Regulation National Law, as in force in each state and territory (the National Law) was adopted except for Part 8. Part 8 relates to the management of health, performance and conduct matters of registered health practitioners. Under the National Law, NSW is known as a co-regulatory jurisdiction. The National Law applies in NSW in relation to matters of registration and accreditation (as it does in all other states and territories), however, matters relating to the health, performance and conduct of regulated health practitioners in NSW are managed by the Health Care Complaints Commission (HCCC) and the NSW Councils. The section of the National Law in relation to the management of health, performance and conduct matters is managed in NSW, in accordance with Part 8 adopted in

1 Productivity Commission. *Australia's Health Workforce*, Research Report. Canberra. 2005. Available from: www.pc.gov.au/projects/study/healthworkforce/docs/finalreport

2 COAG Intergovernmental Agreement for a National Registration and Accreditation Scheme for Health Professions. Available from: www.coag.gov.au/coag_meeting_outcomes/2008-03-26/docs/iga_health_workforce.rtf

3 Act A is available from: www.legislation.qld.gov.au/LEGISLTN/ACTS/2008/08AC062.pdf

4 The National Law and accompanying explanatory notes, as introduced into Queensland Parliament, are available on the Queensland Parliamentary Counsel's website: www.legislation.qld.gov.au/Bills/53PDF/2009/HealPraRegNLB09.pdf

NSW. The NSW office of the Australian Health Practitioner Regulation Agency (AHPRA) and National Boards deal only with registration and accreditation matters and not with notifications in relation to regulated health practitioners in NSW. The National Law provides that any notification received, in any AHPRA office, which relates to conduct occurring in NSW, must be referred immediately to the Health Complaints Entity or the relevant NSW Council.

Objectives and guiding principles

It is a requirement that anyone that has functions under the National Law exercise their functions having regard to the objectives and guiding principles set out. Importantly the National Law provides for a number of considerations in addition to protecting the public.

The objectives and guiding principles of the National Law are set out in section 3 of the National Law, as follows:

- (1) *The object of this Law is to establish a national registration and accreditation scheme for—*
 - (a) *the regulation of health practitioners; and*
 - (b) *the registration of students undertaking—*
 - (i) *programs of study that provide a qualification for registration in a health profession; or*
 - (ii) *clinical training in a health profession.*
- (2) *The objectives of the national registration and accreditation scheme are—*
 - (a) *to provide for the protection of the public by ensuring that only health practitioners who are suitably trained and qualified to practise in a competent and ethical manner are registered; and*
 - (b) *to facilitate workforce mobility across Australia by reducing the administrative burden for health practitioners wishing to move between participating jurisdictions or to practise in more than one participating jurisdiction; and*
 - (c) *to facilitate the provision of high quality education and training of health practitioners; and*
 - (d) *to facilitate the rigorous and responsive assessment of overseas-trained health practitioners; and*
 - (e) *to facilitate access to services provided by health practitioners in accordance with the public interest; and*
 - (f) *to enable the continuous development of a flexible, responsive and sustainable Australian health workforce and to enable*

innovation in the education of, and service delivery by, health practitioners.

- (3) *The guiding principles of the national registration and accreditation scheme are as follows—*
 - (a) *the scheme is to operate in a transparent, accountable, efficient, effective and fair way;*
 - (b) *fees required to be paid under the scheme are to be reasonable having regard to the efficient and effective operation of the scheme;*
 - (c) *restrictions on the practice of a health profession are to be imposed under the scheme only if it is necessary to ensure health services are provided safely and are of an appropriate quality.*

Agency Management Committee

The members of the Agency Management Committee (AManC) are appointed by the Ministerial Council (which comprises health ministers of the governments of the states, territories and the Commonwealth). The role of the AManC is to oversee the affairs of AHPRA, to decide its policies, and to ensure AHPRA functions properly, effectively and efficiently working with the National Health Practitioner Boards (the National Boards).

The inaugural AManC was appointed by the Ministerial Council in March 2009. The AManC consists of at least five people:

- a Chair who is not a registered health practitioner and has not been a health practitioner in the last five years
- at least two people with expertise in health and/or education and training, and
- at least two people with business or administrative expertise who are not currently or previously registered health practitioners.

The AManC meets up to 11 times per year including jointly with the Forum of National Boards on occasion.

AHPRA

The National Boards are supported by AHPRA in its role of administering the National Scheme. AHPRA has a national office based in Melbourne and offices in every state and territory to support local boards and committees, and respond to local enquiries.

Under the National Law, the functions of AHPRA are specified in s25 and include providing administrative assistance and support to the National Boards and their committees in exercising their functions. Many National Board functions are delegated to AHPRA staff to enable effective operation of the National Scheme.

AHPRA is required to enter into a health profession agreement (HPA) with each National Board that makes provision for:

- fees payable by health practitioners and others in respect of the health profession for which the National Board is established
- the annual budget of the National Board, and
- the services to be provided to the National Board by AHPRA to enable the National Board to carry out its functions.

Key AHPRA roles

National Boards can expect to work closely with senior national office AHPRA managers, including the:

- Chief Executive Officer, who is individually accountable for the performance of AHPRA in delivering its functions under the National Law
- Executive Director Strategy and Policy, who is individually accountable for the coordination and delivery of advice and services to the National Boards and their subordinate bodies
- Executive Director Business Services, who is individually accountable for AHPRA's finance and human resources functions, business planning and the management of HPAs with the National Boards
- Executive Director Regulatory Operations, who is individually accountable for the ongoing review and development of high impact changes to business operations, processes and systems, with a particular focus on service delivery to health practitioners and the public

Executive Officers provide direct support to the respective National Board, including policy development, managing stakeholder relations, coordinating secretariat services and liaising between the National Board and AHPRA.

All Boards can expect to work closely with AHPRA state and territory offices, and AHPRA managers and staff, including the:

- State and Territory Managers, who are individually accountable for delivery of functions at a jurisdictional level and collectively accountable, with the national directors, for consistency of process and outputs across jurisdictions
- National Director, Board Services, who is responsible for developing and implementing standardised, quality corporate, governance and administrative support for the National Boards which have only a national registration and notification committee
- National Director Registration, who is responsible for the management of the registration of health practitioners, and

- National Director Notifications (except NSW), who is responsible for the management of notifications in relation to registered health practitioners.

1.2 National Boards and their committees

Members of the following 10 National Boards were first appointed by the Ministerial Council on 31 August 2009 to regulate the corresponding health professions under the National Law from 1 July 2010:

- Chiropractic Board of Australia
- Dental Board of Australia
- Medical Board of Australia
- Nursing and Midwifery Board of Australia
- Optometry Board of Australia
- Osteopathy Board of Australia
- Pharmacy Board of Australia
- Physiotherapy Board of Australia
- Podiatry Board of Australia
- Psychology Board of Australia

Members of the following four National Boards were first appointed by the Ministerial Council on 18 July 2011 to regulate the corresponding health professions under the National Law from 1 July 2012:

- Aboriginal and Torres Strait Islander Health Practice Board of Australia
- Chinese Medicine Board of Australia
- Medical Radiation Practice Board of Australia
- Occupational Therapy Board of Australia

Powers

The powers of the National Boards are set out in section 32 of the National Law. Essentially, a National Board has the powers necessary to enable it to exercise its functions.

Section 36 of the National Law provides for National Boards to establish committees and/or state or territory Boards. This is to enable the National Board to exercise its functions in the particular jurisdiction in a way that provides an effective and timely local response to health practitioners and other people in that jurisdiction.

The National Law under section 37 provides for a National Board to delegate any of its functions, other than the power of delegation, to a committee, AHPRA, a member of staff of AHPRA or a person engaged as a contractor by AHPRA. AHPRA may sub-delegate any function delegated to it by a National Board to a member of the AHPRA staff.

Functions

The functions of the National Boards and their committees as delegated are set out in section 35 of the National Law, as follows:

- (1) *The functions of a National Board established for a health profession are as follows—*
 - (a) *to register suitably qualified and competent persons in the health profession and, if necessary, to impose conditions on the registration of persons in the profession;*
 - (b) *to decide the requirements for registration or endorsement of registration in the health profession, including the arrangements for supervised practice in the profession;*
 - (c) *to develop or approve standards, codes and guidelines for the health profession, including—*
 - (i) *the approval of accreditation standards developed and submitted to it by an accreditation authority; and*
 - (ii) *the development of registration standards for approval by the Ministerial Council; and*
 - (iii) *the development and approval of codes and guidelines that provide guidance to health practitioners registered in the profession;*
 - (d) *to approve accredited programs of study as providing qualifications for registration or endorsement in the health profession;*
 - (e) *to oversee the assessment of the knowledge and clinical skills of overseas trained applicants for registration in the health profession whose qualifications are not approved qualifications for the profession, and to determine the suitability of the applicants for registration in Australia;*
 - (f) *to negotiate in good faith with, and attempt to come to an agreement with, the National Agency on the terms of a health profession agreement;*
 - (g) *to oversee the receipt, assessment and investigation of notifications about persons who—*
 - (i) *are or were registered as health practitioners in the health profession under this Law or a corresponding prior Act; or*
 - (ii) *are students in the health profession;*
 - (h) *to establish panels to conduct hearings about—*
 - (i) *health and performance and professional standards matters in relation to persons who are or were registered in the health profession under this Law or a corresponding prior Act; and*
 - (ii) *health matters in relation to students registered by the Board;*
 - (i) *to refer matters about health practitioners who are or were registered under this Law or a corresponding prior Act to responsible tribunals for participating jurisdictions;*
 - (j) *to oversee the management of health practitioners and students registered in the health profession, including monitoring conditions, undertaking and suspensions imposed on the registration of the practitioners or students;*
 - (k) *to make recommendations to the Ministerial Council about the operation of specialist recognition in the health profession and the approval of specialties for the profession;*
 - (l) *in conjunction with the National Agency, to keep up-to-date and publicly accessible national registers of registered health practitioners for the health profession;*
 - (m) *in conjunction with the National Agency, to keep an up-to-date national register of students for the health profession;*
 - (n) *at the Board's discretion, to provide financial or other support for health programs for registered health practitioners and students;*
 - (o) *to give advice to the Ministerial Council on issues relating to the national registration and accreditation scheme for the health profession;*
 - (p) *if asked by the Ministerial Council, to give to the Ministerial Council the assistance or information reasonably required by the Ministerial Council in connection with the national registration and accreditation scheme;*
 - (q) *to do anything else necessary or convenient for the effective and efficient operation of the national registration and accreditation scheme;*
 - (r) *any other function given to the Board by or under this Law.*
- (2) *For the purposes of subsection (1)(g)-(l), the Board's functions do not include receiving notifications and taking action referred to in those paragraphs in relation to behaviour by a registered health practitioner or student that occurred, or is reasonably believed to have occurred, in a co-regulatory jurisdiction.*

Finance

National Boards and AHPRA are to be efficient, effective and economical in fulfilling their role.

National Boards and AHPRA collaborate to establish and monitor annual budgets, which are set out in the HPA. National Boards apply cost-benefit analysis principles when establishing budgets and monitoring performance. This includes setting health practitioner fees at a level to allow National Boards, their committees and AHPRA to appropriately fulfil their roles and to maintain adequate reserves.

National Boards share indirect costs in agreed proportions and assist AHPRA in fulfilling its broader corporate financial management responsibilities.

AHPRA is also responsible for establishing and administering an AHPRA fund with a separate account for each National Board. Section 211 of the National Law provides that AHPRA may invest money in a National Board's account only if AHPRA has consulted with the National Board about the investment.

Section 212 of the National Law sets out the financial management duties of AHPRA and the National Boards. It imposes duties on AHPRA to ensure its financial management and operations are efficient, transparent and accountable, and its financial management practices are subject to appropriate internal safeguards. It also requires the National Boards to ensure their operations are efficient, effective, and economical; and to take any necessary action to ensure that AHPRA is able to comply with its financial management responsibilities.

Risk

The risks to which National Boards are exposed include regulatory, reputational, legal and financial risks.

Each National Board, as part of its annual planning, assesses the broad domains of risk associated with their functions in their respective health profession, and develops appropriate risk management strategies.

Each National Board commits to advising AHPRA of any risks which may impact on its ability to meet its statutory obligations and also recommend or collaborate to develop risk mitigation and management responses.

If a National Board identifies a risk that has the potential to affect other National Scheme bodies, the matter will be referred to AHPRA to coordinate a Scheme-wide response.

Reporting

AHPRA publishes the annual report in a single publication with reports from each National Board

incorporated. The annual report is published in hard copy and electronic formats. This is available from www.ahpra.gov.au under *Legislation and Publications, AHPRA Publications*.

1.3 Membership

Terms of office

Members of National Boards and AManC are appointed by the Ministerial Council for a term of not more than three years. While National Boards determine whether or not to establish state, territory and/or regional Boards, the members are appointed by the responsible jurisdiction's health minister.

In accordance with National Board succession planning principles, National Board members are eligible for re-appointment for a maximum of three consecutive terms. An exception to this may be considered if the need arises to support succession planning and transition for the role of Chair.

Vacancy in office

The office of a National Board member becomes vacant if the National Board member:

- completes a term of office
- resigns the office by instrument in writing addressed to the Chairperson of the Ministerial Council
- is removed from office by the Chairperson of the Ministerial Council
- is absent, without leave first being granted by the Chair of the Board, from three or more consecutive meetings of the National Board of which reasonable notice has been given to the member personally or by post, or
- dies.

The Chairperson of the Ministerial Council may remove a National Board member from office if:

- the National Board member has been found guilty of an offence that, in the opinion of the Chairperson of the Ministerial Council, renders him or her unfit to continue to hold the office
- the National Board member ceases to be a registered health practitioner as a result of misconduct, impairment or incompetence
- the National Board member ceases to be eligible for appointment to the office that they hold on the National Board
- the National Board member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of remuneration for their benefit, or

- the National Board recommends the removal of the National Board member on the basis that he or she has engaged in misconduct or has failed, or is unable to properly exercise, their functions as a National Board member.

Vacancy in office of state, territory and/or regional Board members is managed in accordance of section 36 of the National Law and by the responsible jurisdiction's health minister.

Vacancy in office of National Board established committees is managed by the National Board and AHPRA.

Extension of term of office

A National Board member may continue holding office at the end of his or her appointment period for a period of not more than six months to enable the position to be filled, whether by re-appointment or the appointment of a successor. This arrangement does not apply if the National Board member resigns by instrument in writing addressed to the Chairperson of the Ministerial Council; or the Chairperson of the Ministerial Council determines that the services of the National Board member are no longer required.

Extension of term of office for state, territory and/or regional Board members is managed by the responsible jurisdiction's health minister.

Extension of term of office for National Board established committees is managed by the National Board and AHPRA.

Board member attributes

In deciding whether to appoint a person as a Chair or member of a Board, the Ministerial Council or responsible health minister must have regard to the skills and experience of the person that are relevant to the Board's functions.

The desired attributes for all Board members are:

- **Displays integrity:** is ethical, committed, diligent, prepared, organised, professional, principles-based and respectful, values diversity, and shows courage and independence.
- **Thinks critically:** is objective and impartial, uses logical and analytical processes, distils the core of complex issues and weighs up options.
- **Applies expertise:** actively applies relevant knowledge, skills and experience to contribute to decision-making.
- **Communicates constructively:** is articulate, persuasive and diplomatic, listens and responds constructively to contributions from others.
- **Focuses strategically:** takes a broad perspective, can see the big picture, and considers long-term impacts.

- **Collaborates in the interests of the National Scheme:** is a team player, flexible and cooperative, creates partnerships within and between Boards and AHPRA.

In addition to the attributes that are expected for all Board members, National Board Chairs are expected to demonstrate the following attributes:

- **Demonstrates leadership:** is confident, decisive and acts without fear or favour; is at the forefront of professional regulation; drives reform and facilitates change.
- **Engages externally:** is the spokesperson for the Board and advocate for the National Scheme; builds and sustains stakeholder relationships.

All Board Chairs, including Chairs of state, territory and regional Boards and committees will possess the following attribute:

- **Chairs effectively:** establishes and follows well-organised agendas, facilitates input from all members, builds consensus, distils core issues, summarises discussion and confirms decisions ensuring they are accurately recorded.

Roles and responsibilities

Members to act in the public interest and for the Board

Board members are to act in accordance with the National Law and the policy framework of the National Scheme. The National Law in Schedule 4, section 7 specifies that members are to act impartially in the public interest, putting the public interest before the interests of health practitioners or any entity that represents health practitioners.

Board member – practitioner

The National Law does not define the role or attributes of a practitioner member, however to be eligible for appointment under the National Law as a practitioner member, the person must be a registered health practitioner in the health profession for which the Board is established. It is considered that a practitioner member will bring to the Board sound experience in the health profession for which the Board is established and will have an appreciation and understanding of the role of the Board.

Member – community

The National Law does not define the role or attributes of a community member, however to be eligible for appointment under the National Law as a community member, the person must *not* be a registered health practitioner in the health profession for which the Board is established, and must not at any time have been registered as a health practitioner in the health profession under the National Law or a corresponding prior Act. It is considered that a community member will bring to the Board a strong community focus and may have

legal or regulatory expertise, or skills in strategy, finance and/or policy.

National Board Chair

A significant distinguishing feature of this role is that each National Board Chair is the official spokesperson for their National Board, as well as a key advocate in explaining and promoting the National Scheme.

All Board Chairs, as highlighted above in *Board member attributes*, also need to demonstrate leadership and be highly skilled and effective at chairing meetings.

Code of Conduct

Board members have an obligation to:

Understand the board's role and public duties

- Gain a clear understanding of the role or purpose of the Board, as well as the statutory and regulatory requirements of members carrying out their public duties.
- Develop an understanding of the political and social environment in which the Board operates.
- Stay informed about all relevant activities affecting the Board.
- Comply with legal obligations and implement the decisions taken by the Board.

Be active

- Attend all Board meetings – where attendance is not possible, Board members will submit an apology.
- Participate actively and work cooperatively with fellow members, AHPRA and other stakeholders to achieve agreed goals.
- Prepare for meetings by reading and considering papers circulated with the agenda.

Respect each other

- Be self-aware and treat each other with professionalism, courtesy and respect.
- Not improperly influence other Board members.
- Act loyally and in good faith.
- Consider a range of perspectives.
- Consider the views of stakeholders and affected parties about issues under consideration.
- Consider the operational impact across National Boards and on AHPRA.

Act ethically

- Constructively raise any concerns with respect to process.

- Express concerns to the Chair or other relevant authority about decisions or actions contrary to the Board's primary responsibility to act in the public interest.
- Disclose any information about actual or potentially corrupt or illegal activities to the Chair or, if necessary, the appropriate reporting body.

Induction

Newly-appointed Board members and Board members re-appointed to different Boards (e.g. community members who move across Boards) will be provided with a comprehensive induction program.

In recognition of the importance of the role of Chair, a specific induction and development program will be made available to incoming Chairs.

Performance review, training and development

National Boards commit to support their members in accessing training and development activities that are directly relevant to the performance of the Board role and, where appropriate, to support succession planning.

Development needs will be identified through regular evaluation processes as determined by National Boards and in response to Scheme-wide issues identified by AHPRA or any National Board.

AHPRA will assist National Boards as required in developing evaluation processes, identifying, addressing and evaluating training and development activities, with financial provision made in the HPA to address agreed requirements.

Boards will formally review the conduct and performance of individual Board members at least once every three years and informally on an annual basis. The process used is determined by each National Board in collaboration with AHPRA, with support from AHPRA as required.

Areas for development identified through review processes will inform a Board member's professional development planning.

Part 2 – Procedures

2.1 Meetings

Meetings are held as required to fulfill the Board's regulatory functions. The procedures for the calling and conduct of meetings and the transaction of business out-of-session are set out in: the National Law under schedule 4, part 4; the National Scheme's *Governance Charter*; and National Board-specific governance documentation.

Meeting schedule

National Boards will generally meet at least six times a year. Other Boards and committees will meet as agreed by the National Boards.

Meetings will be scheduled on an 'as needs' basis and convened as appropriate to the needs of the Board. They may be held face-to-face, via teleconference or videoconference, or out-of-session.

Agenda items

There is a standard format for agendas and board papers, which usually contain background information, advice and recommendations from AHPRA. Board members can also propose items for the agenda. Nominations for Board agendas should be provided to the Chair as soon as possible, and no later than seven working days ahead of the meeting at which the matter is to be considered.

Meeting papers

If a Board member is submitting a paper on an agenda item or other material for a Board meeting, this must be provided to the Chair at least seven working days before the meeting.

Meeting papers will be provided to members five working days prior to the scheduled meeting.

Attendance

Board members are expected to, as far as is practical, attend all meetings including teleconferences and video-links. In the event that a Board member cannot attend a meeting, they are required to advise the Chair prior to the meeting. If an absence is likely to extend for three consecutive meetings, Board members will need to request a leave of absence from the Chair. In the unlikely event that a Board member is absent without being granted leave by the Chair for three or more consecutive meetings, the office of the Board member may be declared vacant, in accordance with schedule 4, clause 4(1)(d) of the National Law.

Record of decisions and action items

The relevant Board secretariat will issue draft records of decisions to members following the meeting and request that any comments or

proposed amendments to the draft be advised within five working days.

The Chair will be responsible for accepting or rejecting amendments to draft decisions. Final decisions and actions will be distributed to the Board members by email, or other secure electronic means, prior to the next meeting.

A formal record of all decisions and meetings will be held by the relevant Board secretariat.

Confidentiality

The papers, discussions and records of the Board are confidential unless otherwise agreed by the Board. A person who is, or has been, exercising functions under the National Law must not disclose any protected information to another person. The National Law includes penalties if this requirement is breached: \$5,000 for a contravention by an individual.

For further information in relation to confidentiality, refer to *Appendix 1: Guidelines for Board and committee members with respect to duty of confidentiality*.

Conflict of interest and bias

The National Law includes extensive provisions in relation to conflict of interest, particularly at schedule 4, clause 8. In accordance with clause 8(1) of schedule 4 of the National Law, Board members must declare any actual and possible conflict of interest in relation to matters to be considered at a meeting. For further detailed information in relation to conflict of interest, refer to *Appendix 2: Guidelines for Board and committee members with respect to conflict of interest*.

All Board members must also declare and exclude themselves from decision-making in relation to a matter in which they are biased, or might be perceived to be biased (refer to the National Scheme's *Governance Charter* for further detail).

Record of conflict of interest

The Chair, or AHPRA on behalf of the Chair, holds a copy of conflict of interest statements provided by Board members on their appointment to the Board. Records of disclosures will be kept in a folder clearly identified for this purpose. In addition, a record of conflict of interest discussions must be recorded at each meeting.

Delegations

Power to delegate

The National Law empowers National Boards to delegate any of its functions, other than the power of delegation, to a committee, AHPRA or one of its staff, or a person engaged as a contractor by AHPRA. State, territory and regional Boards are committees of National Boards operating under delegated powers and accordingly can only carry

out the functions that have been delegated to them by their National Board.

National Board delegations are contained in the *Instruments of Delegation* that describe, define limits for and establish the accountabilities of delegates. *Instruments of Delegation* can be revised at any time by resolution of the National Board, and the signature of a person authorised by the National Board. When operating under delegated powers, the delegations are to be exercised in accordance with the delegating body's policies and requirements.

The National Boards have delegated the bulk of routine and administrative functions to AHPRA. For further information in relation to delegations, refer to *Appendix 3: Guidelines for Board and committee members with respect to the exercise of delegated functions*.

2.2 Internal communications

Communication and reporting between National Boards and committees

National Boards use contemporary and effective governance arrangements to ensure the timely, consistent and accurate flow of information and decision-making. Communication to and from National Board committees (including state, territory and regional Boards) is to be determined and managed by the National Board, with the assistance of AHPRA.

A variety of mechanisms are available to facilitate communication and reporting:

- provision of the record of decisions and actions from committee meetings to the National Board
- regular meetings between the Chairs of national committees and/or state/territory/regional Boards and the National Board Chair or a representative
- standing items on committee agendas for issues raised by the National Board
- submission of papers from committees for consideration by the National Board
- executive officer post-meeting briefings for senior AHPRA staff and National Board committees
- consultation with other National Boards
- consultation with state managers on decisions with operational implications, and
- circulation of communiqués from National Board meetings to key stakeholders, including committees.

Board members seeking assistance or information from AHPRA staff should, where possible, direct

their request or enquiry through the executive officer, or Board or committee Chair.

Communication and reporting between National Boards and AHPRA

Communication between National Boards and AHPRA is determined and managed using a variety of mechanisms:

- Forum of Chairs meeting which is held via teleconference 10 times a year and face-to-face twice a year – the Forum of Chairs comprises the Chair from each National Board, AManC Chair and senior AHPRA staff. The subcommittees of the forum provide for high level collaboration between National Boards, AManC and AHPRA on key issues.
- standing items on National Board agendas including visits by senior AHPRA staff at each National Board meeting
- submission of papers from AHPRA for consideration by the National Board
- executive officer post-meeting briefings after each National Board meeting to AHPRA staff, and
- joint planning activities.

2.3 External communications

National Boards recognise that successful implementation of the National Scheme requires engagement with a wide range of stakeholders.

National Boards consult and communicate with their respective health practitioners, professions and the broader health workforce on the work of their National Board. Many stakeholder organisations play an important intermediary role in advising and supporting individual practitioners. National Boards, assisted by AHPRA (as required by section 40 of the National Law), conduct wide-ranging consultations on the content of registration standards, codes and guidelines.

National Boards, as part of their annual planning, consider communication and stakeholder engagement requirements with the objectives being to:

- support the achievement of National Board statutory obligations and strategic priorities
- increase community awareness of the role of the respective National Board and the Scheme more generally
- maintain (or establish) the confidence of the community, health professions and other stakeholders in the National Board, and
- build and protect the reputation of the National Board as an authoritative, trusted source of information and advice, and a fair and effective regulator within the National Scheme.

AHPRA manages the across-Scheme public and stakeholder engagement and communications strategy on behalf of AHPRA and the National Boards. The National Boards are consulted on the development of this strategy.

Speaking on behalf of the Board

Chairs of National Boards are the official spokespeople for their respective National Board. They are also expected to represent and advocate for the Scheme in general.

Each National Board is to determine their policy for how and when their members may undertake stakeholder communication and engagement activities. The National Board policy applies to all committees of the National Board.

Role of the Chair

The National Board Chair will represent the National Board in all public communication unless, in accordance with specific National Board policy, the role has been delegated to another Board member in a specific situation/s. The National Board Chair may speak on behalf of the National Board without obtaining National Board members' approval.

Responsibility of Board members

Board members may not comment publicly as individuals on the work of the Board or the National Scheme without securing the Chair's approval for the statement concerned or in accordance with specific National Board policy.

Membership of other organisations or professional bodies

Board members may also be members of other organisations or professional bodies that may, from time-to-time, express a view on the work of the Board or the National Scheme. Although the National Law does not preclude a Board member's participation as part of other organisations or professional bodies, due regard should be given to any potential conflicts.

Correspondence

Board members should not respond individually to letters or emails addressed to them individually on matters relating to the Board. Replies to such correspondence will be issued from the National Board Chair or AHPRA (on behalf of the Board), where relevant.

Part 3 – Administration

3.1 Remuneration

The remuneration for Board members is determined by the Ministerial Council having regard to the remuneration generally applied to regulatory bodies with a substantial influence on the health industry.

A schedule of fees payable to Board members is included in *Appendix 4: Schedule of fees for Board, committee and panel members*. From September 2012 Ministers have applied an annual indexation to sitting fees based on CPI.

Sitting fees

A daily fee is payable for Board member attendance in person or by telephone at a scheduled Board meeting. The daily fee includes meeting preparation time for the scheduled Board meeting and up to four hours of travel time.

Where Board meetings are held in between scheduled Board meetings, they are usually conducted by teleconference or out-of-session and are of a shorter duration (less than four hours). As such, half the daily fee is payable. The fee includes meeting preparation time.

Attendance and travel are recorded on the Board member attendance sheet circulated at the scheduled Board meetings. When a meeting is held by teleconference, the National Board's Executive Officer or relevant AHPRA staff member will record attendance and travel (if relevant). For further information refer to Appendix 4.

Special assignment fees

Special assignment fees are payable for Board member commitments that are not related to meetings. These include consultations, conferences, seminars, investigations or the writing of special reports by a Board member, approved by the National Board Chair, or in accordance with specific National Board policy or delegations.

Special assignment fees are lower than fees for Board meetings.

For special assignments of more than four hours duration, a daily fee is payable. For special assignments that are less than four hours, half the daily fee is payable.

Dinners, functions, openings, ceremonies and social engagements are not considered to be special assignments.

Travel time

The daily fee includes up to four hours travel time directly from a Board member's home or workplace to and from the Board meeting or the special assignment.

If travel time is between four and eight hours, an additional half daily fee is paid.

For travel that exceeds eight hours, an additional full daily fee is paid.

Expenses

Board members are entitled to reimbursement of any reasonable out-of-pocket expenses incurred during the course of undertaking Board business.

Expenses must be submitted on the AHPRA claim form. Requests for additional claim forms can be made to boardservices@ahpra.gov.au.

Original receipts, invoices and tickets must be attached and submitted with claim forms.

If receipts are lost, Board members should request a statutory declaration form, for completion, by emailing boardservices@ahpra.gov.au.

Claim forms and receipts can be posted to AHPRA's postal address.

Private vehicle usage

AHPRA reimburses motor vehicle personal expenses using a per kilometre rate in accordance with the Australian Tax Office (ATO) rates.

Valet car parking

Valet parking fees cannot be claimed unless it is required for health reasons and is supported by the relevant National Board Chair and approved by the Executive Director Strategy and Policy

Hospitality

Arrangements to offer hospitality for the purpose of promoting the National Board's work must be approved by the National Board Chair prior to the event, or be in accordance with the AHPRA policy.

Alcohol

The National Board Chair may approve the reasonable cost of the purchase of alcohol for official functions.

Payment

Attendance, special assignment, travel fees and expense claims are paid by AHPRA payroll service on a monthly basis. Tax will be deducted as per ATO requirements.

Payments can only be made to individual accounts to ensure compliance with ATO requirements and avoidance of tax minimisation schemes.

A superannuation guarantee contribution of 9% is paid when Board members receive more than \$450.00 in fees per calendar month.

Salary sacrificing is available for all, or part of board fees and can be forwarded to a

nominated super fund. For further details, email payrollboard@ahpra.gov.au.

3.2 Travel

Flight bookings

Board members requiring flights can ask for an AHPRA staff member to arrange flights via email at mytravel@ahpra.gov.au, or via phone on (03) 8708 9153.

Economy class travel will be arranged by AHPRA and all itineraries are based on the most direct route to and from Board meetings from the Board member's designated place of residence or workplace.

Business class travel is available only when the flight time is greater than 3 hours for each flight or in total for connecting flights on the one journey. This will only vary in exceptional circumstances and requires the support of the National Board Chair and approval of the Executive Director Strategy and Policy

It is understood that flight changes will be required at times. It should be noted, however, that flight amendments do incur additional costs.

Board members may wish to combine Board travel with other business travel, for example another meeting taking place in Melbourne.

AHPRA will only pay for travel and accommodation related to Board meetings.

If another organisation funds all or part of travel/accommodation costs, Board members are not entitled to additional accommodation or flights paid for by AHPRA.

Board members' frequent flyer program details may be advised to AHPRA for provision to our travel agent so that airlines are notified of members' personal travel preferences.

Any benefits accrued through Board-funded travel should be used, where possible, to the benefit of the Board, such as being redeemed for future Board travel requirements.

Board members can use the airport lounge facilities, as offered by private memberships.

Accommodation

Board members travelling for Board purposes will be accommodated in preferred accommodation in line with the AHPRA travel policy and booked by AHPRA travel.

A charge-back voucher will be sent directly to the hotel upon confirmation of accommodation booking. This voucher includes the cost of the room, breakfast, dinner (no alcohol), internet and parking. Mini bar items are not included in the charge-back voucher.

A credit card imprint or cash deposit may be required by the hotel to guarantee any charges not covered by the charge-back voucher.

Other transport

Board members should ensure that the use of Cabcharge is reasonable in the circumstances for Board-related purposes. Cabcharge may only be used for Board-required travel:

- (a) to and from home to the airport
- (b) from the airport to either accommodation or the location of the Board meeting or Board business on arrival, and
- (c) from either accommodation or the location of the Board meeting or Board business to the airport on departure.

Alternatives to Cabcharge, such as car rentals, chauffeured car hire, and rail may be used where there is no alternative, or if the overall cost to AHPRA is the same or lower.

3.3 Indemnity and insurance

Indemnity

Section 236 of the National Law provides protection from personal liability for Board members exercising their functions under the National Law in good faith.

In addition, all Board members have directors and officers liability insurance to cover damages or defence costs in the event of a lawsuit for alleged wrongful acts while acting in their capacity as a Board member.

Insurance

Workers' compensation

While undertaking work for Boards, members are covered by AHPRA's workers' compensation insurance. This insurance also covers Board members when travelling for Board purposes.

If Board members are paid by their employers when carrying out Board work, they should continue to be covered by their employers' workers' compensation scheme.

Other insurance

Board members are covered by appropriate levels of travel insurance when travelling on approved Board-related matters.

Appendix 1: Guidelines for Board and committee members with respect to duty of confidentiality

These guidelines have been prepared for National Board members, state/regional Board members and committee members. They are intended for the use of such members only.

These guidelines remain the property of AHPRA. No part may be reproduced by any process without written permission.

Prepared:	General Counsel
Endorsed:	General Counsel
Approved:	National Boards
Date:	July 2011
Reviewed:	July 2014

In the discharge of their duties and functions under the Health Practitioner Regulation National Law (the National Law), members of the National Boards and/or state/regional Boards (however called) (the Board) and their committees (the committee) (hereafter referred collectively as 'members') will be privy to sensitive and confidential information pertaining to individuals and organisational policies and affairs. Members will be privy to such information via numerous avenues, including, but not limited to, occasions where information is acquired as part of:

- registration and renewal of registration applications
- reports submitted by health professionals, employers and individuals pertaining to a registrant's conduct, health or performance
- investigations conducted by investigators into a registrant's conduct, health or performance
- information or evidence supplied at proceedings before the Board, and
- internal documents with respect to policies, strategies, and business and financial affairs of the Board and AHPRA.

Information pertaining to an individual is private in nature and has the potential for causing harm or violating the privacy of the individual if not appropriately handled. As a matter of good governance, the Board and the committee should ensure that they sensitively and securely collect and safeguard personal information of individuals with whom they deal in accordance with relevant legislation and guidelines.

Another essential aspect of good governance is that members maintain confidentiality in respect of all information pertaining to internal Board and committee meetings, policies and affairs.

Duties on members

The National Law imposes a number of duties on members with respect to information obtained or received in the course of the discharge of their duties. Section 234(3) of the National Law provides:

A person exercising functions under this Law must not make improper use of the person's position or of information that comes to the person's knowledge in the course of, or because of, the person's exercise of the functions—

- (a) *to gain an advantage for himself or herself or another person; or*
- (b) *to cause detriment to the development, implementation or operation of the national registration and accreditation scheme.*

The National Law further imposes a duty of confidentiality or secrecy upon members of the Board and the committee who obtain information in the performance of duties. Section 216(1) provides:

A person who is, or has been, a person exercising functions under this Law must not disclose to another person protected information.

It is important to note that the scope of section 216(1) extends to persons who cease to be members of the Board or the committee. In other words, the duty to maintain confidentiality will survive the expiry or termination of a member's appointment.

Purpose of sections 234(3) and 216(1)

The purpose of sections 234(3) and 216(1) of the National Law is to protect against inappropriate use and disclosure of information obtained in the course of official duties under the National Law. Section 216(1) in particular is designed to ensure that, subject to certain exceptions, information obtained in the course of administration of the National Law must not be divulged or made accessible to others.

Sections 234(3) and 216(1) seek to protect people from unwarranted invasions of their privacy and from use of information for a purpose for which it was never intended. The basic premise is that protected information is given, collected or recorded for a specific reason and that, unless there is an overriding justification, the information should not be disclosed or used for other purposes.

What is 'protected information'?

The term 'protected information' is given a very expansive meaning under the National Law. It is defined to mean *'information that comes to a person's knowledge in the course of, or because of, the person exercising functions under this Law'* (section 214).

This definition is wide enough to capture all information that comes within a member's knowledge in the course of, or because of, his or her exercising a function under the National Law, including, but not limited to:

- personal information pertaining to an individual
- any intellectual property rights of the National Board, the Board, the committee and AHPRA
- policies and strategies of the National Board, the Board, the committee, and AHPRA, and
- the financial and business affairs of the National Board, the Board, the committee, and AHPRA.

However, the duty of confidentiality does not apply if the information is, or has been, accessible to the public.

When can protected information be disclosed?

Section 216(1) is broad in its scope, providing for a blanket prohibition against disclosure of protected

information, subject to the exceptions listed in subsection (2). The prohibition applies unless one of the following exceptions comes to the fore:

The disclosure is made in the exercise of a function or for the purposes of the National Law.

This exception covers all disclosures which occur as a result of members fulfilling their functions and exercising powers delegated to them. It permits disclosure for the purposes of the administration of the National Law.

- **The disclosure is to be made to a co-regulatory authority.**

This exception permits the disclosure of protected information to the following entities:

- Aboriginal and Torres Strait Islander Health Practice Council of New South Wales
- Chinese Medicine Council of New South Wales
- Chiropractic Council of New South Wales
- Dental Council of New South Wales
- Medical Council of New South Wales
- Medical Radiation Practice Council of New South Wales
- Nursing and Midwifery Council of New South Wales
- Occupational Therapy Council of New South Wales
- Optometry Council of New South Wales
- Osteopathy Council of New South Wales
- Pharmacy Council of New South Wales
- Physiotherapy Council of New South Wales
- Podiatry Council of New South Wales
- Psychology Council of New South Wales

- **The disclosure is required or permitted by law.**

This exception would also allow the disclosure of protected information if permitted by the National Law or some other law. Protected information may be disclosed if, for example, it is subpoenaed by a court.

- **The person to whom the information relates has consented to the release.**

This exception permits the disclosure of protected information pertaining to an individual with his or her consent. It is advisable that such consent be obtained in writing.

- **The disclosure is in a form that does not identify the identity of a person.**

This exception permits the disclosure of statistical or other data that could not reasonably be expected to lead to the

identification of any person to whom it relates.

- **The information relates to proceedings before a responsible tribunal and the proceedings are or were open to the public.**

For example, under this exception, information relating to proceedings before the South Australian Health Practitioners Tribunal may be disclosed if such proceedings were open to the public.

- **The information is, or has been, accessible to the public, including because it is or was recorded in a national register.**

This exception permits the disclosure of information that is available to the public on the national register including:

- a health practitioner's sex
- the suburb and postcode of a practitioner's principal place of practice
- the registration number of a practitioner
- the date in which a practitioner was first registered in a health profession in Australia, whether under the National Law or a corresponding prior Act
- the date on which a practitioner's registration expires
- the type of registration held by a practitioner
- if the register includes divisions, the division in which the practitioner is registered
- if a practitioner holds specialist registration, the recognised specialty in which the practitioner is registered
- if a practitioner has been reprimanded, the fact that the practitioner has been reprimanded
- if a condition has been imposed on a practitioner's registration or if a practitioner has entered into an undertaking with the Board, details of the undertaking
- if a practitioner's registration is suspended, the fact that the practitioner's registration has been suspended and, if the suspension is for a specified period, the period during which the suspension applies
- if a practitioner's registration has been endorsed, details of that endorsement, and
- details of any qualifications relied on by a practitioner to obtain registration or to have the practitioner's registration endorsed.

- **The disclosure is otherwise authorised by the Ministerial Council.**

Consequences for breach of section 216(1)

This type of secrecy provision is usually strictly interpreted to require the utmost confidentiality with respect to information, unless its disclosure is expressly required in accordance with one of the exceptions in section 216(2). A maximum penalty of \$5,000 in the case of an individual, or \$10,000 in the case of a body corporate, may apply for a breach of this section. A person disgruntled with an unauthorised disclosure could insist on a summary prosecution of the person releasing information, and also claim damages for breach of confidence, or possibly defamation.

A breach of section 216(1) by a member may be grounds for his/her removal from office.

Further exceptions

In addition to the exceptions provided in section 216(2), the National Law permits disclosure of protected information by members in the following circumstances;

- Where disclosure is made for the purpose of planning the workforce of health practitioners at the request of the Ministerial Council. Note, however, that information disclosed pursuant to this exception must be done in way that does not identify any registered practitioner (section 217).
- Where disclosure is made to an information management agency subject to authorisation being provided by the Ministerial Council (section 218).
- Where disclosure is made to relevant Commonwealth, state and territory entities having functions relating to professional services provided by health practitioners or the regulation of health practitioners (section 219).
- Where disclosure is made to a relevant Commonwealth, state and territory entity so that relevant action can be taken by such an entity in circumstances where there is a reasonable belief that a registered health practitioner poses or may pose a risk to public health or that the health or safety of patients is or may be at risk (section 220).
- Where disclosure is made to a registration authority (whether within or outside Australia) if the information is necessary to the exercise of the registration authority's functions (section 221).

Applicability of the National Privacy Principles

The Board and the committee are required to comply with the National Privacy Principles (NPP) set out in schedule 3 to the Commonwealth

Privacy Act 1988. The NPP governs the collection, storage, correction, use and disclosure of personal information and access to records of **personal information**, defined to mean:

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 an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

The principles set out in the NPP with respect to the disclosure of personal information complements sections 216 and 234 of the National Law. In essence, it provides that the Board and the committee must not use or disclose personal information about an individual for a purpose (the secondary purpose) other than the primary purpose of collection unless one of the stated exceptions applies. To a large extent, these exceptions mirror those provided for under the National Law.

A copy of the NPP is annexed hereto (pages 19-24). Members are encouraged to familiarise themselves with the principles within.

Guidelines for members

Members should:

- ensure that information gained by virtue of their roles as members of the Board or the committee is only used for purposes which are referable to their duties as Board or committee members
- ensure all information provided to them will be kept secure at all times and stored in a way that its confidentiality is assured
- inform the Board of any unauthorised disclosure of information if they become aware of such disclosure, and
- upon the expiry or termination of their appointment to the national, state or territory Board and/or the committee, return or destroy (as the Board may instruct) all documents of a confidential nature received whilst serving as a member.

Members should not:

- directly or indirectly disclose protected information unless otherwise authorised or permitted by law
- use any information gained by virtue of their roles as members of the Board or the committee with intent of securing a benefit for themselves or another person, or to cause detriment to the National Registration and Accreditation Scheme, or
- make any statements to the public or to unauthorised persons regarding matters which are dealt with by the Board or the committee.

Schedule 3 – National Privacy Principles

1. Collection

- 1.1 An organisation must not collect personal information unless the information is necessary for one or more of its functions or activities.
- 1.2 An organisation must collect personal information only by lawful and fair means and not in an unreasonably intrusive way.
- 1.3 At or before the time (or, if that is not practicable, as soon as practicable after) an organisation collects personal information about an individual from the individual, the organisation must take reasonable steps to ensure that the individual is aware of:
 - (a) the identity of the organisation and how to contact it; and
 - (b) the fact that he or she is able to gain access to the information; and
 - (c) the purposes for which the information is collected; and
 - (d) the organisations (or the types of organisations) to which the organisation usually discloses information of that kind; and
 - (e) any law that requires the particular information to be collected; and
 - (f) the main consequences (if any) for the individual if all or part of the information is not provided.
- 1.4 If it is reasonable and practicable to do so, an organisation must collect personal information about an individual only from that individual.
- 1.5 If an organisation collects personal information about an individual from someone else, it must take reasonable steps to ensure that the individual is or has been made aware of the matters listed in subclause 1.3 except to the extent that making the individual aware of the matters would pose a serious threat to the life or health of any individual.

2. Use and disclosure

- 2.1 An organisation must not use or disclose personal information about an individual for a purpose (the **secondary purpose**) other than the primary purpose of collection unless:
 - (a) both of the following apply:
 - (i) the secondary purpose is related to the primary purpose

of collection and, if the personal information is sensitive information, directly related to the primary purpose of collection;

- (ii) the individual would reasonably expect the organisation to use or disclose the information for the secondary purpose; or
- (b) the individual has consented to the use or disclosure; or
- (c) if the information is not sensitive information and the use of the information is for the secondary purpose of direct marketing:
 - (i) it is impracticable for the organisation to seek the individual's consent before that particular use; and
 - (ii) the organisation will not charge the individual for giving effect to a request by the individual to the organisation not to receive direct marketing communications; and
 - (iii) the individual has not made a request to the organisation not to receive direct marketing communications; and
 - (iv) in each direct marketing communication with the individual, the organisation draws to the individual's attention, or prominently displays a notice, that he or she may express a wish not to receive any further direct marketing communications; and
 - (v) each written direct marketing communication by the organisation with the individual (up to and including the communication that involves the use) sets out the organisation's business address and telephone number and, if the communication with the individual is made by fax, telex or other electronic means, a number or address at which the organisation can be directly contacted electronically; or
- (d) if the information is health information and the use or disclosure is necessary for research, or the compilation or analysis of statistics, relevant to public health or public safety:

- (i) it is impracticable for the organisation to seek the individual's consent before the use or disclosure; and
- (ii) the use or disclosure is conducted in accordance with guidelines approved by the Commissioner under section 95A for the purposes of this subparagraph; and
- (iii) in the case of disclosure – the organisation reasonably believes that the recipient of the health information will not disclose the health information, or personal information derived from the health information; or
- (e) the organisation reasonably believes that the use or disclosure is necessary to lessen or prevent:
 - (i) a serious and imminent threat to an individual's life, health or safety; or
 - (ii) a serious threat to public health or public safety; or
- (ea) if the information is genetic information and the organisation has obtained the genetic information in the course of providing a health service to the individual:
 - (i) the organisation reasonably believes that the use or disclosure is necessary to lessen or prevent a serious threat to the life, health or safety (whether or not the threat is imminent) of an individual who is a genetic relative of the individual to whom the genetic information relates; and
 - (ii) the use or disclosure is conducted in accordance with guidelines approved by the Commissioner under section 95AA for the purposes of this subparagraph; and
 - (iii) in the case of disclosure – the recipient of the genetic information is a genetic relative of the individual; or
- (f) the organisation has reason to suspect that unlawful activity has been, is being or may be engaged in, and uses or discloses the personal information as a necessary part of its investigation of the matter or in reporting its concerns to relevant persons or authorities; or
- (g) the use or disclosure is required or authorised by or under law; or
- (h) the organisation reasonably believes that the use or disclosure is reasonably necessary for one or more of the following by or on behalf of an enforcement body:
 - (i) the prevention, detection, investigation, prosecution or punishment of criminal offences, breaches of a law imposing a penalty or sanction or breaches of a prescribed law;
 - (ii) the enforcement of laws relating to the confiscation of the proceeds of crime;
 - (iii) the protection of the public revenue;
 - (iv) the prevention, detection, investigation or remedying of seriously improper conduct or prescribed conduct;
 - (v) the preparation for, or conduct of, proceedings before any court or tribunal, or implementation of the orders of a court or tribunal.

Note 1: It is not intended to deter organisations from lawfully cooperating with agencies performing law enforcement functions in the performance of their functions.

Note 2: Subclause 2.1 does not override any existing legal obligations not to disclose personal information. Nothing in subclause 2.1 requires an organisation to disclose personal information; an organisation is always entitled not to disclose personal information in the absence of a legal obligation to disclose it.

Note 3: An organisation is also subject to the requirements of National Privacy Principle 9 if it transfers personal information to a person in a foreign country.

2.2 If an organisation uses or discloses personal information under paragraph 2.1(h), it must make a written note of the use or disclosure.

2.3 Subclause 2.1 operates in relation to personal information that an organisation that is a body corporate has collected from a related body corporate as if the organisation's primary purpose of collection of the information were the primary purpose for which the related body corporate collected the information.

- 2.4 Despite subclause 2.1, an organisation that provides a health service to an individual may disclose health information about the individual to a person who is responsible for the individual if:
- (a) the individual:
 - (i) is physically or legally incapable of giving consent to the disclosure; or
 - (ii) physically cannot communicate consent to the disclosure; and
 - (b) a natural person (the **carer**) providing the health service for the organisation is satisfied that either:
 - (i) the disclosure is necessary to provide appropriate care or treatment of the individual; or
 - (ii) the disclosure is made for compassionate reasons; and
 - (c) the disclosure is not contrary to any wish:
 - (i) expressed by the individual before the individual became unable to give or communicate consent; and
 - (ii) of which the carer is aware, or of which the carer could reasonably be expected to be aware; and
 - (d) the disclosure is limited to the extent reasonable and necessary for a purpose mentioned in paragraph (b).
- 2.5 For the purposes of subclause 2.4, a person is **responsible** for an individual if the person is:
- (a) a parent of the individual; or
 - (b) a child or sibling of the individual and at least 18 years old; or
 - (c) a spouse or de facto partner of the individual; or
 - (d) a relative of the individual, at least 18 years old and a member of the individual's household; or
 - (e) a guardian of the individual; or
 - (f) exercising an enduring power of attorney granted by the individual that is exercisable in relation to decisions about the individual's health; or
 - (g) a person who has an intimate personal relationship with the individual; or
 - (h) a person nominated by the individual to be contacted in case of emergency.
- 2.6 In subclause 2.5:
- child**: without limiting who is a child of an individual for the purposes of this clause, each of the following is the **child** of an individual:
- (a) an adopted child, stepchild, ex-nuptial child or foster child of the individual; and
 - (b) someone who is a child of the individual within the meaning of the *Family Law Act 1975*.
- de facto partner** has the meaning given by the *Acts Interpretation Act 1901*.
- parent**: without limiting who is a parent of an individual for the purposes of this clause, someone is the **parent** of an individual if the individual is his or her child because of the definition of **child** in this subclause.
- relative** of an individual means a grandparent, grandchild, uncle, aunt, nephew or niece, of the individual.
- sibling** of an individual includes a half-brother, half-sister, adoptive brother, adoptive sister, stepbrother, stepsister, foster brother and foster sister, of the individual.
- stepchild**: without limiting who is a stepchild of an individual for the purposes of this clause, someone is the **stepchild** of an individual if he or she would be the individual's stepchild except that the individual is not legally married to the individual's de facto partner.
- 2.7 For the purposes of the definition of **relative** in subclause 2.6, relationships to an individual may also be traced to or through another individual who is:
- (a) a de facto partner of the first individual; or
 - (b) the child of the first individual because of the definition of **child** in that subclause.
- 2.8 For the purposes of the definition of **sibling** in subclause 2.6, an individual is also a sibling of another individual if a relationship referred to in that definition can be traced through a parent of either or both of them.
- ### 3. Data quality
- An organisation must take reasonable steps to make sure that the personal information

it collects, uses or discloses is accurate, complete and up-to-date.

4. Data security

- 4.1 An organisation must take reasonable steps to protect the personal information it holds from misuse and loss and from unauthorised access, modification or disclosure.
- 4.2 An organisation must take reasonable steps to destroy or permanently de-identify personal information if it is no longer needed for any purpose for which the information may be used or disclosed under National Privacy Principle 2.

5. Openness

- 5.1 An organisation must set out in a document clearly expressed policies on its management of personal information. The organisation must make the document available to anyone who asks for it.
- 5.2 On request by a person, an organisation must take reasonable steps to let the person know, generally, what sort of personal information it holds, for what purposes, and how it collects, holds, uses and discloses that information.

6. Access and correction

- 6.1 If an organisation holds personal information about an individual, it must provide the individual with access to the information on request by the individual, except to the extent that:
 - (a) in the case of personal information other than health information – providing access would pose a serious and imminent threat to the life or health of any individual; or
 - (b) in the case of health information – providing access would pose a serious threat to the life or health of any individual; or
 - (c) providing access would have an unreasonable impact upon the privacy of other individuals; or
 - (d) the request for access is frivolous or vexatious; or
 - (e) the information relates to existing or anticipated legal proceedings between the organisation and the individual, and the information would not be accessible by the process of discovery in those proceedings; or
 - (f) providing access would reveal the intentions of the organisation in relation to negotiations with

the individual in such a way as to prejudice those negotiations; or

- (g) providing access would be unlawful; or
 - (h) denying access is required or authorised by or under law; or
 - (i) providing access would be likely to prejudice an investigation of possible unlawful activity; or
 - (j) providing access would be likely to prejudice:
 - (i) the prevention, detection, investigation, prosecution or punishment of criminal offences, breaches of a law imposing a penalty or sanction or breaches of a prescribed law; or
 - (ii) the enforcement of laws relating to the confiscation of the proceeds of crime; or
 - (iii) the protection of the public revenue; or
 - (iv) the prevention, detection, investigation or remedying of seriously improper conduct or prescribed conduct; or
 - (v) the preparation for, or conduct of, proceedings before any court or tribunal, or implementation of its orders;
- by or on behalf of an enforcement body; or
- (k) an enforcement body performing a lawful security function asks the organisation not to provide access to the information on the basis that providing access would be likely to cause damage to the security of Australia.

- 6.2 However, where providing access would reveal evaluative information generated within the organisation in connection with a commercially sensitive decision-making process, the organisation may give the individual an explanation for the commercially sensitive decision rather than direct access to the information.

Note: An organisation breaches subclause 6.1 if it relies on subclause 6.2 to give an individual an explanation for a commercially sensitive decision in circumstances where subclause 6.2 does not apply.

- 6.3 If the organisation is not required to provide the individual with access to the information because of one or more of paragraphs 6.1(a) to (k) (inclusive), the organisation must, if reasonable,

consider whether the use of mutually agreed intermediaries would allow sufficient access to meet the needs of both parties.

- 6.4 If an organisation charges for providing access to personal information, those charges:

- (a) must not be excessive; and
- (b) must not apply to lodging a request for access.

- 6.5 If an organisation holds personal information about an individual and the individual is able to establish that the information is not accurate, complete and up-to-date, the organisation must take reasonable steps to correct the information so that it is accurate, complete and up-to-date.

- 6.6 If the individual and the organisation disagree about whether the information is accurate, complete and up-to-date, and the individual asks the organisation to associate with the information a statement claiming that the information is not accurate, complete or up-to-date, the organisation must take reasonable steps to do so.

- 6.7 An organisation must provide reasons for denial of access or a refusal to correct personal information.

7. Identifiers

- 7.1 An organisation must not adopt as its own identifier of an individual an identifier of the individual that has been assigned by:

- (a) an agency; or
- (b) an agent of an agency acting in its capacity as agent; or
- (c) a contracted service provider for a Commonwealth contract acting in its capacity as contracted service provider for that contract.

- 7.1A However, subclause 7.1 does not apply to the adoption by a prescribed organisation of a prescribed identifier in prescribed circumstances.

Note: There are prerequisites that must be satisfied before those matters are prescribed: see subsection 100(2).

- 7.2 An organisation must not use or disclose an identifier assigned to an individual by an agency, or by an agent or contracted service provider mentioned in subclause 7.1, unless:

- (a) the use or disclosure is necessary for the organisation to fulfil its obligations to the agency; or

- (b) one or more of paragraphs 2.1(e) to 2.1(h) (inclusive) apply to the use or disclosure; or
- (c) the use or disclosure is by a prescribed organisation of a prescribed identifier in prescribed circumstances.

Note: There are prerequisites that must be satisfied before the matters mentioned in paragraph (c) are prescribed: see subsections 100(2) and (3).

- 7.3 In this clause:

identifier includes a number assigned by an organisation to an individual to identify uniquely the individual for the purposes of the organisation's operations. However, an individual's name or ABN (as defined in the *A New Tax System (Australian Business Number) Act 1999*) is not an **identifier**.

8. Anonymity

Wherever it is lawful and practicable, individuals must have the option of not identifying themselves when entering transactions with an organisation.

9. Transborder data flows

An organisation in Australia or an external Territory may transfer personal information about an individual to someone (other than the organisation or the individual) who is in a foreign country only if:

- (a) the organisation reasonably believes that the recipient of the information is subject to a law, binding scheme or contract which effectively upholds principles for fair handling of the information that are substantially similar to the National Privacy Principles; or
- (b) the individual consents to the transfer; or
- (c) the transfer is necessary for the performance of a contract between the individual and the organisation, or for the implementation of precontractual measures taken in response to the individual's request; or
- (d) the transfer is necessary for the conclusion or performance of a contract concluded in the interest of the individual between the organisation and a third party; or
- (e) all of the following apply:
 - (i) the transfer is for the benefit of the individual;

- (iii) it is impracticable to obtain the consent of the individual to that transfer;
- (iii) if it were practicable to obtain such consent, the individual would be likely to give it; or
- (f) the organisation has taken reasonable steps to ensure that the information which it has transferred will not be held, used or disclosed by the recipient of the information inconsistently with the National Privacy Principles.

10. Sensitive information

10.1 An organisation must not collect sensitive information about an individual unless:

- (a) the individual has consented; or
- (b) the collection is required by law; or
- (c) the collection is necessary to prevent or lessen a serious and imminent threat to the life or health of any individual, where the individual whom the information concerns:
 - (i) is physically or legally incapable of giving consent to the collection; or
 - (ii) physically cannot communicate consent to the collection; or
- (d) if the information is collected in the course of the activities of a non-profit organisation – the following conditions are satisfied:
 - (i) the information relates solely to the members of the organisation or to individuals who have regular contact with it in connection with its activities;
 - (ii) at or before the time of collecting the information, the organisation undertakes to the individual whom the information concerns that the organisation will not disclose the information without the individual's consent; or
- (e) the collection is necessary for the establishment, exercise or defence of a legal or equitable claim.

10.2 Despite subclause 10.1, an organisation may collect health information about an individual if:

- (a) the information is necessary to provide a health service to the individual; and

- (b) the information is collected:
 - (i) as required or authorised by or under law (other than this Act); or
 - (ii) in accordance with rules established by competent health or medical bodies that deal with obligations of professional confidentiality which bind the organisation.

10.3 Despite subclause 10.1, an organisation may collect health information about an individual if:

- (a) the collection is necessary for any of the following purposes:
 - (i) research relevant to public health or public safety;
 - (ii) the compilation or analysis of statistics relevant to public health or public safety;
 - (iii) the management, funding or monitoring of a health service; and
- (b) that purpose cannot be served by the collection of information that does not identify the individual or from which the individual's identity cannot reasonably be ascertained; and
- (c) it is impracticable for the organisation to seek the individual's consent to the collection; and
- (d) the information is collected:
 - (i) as required by law (other than this Act); or
 - (ii) in accordance with rules established by competent health or medical bodies that deal with obligations of professional confidentiality which bind the organisation; or
 - (iii) in accordance with guidelines approved by the Commissioner under section 95A for the purposes of this subparagraph.

10.4 If an organisation collects health information about an individual in accordance with subclause 10.3, the organisation must take reasonable steps to permanently de-identify the information before the organisation discloses it.

10.5 In this clause:

non-profit organisation means a non-profit organisation that has only racial, ethnic, political, religious, philosophical, professional, trade, or trade union aims.

Appendix 2: Guidelines for Board and committee members with respect to conflict of interest

These guidelines have been prepared for National Board members, state/regional Board members and committee members. They are intended for the use of such members only.

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Prepared: General Counsel

Endorsed: General Counsel

Approved: National Boards

Date: July 2011

Reviewed: July 2014

Primary duty of Board and committee members

Members of the National Boards and/or state/regional Boards (however called) (the Board) and its committees (hereafter referred collectively as members) are appointed from various backgrounds and entities. It is acknowledged that members bring with them experience and expertise gained as a result of their private roles as practitioners, academics, members of professional associations and other influential organisations, and members of the community. There is no question that the Board benefits from such expertise and experience.

The Board recognises the importance of fair, impartial and transparent conduct of Board and committee members in the performance of their duties under the Health Practitioner Regulation National Law (the National Law). Thus, notwithstanding that many members are appointed because of their knowledge of and interest in a particular group or field of professional activity, a high level of impartiality is required. It must be stressed, therefore, that members are **not** appointed to represent the interests of the bodies by whom they were nominated or elected. The classic statement of this proposition is by Justice Street in the Supreme Court of New South Wales:

It is entirely foreign to the purpose for which this or any other board exists to contemplate a Member of the board being representative of a particular group or a particular body. Once a group has elected a Member, he [or she] assumes office as a Member of the board and becomes subject to the overriding and predominant duty to serve the interests of the board in preference, on every occasion upon which any conflict might arise, to serving the interests of the group which appointed him [or her]. With this basic proposition there can be no room for compromise.

Bennetts v Board of Fire Commissioners of NSW (1967) 87 WN (NSW) 307 at 311.

It is a fundamental aspect of good governance that all members understand that their role is first and foremost to act in the public interest, irrespective of any personal or other interests. Members are not on Boards to represent and promote the interests of particular groups and stakeholders. Rather, the duty of each member is to promote the public purposes for which the Board exists. These are specified in section 35 of the National Law. In the fulfilment of these functions, members must have regard to the objectives and guiding principles of the National Registration and Accreditation Scheme (the National Scheme). Essentially, the objectives are (section 3(2)) to:

- provide for the protection of the public by ensuring that only health practitioners who are suitably trained and qualified to practise in a competent and ethical manner are registered

- facilitate workforce mobility across Australia by reducing the administrative burden for health practitioners wishing to move between participating jurisdictions or to practise in more than one participating jurisdiction
- facilitate the provision of high-quality education and training of health practitioners
- facilitate the rigorous and responsive assessment of overseas-trained health practitioners
- facilitate access to services provided by health practitioners in accordance with the public interest, and
- enable the continuous development of a flexible, responsive and sustainable Australian health workforce and to enable innovation in the education of, and service delivery by, health practitioners.

The guiding principles of the National Scheme are as follows (section 3(3)):

- The scheme is to operate in a transparent, accountable, efficient, effective and fair way.
- Fees required to be paid under the scheme are to be reasonable, having regard to the efficient and effective operation of the scheme.
- Restrictions on the practice of a health profession are to be imposed under the scheme only if it is necessary to ensure health services are provided safely and are of an appropriate quality.

These objectives and guiding principles are to guide members in the exercise and performance of all their delegated duties, powers and functions under the National Law. And, in exercising functions delegated to them under the National Law, members must act honestly, in good faith, with integrity, and with a reasonable degree of care, diligence and skill (section 234(2)).

All members have a duty to always to put the public interest above their private interests when carrying out their official duties. The National Law specifically requires a member to **‘act impartially and in the public interest in the exercise of the member’s functions as a member’**. Accordingly, a member **‘is to put the public interest before the interests of particular health practitioners or any entity that represents health practitioners’** (clause 7, schedule 4).

Members should therefore avoid situations in which their private interests conflict, or might reasonably be perceived to conflict, with the impartial fulfilment of their official duties and the public interest. Members should not allow the pursuit of private interests to interfere with the proper discharge of their official duties.

Meaning of ‘public interest’

In general terms, the responsibility of each member is, at all times whilst exercising a delegated power or function, to act in the public’s interest. Whilst this may seem a concept that is difficult to define, the overriding principle is that a member’s focus for decision-making must be balanced on the broader public interest (i.e. what is in the interest of the greater public health as it relates to the provision of care); even if as a result there may be a perceived negative outcome for the profession.

Put another way, the public interest can be defined as the interest of the community as a whole. It is not the sum of individual interests or the interest of a particular group, but the collective interest of the entire community.

The public interest should take priority over any potential conflict with private interests.

Meaning of the term ‘conflict of interest’

The term ‘conflict of interest’ refers to a situation where a conflict arises between public duty and private interest which could influence the performance of official duties and responsibilities. Such conflict generally involves opposing principles or incompatible wishes or needs.

A conflict of interest situation will arise when a member’s duty to the Board clashes with their duties, obligations or interests elsewhere – their business or workplace interests, for example, or even the personal, professional or business interests of individuals or groups with whom he/she is closely associated (i.e. relatives, friends, or even rivals and enemies).

Members, of course, do not live within the prism of their official work but have a range of other personal and professional interests and relationships. It is no surprise, then, that almost all members will come across a real, potential or perceived conflict of interest at some point during the term of their membership of the Board or its committees. They can involve the interests of the member, members of his/her immediate family or relatives, business partners or associates, or friends. Enmity as well as friendship can give rise to an actual or perceived conflict of interest.

Conflict of interest can be:

- **Pecuniary** – involving an actual, potential or perceived financial gain or loss. Money does not need to change hands for an interest to be pecuniary. A person has a pecuniary interest if they (or a relative, or a close associate) own property, hold shares, have a position in an organisation that is bidding for work with the Board, or receive benefits such as concessions, discounts, gifts or hospitality from a particular source.

- **Non-pecuniary** – do not have a financial component. They may arise from personal or family relationships, or involvement in sporting, social or cultural activities. They include any tendency toward favour or prejudice resulting from friendship, animosity, or other personal involvement with another person or group.

Conflict of interest can be:

- **Direct/actual** – where a member has an interest personally (and not an interest through an intermediary) which conflicts with the member’s current duties and responsibilities.
- **Indirect** – where a family member or business associate of a member has an interest (either directly or indirectly) in a matter that is under consideration.
- **Reasonably perceived** – conflicts of interest existing where a person could reasonably perceive that a member’s private interests are or are likely to improperly influence the performance of his or her official duties (whether or not this is in fact the case).
- **Potential** – conflicts of interest arising where a member has a private interest that could conflict with his or her official duties in the future.

It matters little whether a conflict of interest is actual or merely a conflict that could be reasonably perceived to exist by a third party. Nor does it matter that a conflict of interest is direct or indirect. All circumstances negatively impact on public confidence in the integrity of the Board and the committee.

The issue of conflict of interest was considered by the New South Wales Supreme Court in Bonds and Securities (Trading) Grounds Ltd v Glomex Mines N.L. and Others (1971) 1 NSWLR 879 in which Justice Street held at page 891:

The Courts have always looked askance upon situations in which a [person] occupying a position of trust engages in activities involving a potentiality of serving interests other than those which his [or her] position requires him [or her] to serve. ...[situations where a conflict arises between duty and self interest are] fraught with the risk that human frailty will prove unequal to the resolution of the moral issues involved in the conflict.

It is not always easy to identify a conflict of interest. Further, it is not possible to foresee all potential areas of conflict of interest, but some areas where a conflict may arise for members would include:

- personal acquaintance with a health practitioner or student who is subject of proceedings before the Board, or

- having a personal financial interest in a business that is tendering to provide a service to the Board.

Issues to be considered in assessing whether there is a conflict of interest

It is not always easy to identify a conflict of interest. In assessing whether a member has an actual, potential or reasonably perceived conflict of interest, it may be helpful to ask the following questions:

- Does the member have a current or previous personal, professional or financial relationship with an interested party and, if so, how significant is or was the relationship (e.g. is the relationship one of simple acquaintance, previous work experience, close friendship, business partnership)?
- Would the member or anyone associated with the member benefit from, or be detrimentally affected by, a decision or finding in favour of, or adverse to, any interested party?
- Does the member hold any personal or professional views or biases that may lead others to reasonably conclude that the member is not an appropriate person to deal with the matter?
- How serious is the matter and does it directly impact on the rights or interests of any persons of the general public?

Distinguishing 'conflict of interest' from 'bias'

A distinction needs to be drawn between conflict of interest and bias. While both concepts are well known in public administration, conflict of interest is far less known to the common law than bias.

'Bias' can be summarised as the failure to bring an impartial mind to the making of a decision. A 'reasonable apprehension of bias' is where a hypothetical fair-minded person, properly informed as to the nature of the proceedings or process, might reasonably apprehend that the decision-maker might not have brought an impartial mind to the making of the decision. A 'conflict of interest', on the other hand, can be summarised as a conflict between public duty and private interests which could influence the performance of official duties and responsibilities. A 'reasonable perception of a conflict of interest' is where a fair-minded person, properly informed as to the nature of the interests held by the decision-maker, might reasonably perceive that the decision-maker might be influenced in the performance of official duties and responsibilities.

Both bias and conflict of interest relate to decision-making and conduct related to decision-making. However, they approach the issue from different directions – looked at in terms of cause and effect:

- Bias focuses on effects (i.e. the conduct of the decision-maker).
- Conflict of interest focuses on the causes (i.e. the interest of the decision-maker).

Bias can be the outcome or effect of a conflict of interest, but a conflict of interest is just one possible cause of bias. It is also relevant to note that a conflict of interest by itself is not misconduct – that question depends on how it is managed and dealt with. On the other hand, bias in the performance of a public function is misconduct.

Duty of members with respect to conflict of interest

A member should not sit on the hearing or determination of any matter in which he or she has a personal interest. To do so can cause real damage to official and public confidence in the Board and the committee and the reputations of individual members – even those not directly involved in the conflict. In some circumstances, the mere appearance of conflict could jeopardise the public credibility of the Board and/or the committee.

The threshold for disclosure of a conflict of interest under the National Law is a fairly low one. The duty arises where:

- a member has a direct or indirect pecuniary or other interest in a matter being considered or about to be considered at a meeting of the Board or the committee, and
- the interest *appears* to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter.

The test therefore is an objective one, related to whether a fair-minded lay observer might reasonably apprehend that a member's interest might result in a conflict with the proper performance of the member's duties.

The National Law imposes a number of duties and obligations on members with respect to the concept of conflict of interest. In particular, clause 8, schedule 4 of the National Law specifically sets out the procedure that is to be followed where a member has a direct or indirect personal or pecuniary interest in a matter to be decided or under consideration. In such a situation, the member **must**:

- as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board or relevant committee
- not, unless the Ministerial Council or the Board or the committee otherwise determines, be present during any deliberation of the Board or committee with respect to the matter
- not take part in any discussion or decision concerning the matter

- not take part in any vote concerning the matter, and
- at the discretion of members, be absent from the meeting room while any such discussion or voting is taking place.

Where such a disclosure is made by a member, it must be recorded in a book kept for that purpose.

Consequences of non-disclosure

The failure of members to appropriately disclose conflicts of interest and abide by the procedures set out under the National Law does not invalidate any decision of the Board or the committee. However, a failure to disclose can undermine public confidence in the integrity of the member and the Board and the committee. Moreover, the failure by a member to disclose a conflict of interest and abide by the procedures laid out in the National Law may result in the removal of the member by the Chairperson of the Ministerial Council on the basis that the member has engaged in misconduct.

General guidelines for Board and committee members

Disclosure of conflict of interest

Members should be pro-active and comprehensive in disclosing interests that could conflict (or appear to conflict) with the proper performance of their duties. If a member is of the view that a real or perceived conflict of interest exists, he or she should:

1. as soon as practicable after the relevant facts have come to his or her knowledge, fully declare the fact and the nature, character and extent of that interest at the commencement of a meeting of the Board or committee
2. if practicable, ask not to be provided with any Board or internal papers that discuss the matter
3. avoid any informal discussions that might influence fellow members on the matter
4. when the matter is raised formally during a meeting, declare his or her interest and inform members of a willingness to leave the room. The members may then discuss whether it is necessary for the member to leave the room, and
5. not take part in any consideration of, or the making of a decision in relation to, that matter.

Board procedures

As a matter of the good practice, the following procedures should be adopted and applied by the Board and its committees:

1. The Board is to have a standing item on the agenda of all Board and committee meetings to ask whether any members is aware of having a conflict of interest arising from any item scheduled for discussion at that meeting. The Chair of Board and committee Chair is to remind members at the outset of each meeting of their obligation to declare conflicts of interest.
2. Where a member considers that that he or she has a conflict of interest with respect to an agenda item, that fact and the nature and extent of the conflict, is to be recorded.

Appendix 3:

Guidelines for Board and committee members with respect to the exercise of delegated functions

These guidelines have been prepared for National Board members, state/regional Board members and committee members. They are intended for the use of such members only.

These guidelines remain the property of AHPRA. No part may be reproduced by any process without written permission.

Prepared: General Counsel

Endorsed: General Counsel

Approved: National Boards

Date: July 2011

Reviewed: July 2014

The National Health Practitioner Boards (the Boards) are vested with numerous functions, duties and powers under the Health Practitioner Regulation National Law (the National Law). It would be unreasonable and indeed unworkable to expect the Boards to personally perform the myriad of functions and powers vested in it. It is mainly for this reason that the National Law empowers the Boards to designate other bodies or persons to exercise particular functions and powers. Section 37(1) of the National Law provides that a Board may delegate any of its functions, other than the power of delegation, to:

- a committee
- AHPRA
- a member of the staff of AHPRA, or
- a person engaged as a contractor by AHPRA.

State, territory and regional boards and their immediate action, registration and notification committees are committees of the Board (the committees). The roles, duties and powers of the Board and the committee are not directly derived from the National Law itself, but from delegations from the Board.

The Board has delegated the bulk of routine and administrative functions to AHPRA. The core registration and notification functions, policy and standard-setting functions have not been delegated and remain the province of the Board.

The particulars of specific delegations are contained in each Board's *Instrument of Delegation*.

Purpose of *Instruments of Delegation*

The *Instrument of Delegation* provides a mechanism for the Board to:

1. ensure there is effective and efficient operation of the core regulatory and business operations within the legislative mandate of the National Law
2. ensure that Board and committee members (members) and AHPRA staff operate effectively and efficiently by empowering them with appropriate delegations to discharge their responsibilities, and
3. define limits and establish the accountability of delegates.

It is recommended that members of the Board and the committee familiarise themselves with the *Instrument of Delegation*. If required, AHPRA can make available the applicable *Instrument of Delegation* to members when attending Board meetings.

From time to time, particular delegations may be revoked and new ones made. Where this occurs, members of the Board and the committee will be made aware of this and copies of revised

Instruments of Delegation will be provided by staff of Board services.

General principles

The delegation of powers and functions by the National Board and the exercise of delegated powers and functions by the Board and the committee under the National Law are subject to a number of principles:

- A delegated function may be exercised only in accordance with any condition to which the delegation is subject.
- The Board and the committee may, in the performance of a delegated function, do anything that is incidental to the delegated function.
- The Board and the committee cannot sub-delegate (i.e. further delegate) to another person or body a delegated power or function.
- A delegation does not derogate from the power of the National Board to act itself in a matter, so long as the delegate has not yet exercised the function or power.

The effects of exercising a delegated power or function

Clause 29(8), schedule 7 of the National Law provides:

If, when exercised by a delegator, a function is dependent on the delegator's opinion, belief or state of mind, then, when exercised by the delegate, the function is dependent on the delegate's opinion, belief or state of mind.

This clause expresses the fundamental effect of a delegation of power made pursuant to an express power of delegation, that is, a person to whom a power is delegated in pursuance of an express power of delegation must exercise the delegated power by applying their own discretion. In other words, the members of the Board and the committee must, in the exercise of a delegated power, apply their own judgement and discretion.

The performance or exercise of a function or power by the regional/state/territory Board and the committee is, for the purposes of the National Law, deemed to be performance or exercise by the National Board (clause 29(7), schedule 7). The intention of this clause is to preclude a recipient of a decision made by the Board or the committee appealing to the National Board and requesting it to reconsider the decision.

Improper exercise of a delegated power or function

A delegated function that is purported to have been exercised by the regional/state/territory Board or the committee is taken to have been properly

exercised by Board or committee unless the contrary is proved (clause 29(6)).

An improper exercise of a delegated function or power may be the subject of an appeal and/or judicial review.

General guidelines for Board and committee members

As a matter of good practice, it is recommended that members should:

- refer to the *Instruments of Delegations* prior to the making of a decision to determine they have been delegated the necessary and required powers
- only exercise a delegated power or function within their area of responsibility
- ensure the exercise of a delegated power or function is in accordance with any conditions to which the delegation is subject
- ensure the exercise of a delegated power or function is in accordance with the procedures as set out in the National Law
- relate decisions made to powers delegated by the National Board, and
- not exercise a delegated power or function if they have a conflict of interest in the exercise of the delegation.

Appendix 4: Schedule of fees for Board, committee and panel members

Fees for National Board meetings, meetings of state/territory/regional boards and committees, and health panels and professional standards panels

Schedule effective at 1 July 2015

The following applies to:

- all National Board meetings
- meetings of state, territory, regional boards and committees
- health and professional standards panels, and
- Agency Management Committee meetings and committees

Role	Attendance (fee includes preparation and up to 4 hours travel time)	Extra travel time	
	Daily sitting fee (more than 4 hours in a day)	Between 4 and 8 hours	Over 8 hours
Board Chair	\$750	\$375	\$750
Board member	\$615	\$307	\$615

For meetings that are less than four hours, half the daily fee is payable.

In addition to the attendance fee, panel members may be paid an additional fee for preparation as this represents an essential part of the task. It is payable at the same rate as the sitting fees outlined above.

Fees for special assignment

The following applies to:

- all members of national, state and territory boards and committees of all professions.

Role	Attendance (fee includes preparation and up to 4 hours travel time)	Extra travel time	
	Daily sitting fee (more than 4 hours in a day)	Between 4 and 8 hours	Over 8 hours
Chair	\$625	\$312	\$625
Other Board/ committee members	\$513	\$256	\$513

Special assignment fees are payable for Board-related commitments that are not related to meetings and include consultations, conferences, seminars, investigations or the writing of special reports by a Board member, approved by the Chair. Dinners, functions, openings, ceremonies and social engagements are not considered to be special assignments.

Business rules for the payment of sitting fees and expenses (as at March 2012)

	Business rule	Detail and examples
1. Scheduled Board or committee meetings.	<p>If a Board or committee member's attendance at a scheduled meeting is for less than four hours, half the daily fee is payable.</p> <p>If a Board or committee member's attendance at a scheduled meeting is for more than four hours, the daily fee is payable.</p> <p>Sitting fees are based on sitting time for the meeting. This is deemed to include preparation time.</p>	<p>A Board or committee member may only be paid a maximum of two half-day meetings or one full-day in a single day.</p> <p>The daily fee includes compensation for reasonable travelling time associated with the meeting.</p> <p>Where extensive travel occurs, payment of a special fee (in addition to the meeting fee) will be made.</p> <p>See section below on the calculation of travel time.</p> <p><i>Example:</i> If a Board member, in a single day, attends a two-hour Board meeting followed by a registration committee meeting and a notification assessment committee meeting, he or she would only be paid for a full-day attendance.</p>
2. Recording and authorising payments for attendance and travel.	<p>Attendance and travel are recorded on the attendance sheet circulated at scheduled Board meetings. When a meeting is held by teleconference, the secretariat or senior AHPRA employee will record attendance and travel.</p>	<p>All attendance sheets must be authorised by the Board/committee Chair.</p> <p>All attendance sheets must be verified by the senior AHPRA employee attending the meeting.</p> <p>All timesheets require both authorisation and verification.</p>
3. Additional meetings which are held between scheduled meetings (out-of-session) when additional matters need to be considered or urgent decisions need to be made.	<p>If a member's attendance at a scheduled meeting is for less than four hours, half the daily fee is payable.</p> <p>If a member's attendance at a scheduled meeting is for more than four hours, the daily fee is payable.</p> <p>Sitting fees are based on sitting time for the meeting. This is deemed to include preparation time.</p>	<p>Business Rule 1 applies.</p> <p>A member may only be paid a maximum of two half-day meetings or one full-day in a single day.</p> <p><i>Example:</i> If a Board member, in a single day, attends a three-hour Board meeting followed by two special assignments (for example two separate health practitioner interviews), he or she would be paid a half-day fee for the Board meeting and a half-day fee for first special assignment. No further payment is paid for other activities on the same day.</p>
4. Immediate action committees.	<p>Immediate action committee attendance times are registered by the Board and a fee claim made for full or half-day fees once the matter has been completed.</p>	<p>If there is a continuation of a particular matter, the time is cumulative. Once the matter is finalised, a claim for payment can be made.</p> <p><i>Example:</i> an immediate action committee member may attend two immediate action meetings of one hour each, and another of 45 minutes during a period, <u>on the one matter</u>. As the total has now concluded, a half-day fee may be paid.</p> <p>If separate matters are being considered at different meetings, separate claims should be made.</p>

	Business rule	Detail and examples
5. The National Law provides that National Board meetings can be face-to-face, by video conference, or by teleconference. State, territory and regional boards will on occasions conduct their business via email.	<p>A daily or half-daily fee is payable for a member's attendance in person, by video or teleconference at scheduled meetings. Members will also be paid for participation in a meeting that is conducted via email.</p> <p>On the occasions where meetings take place via teleconference for a short duration (up to one hour), attendance times are registered by the secretariat and a fee claim made for fees.</p> <p>Individual Boards may adopt their own rules for the payment for meetings of very short duration. However, the variation may only be adopted to reduce the costs of meeting fees.</p>	<p><i>Example:</i> a Board or committee convenes two meetings of short duration and resolutions are passed via email with time for each meeting of 30 minutes.</p> <p>In the absence of Boards' own rules limiting the claiming of sitting fees for meetings of short duration, full fees should be paid in the normal manner.</p>
6. Special assignment fees are only payable for Board commitments not related to meetings.	<p>Special assignments include conferences, seminars, interviews with health practitioners, health assessment discussions, discussions on return to work plans, S176 interviews with health practitioners, or special tasks/projects assigned by the Board.</p> <p>If the undertaking of a special assignment is for less than four hours, half the daily fee is payable.</p> <p>If the undertaking of a special assignment is for more than four hours, the daily fee is payable.</p> <p>Dinners, functions, openings, ceremonies and social engagements are not considered to be special assignments.</p>	<p>Where the length of time taken to complete a special assignment is unclear, AHPRA will rely on the advice of the Chair of the respective Board.</p> <p>Special assignments may take place on the same day as a Board or committee meeting. In those cases, the fees would be calculated separately, as indicated below.</p> <p>Business Rule 1 applies, however the fee for special assignments is lower than a standard meeting fee.</p> <p>Special assignments are required to be authorised by the Board Chair for payment.</p> <p>When a special assignment is followed by another activity (standard meeting), members will only be paid for one full day. However, the rate will be paid at the higher rate.</p> <p>Approval of special assignments rests with:</p> <ol style="list-style-type: none"> 1. AHPRA delegate 2. Board Chair, or 3. if a special assignment is conducted by the Board Chair, it is approved by the full Board or AHPRA delegate. <p><i>Example:</i> If a Board member, in a single day, participates in two special assignments (for example, two separate health practitioner interviews) followed by a three-hour Board meeting, he or she would only be paid a half-day special assignment fee and a half-day Board meeting fee.</p>

	Business rule	Detail and examples
7. Retreats or planning days: these are often held away from the normal meeting location for a full day or weekend. They allow members to take part in deeper discussions about strategic challenges and directions.	<p>If a member's attendance at a scheduled meeting is for less than four hours, half the daily fee is payable.</p> <p>If a Board or committee member's attendance at a scheduled meeting is for more than four hours, the daily fee is payable.</p> <p>Half-day and full-day fees are inclusive of preparation and reading time, as well as reasonable travel.</p>	Business Rule 1 applies
8. Late to a meeting.	If a Board or committee member is late to a meeting and does not take part in the deliberations, it is at the discretion of the Chair of the respective Board or committee to decide if an attendance fee will be paid.	
9. If a quorum is not achieved.	If a quorum is not achieved on the day of a scheduled meeting, the members who did attend the meeting will be paid the appropriate meeting attendance fee.	<p>If the meeting is rescheduled for a later date, the members will also be paid for attendance at the newly-scheduled meeting.</p> <p>If the meeting has been cancelled 24 hours or more prior to the scheduled meeting time, members will not be paid.</p>
10. Non-attendance of a registrant for a special assignment.	If a registrant fails to attend a scheduled meeting with a Board or committee member, the special assignment fee is still payable.	
11. Health, performance and professional standards panels.	The panel Chair and members are paid sitting fees.	<p>An additional fee may be paid for preparation and research. This fee is the same rate as the sitting fee.</p> <p>When attending panels, the attendance sheet must be approved by the Chair of the panel and recorded by the secretariat.</p>
12. Travel time.	<p>The daily fee includes up to four hours total travel time for meetings or special assignments.</p> <p>If travel time is between four and eight hours, half of the daily fee is paid.</p> <p>For travel that exceeds eight hours, a full daily fee is paid.</p>	<p>Travelling time is paid in addition to meeting time. While meeting fees are capped at a full day's fee, it is possible to receive additional fees for travelling time. The maximum that can be paid for travel time is a single daily fee (i.e. greater than eight hours travel time).</p> <p>The travel time for a meeting includes the total time travelling for the meeting or special assignment. Travel time is taken from home to home, less the time normally taken to travel to and from work.</p> <p>The additional travelling time will be denoted as travel in the payment documentation.</p>

	Business rule	Detail and examples
13. Expenses.	<p>Board members are entitled to reimbursement of reasonable out of pocket expenses incurred during the course of undertaking Board business.</p> <p>Expenses must be submitted on the AHPRA claim form. Requests for additional claim forms can be made to boardservices@ahpra.gov.au.</p>	<p>Receipts, invoices and tickets are to be attached and submitted with claim forms.</p> <p>Payment for expenses must be authorised by the State Manager or the Executive Officer.</p> <p>Original receipts will need to be included with the expense claim.</p> <p>In cases of lost receipts, a declaration form will be provided on request to boardservices@ahpra.gov.au.</p> <p>Claim forms and receipts can be posted to AHPRA's postal address in the appropriate state or territory or National Office.</p>
14. Private vehicle usage.	AHPRA reimburses motor vehicle expenses using a per kilometre rate in accordance with Australian Tax Office rates.	Private vehicle usage must be approved by the State Manager or Executive Officer.
15. Valet car parking.	Valet parking fees are not claimable unless required for health reasons or approved by the Chair.	
16. Hospitality.	Arrangements to offer hospitality for the purpose of promoting a National Board's work must be approved by the National Board prior to the event.	Hospitality approval should be sought through the Executive Officer.
17. Alcohol.	The use of alcohol for official functions will be approved by the State Manager or Executive Officer in consultation with the Board Chair.	



Aboriginal and Torres Strait
Islander Health Practice
Chinese Medicine
Chiropractic
Dental
Medical
Medical Radiation Practice
Nursing and Midwifery
Occupational Therapy
Optometry
Osteopathy
Pharmacy
Physiotherapy
Podiatry
Psychology

Australian Health Practitioner Regulation Agency

Conflict of Interest Procedures v1 – RM007

April 2015

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1. Introduction

“The community has a right to expect that (AHPRA employees) will perform their duties in a fair and unbiased way, and that the decisions they make are not affected by self-interest, private affiliations, or the likelihood of personal gain or loss.

Community confidence in the integrity of (AHPRA) and its processes is also fundamental to the rule of law, one key principle of which is that every citizen is equal before the law and should receive fair and impartial treatment.

For these compelling reasons, it is crucial that (AHPRA and the National Boards) protect the public interest by ensuring that private interests that conflict with it are identified and managed effectively.”¹

ICAC (NSW) and the Crime and Misconduct Commission of Qld have identified undisclosed or unmanaged conflicts of interest as the catalyst for many cases of serious corruption.

Conflict of interest in relation to National Boards is dealt with in the National Law (Schedule 4, clause 8) and the Manual for National Boards and their committees (Part 2 and Appendix 2).

AHPRA's Conflict of Interest Procedures apply to all AHPRA employees and are based on “Managing Conflicts of Interest in the Public Sector - Guidelines, Independent Commission Against Corruption (NSW) and Crime and Misconduct Commission (Qld), 2004 and “Conflict of Interest Policy Framework in the Victorian Public Sector”, State Services Authority Victoria 2009. They are designed to support the Fraud and Corruption Control Policy by:

- identifying the different types of conflicts of interest that may arise within AHPRA;
- developing appropriate management strategies and responses to conflicts of interest;
- educating staff, managers and senior executives about conflict of interest;
- communicating AHPRA's commitment to managing conflicts of interest to stakeholders including contractors, clients and the public; and
- enforcing conflict of interest procedures

2. Conflict of Interest

The term ‘conflict of interests’ refers to situations where a conflict arises between the **public duty** and **private interests** of an official, which could improperly influence the performance of official duties and responsibilities.¹

Private interests are those interests that can bring benefits or disadvantages to public officials as individuals, or to others whom public officials may wish to benefit or disadvantage. Private interests are not limited to pecuniary interests or to interests that can bring direct personal gain or help avoid personal loss. They also include many social and professional activities and interests.¹

The types of conflicts that can occur include actual, perceived/apparent or potential conflict.

An **actual conflict** of interest involves a direct conflict between an official's current duties and responsibilities and existing private interests.

A **perceived or apparent conflict** of interest can exist where it could be perceived, or appears that an official's private interests could improperly influence the performance of his/her duties – whether or not this is in fact the case.

A **potential conflict** of interest arises where an official has private interests that could conflict with his/her official duties in the future.

Avoiding actual, potential and perceived conflicts of interest is fundamental to ensuring the highest levels of integrity and public trust.

¹ Managing Conflicts of Interest in the Public Sector - Guidelines, Independent Commission Against Corruption (NSW) and Crime and Misconduct Commission (Qld), 2004

A conflict of interest can arise from avoiding personal losses, as well as gaining personal advantage, whether financial or otherwise.

Areas of work or organisational functions that create a high risk for potential conflicts of interest include (but are not limited to):

- interacting regularly with the private sector
- contracting and procurement
- inspecting, regulating or monitoring of standards, businesses, equipment or premises
- issuing qualifications or licences (i.e. practitioner registration)
- providing a service where demand exceeds supply
- allocating grants of public funds
- issuing or reviewing the issue of fines or other sanctions
- providing subsidies, financial assistance, concessions or other relief to those in need
- making determinations or handing down judgement about individuals or disputes
- carrying out regulatory tests and procedures
- making appointments to positions.

A **private interest** in the context of conflict of interest means anything that can have an impact on an individual or group and includes not only an employee's own personal, professional or business interests, but also the personal, professional or business interests of individuals or groups with whom he or she is closely associated. This can include relatives or friends.

Private interests can be divided into two types: **pecuniary** and **non-pecuniary**.

Pecuniary Interests involve an actual, potential or perceived financial gain or loss. Money does not need to change hands for an interest to be pecuniary. People have pecuniary interests if they (or relatives, or close associates) own property, hold shares, have positions in a company bidding for government work, or receive benefits such as concessions, discounts, gifts or hospitality from a particular source.

Non-pecuniary interests do not have a financial component. They may arise from personal or family relationships, or involvement in sporting, social or cultural activities. They include any tendency toward favour or prejudice resulting from friendship, animosity, or other personal involvement with another person or group.

If personal values are likely to impact on the proper performance of public duty, then these can also lead to a conflict of interest. Enmity as well as friendship can give rise to a conflict of interest.

Some examples of private interests that could create pecuniary and non-pecuniary conflicts of interest include:

- financial and economic interests (such as debts or assets)
- family or private businesses
- affiliations with for-profit and not-for-profit organisations
- affiliations with political, trade union or professional organisations and other personal interests
- involvement in secondary employment that potentially conflicts with an official's public duties
- undertakings and relationships (such as obligations to professional, community, ethnic, family, or religious groups in a personal or professional capacity, or relationships to people living in the same household)
- enmity towards or competition with another person or group

3. Public Duty

Public Duty is the duty expected of all public officials, that is, to put the public interest above their own personal or private interests when they carry out official duties.²

The public interest can be defined as the interest of the community as a whole. It is not the sum of individual interests or the interest of a particular group, but the collective interest of the entire community.

Determining the public interest in a particular situation can be complex, even problematic, but on a practical, day-to-day level, employees can best fulfil their duties to put the public interest first by:

- carrying out their prescribed official duties fully and effectively in accordance with relevant legislation and policy;
- carrying out their official duties in accordance with the public sector values and codes of conduct; and
- identifying any actual, potential or perceived conflicts of interest that they have and ensuring these are managed effectively.

4. Roles And Responsibilities

Managing conflict of interest risks is the shared responsibility of the Agency Management Committee, National Executive, managers and employees.

4.1 Agency Management Committee (through the Audit and Risk Committee)

The overriding objective of any conflict of interest management strategy is to ensure that the public interest is not compromised should. The Agency Management Committee is responsible for:

- prescribing a system for identifying and managing conflicts of interest in the form of detailed policies and procedures;
- building an organisational culture that supports implementation of all relevant policies through appropriate education, training and enforcement activities;
- reviewing relevant policies and procedures on a regular basis to ensure they are effective;
- receiving and investigating complaints regarding possible breaches of conflict of interest policies; and
- monitoring compliance with conflict of interest policies, including responses to alleged breaches.

It will perform this role through the Chief Executive Officer and evaluate its effectiveness through the Audit & Risk Committee.

4.2 Responsibilities of managers

Managers are responsible for complying with conflict of interest policies with respect to their own conflicts and potential conflicts of interest facilitating the compliance of those they supervise by:

- being aware of the risks of conflicts inherent in the work of the staff they manage;
- making staff aware of relevant policies and procedures;
- advising staff about appropriate ways to manage conflicts;
- recording the receipt of disclosures of conflicts of interest reported to them by staff;
- assisting with preparation of management strategies for staff who disclose conflicts of interest; and
- monitoring the work of staff and the risks to which they are exposed.

² Fraud and Corruption Control Strategy NSW Govt - 2006

4.3 Responsibilities of employees

Employees subject to these general procedures must:

- take reasonable steps to restrict the extent to which a private interest could compromise, or be seen to compromise, their impartiality when carrying out their official duties;
- abstain from involvement in official decisions and actions that could reasonably be seen to be compromised by their private interests and affiliations;
- avoid private action in which they could be seen to have an improper advantage from inside information they might have access to because of their official duties;
- not use their official position or AHPRA resources for private gain;
- ensure that there can be no perception that they have received an improper benefit that may influence the performance of their official duties; and
- not take improper advantage of their official position or privileged information gained in that position when seeking employment outside AHPRA.

4.4 Fraud and Corruption Control Officer

The Fraud and Corruption Control Officer will be responsible for:

- Developing and maintaining Conflict of Interest Procedures for all AHPRA employees;
- Maintaining a Conflict of Interest Register;
- Providing regular reports in relation to conflict of interest issues;
- Developing and maintaining a Fraud and Corruption Control framework to deal with conflicts of interest;
- Development and delivery of Conflict of Interest training and awareness programs for all employees, stakeholders, third party providers and the public.

5. Manage Conflict of Interest

The proper management of conflicts of interest does not require the wholesale avoidance or relinquishment of private interests that might give rise to a conflict of interest issue. It requires the appropriate management of the interaction between private interests and public duties and requires the application of the “reasonable person” test.

Acting in a reasonable way means exercising sound judgement and taking a sensible approach. That is, would another reasonable person make the same decision in light of the same facts and circumstances?

There are a number of options available for managing conflict of interest. These range from simply disclosing relevant details, to relinquishing the private interest or stepping down from the public office.

Commonly accepted procedures are:

Registration	details of the existence of a possible or potential conflict of interest are formally advised and noted
Restriction	restrictions are placed on the employee's involvement in the matter
Recruitment	a disinterested third party is appointed to oversee part or all of the process that deals with the matter
Removal	the employee does not participate at all in the matter
Relinquishment	the private interest concerned is relinquished
Resignation	the employee steps down from the position he or she holds on a temporary or permanent basis.

AHPRA will maintain a conflict of interest register. The register will incorporate:

- mandatory declarations for all AHPRA personnel who hold financial or HR delegations or delegations under the National Law;
- Management plans for identified incidents of conflict of interest.

Any APRHA employee who holds a delegation is required to submit an annual Conflict of Interest Declaration form. A copy of the declaration is contained in appendix A attached.

For all other circumstances which may involve conflict of interest, the conflict should be immediately reported to the manager of the individual who is the subject of the conflict.

The manager and the individual will examine the circumstances and determine an appropriate strategy for managing the conflict.

The strategy must be documented and agreed by the manager and the individual. The documented strategy will be recorded in a Conflict of Interest Report and submitted to the Fraud and Corruption Control Officer who will be responsible for maintaining the Conflict of Interest Register.

Any conflict of interest strategy must be approved by the Critical Incident Management Team.

While conflicts of interest can be resolved or managed in a variety of ways as mentioned above and outlined in the schedule below (see table 1), the choice of strategy will depend on an assessment of the:

- nature of the conflict;
- complexity of the situation;
- subtlety and severity of the case.

Each case will require detailed examination and careful application of various conflict resolution strategies. Often a combination of measures may be adopted and consideration should be given to the schedule of strategic elements outlined in the schedule below (see table 1)

Management Strategy	When most suitable	When least suitable
Register: Where details of the existence of a possible or potential conflict of interest are formally registered.	<ul style="list-style-type: none">• for very low-risk conflicts of interest and potential conflicts of interest• where the act of recording the conflict of interest is sufficient	<ul style="list-style-type: none">• the conflict of interest is more significant or of higher risk• the potential or perceived effects of a conflict of interest on the proper performance of the employee's duties require more proactive management
Restrict: Where restrictions are placed on the employee's involvement in the matter.	<ul style="list-style-type: none">• the employee can be effectively separated from parts of the activity or process• the conflict of interest is not likely to arise frequently	<ul style="list-style-type: none">• the conflict is likely to arise more frequently• the employee is constantly unable to perform a number of regular duties because of conflict of interest issues

Management Strategy	When most suitable	When least suitable
Recruit: Where a disinterested third party is used to oversee part or all of the process that deals with the matter.	<ul style="list-style-type: none"> it is not feasible or desirable for the employee to be removed themselves from the decision-making process in small or isolated communities where the particular expertise of the employee is necessary and genuinely not easily replaced 	<ul style="list-style-type: none"> the conflict is serious and ongoing rendering <i>ad hoc</i> recruitment of others unworkable recruitment of a third party is not appropriate for the proper handling of the matter a suitable third party is unable to be sourced
Remove: Where an employee chooses to be removed from the matter.	<ul style="list-style-type: none"> for ongoing serious conflicts of interest where <i>ad hoc</i> restriction or recruitment of others is not appropriate 	<ul style="list-style-type: none"> the conflict of interest and its perceived or potential effects are of low risk or low significance the employee is prepared to relinquish the relevant private interest rather than radically change his or her work responsibilities or environment
Relinquish: Where the employee relinquishes the private interest that is creating the conflict.	<ul style="list-style-type: none"> the employee's commitment to public duty outweighs his or her attachment to the private interest 	<ul style="list-style-type: none"> the employee is unable or unwilling, for various reasons, to relinquish the relevant private interest
Resign: Where the employee resigns from his or her position with the agency.	<ul style="list-style-type: none"> no other options are workable - the employee cannot or will not relinquish his or her conflicting private interest and changes to the work responsibilities or environment are not feasible the employee prefers this course as a matter of personal principle. 	<ul style="list-style-type: none"> the conflict of interest and its potential or perceived effects are of low risk or low significance other options exist that are workable for the employee and the Agency.

Table 1 – Schedule of Conflict of Interest Management Strategies

Whichever strategy is chosen, transparent decision making and detailed record keeping are essential. The following points should be clearly recorded in the conflict of interest register:

- registration of relevant private interests, if required
- disclosure of the conflict of interest
- directions given about handling the conflict of interest
- decisions and arrangements made for resolving the conflict of interest
- steps taken in implementing the chosen management strategy.

These records will enable AHPRA to demonstrate in an accountable manner that a specific conflict of interest has been appropriately identified and managed.

The process of managing conflicts of interest is outlined below (see figure 1) and include:

- Identifying conflicts of interest,
- Developing and implementing a strategy for each conflict of interest; and
- Monitoring the implementation of that strategy.

Conflict of Interest Management Decision Model

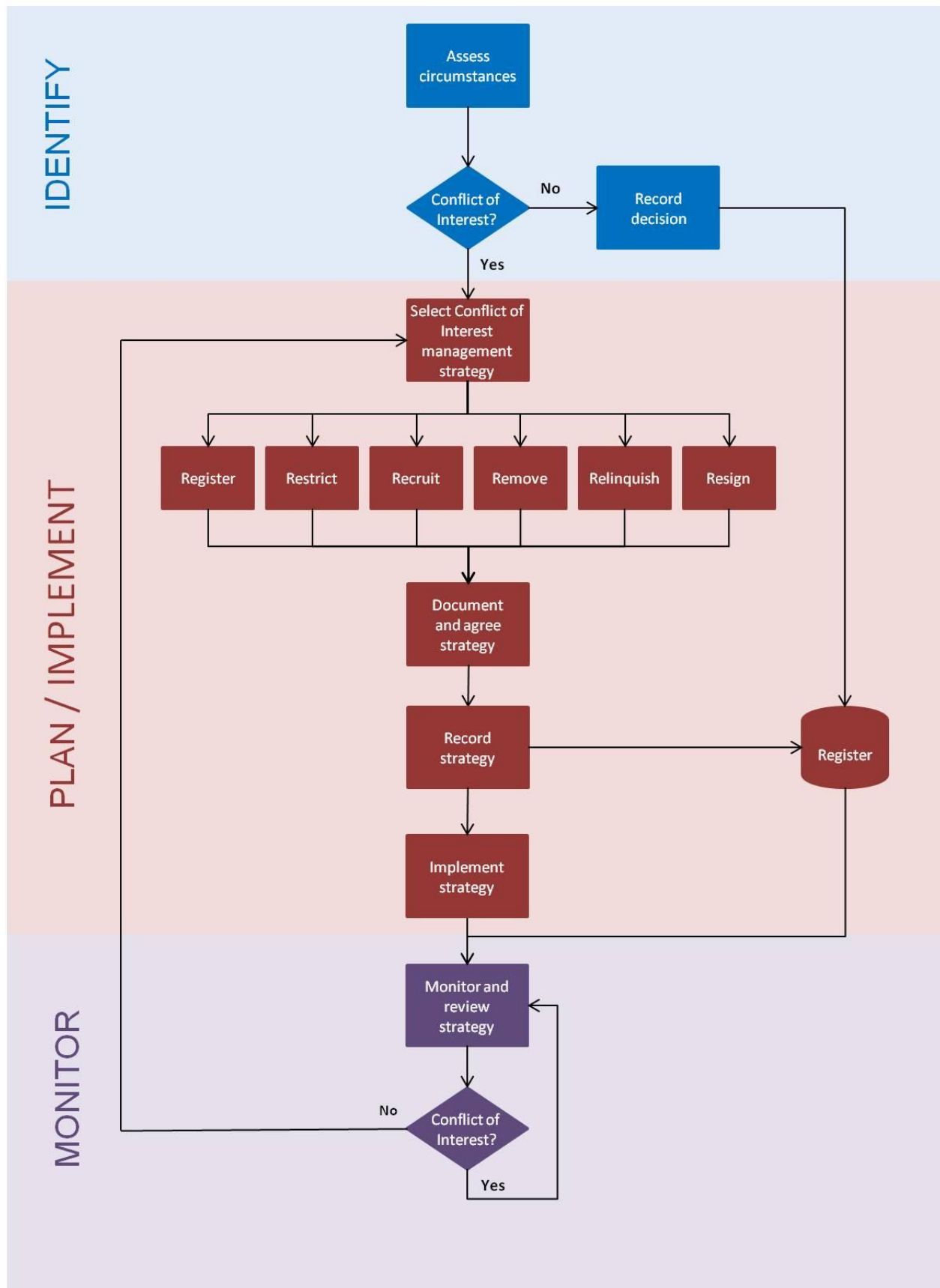


Figure 1 – Conflict of Interest Management Decision Model

6. Document control

Approver	National Executive
Policy Number	RM007 v.1
Date Approved	May 2015
Date Commenced	May 2015
Date for Review	April 2017
Responsible Officer	Fraud and Corruption Control Officer (Manager Corporate Risk and Compliance)
Sections modified	October 2014, New document April 2015, updated to reflect new policy template



Aboriginal and Torres Strait
Islander Health Practice
Chinese Medicine
Chiropractic
Dental
Medical
Medical Radiation Practice
Nursing and Midwifery

Occupational Therapy
Optometry
Osteopathy
Pharmacy
Physiotherapy
Podiatry
Psychology

Australian Health Practitioner Regulation Agency

GUIDELINES FOR BOARD & COMMITTEE MEMBERS WITH RESPECT TO CONFLICT OF INTEREST

These guidelines have been prepared for National Board Members, State/Regional Board Members and Committee Members. They are intended for the use of such Members only.

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Prepared: Legal Adviser, South Australia AHPRA

Endorsed: General Counsel

Approved: National Boards

Date: July 2011

PRIMARY DUTY OF BOARD AND COMMITTEE MEMBERS

Members of the National Boards and/or State/Regional Boards (however called) (“the Board”) and its Committees (hereafter referred collectively as “Members”) are appointed from various backgrounds and entities. It is acknowledged that Members bring with them experience and expertise gained as a result of their private roles as practitioners, academics, members of professional associations and other influential organisations, and members of the community. There is no question that the Board benefits from such expertise and experience.

The Board recognises the importance of fair, impartial and transparent conduct of Board and committee Members in the performance of their duties under the *Health Practitioner Regulation National Law* (“the National Law”). Thus, notwithstanding that many Members are appointed because of their knowledge of and interest in a particular group or field of professional activity, a high level of impartiality is required. It must be stressed, therefore, that Members are **not** appointed to represent the interests of the bodies by whom they were nominated or elected. The classic statement of this proposition is by Justice Street in the Supreme Court of New South Wales:-

It is entirely foreign to the purpose for which this or any other board exists to contemplate a Member of the board being representative of a particular group or a particular body. Once a group has elected a Member, he [or she] assumes office as a Member of the board and becomes subject to the overriding and predominant duty to serve the interests of the board in preference, on every occasion upon which any conflict might arise, to serving the interests of the group which appointed him [or her]. With this basic proposition there can be no room for compromise.”
Bennetts v Board of Fire Commissioners of NSW (1967) 87 WN (NSW) 307 at 311.

It is a fundamental aspect of good governance that all Members understand that their role is first and foremost to act in the public interest, irrespective of any personal or other interests. Members are not on Boards to represent and promote the interests of particular groups and stakeholders. Rather, the duty of each Member is to promote the public purposes for which the Board exists. These are specified in section 35 of the National Law. In the fulfilment of these functions, Members must have regard to the objectives and guiding principles of the national registration and accreditation scheme. Essentially, the objectives are (section 3(2)):

- to provide for the protection of the public by ensuring that only health practitioners who are suitably trained and qualified to practise in a competent and ethical manner are registered; and
- to facilitate workforce mobility across Australia by reducing the administrative burden for health practitioners wishing to move between participating jurisdictions or to practise in more than one participating jurisdiction; and
- to facilitate the provision of high quality education and training of health practitioners; and
- to facilitate the rigorous and responsive assessment of overseas trained health practitioners; and
- to facilitate access to services provided by health practitioners in accordance with the public interest; and
- to enable the continuous development of a flexible, responsive and sustainable Australian health workforce and to enable innovation in the education of, and service delivery by, health practitioners.

The guiding principles of the national registration and accreditation scheme are as follows (section 3(3)):

- the scheme is to operate in a transparent, accountable, efficient, effective and fair way;
- fees required to be paid under the scheme are to be reasonable having regard to the efficient and effective operation of the scheme;
- restrictions on the practice of a health profession are to be imposed under the scheme only if it is necessary to ensure health services are provided safely and are of an appropriate quality.

These objectives and guiding principles are to guide Members in the exercise and performance of all their delegated duties, powers and functions under the National Law. And, in exercising functions delegated to them under the National Law, Members must act honestly, in good faith, with integrity, and with a reasonable degree of care, diligence and skill (section 234(2)).

All Members have a duty to always to put the public interest above their private interests when carrying out their official duties. The National Law specifically requires a Member to **“act impartially and in the public interest in the exercise of the Member’s functions as a Member”**. Accordingly, a Member **“is to put the public interest before the interests of particular health practitioners or any entity that represents health practitioners”** (clause 7, Schedule 4).

Members should therefore avoid situations in which their private interests conflict or might reasonably be perceived to conflict with the impartial fulfilment of their official duties and the public interest. Members should not allow the pursuit of private interests to interfere with the proper discharge of their official duties.

MEANING OF “PUBLIC INTEREST”

In general terms, the responsibility of each Member is, at all times whilst exercising a delegated power or function, to act in the public’s interest. Whilst this may seem a concept that is difficult to define, the overriding principle is that a Member’s focus for decision making must be balanced on the broader public interest (i.e. what is in the interest of the greater public health as it relates to the provision of care); even if as a result there may be a perceived negative outcome for the profession.

Put another way, the public interest can be defined as the interest of the community as a whole. It is not the sum of individual interests or the interest of a particular group, but the collective interest of the entire community.

The public interest should take priority over any potential conflict with private interests.

MEANING OF THE TERM “CONFLICT OF INTEREST”

The term “conflict of interest” refers to a situation where a conflict arises between public duty and private interest which could influence the performance of official duties and responsibilities. Such conflict generally involves opposing principles or incompatible wishes or needs.

A “conflict of interest” situation will arise when a Member’s duty to the Board clashes with their duties, obligations or interests elsewhere – their business or workplace interests, for

example, or even the personal, professional or business interests of individuals or groups with whom he/she is closely associated (i.e. relatives, friends or even rivals and enemies).

Members, of course, do not live within the prism of their official work but have a range of other personal and professional interests and relationships. It is no surprise, then, that almost all Members will come across a real, potential or perceived conflict of interest at some point during the term of their membership of the Board or its Committees. They can involve the interests of the Member, members of his/her immediate family or relatives, business partners or associates, or friends. Enmity as well as friendship can give rise to an actual or perceived conflict of interest.

Conflict of interest can be:

- **pecuniary** - involving an actual, potential or perceived financial gain or loss. Money does not need to change hands for an interest to be pecuniary. A person has a pecuniary interest if they (or a relative, or a close associate) own property, hold shares, have a position in an organisation that is bidding for work with the Board, or receive benefits such as concessions, discounts, gifts or hospitality from a particular source.
- **non-pecuniary** – do not have a financial component. They may arise from personal or family relationships, or involvement in sporting, social or cultural activities. They include any tendency toward favour or prejudice resulting from friendship, animosity, or other personal involvement with another person or group.

Conflict of interest can be:

- **direct/actual** – where a Member has an interest personally (and not an interest through an intermediary) which conflicts with the Member's current duties and responsibilities.
- **indirect** – where a family member or business associate of a Member has an interest (either directly or indirectly) in a matter that is under consideration.
- **reasonably perceived** – conflicts of interest existing where a person could reasonably perceive that a Member's private interests are or are likely to improperly influence the performance of his or her official duties (whether or not this is in fact the case).
- **potential** – conflicts of interest arising where a Member has a private interest that could conflict with his or her official duties in the future.

It matters little whether a conflict of interest is actual or merely a conflict that could be reasonably perceived to exist by a third party. Nor does it matter that a conflict of interest is direct or indirect. All circumstances negatively impact on public confidence in the integrity of the Board and the Committee.

The issue of conflict of interest was considered by the New South Wales Supreme Court in Bonds and Securities (Trading) Grounds Ltd v Glomex Mines N.L. and Others (1971) 1 NSWLR 879 in which Justice Street held at page 891:

The Courts have always looked askance upon situations in which a [person] occupying a position of trust engages in activities involving a potentiality of serving interests other than those which his [or her] position requires him [or her] to serve. ...[situations where a conflict arises between duty and self interest are] fraught with the risk that human frailty will prove unequal to the resolution of the moral issues involved in the conflict.

It is not always easy to identify a conflict of interest. Further, it is not possible to foresee all potential areas of conflict of interest, but some areas where a conflict may arise for Members would include:

- Personal acquaintance with a health practitioner or student who is subject of proceedings before the Board; and
- Having a personal financial interest in a business that is tendering to provide a service to the Board.

Issues to be considered in assessing whether there is a conflict of interest

It is not always easy to identify a conflict of interest. In assessing whether a Member has an actual, potential or reasonably perceived conflict of interest, it may be helpful to ask the following questions:

- Does the Member have a current or previous personal, professional or financial relationship with an interested party and if so, how significant is or was the relationship (e.g. is the relationship one of simple acquaintance, previous work experience, close friendship, business partnership)?
- Would the Member or anyone associated with the Member benefit from or be detrimentally affected by a decision or finding in favour of, or adverse to, any interested party?
- Does the Member hold any personal or professional views or biases that may lead others to reasonably conclude that the Member is not an appropriate person to deal with the matter?
- How serious is the matter and does it directly impact on the rights or interests of any persons of the general public?

DISTINGUISHING “CONFLICT OF INTEREST” FROM “BIAS”

A distinction needs to be drawn between conflict of interest and bias. While both concepts are well known in public administration, conflict of interest is far less known to the common law than bias.

“Bias” can be summarised as the failure to bring an impartial mind to the making of a decision. A “*reasonable apprehension of bias*” is where a hypothetical fair minded person, properly informed as to the nature of the proceedings or process, might reasonably apprehend that the decision-maker might not have brought an impartial mind to the making of the decision. A “*conflict of interest*” on the other hand can be summarised as a conflict between public duty and private interests which could influence the performance of official duties and responsibilities. A “*reasonable perception of a conflict of interest*” is where a fair minded person, properly informed as to the nature of the interests held by the decision-maker, might reasonably perceive that the decision-maker might be influenced in the performance of official duties and responsibilities.

Both bias and conflict of interest relate to decision-making and conduct related to decision-making. However, they approach the issue from different directions – looked at in terms of cause and effect.

- Bias focuses on effects (i.e. the conduct of the decision-maker)
- Conflict of interest focuses on the causes (i.e. the interest of the decision-maker).

Bias can be the outcome or effect of a conflict of interest, but a conflict of interest is just one possible cause of bias. It is also relevant to note that a conflict of interest, by itself is not misconduct – that question depends on how it is managed and dealt with. On the other hand, bias in the performance of a public function is misconduct.

DUTY OF MEMBERS WITH RESPECT TO CONFLICT OF INTEREST

A Member should not sit on the hearing or determination of any matter in which he or she has a personal interest. To do so can cause real damage to official and public confidence in the Board and the Committee and the reputations of individual Members – even those not directly involved in the conflict. In some circumstances, the mere appearance of conflict could jeopardise the public credibility of the Board and/or the Committee.

The threshold for disclosure of a conflict of interest under the National Law is a fairly low one. The duty arises where:

- (a) a Member has a direct or indirect pecuniary or other interest in a matter being considered or about to be considered at a meeting of the Board or the Committee; and
- (b) the interest *appears* to raise a conflict with the proper performance of the Member's duties in relation to the consideration of the matter.

The test therefore is an objective one, related to whether a fair minded lay observer might reasonably apprehend that a Member's interest might result in a conflict with the proper performance of the Member's duties.

The National Law imposes a number of duties and obligations on Members with respect to the concept of conflict of interest. In particular, Clause 8, Schedule 4 of the National Law specifically sets out the procedure that is to be followed where a Member has a direct or indirect personal or pecuniary interest in a matter to be decided or under consideration. In such a situation, the Member **must**:

- as soon as possible after the relevant facts have come to the Member's knowledge, disclose the nature of the interest at a meeting of the Board or relevant committee;
- not, unless the Ministerial Council or the Board or the Committee otherwise determines, be present during any deliberation of the Board or committee with respect to the matter;
- not take part in any discussion or decision concerning the matter;
- not take part in any vote concerning the matter; and
- at the discretion of Members be absent from the meeting room while any such discussion or voting is taking place.

Where such a disclosure is made by a Member, it must be recorded in a book kept for that purpose.

CONSEQUENCES OF NON-DISCLOSURE

The failure of Members to appropriately disclose conflicts of interest and abide by the procedures set out under the National Law does not invalidate any decision of the Board or the Committee. However, a failure to disclose can undermine public confidence in the integrity of the Member and the Board and the Committee. Moreover, the failure by a Member to disclose a conflict of interest and abide by the procedures laid out in the National

Law may result in the removal of the Member by the Chairperson of the Ministerial Council on the basis that the Member has engaged in misconduct.

GENERAL GUIDELINES FOR BOARD AND COMMITTEE MEMBERS

Disclosure of conflict of interest

Members should be pro-active and comprehensive in disclosing interests that could conflict (or appear to conflict) with the proper performance of their duties. If a Member is of the view that a real or perceived conflict of interest exists, he or she should:

1. As soon as practicable after the relevant facts have come to his or her knowledge, fully declare the fact and the nature, character and extent of that interest at the commencement of a meeting of the Board or Committee.
2. If practicable, ask not to be provided with any Board or internal papers that discuss the matter.
3. Avoid any informal discussions that might influence fellow Members on the matter.
4. When the matter is raised formally during a meeting, declare his or her interest and inform Members of a willingness to leave the room. The Members may then discuss whether it is necessary for the Member to leave the room.
5. Not take part in any consideration of, or the making of a decision in relation to, that matter.

Board Procedures

As a matter of the good practice, the following procedures should be adopted and applied by the Board and its Committees:

1. The Board is to have a standing item on the agenda of all Board and Committee meetings to ask whether any Members is aware of having a conflict of interest arising from any item scheduled for discussion at that meeting. The Chair of Board and Committee Chair is to remind Members at the outset of each meeting of their obligation to declare conflicts of interest.
2. Where a Member considers that that he or she has a conflict of interest with respect to an agenda item, that fact and the nature and extent of the conflict is to be recorded.

BOARD NAME

Record of disclosure of conflict of interest

Name: _____

Meeting date: _____

Agenda item: _____

Subject: _____

Nature of interest

Action taken

- ☐ Member absent during deliberation
- ☐ Member did not take part in decision
- ☐ Board determined that the member’s interest does not raise a conflict
- ☐ Matter referred to Ministerial Council for determination

Comments

Signed

Chair