

Instrument of Delegation

Delegation of National Board functions under the Health Practitioner Regulation National Law as in force in each State and Territoryto Committees of the Board and the Australian Health Practitioner Regulation Agency

Preliminary

* 1. The Aboriginal and Torres Strait Islander Health Practice Board of Australia(the ‘**Board’**), pursuant to s 37 of the National Law, resolved to delegate its functions as specified in this instrument of delegation (‘**instrument’**) on22November2017.
  2. This instrument is a complete record of the Board’s resolution with respect to the delegation of its functions. The Board resolved to revoke all prior delegations on22 November2017.
  3. The Board resolved to authorise the Chair of the Board to sign this instrument as evidence of the Board’s decision to delegate its functions in compliance with Clause 29(3) to Schedule 7 of the National Law.

Definitions

* 1. **National Law** means:
     1. the Health Practitioner Regulation National Law (Queensland) in Queensland
     2. the Health Practitioner Regulation National Law (ACT) in the Australian Capital Territory
     3. the Health Practitioner Regulation National Law (Victoria) in Victoria
     4. the Health Practitioner Regulation National Law (South Australia) in South Australia
     5. the Health Practitioner Regulation National Law (NT) in the Northern Territory
     6. the Health Practitioner Regulation National Law (Tasmania) in Tasmania
     7. the Health Practitioner Regulation National Law (NSW) in New South Wales
     8. the Health Practitioner Regulation National Law (Western Australia) in Western Australia.
  2. **ACT** means the *Health Practitioner Regulation National Law* (ACT)
  3. **NSW Act** means the *Health Practitioner Regulation National Law* (NSW)
  4. **Qld Act** means the *Health Practitioner Regulation National Law Act* (Qld)
  5. **SA Act** means the *Health Practitioner Regulation National Law* (South Australia)
  6. **WA Act** means the *Health Practitioner Regulation National Law (Western Australia) Act 2010*
  7. **Tas Act** means the *Health Practitioner Regulation National Law (Tasmania) Act 2010*
  8. To avoid doubt, any section cited in this instrument refers to the section in the National Law in force in each jurisdiction unless:
     1. the section is contained within Part 8 of theNSW Act; or
     2. it is otherwise indicated by this instrument that the National Law specific to a particular participating jurisdiction applies.
  9. **AHPRA** means the Australian Health Practitioner Regulation Agency, established by section 23 of the National Law.
  10. **National Board (Board)** means the Aboriginal and Torres Strait Islander Health Practice Board of Australia, established by the section 31 of the National Law.
  11. **Participating jurisdiction** has the same meaning as in section 5 of the National Law.
  12. **Registration and Notification Committee** means the committee established by the Board pursuant to Clause 11 of Schedule 4 to the National Law constituted according to its terms of reference.
  13. **Immediate Action Committee** means the committee established by the Board pursuant to Clause 11 of Schedule 4 to the National Law constituted according to its terms of reference
  14. **Appellable decision** has the same meaning as in section 199 of the National Law meaning**:**
      1. a decision to refuse to register the person;
      2. a decision to refuse to endorse the person’s registration;
      3. a decision to refuse to renew the person’s registration;
      4. a decision to refuse to renew the endorsement of the person’s registration;
      5. a decision to impose or change a condition on a person’s registration or the endorsement of the person’s registration, other than –

1. a condition relating to the person’s qualification for general registration in the health profession; and
2. a condition imposed by section 112(3)(a);
   * 1. a decision to refuse to change or remove a condition imposed on the person’s registration or the endorsement of the person’s registration;
     2. a decision to refuse to change or revoke an undertaking given by the person to the Board;
     3. a decision to suspend the person’s registration.
   1. **Relevant Event** means any health, performance or conduct notification action taken against the registrant in relation to an adverse disclosure on renewal of registration, new information returned on a criminal history check, a confirmed breach of restrictions, or where the practitioner has been the subject of action under Part 8 of the National Law or its equivalent in a co-regulatory jurisdiction. This includes receipt of any new notification irrespective of whether action was taken.

Delegation of Board functions

* 1. Principles of delegation:
     1. The purpose of this instrument is to allow the Board to discharge its functions as set out in s 35 of the National Law.
     2. To the extent that the Board’s functions are capable of being delegated, the Board delegates its functions to AHPRA and the committees of the Board as set out below.
     3. A delegate may in the performance of a delegated function do anything that is incidental to the delegated function.
     4. A delegation does not derogate from the power of the Board to act itself in the matter, so long as the delegate has not yet exercised the function or power.
     5. A delegate may only exercise a function, or make a decision, subject to the limitations imposed on the delegated function. If the decision to be made is not within the limitation which applies to the delegated function, or the delegate is not sure what the decision should be, the delegate must not make the decision. The delegate may, however, make recommendations to the National Board or another delegate.
  2. Powers and functions that have not been delegated by the Board are in Column C to the Schedule.
  3. The Board delegates to the Registration and Notification Committee the following functions of the Board:
     1. The functions listed in Column D to the Schedule, subject to the limitations (if any) in Column G to the Schedule.
     2. All functions delegated to AHPRA.
  4. The Board delegates to the Immediate Action Committee the following functions of the Board:
     1. The functions listed in Column E to the Schedule, subject to the limitations (if any) in Column G.
  5. The Board delegates to AHPRA the following functions of the Board:
     1. The provision of notice(s), whether or not expressly provided for in this instrument and whether from the Board or a committee of the Board, to any entity or person; and,
     2. The publishing of information on the website, whether or not expressly provided for in this instrument
     3. The functions listed in Column F to the Schedule, subject to the limitations (if any) in Column G to the Schedule.
     4. AHPRA may not exercise any function that is an appellable decision unless specified otherwise

# Signature

As Signed

Renee Owen

Presiding Member, Aboriginal and Torres Strait Islander Health Practice Board of Australia

# Date: 22November 2017

Schedule

Accreditation functions

| **A** | **B** | **C** | **D** | **E** | **F** | **G** |
| --- | --- | --- | --- | --- | --- | --- |
| **Part and Division** | **Description of Division** | **Not delegated by National Board** | **Registration and Notification Committee** | **Immediate Action Committee** | **AHPRA** | **Limitations on delegation** |
| **Part 6**  **Accreditation** |  |  |  |  |  |  |
| Div 3 | Accreditation functions | 47(1)  47(2)  47(6)  49(1)  49(2)  51(2) |  |  |  |  |

Registration functions

| **A** | **B** | **C** | **D** | **E** | **F** | **G** |
| --- | --- | --- | --- | --- | --- | --- |
| **Part and Division** | **Description of Division** | **Not delegated by National Board** | **Registration and Notification Committee** | **Immediate Action Committee** | **AHPRA** | **Limitations on delegation** |
| **Part 7**  **Registration** |  |  |  |  |  |  |
| Div 1 | General registration | 56 | 54 |  |  | . |
| Div 2 | Specialist registration | 61 | 59 |  |  |  |
| Div 3 | Provisional registration | 64 |  |  |  |  |
| Div 4 | Limited registration | 72 |  |  |  |  |
| Div 5 | Non-practising registration | 76 |  |  |  |  |
| Div 6 | Application for registration |  | 80(1)(a)(i)  80(1)(a)(ii)  80(1)(b)  80(1)(c)  80(1)(d)  80(1)(e)  80(2)  81(1)  82(1)(a)  82(1)(b)  82(1)(c)  83 |  | 77(2)  78(1)  79  80(1)(a)(i)  80(1)(a)(ii)  80(1)(b)  80(2)  81(1)  82(1)(a)  82(1)(c)  83  84  85 | AHPRA to seek the approval of the Chair of the Board (or a nominee of the Chair) when approving a form.  AHPRA may only register an applicant if the applicant is:  eligible, qualified, suitable and meets all requirements for registration in the applicable registration standards.  Eligible means the applicant meets all the requirements in s 52 or 57 or 62 or 65 or 73.  Qualified means the applicant meets the requirements in s 53(a), (c), (d) or has a qualification recognised by the Board as being equivalent to an approved qualification for the purpose of s 53(b), or a qualification recognised by the Board for the purposes of s 303(1)(a) or (b).  Suitable means the applicant is not an unsuitable person within the meaning of s 55 or 60 or 63 or 70 or 74.  AHPRA may only impose a condition on registration in the following circumstances:   * the applicant has been given notice of a proposal to impose the condition on registration under s.81; and * the applicant has not made any submissions in response to that notice in the time required, or has indicated that he or she agrees with the proposed imposition of the condition.   AHPRA may not grant limited registration.  AHPRA is delegated the power to refuse an application for registration only in the following circumstances:   * the applicant has been given notice of a proposal to refuse registration under s.81; and * the applicant has not made any submissions in response to that notice, or has indicated that he or she agrees with the proposed refusal decision. |
| Div 7/1 | Student registration | 87  88(4) |  |  | 88(1)  89(1)(a)  89(1)(b)  89(4) | An application must be in the form approved by the National Board |
| Div 7/2 | Other persons |  |  |  | 91(4) | An application must be in the form approved by the National Board |
| Div 7/3 | General provisions re students |  |  |  | 92(2) | An application must be in the form approved by the National Board |
| Div 8/1 | Endorsement of registration – scheduled medicines | 94 |  |  |  |  |
| Div 8/2 | Endorsement for nurse practitioner | N/A | N/A |  | N/A |  |
| Div 8/3 | Endorsement for midwifery | N/A | N/A |  | N/A |  |
| Div 8/4 | Endorsement for acupuncture |  |  |  |  |  |
| Div 8/5 | Endorsement for area of practice |  | 98(1)(a)(ii) |  |  |  |
| Div 8/6 | Application for endorsement |  | 100(1)  101  102  103 |  | 99(2)  100(1)(a)  100(1)(b)  100(1)(c)  102(1) | AHPRA to seek the approval of the Chair of the Board (or a nominee of the Chair) when approving a form.  AHPRA is delegated the power to refuse an application for endorsement only in the following circumstances:   * the applicant has been given notice of a proposal to refuse endorsement under s.101; and * the applicant has not made any submissions in response to that notice, or has indicated that he or she agrees with the proposed refusal decision. |
| Div 9 | Renewal of registration |  | 110 (functions corresponding to  80(1)(a)(i)  80(1)(a)(ii)  80(1)(b)  80(1)(c)  80(1)(d)  80(1)(e)  80(2)  111(1)  112 |  | 107(4)(a)  110 (functions corresponding to  80(1)(a)(i)  80(1)(a)(ii)  80(1)(b)  80(1)(c)  80(2)  112(1)  112(3) | AHPRA to seek the approval of the Chair of the Board (or a nominee of the Chair) when approving a form.  AHPRA may only renew a practitioner’s registration if s 111 does not apply, but this does not prevent AHPRA from imposing a condition on registration as set out below.  AHPRA is delegated the power to refuse an application for renewal of registration only in the following circumstances:   * the applicant has been given notice of a proposal to refuse renewal under s.111; and * the applicant has not made any submissions in response to that notice, or has indicated that he or she agrees with the proposed refusal decision.   AHPRA may only impose a new condition on registration under s.112(3) if the applicant:   * has been given notice of the proposal to impose the condition under s.111; and * has not made any submissions in response to that notice in the time provided, or has indicated that he or she agrees with the proposed imposition of the condition. |
| Div 10 | Title and practice protections |  |  |  |  |  |
| Div 11/1 | Certificate of registration |  |  |  | 124 |  |
| Div 11/2 | Review of conditions and undertakings |  | 125(4)  125(5)  126(1)  126(5)  127 |  | 125(3)  125(4)  125(5)  125(6)  126(2)  126(6)  127 | AHPRA to seek the approval of the Chair of the Board (or a nominee of the Chair) when approving a form.  Delegation of s. 125(4) and (5) to AHPRA limited to matters where conditions were imposed in response to a breach of s. 133 (Advertising offences).  AHPRA can only grant applications under s. 125(5) where the practitioner has:   * complied with conditions on their registration regarding the breach of s. 133 (re advertising); and * provided material to AHPRA to demonstrate that they clearly understand the advertising requirements in the National Law.   If advertising is assessed as continuing to be non-compliant, a decision to refuse to remove the conditions remains with the Registration and Notification Committee, and is not delegated to AHPRA.  AHPRA may only remove conditions once they have been complied with.  s 125(7) sets out the contents of a notice to refuse to grant an application. |
| Div 11/3 | Obligations of registered health practitioners and students |  | 129(2) |  | 129(2)  132(1) |  |
| Div 11/5 | Boards powers to check identity and criminal history |  |  |  | 134  135(1) |  |
| Div 116 | General |  |  |  | 137 |  |

Notification functions

| **A** | **B** | **C** | **D** | **E** | **F** | **G** |
| --- | --- | --- | --- | --- | --- | --- |
| **Part and Division** | **Description** | **Not delegated by National Board** | **Registration and Notification Committee** | **Immediate Action Committee** | **AHPRA** | **Limitations on delegation** |
| **Part 8** |  |  |  |  |  |  |
| **Notifications** |  |  |  |  |
| Div 1 | Persons formerly registered under this Law |  |  |  |  |  |
| Div 2 | Mandatory Notifications |  |  |  |  |  |
| Div3 | Voluntary notifications |  |  |  |  |  |
| Div4 | Making a Notification |  |  |  |  |  |
| Div 5 | Preliminary assessment |  | 149(1)(a), (b) and (c), (excl Qld Act)  149(3) (excl Qld Act)  150(excl Qld Act)  151  152(excl Qld Act)  150(1)(a) and (b) (Qld Act)  150(3) (Qld Act) | 149(1)(a), (b) and (c) (excl Qld Act)  150(1)(a) and (b) (Qld Act) | 149(1)(a),(b),(c) (excl Qld Act)  149(3) (excl Qld Act)  150 (excl Qld Act)  151(1)(e) (excl Qld Act)  152 (excl Qld Act)  150(1)(a) and (b) (Qld Act)  150(3) (Qld Act) | AHPRA may not decide that a notification/referred matter does not relate to a ground for a notification  Delegation of s. 151(1)(e) to AHPRA limited to situations where the Board’s delegate and the health complaints entity (‘**HCE**’) have agreed that the HCE will deal with the subject matter of the notification, under s. 150(3). |
| Div 6 | Other matters |  | 153  154(2) | 153  154(2) |  |  |
| Div 7 | Immediate action |  | 156  157(3)  158(1)(b)  159(2)(b) & (c) | 156  157(3)  158(1)(b)  159(2)(b) & (c) | 157(1)  158(1)(a) | AHPRA may only give written notice. |
| Div 8 | Investigations |  | 160  161(4) | 160  161(4) | 160(1)  160(2)  161(1),(2),(3) & (4)  81(1) (SA Act) | Delegation of s 160(1) to AHPRA limited to situations where:   * s 150(4) applies to require an investigation; or * where a notification is made to the AHPRA or the Board without patient consent to obtain records relevant to the notification.   (As soon as possible after the decision to initiate an investigation, AHPRA must notify the Chair of the Board and give details of the investigation). |
| Div 8 | Investigators |  |  |  | 163  164(1) |  |
| Div 8 | Procedure after investigation |  | 167  167(1) (ACT)  167(3) (ACT) |  | 166(3) (ACT) |  |
| Div 9 | Health and performance assessments |  | 169  170  171(1)  172  176(1)(b)  176(3)  177 (note: in Qld Act, s.177 applies subject to Div 12, Subdiv 1 of Part 8)  177(1), (2), (4) (ACT) | 169  170 |  |  |
|  |  | 171(1)  172(1)  175(2) (ACT)  176(1)(a)  176(3) | AHPRA may only provide a copy of the report once the relevant committee or State Board has determined whether s 176(1)(b) applies. |
| Div 10 | Action by National Board |  | 178  179 |  | 178(2)(c)  179(1)  179(2)(a)  180(1) | AHPRA is limited to deciding to propose action to impose conditions that relate to an apparent breach of s. 133 (advertising offences).  AHPRA is limited to proposing standard conditions in relation to apparent breaches of s. 133 (advertising offences).  AHPRA may only decide to take no further action under s. 179(2)(a) in relation to apparent breaches of s. 133 (advertising offences). |
| Div 11 | Panels | 183 | 181  182  192 |  | 181(1)  182(1)  184(3) (ACT)  192(2) | AHPRA may only select persons to be on the panel and may not establish the panel.  AHPRA limited to maintaining the list of approved persons. AHPRA does not have power to approve people.  AHPRA to give notice at the direction of panel members  AHPRA to give notice to reflect the Panel's decision |
| Div 12 | Referring matter to tribunal |  | 193 (excl Qld Act)  193 (Qld Act)  193A(1),(2) and (4) (Qld Act)  193B(1), (2) and (3) (Qld Act) |  | 192(3A) (ACT)  193(2)(b) (excl Qld Act) |  |
| Div 13 | Appeals |  |  |  |  |  |
| Div 14 | Miscellaneous |  |  |  | 205, 206  206A(2) (Qld Act)  206B(3) (Qld Act) |  |
| Div 14B (NSW Act) | Health, performance and conduct (Miscellaneous) |  |  |  | 176B (NSW Act) |  |
| **Part 10** |  |  |  |  |  |  |
| Div 2 | Disclosure of information and confidentiality |  | 220 |  | 217, 220 |  |
| Div 3 | Registers (registered health practitioners) |  | 226 (2) & (3) | 226 (2) & (3) | 222  223  225  226  227 | AHPRA is only delegated the power to decide to remove information that a registered health practitioner has been reprimanded from the National Register or Specialists Register under s. 226(3) where:   * the reprimand has been published for 5 years or longer; and * there has not been a ‘Relevant Event’ in the preceding 5 years regarding the practitioner.   AHPRA is only delegated the power to refuse a request to remove a reprimand under s. 226(3) where the Board or a duly authorised Committee (as the case may be) has issued a written notice to the registered health practitioner proposing to refuse to remove the reprimand and the practitioner does not provide a response in the time required by the notice or indicates they intend to make no submission in relation to the notice. |
| Div 4 | Registers (students) |  |  |  | 229, 230 |  |
| Div 5 | Other records |  |  |  | 231, 232 |  |
| Div 6 | Unique identifier |  |  |  | 233 |  |
| **Part 11** |  |  |  |  |  |  |
| Div 2 | Inspectors |  |  |  | 239  81(2) (SA Act)  240 |  |
| **Part 12** |  |  |  |  |  |  |
| Div 13 | Complaints, notifications, disciplinary proceedings |  | 289  291  17(WA Act)  18 (Tas Act) |  | 289  291  17 (WA Act)  18 (Tas Act) | AHPRA may only give notice under this division. |
| **Part 13 (Qld Act)** |  |  |  |  |  |  |
| N/A | Transitional (Qld) |  |  |  | 310(1) and (2) (Qld Act) |  |

Change table

|  |  |  |  |
| --- | --- | --- | --- |
| **Part and Division** | **Description** | **Change** | **Date Change Made** |
| Part 7, Div 11/2 | Review of conditions and undertakings | Delegate s. 126(6) to AHPRA. | November 2017 |
|  |  |  |  |