

Petreski, Sonya

From: Wallner, Peter
Sent: Monday, 29 April 2013 3:29 PM
To: Lim, Dixie
Subject: FW: Teeth Whitening Products - Dispensing by healthcare professionals [SEC=UNCLASSIFIED]
Attachments: 4.8.5M - ACCC, Advice concerning registration standards.pdf
Follow Up Flag: Follow up
Flag Status: Flagged

Peter Wallner

Director | Chemicals & Regulated Products | Product Safety

Australian Competition & Consumer Commission


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From: Mackay, Ruth
Sent: Monday, 15 April 2013 8:37 PM
To: Miley, Benjamin; Hutchison, Steve; Jamieson, John; Wallner, Peter
Subject: FW: Teeth Whitening Products - Dispensing by healthcare professionals [SEC=UNCLASSIFIED]

Hi Ben

Could you please set up a meeting for early next week please (when Peter is back).

Thanks

R

From: Ridgway, Nigel
Sent: Friday, 12 April 2013 6:38 PM
To: Mackay, Ruth; Hutchison, Steve; Wallner, Peter
Cc: Rickard, Delia; Bezzi, Marcus
Subject: FW: Teeth Whitening Products - Dispensing by healthcare professionals [SEC=UNCLASSIFIED]

Hi Ruth, Steve and Peter

For your consideration. The ADIA has forwarded the information it undertook to secure in our recent meeting with respect to the proposed dispensation of high strength teeth whitening products by dentists for home use by their patients/customers.

I expect you will require a little time to digest the material and form a preliminary view as to whether the information has relevance to the breadth of our concern with respect to the supply for home use of high strength teeth whitening products that currently extends to include supply by dentists.

Interested in your thoughts once you have done so.

Kind regards
Nigel

Delia and Marcus - FYI

From: Troy Williams - ADIA [<mailto:troy.williams@adia.org.au>]
Sent: Friday, 12 April 2013 5:10 PM
To: Ridgway, Nigel
Cc: Bronwyn Capanna - Accord
Subject: Teeth Whitening Products - Dispensing by healthcare professionals

Dear Nigel

Further to our earlier discussions please find attached the background documentation associated with the dispensing of over-strength teeth whitening products by registered dental professionals.

As the documentation from the Australian Healthcare Practitioner Regulation Agency (AHPRA) makes clear, there is a clear legal obligation on any dental professional wishing to dispense over-strength teeth whitening product that they possess the necessary education, training and competence. Furthermore, in the event that a national board determines that a registered dental professional has acted inappropriately, the board is duty bound to suspend, or impose a condition on the healthcare professionals registration.

We look forward to discussing this matter further.

Regards

Troy

Troy R Williams AFAIM MAICD
Chief Executive Officer ■ Australian Dental Industry Association

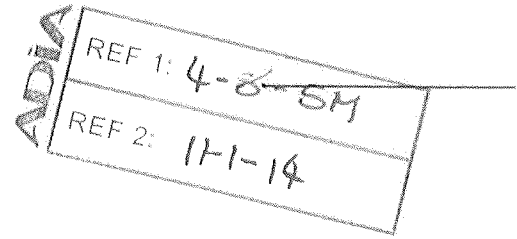
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Ref: 4.8.5M — 12 April 2013



Mr Nigel Ridgway
Group General Manager
Compliance Operations Group
Australian Competition & Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

Dear Mr Ridgway

RE: Teeth Whitening Products – Obligations of registered dental professionals

The Australian Dental Industry Association (ADIA) refers to our discussions with officers of the Australian Competition and Consumer Commission (ACCC) on 19 March 2013 in Canberra to discuss the abovementioned matter, with particular reference to supply chain arrangements.

From the outset, it is noted that the revised arrangements for teeth whitening products containing greater than 6% hydrogen peroxide and / or 18% carbamide peroxide (hereafter referred to as over-strength products for ease of reference) are more restrictive than other substances such as prescription medicines. Whereas any registered healthcare professional with prescribing rights or registered pharmacists can supply prescription medicines, the amended entries to the *Standard for the Scheduling of Medicines and Poisons* (SUSMP), references in state / territory legislation deliberately limits dispensing of over-strength teeth whitening products to registered dental professionals as part of their professional practice.

With respect dispensing this product by registered dental professionals, such activities have been uniformly regulated throughout Australia since 1 July 2010. Although this correspondence references the *Health Practitioner Regulation National Law (ACT) Act 2010*, the legislation in each state and territory is identical, resulting in nationally consistent requirements and outcomes.

National framework for registration

The Council of Australian Governments (COAG) agreed on 26 March 2008 that professionals in the disciplines of physiotherapy, optometry, nursing and midwifery, chiropractic care, pharmacy, dental care (dentists, dental hygienists, dental prosthetists and dental therapists), medicine, psychology and osteopathy would be covered by the national scheme as of 1 July 2010.

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teebigtoignore.org.au

The Australian Health Practitioner Regulation Agency (AHPRA) was created as the umbrella agency and there are currently fourteen boards across the various healthcare disciplines.

Beyond providing for a registration framework, the national scheme also provides the authority to set registration standards for individual professionals. This is relevant to the dispensing of over-strength teeth whitening products by registered dental professionals as it places effective safeguards with court-enforceable penalties in the event of inappropriate dispensing of the product.

Competency and professionals standards

The amended entries to the *Standard for the Scheduling of Medicines and Poisons* (SUSMP), referenced in state / territory legislation deliberately limits supply to registered dental professionals as part of their professional practice. The scope of professional practice is set by the national boards pursuant to Section 3(2)a of the Act which states that the national scheme must:

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

This framework is managed by the national boards which have statutory responsibility to oversee the development of registration, practice, competency and accreditation standards and continuing professional development requirements. Relevant to the dispensing of over-strength teeth whitening products are the policies, codes and guidelines to provide guidance to the profession. These also help to clarify each board's views and expectations on a range of issues. Pursuant to Section 39 of the Act, the Dental Board of Australia (DBA) has developed an interim policy which states:

Teeth whitening / bleaching, is an irreversible procedure on the human teeth and any tooth whitening/bleaching products containing more than 6% concentration of the active whitening / bleaching agent, should only be used by a registered dental practitioner with education, training and competence in teeth whitening/bleaching.

This requirement places a legal obligation on any dental professional wishing to dispense as part of their professional practice over-strength teeth whitening product on the basis that they have the necessary education, training and competence. In this context, the belief that a registered dental professional could dispense over-strength teeth whitening products to patients without regard for a patient's safety and well-being is without foundation.

Penalties for inappropriate dispensing of over-strength teeth whitening products

In the event that a registered healthcare professional has inappropriately dispensed over-strength teeth whitening products, this would constitute an action requiring immediate action by a national Board. Section 156(1) describes the circumstances in which immediate action may be taken with respect to a registered health practitioner:

A National Board may take immediate action in relation to a registered health practitioner or student registered by the Board if—

(a) *the National Board reasonably believes that—*

- i) because of the registered health practitioner's conduct, performance or health, the practitioner poses a serious risk to persons; and*
- (ii) it is necessary to take immediate action to protect public health or safety; or*

If there is a case where a registered dental professional dispensed over-strength teeth whitening product to a patient in circumstances which caused injury to the patient, a national board would take action in accordance with its obligation under this legislative provision. The test is relatively straight forward – in order to propose immediate action, the national board must reasonably believe that the immediate action is necessary because of the practitioner's health conduct or performance.

In the event that a national board determines that a registered healthcare professional has acted inappropriately and action pursuant to Section 156(1) is required, there are several options available to the national Board. Immediate actions available to the national Board are defined in Section 155 of the Act which permits:

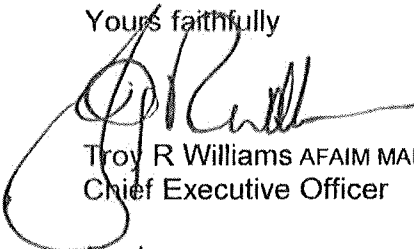
- (a) the suspension, or imposition of a condition on, the health practitioner's or student's registration; or*
- (b) accepting an undertaking from the health practitioner or student; or*
- (c) accepting the surrender of the health practitioner's or student's registration.*

The registered dental professional is not without recourse, as a decision to suspend the practitioner's registration, or to impose conditions on the registration, is an appellable decision. The appeal may be heard by the relevant tribunal in each jurisdiction.

The decision to amend the SUSMP to restrict supply to registered dental professionals was a deliberate one made in the context of the legal obligations that such professionals have. As is apparent from the information tendered above and in the enclosures, for a registered dental professional to dispense over-strength teeth whitening products in a manner that risks harm to a patient is inconsistent with their legal obligations as a registered dental professional.

We look forward to working with the ACCC further on this matter and if you require clarification or further information please contact me at your convenience.

Yours faithfully



Troy R Williams AFAIM MAICD
Chief Executive Officer

Encl.

Accreditation under the *Health Practitioner Regulation National Law Act*¹ (the National Law)

This paper which has been developed by accreditation authorities, national boards and the Australian Health Practitioner Regulation Agency (AHPRA) provides information about accreditation under the *Health Practitioner Regulation National Law Act* as in force in each state and territory (the National Law).

It covers a range of issues associated with the accreditation functions, including:

- the guiding principles and objectives of the National Law
- relationships and communication between accreditation authorities, national boards and AHPRA about accreditation
- the *Quality Framework for the Accreditation Function*, and
- the *Procedures for the Development of Accreditation Standards*.

The information in this paper was agreed by accreditation authorities, national boards and AHPRA after a Joint Meeting to consider accreditation issues on 7 June 2011 (the 2011 Joint Meeting).

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Appendices

- A. Extract from the *Health Practitioner Regulation National Law Act*
- B. Accreditation Functions, Relationships and Communication
- C. *Quality Framework for the Accreditation Function*
- D. *Procedures for the Development of Accreditation Standards*

¹ As in force in each state and territory

1. Background

The National Law implements the Council of Australian Governments' agreement to establish a national registration and accreditation scheme. The National Law specifies a range of functions for the national agency and the national boards and a number of accreditation functions (see **Appendix A**).

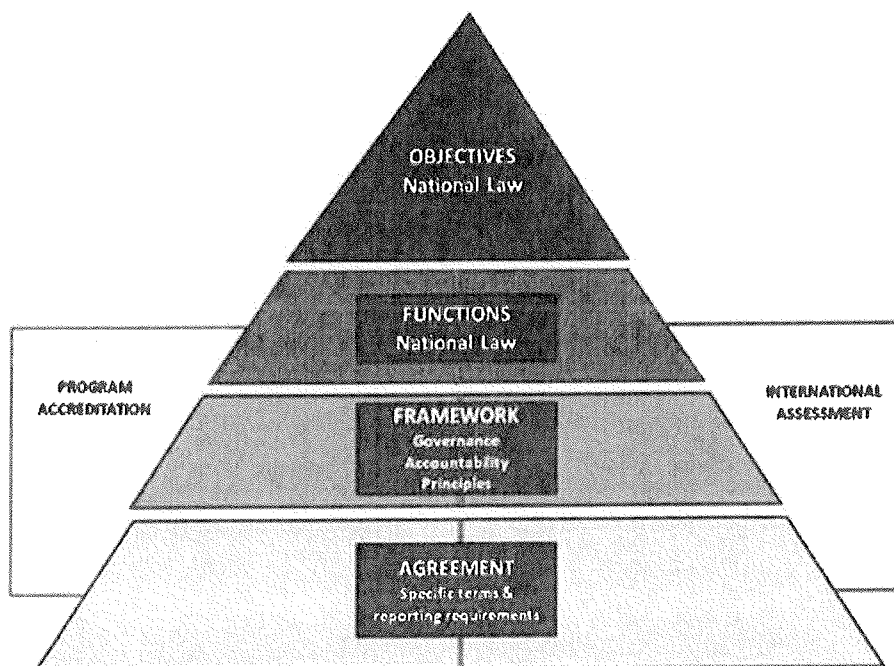
The *Health Practitioner Regulation (Administrative Arrangements) National Law Act 2008 (Qld)* ("Act A") provided powers for the Ministerial Council to appoint any body undertaking existing accreditation functions in a health profession to exercise functions with respect to accreditation under the Scheme (section 9). In December 2008, the Ministerial Council appointed accreditation authorities for chiropractic, dental care, medicine, optometry, osteopathy, pharmacy, physiotherapy and psychology. In March 2009 an accreditation authority was appointed for podiatry and then for nursing and midwifery in 2010.

The National Law came into force on 1 July 2010 in all States and Territories except Western Australia (18 October 2010) and empowers the relevant national board to decide whether the accreditation functions will be carried out by an external accreditation entity, or a committee established by the board (section 43). Further, it requires boards to review the arrangements for the exercise of accreditation functions for the health profession within 3 years after the commencement of the National Law (1 July 2013) (section 253).

Currently accreditation authorities exercise accreditation functions under the National Law specified in an agreement with AHPRA on behalf of each national board.

The accreditation authorities, national boards and AHPRA have agreed to a Quality Framework for the Accreditation Function (**Appendix C**) to support quality assurance and continuous quality improvement of accreditation under the National Law. The Quality Framework will be an important tool in the review of accreditation arrangements under section 253 of the National Law.

The following diagram shows one way of depicting the relationship between the provisions of the National Law, the Quality Framework and the agreement for accreditation functions.



2. The Objectives of the National Law

Section 3 of the National Law sets out the following guiding principles and objectives, which apply to functions under the National Law, including accreditation functions:

- (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.

The objectives and guiding principles in section 3 of the National Law apply equally to all those exercising functions under the National Law i.e. national boards, accreditation authorities and AHPRA. In exercising their functions each must have regard to the objectives and guiding principles.

Accreditation functions are defined in the National Law, and the relevant provisions of the National Law are at **Appendix A**.

3. The National Law Objectives in Practice

Objectives directly related to accreditation functions

Section 42 defines accreditation functions quite broadly. The objectives relating to facilitating the provision of high quality education and training of health practitioners (s3(2)(c)) and facilitating the rigorous and responsive assessment of overseas qualified practitioners (s3(2)(d)) relate directly to accreditation functions. Accreditation standards and accreditation of programs of study against those standards are fundamental determinants of the quality of the education and training of health practitioners. Accreditation authorities develop processes to assess overseas qualified practitioners and undertake those processes, and therefore control the responsiveness and rigorousness of those assessments.

Other objectives

However, the parts of section 3 dealing with protection of the public, workforce mobility, public access to services, the development of the workforce and innovation in the education of, and service delivery by, health practitioners are also relevant to accreditation functions, as illustrated below.

<i>National Law objective</i>	<i>Example</i>
Protection of the public	National boards' decisions about registration of practitioners and registration standards, codes and guidelines impact on protection of the public. The quality of the assessment of overseas qualified practitioners, accreditation standards and accreditation of programs of study is also critical to protecting the public.
Facilitate workforce mobility	The establishment of the national scheme has facilitated workforce mobility.
Facilitate access to services in the public interest	If the registration standards, codes and guidelines developed by national boards are unnecessarily onerous or restrictive, this could impact on access to services. Similarly, if the assessment process for overseas practitioners is unnecessarily onerous or unduly restrictive, it could impact on the number of overseas qualified practitioners from professions in shortage who are able to enter Australia to provide services. If accreditation standards are unnecessarily onerous, institutions may decide not to offer courses, impacting on the supply of practitioners and ultimately on access to services.
Continuous development of a flexible, responsive and sustainable workforce	Registration standards, codes and guidelines as well as accreditation standards, the quality of accreditation of programs of study and assessment of overseas qualified practitioners may all influence the attainment of this objective.

4. Relationships and Communication between Accreditation Authorities, National Boards and AHPRA

The provisions for accreditation in the National Law indicate that there is a necessary separation of the role of the accreditation authority and that of the national board in relation to the following regulatory responsibilities:

- the accreditation authority is required to develop accreditation standards, to use these standards to assess programs of study and the education providers that provide these programs, and to accredit programs of study and their education providers which meet the accreditation standards;
- the national board is required to approve the accreditation standards [s35(c)(i)], and to approve accredited programs as providing a qualification for the purposes of registration or endorsement in the health profession [s35(d)].

The National Law is less definitive in relation to the separation of roles for the function of assessment of overseas qualified health practitioners [see sections 35(e) and 42(d), and sections 54 and 59]. In relation to the assessment of authorities in other countries that are responsible for examination and accreditation, the National Law refers to the role of the accreditation authority [s42(c)] but makes no reference to a specific role for the national board. Accreditation authorities will consult with national boards before undertaking this function.

There is also specific provision in the National Law for the accreditation authority to make recommendations and give advice to a national board about matters related to accreditation functions [s42(e)].

At the time of implementation of the National Registration and Accreditation Scheme, there was variation between accreditation authorities in their roles in the assessment of overseas qualified health practitioners and in the assessment of overseas examination and accreditation authorities. This variation of roles continues to exist.

Under the National Law, the accreditation authority will report to the board on the programs of study it has accredited. The final decision on whether the accredited programs of study are approved for the purposes of registration is the responsibility of the national board. The accreditation authority will have the ability to make the information and advice it gave to the board publicly available in the circumstance that agreement between the accreditation authority and the national board cannot be achieved. Although the National Law does not require the accreditation authority to report to the national board about programs of study which after review, it has refused to accredit, reporting about this matter would be helpful.

In relation to assessment activities undertaken by an accreditation authority or other assessing body appointed by a board, arrangements allow for regular reporting to the board of assessment outcomes and other reasonable performance indicators to enable it to fulfil its oversight role under the National Law.

Transparency and the effective operation of the national scheme, require sound relationships between the two authorities responsible for each of the registered health professions and AHPRA. These relationships must enable the transfer of the information necessary for the national board to make the decisions it is required to make under the National Law, both expediently and autonomously. Under the jurisprudence of administrative law, the regulatory authority making such decisions must be satisfied in relation to the governance arrangements for the accreditation system. This includes having confidence in the decision making processes and the information and reports from the accreditation authority to enable the board to make autonomous decisions that will stand up to the scrutiny of administrative and judicial appeal and review processes.

It is clearly not in the interests of the efficient and effective delivery of accreditation functions and roles to have unnecessary duplication of processes. Therefore the accrediting authority and the registering authority have developed a system for communication and quality improvement to enable decision making processes to function efficiently. This includes clear lines of communication with AHPRA for the purposes of the operations of the national regulatory scheme. Features of this system are outlined in the *Quality Framework for the Accreditation Function* and also include:

- regular and directed dialogue concerning the profession's accreditation governance systems and processes; and the evaluation and quality improvement of these
- advice and communication to the national board about the review of accreditation standards
- appropriate involvement of the accreditation authority in the review of relevant national board codes, guidelines and registration standards
- a clear process for discussing and managing issues that may arise in relation to individual accreditation matters
- a comprehensive communication strategy for liaison with AHPRA and the national boards on matters involving the accreditation authority.

Appendix B outlines the approach to relationships and communication between accreditation authorities, national boards and AHPRA agreed at the 2011 Joint Meeting.

5. Quality Framework for the Accreditation Function

Background

In July 2006, the Council of Australian Governments (COAG) agreed to establish a single national registration and accreditation scheme for health professionals and in March 2008 signed an Intergovernmental Agreement for a National Registration and Accreditation Scheme for the Health Professions (IGA) which set out the principles of such a Scheme. In the IGA, Governments set out the responsibilities of the National Agency. The relevant responsibilities addressed by this framework are reproduced below:

- (g) *in consultation with the boards, develop and administer procedures and business rules for the efficient and quality operation of the registration and accreditation functions and the operation of the boards and their committees, consistent with ministerial policy direction and the objects of the legislation.*

Although this function has not been carried through into the legislation in these words, the mandate for developing such a framework comes from the role of AHPRA in supporting the boards with their functions and developing and managing contracts and service agreements, including those with accreditation authorities, on behalf of boards.

Quality Framework

Accreditation authorities, national boards and AHPRA have agreed a *Quality Framework for the Accreditation Function* (the Quality Framework) (**Appendix C**). The Quality Framework is the principal reference document for national boards and AHPRA to assess the work of accreditation authorities.

This framework is a broad one. It is based on both international and national best practice frameworks for accreditation in particular the work of Professions Australia (2008) and the

European Consortium for Accreditation (2004). A reference list is included. As noted by Professions Australia, the aim of the accreditation process is not just quality assurance but also to support continuous quality improvement of professional education and training to respond to evolving community need and professional practice. It is important that the Quality Framework supports this approach and in addition that it supports the development of good practice in implementing accreditation functions and allows diversity amongst accreditation authorities and the assessment of those accreditation authorities.

The principles underpinning the Quality Framework are:

1. the COAG principles for best practice regulation
2. the objectives and guiding principles of the scheme in the legislation, in particular:
 - 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
 - to facilitate the provision of high quality education and training of health practitioners
 - to facilitate the rigorous and responsive assessment of overseas-trained health practitioners
 - 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, and
 - to operate in a transparent, accountable, efficient, effective and fair way.
3. the independence of accreditation decision-making within the parameters established by the National Law.

The Quality Framework is designed to delineate broad domains and then more specific attributes under those domains. The Quality Framework is not a checklist, and it should be interpreted flexibly and adapted as necessary to suit different contexts.

The Quality Framework will be reviewed at least every three years.

6. Reporting

Accreditation authorities report to the relevant national board and AHPRA about their accreditation function under the National Law.

Annually, the reports must include:

- financial report (needs to include only revenue and expenditure relevant to the accreditation function and any other projects or work funded by the relevant national board through AHPRA)
- an annual report on the accreditation function and any other projects or work funded by the relevant national board through AHPRA
- performance against indicators agreed between the accreditation authorities, national boards and AHPRA.

There will also be a half yearly update on activity against the work program.

7. Procedures for the Development of Accreditation Standards

The *Procedures for the Development of Accreditation Standards* (the Procedures) are at **Appendix D**.

In 2009, the Agency Management Committee of AHPRA developed the Procedures with input from the Forum of Australian Health Professions Councils and others. The Procedures are intended to inform national boards, accreditation authorities and AHPRA about the matters:

- that an accreditation authority should take into account in developing accreditation standards or changing accreditation standards, and
- which an accreditation authority should explicitly address when submitting accreditation standards to a national board for approval, and
- that a national board should consider when deciding whether to approve accreditation standards developed by the accreditation authority.

The Procedures are intended to ensure that all parties have a clear and shared understanding about these matters. When an accreditation authority submits new or revised accreditation standards to a national board for approval, providing a statement about how the accreditation authority has complied with the Procedures will satisfy the board about the reasons for the change and the accreditation authority's process. The Procedures also clarify what national boards should consider when deciding whether to approve accreditation standards. In some circumstances, national boards may seek further information from accreditation authorities about aspects of the development of the new or revised accreditation standards.

Accreditation authorities will be able to draw on material provided in the consultation process to undertake the necessary assessment against the matters outlined in the Procedures. Authorities are not expected to undertake a full Regulatory Impact Statement process, but to explain how they have taken the relevant factors into consideration and weighed any competing factors or feedback identified in the consultation process.

A similar document, the *Procedures for the Development of Registration Standards*, applies to national boards.

APPENDIX A

EXTRACTS FROM THE HEALTH PRACTITIONER REGULATION NATIONAL LAW ACT

The complete National Law is available at <http://www.ahpra.gov.au/Legislation-and-Publications/Legislation.aspx>.

Part 4 Australian Health Practitioner Regulation Agency

25 Functions of National Agency

The functions of the National Agency are as follows—

- (a) to provide administrative assistance and support to the National Boards, and the Boards' committees, in exercising their functions;
- (b) in consultation with the National Boards, to develop and administer procedures for the purpose of ensuring the efficient and effective operation of the National Boards;
- (c) to establish procedures for the development of accreditation standards, registration standards and codes and guidelines approved by National Boards, for the purpose of ensuring the national registration and accreditation scheme operates in accordance with good regulatory practice;
- (d) to negotiate in good faith with, and attempt to come to an agreement with, each National Board on the terms of a health profession agreement;
- (e) to establish and administer an efficient procedure for receiving and dealing with applications for registration as a health practitioner and other matters relating to the registration of registered health practitioners;
- (f) in conjunction with the National Boards, to keep up-to-date and publicly accessible national registers of registered health practitioners for each health profession;
- (g) in conjunction with the National Boards, to keep up-to-date national registers of students for each health profession;
- (h) to keep an up-to-date and publicly accessible list of approved programs of study for each health profession;
- (i) to establish an efficient procedure for receiving and dealing with notifications against persons who are or were registered health practitioners and persons who are students, including by establishing a national process for receiving notifications about registered health practitioners in all professions;
- (j) to provide advice to the Ministerial Council in connection with the administration of the national registration and accreditation scheme;
- (k) 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 administration of the national registration and accreditation scheme;
- (l) any other function given to the National Agency by or under this Law.

Part 5 National Boards

35 Functions of National Boards

- (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 suspension 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)-(j), 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.

Part 6 Accreditation

42 Definition

In this Part—

accreditation function means—

- (a) developing accreditation standards for approval by a National Board; or
- (b) assessing programs of study, and the education providers that provide the programs of study, to determine whether the programs meet approved accreditation standards; or
- (c) assessing authorities in other countries who conduct examinations for registration in a health profession, or accredit programs of study relevant to registration in a health profession, to decide whether persons who successfully complete the examinations or programs of study conducted or accredited by the authorities have the knowledge, clinical skills and professional attributes necessary to practise the profession in Australia; or
- (d) overseeing the assessment of the knowledge, clinical skills and professional attributes of overseas qualified health practitioners who are seeking registration in a health profession under this Law and whose qualifications are not approved qualifications for the health profession; or
- (e) making recommendations and giving advice to a National Board about a matter referred to in paragraph (a), (b), (c) or (d).

43 Accreditation authority to be decided

- (1) The National Board established for a health profession must decide whether an accreditation function for the health profession for which the Board is established is to be exercised by—
 - (a) an external accreditation entity; or
 - (b) a committee established by the Board.

Note. See sections 253 and 301 which provide for the performance of accreditation functions for a health profession by external accreditation authorities appointed by the Ministerial Council for a period after the commencement of this Law.

- (2) The National Agency may charge an entity the relevant fee for the exercise of an accreditation function by an accreditation committee.

44 National Agency may enter into contracts with external accreditation entities

The National Agency may enter into a contract with an external accreditation entity for the performance by the entity of an accreditation function for a health profession only if the terms of the contract are in accordance with the health profession agreement between the National Agency and the National Board established for that profession.

45 Accreditation processes to be published

Each accreditation authority must publish on its website or, if the authority is an accreditation committee, the website of the National Board that established the committee, how it will exercise its accreditation function.

46 Development of accreditation standards

- (1) An accreditation standard for a health profession may be developed by—
 - (a) an external accreditation entity for the health profession; or
 - (b) an accreditation committee established by the National Board established for the health profession.

- (2) In developing an accreditation standard for a health profession, an accreditation authority must undertake wide-ranging consultation about the content of the standard.

47 Approval of accreditation standards

- (1) An accreditation authority must, as soon as practicable after developing an accreditation standard for a health profession, submit it to the National Board established for the health profession.
- (2) As soon as practicable after a National Board receives an accreditation standard under subsection (1), the Board must decide to—
 - (a) approve the accreditation standard; or
 - (b) refuse to approve the accreditation standard; or
 - (c) ask the accreditation authority to review the standard.
- (3) If the National Board decides to approve the accreditation standard it must give written notice of the approval to—
 - (a) the National Agency; and
 - (b) the accreditation authority that submitted the standard to the Board.
- (4) If the National Board decides to refuse to approve the accreditation standard—
 - (a) it must give written notice of the refusal, including the reasons for the refusal, to the accreditation authority that submitted the standard; and
 - (b) the accreditation authority is entitled to publish any information or advice it gave the Board about the standard.
- (5) If the National Board decides to ask the accreditation authority to review the standard it must give the authority a written notice that—
 - (a) states that the authority is being asked to review the standard; and
 - (b) identifies the matters the authority is to address before again submitting the standard to the Board.
- (6) An accreditation standard approved by a National Board must be published on its website.
- (7) An accreditation standard takes effect—
 - (a) on the day it is published on the National Board's website; or
 - (b) if a later day is stated in the standard, on that day.

48 Accreditation of programs of study

- (1) An accreditation authority for a health profession may accredit a program of study if, after assessing the program, the authority is reasonably satisfied—
 - (a) the program of study, and the education provider that provides the program of study, meet an approved accreditation standard for the profession; or
 - (b) the program of study, and the education provider that provides the program of study, substantially meet an approved accreditation standard for the profession and the imposition of conditions on the approval will ensure the program meets the standard within a reasonable time.
- (2) If the accreditation authority decides to accredit a program of study, with or without conditions, it must give to the National Board established for the health profession a report about the authority's accreditation of the program.
- (3) If the accreditation authority decides to refuse to accredit a program of study it must give written notice of the decision to the education provider that provides the program of study.
- (4) The notice must state—
 - (a) the reasons for the decision; and
 - (b) that, within 30 days after receiving the notice, the education provider may apply to the accreditation authority for an internal review of the decision; and
 - (c) how the education provider may apply for the review.
- (5) An education provider given a notice under subsection (3) may apply, as stated in the notice, for an internal review of the accreditation authority's decision to refuse to accredit the program of study.

- (6) The internal review must not be carried out by a person who assessed the program of study for the accreditation authority.

49 Approval of accredited programs of study

- (1) If a National Board is given a report by an accreditation authority about the authority's accreditation of a program of study, the Board may approve, or refuse to approve, the accredited program of study as providing a qualification for the purposes of registration in the health profession for which the Board is established.
- (2) An approval under subsection (1) may be granted subject to the conditions the National Board considers necessary or desirable in the circumstances.
- (3) If the National Board decides to approve the accredited program of study it must give written notice of the approval to—
 - (a) the National Agency for inclusion of the program of study in the list under subsection (5); and
 - (b) the accreditation authority that submitted the program to the Board.
- (4) If the National Board decides to refuse to approve the accredited program of study—
 - (a) it must give written notice of the refusal, including the reasons for the refusal, to the accreditation authority that submitted the program; and
 - (b) the accreditation authority is entitled to publish any information or advice it gave the Board about the program.
- (5) A list of the programs of study approved by a National Board as providing a qualification for registration in the health profession for which the Board is established must be published on the National Agency's website.
- (6) The list of approved programs of study published under subsection (5) must include, for each program of study, the name of the university, specialist medical or other college or other education provider that provides the approved program of study.
- (7) An approval under subsection (1) does not take effect until the program of study is included in the list published under subsection (5).

50 Accreditation authority to monitor approved programs of study

- (1) The accreditation authority that accredited an approved program of study must monitor the program and the education provider that provides the program to ensure the authority continues to be satisfied the program and provider meet an approved accreditation standard for the health profession.
- (2) If the accreditation authority reasonably believes the program of study and education provider no longer meet an approved accreditation standard for the health profession, the accreditation authority must—
 - (a) decide to—
 - (i) impose the conditions on the accreditation that the accreditation authority considers necessary to ensure the program of study will meet the standard within a reasonable time; or
 - (ii) revoke the accreditation of the program of study; and
 - (b) give the National Board that approved the accredited program of study written notice of the accreditation authority's decision.

51 Changes to approval of program of study

- (1) If a National Board is given notice under section 50(2)(b) that an accreditation authority has revoked the accreditation of a program of study approved by the Board, the Board's approval of the program is taken to have been cancelled at the same time the accreditation was revoked.
- (2) If a National Board reasonably believes, because of a notice given to the Board under section 50(2)(b) or for any other reason, that an accredited program of study approved by the Board no longer provides a qualification for the purposes of registration in the health profession for which the Board is established, the Board may decide to—

- (a) impose the conditions the Board considers necessary or desirable on the approval of the accredited program of study to ensure the program provides a qualification for the purposes of registration; or
 - (b) cancel its approval of the accredited program of study.
- (3) If a National Board makes a decision under subsection (2), it must give written notice of the decision, including the reasons for the decision, to the accreditation authority that accredited the program.
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Part 7 Registration of health practitioners

54 Examination or assessment for general registration

For the purposes of section 52(1)(b)(ii), if a National Board requires an individual to undertake an examination or assessment, the examination or assessment must be conducted by an accreditation authority for the health profession, unless the Board decides otherwise.

59 Examination or assessment for specialist registration

For the purposes of section 57(1)(b)(ii), if the National Board requires an individual to undertake an examination or assessment, the examination or assessment must be conducted by an accreditation authority for the health profession, unless the Board decides otherwise.

APPENDIX B

ACCREDITATION FUNCTIONS, RELATIONSHIPS AND COMMUNICATION

INTRODUCTION

This paper discusses accreditation functions and communication between accreditation authorities, national boards and AHPRA. It sets out a summary of accreditation functions and flowcharts in relation to accreditation and approval of programs of study.

It includes:

- a communication protocol between accreditation authorities, national boards and education providers
- a principle about avoiding unnecessary duplication
- a summary of accreditation roles and responsibilities under the National Law
- a flow chart on the National Law provisions on accreditation of programs of study.
- a flowchart on the National Law provisions on monitoring of approved programs of study.

BACKGROUND

The *Health Practitioner Regulation National Law Act* (the National Law) as in force in each state and territory establishes a range of functions for national boards and specifies a number of accreditation functions which have been assigned to accreditation authorities for the first three years of the national registration and accreditation scheme (see extract from the National Law at [Appendix A](#)).

ISSUES

In some cases, the provisions of the National Law establish different roles and responsibilities than may have operated in relation to the accreditation activities of particular professions in the past. For example, under the National Law accreditation authorities **accredit** programs of study but national boards **approve** accredited programs of study for the purposes of registration. In some cases, before the national scheme commenced, accreditation authorities accredited and approved programs of study. It is important that national boards and accreditation authorities reflect the provisions of the National Law in their decision-making and advice, to ensure that decisions are robust and legally valid.

Accreditation authorities work closely with education providers in relation to accreditation functions. Accordingly, accreditation authorities and national boards have agreed that accreditation authorities will generally be the primary interface with education providers in relation to accreditation decisions under the National Law. For example, national boards will advise accreditation authorities of their decisions whether or not to approve programs of study for the purposes of registration and accreditation authorities will communicate this decision to the relevant education providers.

Refusal to approve an accredited program of study

The National Law provides that a national board may refuse to approve an accredited program of study for general registration, specialist registration or endorsement. This would be a significant decision and one which a national board would not take lightly. The board would need to have regard to the objectives of section 3, including the impact on access to health services. The national board would also be conscious of the impact on students or practitioners who were currently enrolled in the course, as if the course is not an approved program of study when the student applies for registration, the student will not hold a qualification which qualifies them for general registration under section 53(a) of the National Law. The national board would also need to have reasonable grounds for making this

decision, in line with general administrative law requirements. Whilst the primary responsibility for ensuring course accreditation rests with the education provider, any decision of this nature would require engagement between the national board and the accreditation authority to consider and attempt to resolve the particular issues involved.

Avoiding duplication

Where possible, accreditation authorities, national boards and AHPRA will work together to develop clear and accountable processes, that enhance communication and overcome duplication of effort.

Summary of Accreditation Roles and Responsibilities under the National Law

Purpose of this paper:

To define the requirements imposed by the National Law on the board, the accreditation authority and AHPRA.

General structure of accreditation functions in the National Law:

1. Development of accreditation standards
2. Accrediting programs of study
3. Approving accredited programs of study
4. Assessment of overseas qualified practitioners.

The National Law imposes a range of requirements on the accreditation authority that include:

1. To publish on its website how it will exercise its accreditation function (s45).
2. Accreditation standards
 - a. To develop accreditation standards for the relevant profession. In developing accreditation standards, an accreditation authority must undertake wide-ranging consultation about the content of the standard (s46).
 - b. As soon as practicable after developing an accreditation standard for the relevant profession, submit it to the board (s47).
3. Programs of study – initial accreditation
 - a. To accredit programs of study if an accreditation authority is reasonably satisfied that the program meets an approved accreditation standard or will meet the standard within a reasonable time with the imposition of conditions (s48(1)).
 - b. To give notice to the board of a decision to accredit a program of study (s48(2)).
 - c. To give written notice to the education provider of a decision to refuse to accredit a program of study (s48(3)).
 - d. To conduct an internal review of a decision to refuse to accredit a program of study, if requested by the education provider (s48(5) and (6)).
4. Programs of study - monitoring
 - a. To monitor the program and the education providers that provide programs of study to ensure that the program and provider meet an approved accreditation standard for the health profession (s50(1)).
 - b. To give the board written notice of a decision to impose conditions on the accreditation or to revoke accreditation of a program of study (s50(2)).

The National Law imposes a range of requirements on the board that include:

1. To decide whether an accreditation function is to be exercised by an external accreditation entity or a committee established by the board (s43).

2. Accreditation standards

- a. After receiving an accreditation standard from an accreditation authority under s47(1), to decide whether to approve, refuse to approve the standard or ask the accreditation authority to review the standard (s47(2)).
- b. If the board **approves** the accreditation standard, to give written notice to AHPRA and the accreditation authority (s47(3)).
- c. If the board decides to **refuse** the accreditation standard, to give notice of the refusal to the accreditation authority and the authority is entitled to publish any information or advice it gave to the board about the standard (s47(4)).
- d. If the board asks the accreditation authority to **review** the standard, to give written notice of this decision and identify the matters that the authority is to address before submitting the standard to the board (s47(5)).
- e. To publish on its website an accreditation standard that it has approved (s47(6)).

3. Programs of study

- a. To approve or refuse to approve a program of study that has been accredited by the accreditation authority (s49(1)).
- b. To give written notice to AHPRA and the accreditation authority if it **approves** an accredited program of study (s49(3)).
- c. To give written notice to the accreditation authority, including the reasons, if it **refuses** to approve an accredited program of study (s49(4)).
- d. After being given notice of the accreditation authority's decision to impose conditions or revoke the accreditation of a program of study under s50(2)(b), the board may decide to impose conditions on the approval of the accredited program of study to ensure the program provides a qualification for the purposes of registration or cancel its approval of the accredited program of study (s51(2)). The board must give written notice to the accreditation authority if it makes a decision to impose conditions or cancel approval (s51(3)).

There are requirements on the Agency that include:

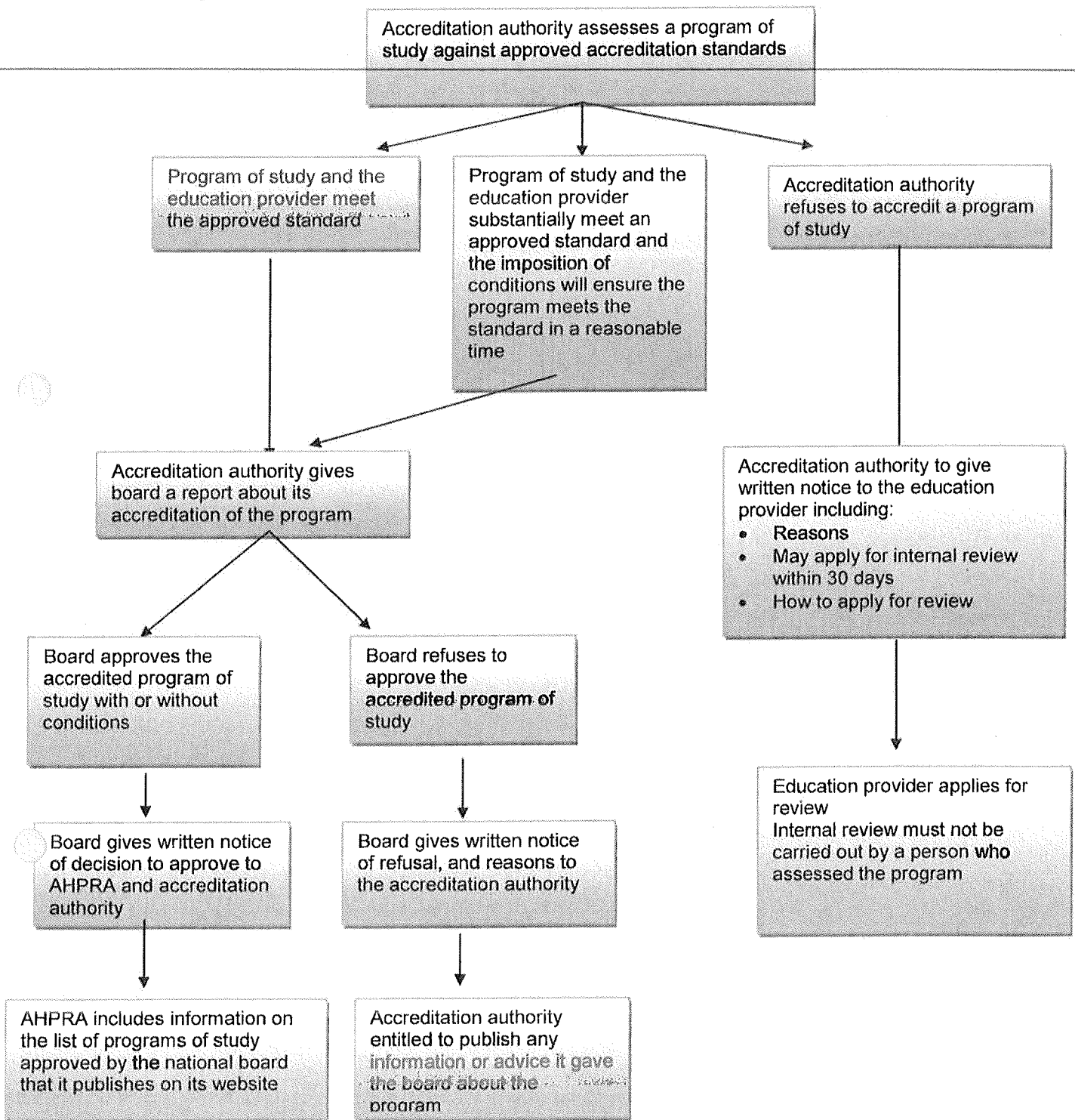
1. To enter into a contract with the accreditation authority for the performance of the accreditation function, only if the terms of the contract are in accordance with the health professions agreement between AHPRA and the board.
2. To publish on its website a list of the programs of study approved by the board as providing a qualification for registration in the relevant profession.

Assessment of overseas qualified practitioners

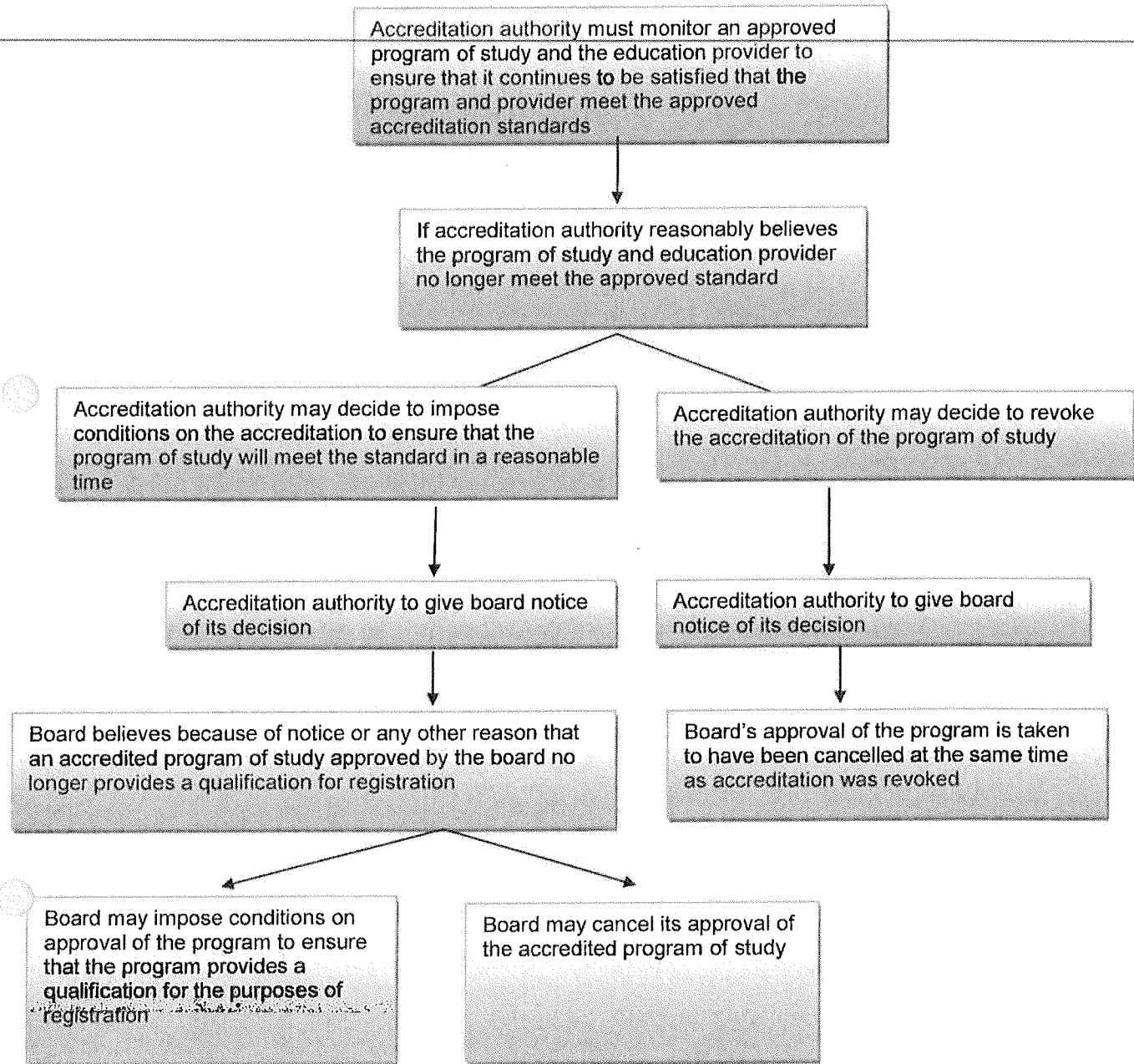
The assessment of overseas qualified practitioners is an accreditation function, but the National Law contains little detail about this, except for the following references:

1. s3 objectives include to facilitate the rigorous and responsive assessment of overseas-trained health practitioners.
2. s35 functions of national boards and s42 accreditation functions both include overseeing the assessment of the knowledge, clinical skills and professional attributes of overseas qualified health practitioners seeking registration.
3. (indirectly) s53 qualifications for general registration – s53(c) the individual holds a qualification relevant to the health profession and has successfully completed an examination or other assessment required by the national board for the purpose of general registration.

National Law provisions on accreditation of programs of study



National Law provisions on monitoring of approved programs of study



APPENDIX C

QUALITY FRAMEWORK FOR THE ACCREDITATION FUNCTION

Accreditation authorities, national boards and AHPRA have agreed to this *Quality Framework for the Accreditation Function* (the Quality Framework). The Quality Framework is the principal reference document for national boards and AHPRA to assess the work of accreditation authorities.

This framework is a broad one. It is based on both international and national best practice frameworks for accreditation in particular the work of Professions Australia (2008) and the European Consortium for Accreditation (2004) (see references). As noted by Professions Australia, the aim of the accreditation process is not just quality assurance but also to support continuous quality improvement of professional education and training to respond to evolving community need and professional practice. It is important that the Quality Framework supports this approach and in addition that it supports the development of good practice in implementing accreditation functions and allows diversity amongst accreditation authorities and the assessment of those accreditation authorities.

The principles underpinning the Quality Framework are:

- the COAG principles for best practice regulation
- the objectives and guiding principles of the scheme in the legislation (see below), and
- the independence of accreditation decision-making within the parameters established by the National Law.

The Quality Framework is designed to delineate broad domains and then more specific attributes under those domains. The Quality Framework is not a checklist, and it should be interpreted flexibly and adapted as necessary to suit different contexts.

The Quality Framework will be reviewed at least every three years.

Purpose

The National Law defines the accreditation function as:

- (a) developing accreditation standards for approval by a national board; or*
- (b) assessing programs of study, and the education providers that provide the programs of study, to determine whether the programs meet approved accreditation standards; or*
- (c) assessing authorities in other countries who conduct examinations for registration in a health profession, or accredit programs of study relevant to registration in a health profession, to decide whether persons who successfully complete the examinations or programs of study conducted or accredited by the authorities have the knowledge, clinical skills and professional attributes necessary to practise the profession in Australia; or*
- (d) overseeing the assessment of the knowledge, clinical skills and professional attributes of overseas qualified health practitioners who are seeking registration in a health profession under this Law and whose qualifications are not approved qualifications for the health profession; or*
- (e) making recommendations and giving advice to a national board about a matter referred to in paragraph (a), (b), (c) or (d).*

Objectives and guiding principles

The National Law requires those exercising functions under the National Law to do so having regard to the following objectives and guiding principles:

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.*

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.*

The Eight Domains at a Glance

- 1. Governance** - the accreditation authority effectively governs itself and demonstrates competence and professionalism in the performance of its accreditation role.
- 2. Independence** - the accreditation authority carries out its accreditation operations independently.
- 3. Operational management** - the accreditation authority effectively manages its resources to carry out its accreditation function.
- 4. Accreditation standards** - the accreditation authority develops accreditation standards for the assessment of programs of study and education providers.
- 5. Processes for accreditation of programs of study and education providers** - the accreditation authority applies the approved accreditation standards and has rigorous, fair and consistent processes for accrediting programs of study and their education providers.
- 6. Assessing authorities in other countries** (where this function is exercised by the accreditation authority) - the accreditation authority has defined its standards and procedures to assess examining and/or accrediting authorities in other countries.
- 7. Assessing overseas qualified practitioners** (where this function is exercised by the accreditation authority) - the authority has processes to assess and/or oversee the assessment of the knowledge, clinical skills and professional attributes of overseas qualified practitioners who are seeking registration in the profession under the National Law and whose qualifications are not approved qualifications under the National Law for the profession.

8. Stakeholder collaboration - the accreditation authority works to build stakeholder support and collaborates with other national, international and/or professional accreditation authorities.

THE QUALITY FRAMEWORK DOMAINS IN DETAIL

1. Governance

The accreditation authority effectively governs itself and demonstrates competence and professionalism in the performance of its accreditation role.

Attributes:

- The accreditation authority is a legally constituted body and registered as a business entity.
- The accreditation authority's governance and management structures give priority to its accreditation function relative to other activities (or relative to its importance).
- The accreditation authority is able to demonstrate business stability, including financial viability.
- The accreditation authority's accounts meet relevant Australian accounting and financial reporting standards.
- There is a transparent process for selection of the governing body.
- The accreditation authority's governance arrangements provide for input from stakeholders including input from the community, education providers and the profession/s.
- The accreditation authority's governance arrangements comply with the National Law and other applicable legislative requirements.

2. Independence

The accreditation authority carries out its accreditation operations independently.

Attributes:

- Decision making processes are independent and there is no evidence that any area of the community, including government, higher education institutions, business, industry and professional associations - has undue influence.
- There are clear procedures for identifying and managing conflicts of interest.

3. Operational management

The accreditation authority effectively manages its resources to carry out its accreditation function. Attributes:

- The accreditation authority manages the human and financial resources to achieve objectives in relation to its accreditation function.
- There are effective systems for monitoring and improving the authority's accreditation processes, and identification and management of risk.
- The authority can operate efficiently and effectively nationally.
- There are robust systems for managing information and contemporaneous records, including ensuring confidentiality.
- In setting its fee structures, the accreditation authority balances the requirements of the principles of the National Law and efficient business processes.

4. Accreditation standards

The accreditation authority develops accreditation standards for the assessment of programs of study and education providers.

Attributes:

- Standards meet relevant Australian and international benchmarks.
- Standards are based on the available research and evidence base.
- Stakeholders are involved in the development and review of standards and there is wide ranging consultation.
- The accreditation authority reviews the standards regularly.
- In reviewing and developing standards, the accreditation authority takes account of AHPRA's *Procedures for Development of Accreditation Standards* and the National Law.

5. Processes for accreditation of programs of study and education providers

The accreditation authority applies the approved accreditation standards and has rigorous, fair and consistent processes for accrediting programs of study and their education providers.

Attributes:

- The accreditation authority ensures documentation on the accreditation standards and the procedures for assessment is publicly available.
- The accreditation authority has policies on the selection, appointment, training and performance review of assessment team members. Its policies provide for the use of competent persons who are qualified by their skills, knowledge and experience to assess professional programs of study and their providers against the accreditation standards.
- There are procedures for identifying, managing and recording conflicts of interest in the work of accreditation assessment teams and working committees.
- The accreditation authority follows documented processes for decision-making and reporting that comply with the National Law and enable decisions to be made free from undue influence by any interested party.
- Accreditation processes facilitate continuing quality improvement in programs of study by the responsible education provider.
- There is a cyclical accreditation process with regular assessment of accredited education providers and their programs to ensure continuing compliance with standards.
- The accreditation authority has defined the changes to programs and to providers that may affect the accreditation status, how the education provider reports on these changes and how these changes are assessed.
- There are published complaints, review and appeals processes which are rigorous, fair and responsive.

6. Assessing authorities in other countries

Where this function is exercised by the accreditation authority, the authority has defined standards and procedures to assess examining and/or accrediting authorities in other countries.

Attributes:

- The assessment standards aim to determine whether these authorities' processes result in practitioners who have the knowledge, clinical skills and professional attributes necessary to practice in the equivalent profession in Australia.
- Stakeholders are involved in the development and review of standards and there is wide ranging consultation.
- The procedures for initiating consideration of the standards and procedures of authorities in other countries are defined and documented.
- There is a cyclical assessment process to ensure recognised authorities in other countries continue to meet the defined standards.
- The accreditation authority follows documented systems for decision-making and reporting that enable decisions to be made free from undue influence by any interested party.
- There are published complaints, review and appeals processes which are rigorous, fair and responsive.

7. Assessing overseas qualified practitioners

Where this function is exercised by the accreditation authority, the authority has processes to assess and/or oversee the assessment of the knowledge, clinical skills and professional attributes of overseas qualified practitioners who are seeking registration in the profession under the National Law and whose qualifications are not approved qualifications under the National Law for the profession.

Attributes:

- The assessment standards define the required knowledge, clinical skills and professional attributes necessary to practise the profession in Australia.
- The key assessment criteria, including assessment objectives and standards, are documented.
- The accreditation authority uses a recognised standard setting process and monitors the overall performance of the assessment.
- The procedures for applying for assessment are defined and published.
- The accreditation authority publishes information that describes the structure of the examination and components of the assessments.
- The accreditation authority has policies on the selection, appointment, training and performance review of assessors. Its policies provide for the use of competent persons who are qualified by their skills, knowledge and experience to assess overseas qualified practitioners.
- There are published complaints, review and appeals processes which are rigorous, fair and responsive.

8. Stakeholder collaboration

The accreditation authority works to build stakeholder support and collaborates with other national, international and/or professional accreditation authorities.

Attributes:

- There are processes for engaging with stakeholders, including governments, education institutions, health professional organisations, health providers, national boards and consumers/community.
- There is a communications strategy, including a website providing information about the accreditation authority's roles, functions and procedures.
- The accreditation authority collaborates with other national and international accreditation organisations.
- The accreditation authority collaborates with accreditation authorities for the other registered health professions appointed under the National Law.
- The accreditation authority works within overarching national and international structures of quality assurance/accreditation.

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Procedures for the Development of Accreditation Standards

Under section 25 of the Health Practitioner Regulation National Law Act (the National Law) as in force in each state and territory, one of the functions of the Australian Health Practitioner Regulation Agency is:

"to establish procedures for the development of accreditation standards, registration standards and codes and guidelines approved by National Boards, for the purpose of ensuring that the national registration and accreditation scheme operates in accordance with good regulatory practice".

The following is the text of the procedure agreed by the Agency Management Committee at its meeting on 16 November 2009 and updated on 14 June 2011.

In putting forward a proposal for a new or amended accreditation standard, an accreditation authority must be satisfied that the proposal:

- (1) takes into account the objectives and guiding principles in the legislation, in particular a), c) and f) of the objectives and a) of the guiding principles. The objectives and guiding principles set out in the National Law at Section 3 (2) and (3) read as follows:

"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 workplace 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.

"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"

- (2) meets the consultation requirements in the legislation, namely:

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"In developing an accreditation standard for a health profession, an accreditation authority must undertake wide-ranging consultation about the content of the standard" (Section 46(2)).

Accreditation authorities should consult fully on any significant change to standards, or on new standards. The education sector, relevant profession, and governments should be consulted as a minimum, and proposed changes should also be published on the authority's website at the commencement of a consultation process.

- (3) takes account of relevant international standards and statements relating to education and training in the profession, and the accreditation standards applied in countries with comparable education and practice standards for the profession, and
- (4) takes into account the COAG principles for best practice regulation by considering the following matters:
 - (a) whether the proposal results in an unnecessary restriction of competition among providers and potential providers of education programs,
 - (b) whether the proposal results in an unnecessary restriction of consumer choice,
 - (c) whether the overall costs of the proposal to members of the public, education providers and/or governments are reasonable in relation to the benefits to be achieved, and
 - (d) whether the accreditation authority has procedures in place to ensure that the proposed standard remains relevant and effective over time.

Accreditation authorities may make a broad assessment of proposed standards against the COAG principles, which should be made publicly available including during the consultation process. Accreditation authorities will provide to the relevant National Board any feedback on regulatory impacts that has been provided in the consultation process or identified in developing the new or revised accreditation standard.

Section 11 of the National Law provides that the Ministerial Council may give directions to a National Board about the policies to be applied by the National Board in exercising its functions under the National Law. A Ministerial Council direction may relate to matters including a particular proposed accreditation standard, or a particular proposed amendment of an accreditation standard, for a health profession. However, the Ministerial Council may give a National Board a direction in relation to an accreditation standard or proposed amendment of an accreditation standard only if:

- (a) in the Council's opinion, the proposed accreditation standard or amendment will have a substantive and negative impact on the recruitment or supply of health practitioners, and
- (b) the Council has first given consideration to the potential impact of the Council's direction on the quality and safety of health care.

Where a National Board considers, based on the accreditation authority's advice or its own analysis, that the proposed accreditation standard or amendment will have a substantive and negative impact on the recruitment or supply of health practitioners, the National Board will advise the Australian Health Workforce Ministerial Council of its view and the reasons for it so that the Council can consider whether any action is required under s. 11(4) of the National Law.

14 June 2011



Peter Allen
Chair
Agency Management Committee

LEGAL PRACTICE NOTE

THE NATIONAL BOARDS' POWER TO TAKE IMMEDIATE ACTION LPN 4 (1 March 2012)

The power to take immediate action is contained within Part 8¹ of the National Law. It is a power available to the Board that supports the objective of the National Law:

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 registered²;...

The National Law provides guiding principles in the way the National Law is to operate:

*The scheme is to operate in a transparent, accountable, efficient, effective and fair way³;
.....*

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.⁴

Taking immediate action is a 'risk assessment process', as explained by Her Honour, Justice Hollingworth in the matter of *Sabet v Medical Practitioners Board of Victoria* [2008] VSC 346 at [64]-[65];

The context here must include the fact that the Board is essentially undertaking a provisional risk-assessment exercise, on an interim basis, based on such material as is known to it at the time. The context also includes the consequences of suspending or not suspending, on the practitioner and the public.

Given the serious consequences of a decision to suspend a health practitioner, I accept that 'necessary' should be construed as meaning more than simply "convenient" or "useful".

IMMEDIATE ACTION

Section 155 of the National Law defines immediate action:

immediate action, in relation to a registered health practitioner or student, means—

¹ Note that Part 8 of the National Law (health, performance and conduct) does not apply in NSW. Those matters are the responsibility of the Health Care Complaints Commission and the Health Professional Councils Authority in NSW.

² Section 3(2)(a) *Health Practitioner Regulation National Law*

³ *Ibid* s3((3)(a)

⁴ *Ibid* s3(3)(c)

- (a) the suspension, or imposition of a condition on, the health practitioner's or student's registration; or
- (b) accepting an undertaking from the health practitioner or student; or
- ~~(c) accepting the surrender of the health practitioner's or student's registration.~~

Section 156 describes the circumstances in which immediate action may be taken with respect to a registered health practitioner or a student.

156 Power to take immediate action

- (1) A National Board may take immediate action in relation to a registered health practitioner or student registered by the Board if—
 - (a) the National Board **reasonably believes** that—
 - (i) because of the registered health practitioner's conduct, performance or health, the practitioner poses a **serious** risk to persons; and
 - (ii) it is **necessary** to take immediate action to protect public health or safety; or
 - (b) the National Board reasonably believes that—
 - (i) the student poses a serious risk to persons because the student—
 - (A) has been charged with an offence, or has been convicted or found guilty of an offence, that is punishable by 12 months imprisonment or more; or
 - (B) has, or may have, an impairment; or
 - (C) has, or may have, contravened a condition of the student's registration or an undertaking given by the student to a National Board; and
 - (ii) it is necessary to take immediate action to protect public health or safety; or
 - (c) the registered health practitioner's registration was improperly obtained because the practitioner or someone else gave the National Board information or a document that was false or misleading in a material particular; or
 - (d) the registered health practitioner's or student's registration has been cancelled or suspended under the law of a jurisdiction, whether in Australia or elsewhere, that is not a participating jurisdiction.

Reasonable belief

In order to propose immediate action, the Board must **reasonably believe** that the immediate action is necessary because of the practitioner's health conduct or performance. A reasonable belief is more than mere conjecture or speculation, the Board must be able to articulate the basis for the formation of a reasonable belief.

Serious risk

The risk to persons resulting from the practitioner's health, conduct or performance must be a **serious** risk. While not defined in the National Law, serious has, in other matters been defined to mean "at least 'very considerable' and certainly more than 'significant' or 'marked.'"⁵ In other words, the risk must be a real one, not fanciful or theoretical.

Necessary

The abovementioned extract from *Sabet* provides the view of the Supreme Court of Victoria of the meaning of necessary.

⁵ *Humphries v Poljak* [1992] 2 VR 129 at 140 and *Mobilo v Balliotis* [1998] 3 VR 833 at 843

The Board must therefore reasonably believe that there is a serious risk **and** it is necessary to take immediate action in order to protect public health or safety. The Board might be convinced that it is necessary to take the immediate action by turning its mind to the consequences of not taking the action. If the serious risk would be certain to eventuate, the Board might be more likely to decide that the immediate action proposed is necessary.

Students

The Board may propose immediate action on a student's registration for the reasons mentioned above and for additional reasons:

- if the student has been charged with, convicted of or found guilty of an offence which is punishable by more than twelve months imprisonment; or
- if the student has or may have contravened a condition on his/her registration or breached an undertaking given to the Board

and

- it is necessary to take immediate action to protect public health or safety.⁶

Registration improperly obtained

A Board may propose to take immediate action with respect to a registered health practitioner (not a student) if the practitioner's registration was improperly obtained because the practitioner or someone else gave the Board information or a document which was **misleading in a material particular**, in order to obtain registration.⁷

The Board must have knowledge that the document or information was false or misleading and the falseness must have been pertinent to the granting of registration.

Registration cancelled

A Board may propose to take immediate action with respect to a registered health practitioner or student's registration if their registration was suspended or cancelled under the law of a jurisdiction, whether in Australia or elsewhere that is not a participating jurisdiction.⁸

As with improperly obtained registration, the Board must have knowledge of the suspension or cancellation, a higher requirement than the reasonable belief requirement of s156(1)(a).

STEPS TO BE FOLLOWED IN TAKING IMMEDIATE ACTION

Before the Board takes immediate action it must first provide the practitioner with an opportunity to be heard about the proposal. This process, referred to as the 'show cause' process, is required by s 156(2) and defined in s 157.

... the National Board may take immediate action that consists of suspending, or imposing a condition on, the health practitioner's or student's registration only if the Board has complied with section 157.

The show cause process

⁶ National Law s156(1)(b)

⁷ National Law s156(1)(c)

⁸ National Law s156(1)(d)

157 Show cause process

(1) If a National Board is proposing to take immediate action that consists of suspending, or imposing a condition on, a registered health practitioner's or student's registration under section 156, the Board must—

- (a) give the practitioner or student notice of the proposed immediate action; and
- (b) invite the practitioner or student to make a submission to the Board, within the time stated in the notice about the proposed immediate action.

(2) A notice given to a registered health practitioner or student under subsection (1), and any submissions made by the practitioner or student in accordance with the notice, may be written or verbal.

(3) The National Board must have regard to any submissions made by the registered health practitioner or student in accordance with this section in deciding whether to take immediate action in relation to the practitioner or student.

The submissions – written or verbal?

The National Law states that the submissions on behalf of the practitioner may be written or verbal. The National Law does not specifically state whether the decision about the nature of the submissions (written or verbal) rests with the practitioner or student or with the Board.

Having regard to:

- the seriousness of the proposed action
- the fact that the practitioner (or student) is *invited*⁹ to make submissions and
- the wording of s157(3) which requires that the Board must have regard to **any** submission made by the health practitioner or student

the decision about the nature of the submissions should rest with the practitioner or student. Indeed the practitioner or student may provide written and verbal submissions.

Time for the submissions

The Explanatory Notes to the National Law are helpful in considering the timeframe to be provided to the practitioner to make submissions about the proposal to take immediate action.

The stated time in the notice from the board to the practitioner or student about the proposed immediate action may be a matter of hours. A practitioner's or student's response to the notice issued under clause 157 may be written or verbal, and a National Board is to take the submission into account in deciding whether to take immediate action in relation to the practitioner or student.

The purpose of the show cause process is to afford the practitioner or student natural justice prior to a National Board deciding whether to take immediate action. It is not intended that this process delay or impede a National Board from taking immediate action, when it is warranted.

⁹ National Law s157(1)(b)

The Board, in determining the time for the practitioner to provide the submissions to the Board will need to balance the purposes of the immediate action. That is, the need to protect the public by taking immediate action and the requirement to afford the practitioner natural justice, which may involve the seeking and obtaining of legal advice.

Legal representation?

The National Law is silent about whether legal representation is permitted in formulating and/or presenting any submissions by the practitioner or student.

Taking immediate action may severely affect the practitioner. It may be exercised upon the formation of a reasonable belief with (at times) limited evidence. For these reasons a practitioner should be permitted to seek and obtain legal representation. However this does not mean the Board must permit the legal representative to speak for the practitioner or student.

Consideration of the submissions

Section 157(3) of the National Law states that the Board **must** have regard to any submissions made by the registered health practitioner or student. The Board is required to consider the submissions because the practitioner is entitled to an opportunity to be heard before the Board makes its decision. The Board must undertake this duty free from bias or prejudice.

Reasons for decision

The National Law requires that **immediately after** deciding to take immediate action, the practitioner must be given written notice of the decision.¹⁰

The notice must state:

- the nature of the immediate action the Board has decided to take and
- the **reasons** for the Board's decision and
- (any) further action the Board has decided to take under the Part, such further action may be to refer the matter for investigation, to require the practitioner to undergo a health or performance assessment and
- that the practitioner may seek review of the decision in the relevant Tribunal and
- how an application for review may be made and
- the period within which the application must be made.

If the practitioner has attended to make verbal submissions to the Board about the Board's proposal and the Board takes immediate action, the Board may convey its decision to the practitioner at that time. The written notice must follow.

Period of immediate action

Section 159 of the National Law states that the period of immediate action is from the date stated in the notice until:

- the decision is set aside on appeal or
- the suspension is revoked or the conditions are removed by the Board or
- the Board and the practitioner agree to end any undertaking.

¹⁰ National Law s158(1)(a)

Right of appeal to the relevant tribunal

A decision to suspend the practitioner's registration, or to impose conditions on the registration, is an appellable decision. The appeal may be heard by the relevant tribunal in each jurisdiction.

The application for review of the Board's decision to take immediate action is a review on the merits involving a fresh hearing of the matter:

The tribunal approaches its task on the basis that s 156 requires it to consider the applicant's conduct as shown by the evidence before it. Here, it is the applicant's conduct as notified. The tribunal must decide on the evidence whether it reasonably believes the evidence shows that the applicant's conduct poses a serious risk to persons such that it is necessary for the taking of immediate action to protect public health and safety.

The tribunal is not obliged on the hearing of a review of the decision of the Board made using the power in s 156 to decide whether the conduct of the applicant shows him to be not a fit and proper person to be registered as a pharmacist.

It must assess the conduct of the applicant relative to the risk posed by the conduct to public health and safety and decide what (if any) action of an immediate nature needs to be taken. The intent of s 156 is to provide a power entirely protective of the public.¹¹

This is a merits review proceeding. The tribunal is obliged to review the decision of the Board¹²

The contents of this Legal Practice Note are current at the date it was published. This Note is not intended to be relied on instead of legal advice. You should seek legal advice as is appropriate for your circumstances before taking any action or decision on the basis of this Note.

General Counsel

¹¹ *Kozanoglu v The Pharmacy Board of Australia* (Occupational and Business Regulation List) [2011] VCAT 2085 (3 November 2011) at 26

¹² *Ibid*, 31

Procedures for the Development of Accreditation Standards

Under section 25 of the Health Practitioner Regulation National Law Act (the National Law) as in force in each state and territory, one of the functions of the Australian Health Practitioner Regulation Agency is:

“to establish procedures for the development of accreditation standards, registration standards and codes and guidelines approved by National Boards, for the purpose of ensuring that the national registration and accreditation scheme operates in accordance with good regulatory practice”.

The following is the text of the procedure agreed by the Agency Management Committee at its meeting on 16 November 2009 and updated on 14 June 2011.

In putting forward a proposal for a new or amended accreditation standard, an accreditation authority must be satisfied that the proposal:

- (1) takes into account the objectives and guiding principles in the legislation, in particular a), c) and f) of the objectives and a) of the guiding principles. The objectives and guiding principles set out in the National Law at Section 3 (2) and (3) read as follows:

“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 workplace 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.

“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”
- (2) meets the consultation requirements in the legislation, namely:

Australian Health Practitioner Regulation Agency

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"In developing an accreditation standard for a health profession, an accreditation authority must undertake wide-ranging consultation about the content of the standard" (Section 48(2)).

Accreditation authorities should consult fully on any significant change to standards, or on new standards. The education sector, relevant profession, and governments should be consulted as a minimum, and proposed changes should also be published on the authority's website at the commencement of a consultation process.

- (3) takes account of relevant international standards and statements relating to education and training in the profession, and the accreditation standards applied in countries with comparable education and practice standards for the profession, and
- (4) takes into account the COAG principles for best practice regulation by considering the following matters:
 - (a) whether the proposal results in an unnecessary restriction of competition among providers and potential providers of education programs,
 - (b) whether the proposal results in an unnecessary restriction of consumer choice,
 - (c) whether the overall costs of the proposal to members of the public, education providers and/or governments are reasonable in relation to the benefits to be achieved, and
 - (d) whether the accreditation authority has procedures in place to ensure that the proposed standard remains relevant and effective over time.

Accreditation authorities may make a broad assessment of proposed standards against the COAG principles, which should be made publicly available including during the consultation process. Accreditation authorities will provide to the relevant National Board any feedback on regulatory impacts that has been provided in the consultation process or identified in developing the new or revised accreditation standard.

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14 June 2011



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