



Queensland

# Health Practitioner Regulation (Administrative Arrangements) National Law Bill 2008

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**2008**

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**A Bill**

for

**An Act providing for the adoption of a national law to facilitate the development and implementation of a national registration and accreditation scheme for health practitioners**

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**The Parliament of Queensland enacts—**

**1 Short title**

This Act may be cited as the *Health Practitioner Regulation (Administrative Arrangements) National Law Act 2008*.

**2 Commencement**

- (1) The following provisions commence on the date of assent to this Act—
  - (a) the local application provisions of this Act;
  - (b) the Health Practitioner Regulation (Administrative Arrangements) National Law (Queensland), parts 1 and 2.
- (2) The Health Practitioner Regulation (Administrative Arrangements) National Law (Queensland), parts 4, 6 and 7 and schedule 2 commence on 1 February 2009.
- (3) The Health Practitioner Regulation (Administrative Arrangements) National Law (Queensland), part 5 and schedule 3 commence on 1 July 2009.
- (4) The Health Practitioner Regulation (Administrative Arrangements) National Law (Queensland), part 3 and schedule 1 commence on a day to be fixed by proclamation.

**3 Definitions**

- (1) For this Act, the local application provisions of this Act are the provisions of this Act other than the Health Practitioner Regulation (Administrative Arrangements) National Law set out in this Act.
- (2) In the local application provisions of this Act—

*Health Practitioner Regulation (Administrative Arrangements) National Law (Queensland)* means the provisions applying in this jurisdiction because of section 4.

- (3) Terms used in the local application provisions of this Act and also in the Health Practitioner Regulation (Administrative Arrangements) National Law have the same meanings in those provisions as they have in that Law.

**4 Health Practitioner Regulation (Administrative Arrangements) National Law**

The Health Practitioner Regulation (Administrative Arrangements) National Law set out in this Act—

- (a) applies as a law of this jurisdiction; and
- (b) as so applying may be referred to as the Health Practitioner Regulation (Administrative Arrangements) National Law (Queensland); and
- (c) as so applying, is a part of this Act.

**5 Meaning of generic terms in Health Practitioner Regulation (Administrative Arrangements) National Law for this jurisdiction**

In the Health Practitioner Regulation (Administrative Arrangements) National Law (Queensland)—

*this jurisdiction* means Queensland.

**6 Exclusion of legislation of this jurisdiction**

- (1) The following Acts of this jurisdiction do not apply to the Health Practitioner Regulation (Administrative Arrangements) National Law (Queensland)—
  - (a) the *Acts Interpretation Act 1954*;
  - (b) the *Financial Administration and Audit Act 1977*;
  - (c) the *Statutory Bodies Financial Arrangements Act 1982*.
- (2) The *Public Service Act 2008* does not apply to an entity established by the Health Practitioner Regulation (Administrative Arrangements) National Law (Queensland) or to the appointment of the members of those entities or to any staff of those entities.

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*Note—*

For financial arrangements applying to the National Agency, see the Health Practitioner Regulation (Administrative Arrangements) National Law (Queensland), part 4, division 5 and part 6.

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# Health Practitioner Regulation (Administrative Arrangements) National Law

## Part 1 Preliminary

### 1 Short title

This Law may be cited as the Health Practitioner Regulation (Administrative Arrangements) National Law.

### 2 Commencement

This Law commences on the day or days appointed under section 2 of the *Health Practitioner Regulation (Administrative Arrangements) National Law Act 2008* for the commencement of this Law.

### 3 Object of Law

- (1) The object of this Law is to facilitate the development and implementation of the national registration and accreditation scheme for health practitioners.
- (2) A person or body that has functions under this Law is to exercise those functions having regard to the objectives of the national registration and accreditation scheme, as set out in the COAG Agreement.

*Note—*

The national registration and accreditation scheme will consist of—

- (a) the Ministerial Council; and
- (b) the Advisory Council; and
- (c) the National Agency (the affairs of which are conducted by the Agency Management Committee); and
- (d) a National Board for each of the health professions covered by the scheme (10 health professions initially).

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The Advisory Council will provide independent advice to the Ministerial Council on matters relating to the scheme.

The National Agency will be responsible for the administration of the scheme in accordance with policy directions of the Ministerial Council. It will also be required to establish a national office and at least one office in each participating jurisdiction.

A National Board will have registration and accreditation functions with respect to the health profession for which it is established. The National Boards will be able to establish committees to assist in the exercise of their functions.

## 4 Definitions

(1) In this Law—

**Advisory Council** means the Australian Health Workforce Advisory Council established by this Law.

**Agency Fund** means the Australian Health Practitioner Regulation Agency Fund established by this Law.

**Agency Management Committee** means the Australian Health Practitioner Regulation Agency Management Committee established by this Law.

**COAG Agreement** means the agreement for a national registration and accreditation scheme for health professions, made on 26 March 2008 between the Commonwealth, the States, the Australian Capital Territory and the Northern Territory.

*Note—*

A copy of the COAG Agreement is available on the Council of Australian Governments' website.

**exercise** a function includes perform a duty.

**financial year** means the period of 12 months commencing on 1 July in any year.

**function** includes a power, authority or duty.

**health practitioner** means a natural person who practises a health profession.

**health profession** means the following professions—

- (a) chiropractic;
- (b) dental (including the profession of a dentist, dental therapist, dental hygienist or dental prosthetist);
- (c) medical;
- (d) nursing and midwifery;
- (e) optometry;
- (f) osteopathy;
- (g) pharmacy;
- (h) physiotherapy;
- (i) podiatry;
- (j) psychology.

***health profession agreement*** has the meaning given by section 21.

***health profession standard*** has the meaning given by section 8.

***local health registration authority*** means a person or body having functions under a law of a participating jurisdiction that include the registration of persons as health practitioners.

***Ministerial Council*** means the Australian Health Workforce Ministerial Council comprising Ministers of the governments of the participating jurisdictions and the Commonwealth with portfolio responsibility for health.

***National Agency*** means the Australian Health Practitioner Regulation Agency established by this Law.

***National Board*** means a National Health Practitioner Board established by this Law.

***national registration and accreditation scheme*** or ***scheme*** means the scheme referred to in the COAG Agreement.

***participating jurisdiction*** means a jurisdiction that is a party to the COAG Agreement, other than the Commonwealth.

***registered health practitioner*** means a natural person who—

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- (a) is registered, under the law of a participating jurisdiction, to practise a health profession; or
  - (b) is entitled or eligible for that registration but, at his or her election, is registered under the law of a participating jurisdiction as a non-practising member of the relevant health profession.
- (2) In this Law—
- (a) a reference to a person who is registered, under the law of a participating jurisdiction, to practise a health profession includes a reference to a person whose registration under the law of a participating jurisdiction enables the person to represent himself or herself as a person entitled or qualified to practise a health profession; and
  - (b) a reference to registration under the law of a participating jurisdiction includes a reference to any other form of authorisation granted under the law of a participating jurisdiction.
- (3) In this Law, a reference to a person engaged in the administration of this Law is a reference to a member of the Advisory Council or Agency Management Committee, a member of staff of the National Agency, or a member of a National Board or any of its committees.

## **5 Interpretation generally**

- (1) Schedule 2 to the *Consumer Credit Code* set out in the Appendix to the *Consumer Credit (Queensland) Act 1994* applies in relation to this Law in the same way as it applies to the *Consumer Credit Code*.
- (2) For that purpose, a reference in that schedule to the Code is taken to be a reference to this Law.

## **6 Extraterritorial operation of Law**

It is the intention of the Parliament of this jurisdiction that the operation of this Law should, as far as possible, include operation in relation to the following—

- (a) things situated in or outside the territorial limits of this jurisdiction;
- (b) acts, transactions and matters done, entered into or occurring in or outside the territorial limits of this jurisdiction;
- (c) things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Law, be governed or otherwise affected by the law of another jurisdiction.

## **Part 2 Ministerial Council**

### **7 Policy directions**

- (1) The Ministerial Council may give directions to the National Agency as to the policies to be applied by the National Agency in exercising its functions under this Law.
- (2) The Ministerial Council may give directions to a National Board as to the policies to be applied by the National Board in exercising its functions under this Law.

### **8 Approval of health profession standards**

- (1) The Ministerial Council may, in anticipation of the commencement of the national registration and accreditation scheme, approve health profession standards for any health profession.
- (2) A *health profession standard* is a standard or requirement relating to registration, practice, competency, accreditation or

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continuing professional development with respect to a health profession.

- (3) A health profession standard for a health profession may be approved by the Ministerial Council only if its approval is recommended by the National Board established for that health profession.
- (4) The Ministerial Council may at any time request a National Board to review any approved health profession standard or any proposed health profession standard submitted to it by the National Board.
- (5) The Ministerial Council may approve any amendment of a health profession standard for a health profession, or revoke its approval of a health profession standard for a health profession, on the recommendation of the National Board established for that health profession.
- (6) An approved health profession standard does not have effect with respect to a health profession until the national registration and accreditation scheme commences.
- (7) An approved health profession standard is to be made publicly available.

## **9 Special arrangements relating to accreditation**

- (1) The Ministerial Council may, in anticipation of the commencement of the national registration and accreditation scheme, appoint any person or body with existing functions with respect to accreditation in a health profession to exercise functions with respect to accreditation under the scheme.
- (2) A person or body appointed by the Ministerial Council under this section may develop health profession standards relating to accreditation (*accreditation standards*) for the health profession in respect of which the person or body is appointed.
- (3) Accreditation standards that are developed by the person or body are to be submitted to the National Board established for the health profession for its consideration.

- (4) A person or body that develops accreditation standards is to ensure that the process by which standards are developed includes wide-ranging consultation with respect to the content of the standards.

*Note—*

As a transitional measure, the COAG Agreement provides for the Ministerial Council to assign accreditation functions under the scheme to existing accreditation bodies.

## **10 How Ministerial Council exercises functions**

The Ministerial Council is to give a direction or approval, or make a recommendation, request or appointment, for the purposes of a provision of this Law by resolution of the Council passed in accordance with procedures determined by the Council.

## **11 Acts done by Ministerial Council**

- (1) A certificate that—
- (a) purports to be signed by a member of the Ministerial Council; and
  - (b) states that the Ministerial Council has done any act or thing or formed any opinion;

is, on mere production, receivable as prima facie evidence that the Ministerial Council has done the act or thing or formed the opinion.

- (2) An act or thing done by the Ministerial Council (whether by resolution, instrument or otherwise) does not cease to have effect merely because of a change in the Council's membership.

## **12 Notification and publication of directions**

- (1) A copy of any direction given by the Ministerial Council to the National Agency is to be given to the Chairperson of the Agency Management Committee.



opportunity to consider the advice, in accordance with the COAG Agreement.

- (2) The Ministerial Council may decline to publish an advice or part of an advice if the Advisory Council recommends that the Council do so in the interests of protecting the privacy of any person.

## **16 Powers of Advisory Council**

The Advisory Council has the powers necessary to enable it to perform its function.

## **17 Membership of Advisory Council**

- (1) The Advisory Council is to consist of 7 members.
- (2) The first members of the Advisory Council are to be appointed by the Council of Australian Governments.
- (3) After that, members of the Advisory Council are to be appointed by the Ministerial Council.
- (4) One of the members of the Advisory Council is to be appointed as Chairperson, being a person who is not a registered health practitioner and who has not been a registered health practitioner within the last 5 years.
- (5) At least 3 of the other members of the Advisory Council are to be persons who have expertise in health or education and training, or both.
- (6) Schedule 1 sets out provisions relating to the Advisory Council.

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## **Part 4                      Australian Health Practitioner    Regulation Agency**

### **Division 1                      National Agency**

#### **18            National Agency**

- (1) The Australian Health Practitioner Regulation Agency is established.
- (2) The National Agency—
  - (a) is a body corporate with perpetual succession; and
  - (b) has a common seal; and
  - (c) may sue and be sued in its corporate name.
- (3) The National Agency has the status, privileges and immunities of the State.

#### **19            General powers of National Agency**

The National Agency has all the powers of an individual and, in particular, may—

- (a) enter into contracts; and
- (b) acquire, hold, dispose of, and deal with, real and personal property; and
- (c) do anything necessary or convenient to be done in the performance of its functions.

#### **20            Principal functions of National Agency**

- (1) The functions of the National Agency are as follows—
  - (a) to establish general requirements for the development of health profession standards for the purpose of ensuring that the scheme operates in accordance with good regulatory practice;

- (b) in consultation with the National Boards, to develop procedures for the purpose of ensuring the efficient and effective operation of the National Boards;
- (c) to provide administrative assistance to the National Boards and their committees;
- (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 for the health profession for which the Board is established;
- (e) to provide advice to the Ministerial Council in connection with the development and implementation of the national registration and accreditation scheme;
- (f) when requested by the Ministerial Council, to give to the Ministerial Council any assistance or information reasonably required by the Ministerial Council in connection with the development and implementation of the national registration and accreditation scheme;
- (g) in anticipation of the commencement of the national registration and accreditation scheme, to do anything else that is necessary or convenient for the purpose of preparing or enabling the National Agency to exercise any other functions the COAG Agreement provides will be conferred on the National Agency under the scheme.

*Note—*

The functions that the COAG Agreement provides are to be conferred on the National Agency include—

- (a) maintaining an up-to-date and publicly accessible list of registered health practitioners for each health profession and of accredited courses for each health profession; and
  - (b) through its local offices, establishing an efficient procedure for receiving and dealing with applications for registration as a health practitioner, complaints against health practitioners and other matters relating to registration of health practitioners.
- (2) The National Agency has the other functions conferred or imposed on it—
- (a) by or under this Law; and

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- (b) by or under any law of this or any other participating jurisdiction.
- (3) The National Agency may exercise its functions in any participating jurisdiction.

## 21 Health profession agreements

- (1) The National Agency may, in anticipation of the commencement of the scheme, enter into an agreement (a *health profession agreement*) with a National Board that makes provision for the following—
  - (a) the fees that will be payable under the scheme by health practitioners and others in respect of the health profession for which the Board is established (including arrangements relating to refunds, waivers, or reductions and penalties for late payment);
  - (b) the annual budget of the National Board (including the funding arrangements for its committees and ancillary bodies);
  - (c) the services to be provided to the National Board by the National Agency so as to enable the National Board to carry out its functions under the scheme.
- (2) If the National Agency and the National Board for a health profession are unable to agree on any matter relating to a health profession agreement or proposed health profession agreement, the Ministerial Council may give directions to the National Agency and National Board as to how the dispute should be resolved.
- (3) In this section—

*ancillary body* of a National Board means any person or body that is appointed by the Ministerial Council under this Law to exercise accreditation functions under the scheme in relation to the health profession for which the Board is established.

**22 Cooperation with participating jurisdictions and the Commonwealth**

- (1) The National Agency may perform any of its functions in cooperation with or with the assistance of a participating jurisdiction or the Commonwealth, including in cooperation with or with the assistance of any of the following—
  - (a) any government agency of a participating jurisdiction or of the Commonwealth;
  - (b) a local registration authority;
  - (c) an educational body or other body established by or under a law of a participating jurisdiction or the Commonwealth.
- (2) In particular, the National Agency may—
  - (a) request information that it requires for the purpose of exercising its functions under this Law from any person or body referred to in subsection (1); and
  - (b) use the information for the purpose of exercising its functions under this Law.
- (3) A person or body referred to in subsection (1) that receives a request for information from the National Agency is authorised to provide any information so requested to the National Agency.

**23 Office of National Agency**

- (1) The National Agency is to establish a national office.
- (2) The National Agency is also to establish at least one local office in each participating jurisdiction.

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## **Division 2                      Agency Management Committee**

### **24            Agency Management Committee**

- (1) The Australian Health Practitioner Regulation Agency Management Committee is established.
- (2) The Agency Management Committee is to consist of at least 5 members appointed by the Ministerial Council.
- (3) Of the members—
  - (a) one is to be a person appointed by the Ministerial Council as Chairperson, being a person who is not a registered health practitioner and who has not been a registered health practitioner within the last 5 years; and
  - (b) at least 2 others are to be persons who have expertise in health, or education and training, or both; and
  - (c) at least 2 others are to be persons who are not current or former registered health practitioners and who have business or administrative expertise.
- (4) Schedule 2 sets out provisions relating to the Agency Management Committee.

### **25            Vacancies to be advertised**

- (1) Before the Ministerial Council appoints any member of the Agency Management Committee, the vacancy or vacancies to be filled are to be publicly advertised.
- (2) For the first members of the Agency Management Committee, it is sufficient compliance with this section if the vacancies are publicly advertised before the enactment of this Law.
- (3) It is not necessary to advertise a vacancy in the membership of the Agency Management Committee before appointing a person to act in the office of a member.

*Note—*

The general interpretation provisions applicable to this Law under section 5 confer power to appoint acting members of the Agency Management Committee.

## **26 Functions of Agency Management Committee**

- (1) The functions of the Agency Management Committee are as follows—
  - (a) subject to any directions of the Ministerial Council, to determine the policies of the National Agency;
  - (b) to ensure that the National Agency performs its functions in a proper, effective and efficient way.
- (2) The Agency Management Committee has the other functions conferred or imposed on it—
  - (a) by or under this Law; and
  - (b) by or under any law of any participating jurisdiction.
- (3) The affairs of the National Agency are to be controlled by the Agency Management Committee and all acts and things done in the name of, or on behalf of, the National Agency by or with the authority of the Agency Management Committee are taken to have been done by the National Agency.

## **27 Members to act in public interest**

- (1) A member of the Agency Management Committee is to act impartially and in the public interest in the exercise of his or her functions as a member.
- (2) Accordingly, a member of the Agency Management Committee is to put the public interest before the interests of particular health practitioners or any body or organisation that represents health practitioners.

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## **Division 3                    Chief executive officer**

### **28            Chief executive officer**

- (1) The Agency Management Committee is to appoint a person as chief executive officer of the National Agency.
- (2) The chief executive officer of the National Agency is to be appointed for a period, not exceeding 5 years, specified in his or her instrument of appointment, but is eligible for reappointment.
- (3) The chief executive officer of the National Agency is taken, while holding that office, to be a member of staff of the National Agency.

### **29            Functions of chief executive officer**

- (1) The chief executive officer of the National Agency has the functions conferred on the chief executive officer by instrument in writing of the Agency Management Committee.
- (2) The Agency Management Committee may delegate any of the functions of the National Agency, or of the Agency Management Committee, to the chief executive officer of the National Agency, other than this power of delegation.
- (3) The chief executive officer of the National Agency may subdelegate any function delegated to the chief executive officer by the Agency Management Committee to any member of staff of the National Agency if the chief executive officer is authorised to do so by the Agency Management Committee.

### **30            Vacancy in office**

- (1) The office of the chief executive officer of the National Agency becomes vacant if—
  - (a) the chief executive officer resigns his or her office by instrument in writing addressed to the chairperson of the Agency Management Committee; or

- (b) the appointment of the chief executive officer is terminated by the Agency Management Committee under this section.
- (2) The Agency Management Committee may, at any time and for any reason, terminate the appointment of the chief executive officer of the National Agency by notice given to the chief executive officer.

## **Division 4            Staff and consultants**

### **31        Staff of National Agency**

- (1) The National Agency may, for the purpose of performing its functions, employ staff.
- (2) The staff of the National Agency are to be employed on such terms and conditions as the National Agency determines from time to time.
- (3) Subsection (2) is subject to any relevant industrial award or agreement that applies to the staff.

### **32        Staff seconded to National Agency**

The National Agency may make arrangements for the services of any staff of a government agency of any participating jurisdiction or the Commonwealth to be made available to the National Agency in connection with the exercise of any of the functions of the National Agency.

### **33        Consultants**

- (1) The National Agency may engage persons with suitable qualifications and experience as consultants.
- (2) The terms and conditions of engagement of consultants are such as the National Agency determines from time to time.

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## **Division 5                      Reporting obligations**

### **34            Progress reports**

- (1) The National Agency is to prepare a report on progress made in the implementation of the national registration and accreditation scheme (a *progress report*).
- (2) The first progress report is to be made in relation to the period commencing when the National Agency is established and ending on the following 30 June.
- (3) After that, a progress report is to be made in relation to each subsequent period of 6 months.
- (4) The Ministerial Council may give directions as to the manner in which a progress report is to be prepared and the matters which must be addressed in the progress report.
- (5) A progress report must be submitted to the Ministerial Council within 3 months after the end of the period to which the report relates.
- (6) The Ministerial Council may extend the period for submission of a progress report to the Council.
- (7) The progress report for a period ending on 30 June may be presented in the form of a single report with the annual report of the National Agency for a period ending on that date.

### **35            Annual report**

- (1) The National Agency must, within 3 months after the end of each financial year—
  - (a) prepare an annual report for that financial year; and
  - (b) submit the annual report to the Ministerial Council.
- (2) The first annual report of the National Agency is to be made within 3 months after the end of the financial year ending on 30 June 2010, and is to cover the period commencing when the National Agency is established and ending on 30 June 2010.

- (3) The Ministerial Council may give directions as to the manner in which the annual report is to be prepared and the matters which must be addressed in the annual report.
- (4) The annual report must include a financial statement for the National Agency, and for the National Boards, for the period to which the report relates.
- (5) The financial statement is to be audited, and a report is to be provided by the auditor, in accordance with arrangements approved by the Ministerial Council.
- (6) The Ministerial Council is to make arrangements for the tabling of the annual report of the National Agency, and the report of the auditor with respect to the financial statement in the report, in the Parliament of each participating jurisdiction and the Commonwealth.
- (7) The Ministerial Council may extend, or further extend, the period for submission of an annual report to the Council by a total period of up to 3 months.

### **36 Reporting by National Boards**

- (1) A National Board must, on the request of the National Agency, provide the National Agency with such information as the National Agency requires to compile its annual report in each year, including—
  - (a) a report on the National Board's performance of its functions under this Law; and
  - (b) a statement of the income and expenditure of the National Board for the period to which the annual report relates, presented by reference to the budget of the National Board for that period.
- (2) The information provided by the National Board is to be incorporated in the relevant annual report for the National Agency.

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## **Part 5 National Boards**

### **Division 1 National Boards**

#### **37 Establishment of National Boards**

Each of the following National Health Practitioner Boards is established for the health profession listed beside that Board in the following table—

**Table  
National Boards**

<b>Name of Board</b>	<b>Health profession</b>
Chiropractic Board of Australia	chiropractic
Dental Board of Australia	dental (including the profession of a dentist, dental therapist, dental hygienist or dental prosthetist)
Medical Board of Australia	medical
Nursing and Midwifery Board of Australia	nursing and midwifery
Optometry Board of Australia	optometry
Osteopathy Board of Australia	osteopathy
Pharmacy Board of Australia	pharmacy
Physiotherapy Board of Australia	physiotherapy
Podiatry Board of Australia	podiatry
Psychology Board of Australia	psychology

#### **38 Membership of National Boards**

- (1) A National Board is to consist of members appointed in writing by the Ministerial Council.
- (2) Members of a National Board are to be appointed as practitioner members or community members.

- (3) Subject to this section, the Ministerial Council may determine the size and composition of a National Board.
- (4) At least half, but not more than two-thirds, of the members of a National Board must be persons appointed as practitioner members.
- (5) At least 2 of the members of a National Board must be persons appointed as community members.
- (6) One of the practitioner members of the National Board is to be appointed as Chairperson of the Board by the Ministerial Council.
- (7) Schedule 3 sets out provisions relating to a National Board.

### **39 Eligibility for appointment**

- (1) In deciding whether to appoint a person as a member of a National Board, the Ministerial Council is to have regard to the skills and experience of the person that are relevant to the Board's functions.
- (2) A person is eligible to be appointed as a practitioner member only if the person is a registered health practitioner in the health profession for which the Board is established.
- (3) A person is eligible to be appointed as a community member of a National Board only if the person is not a registered health practitioner in the health profession for which the Board is established and has not previously been a registered health practitioner in that health profession.
- (4) A person is not eligible to be appointed as a member of a National Board if—
  - (a) in the case of appointment as a practitioner member, the person has ceased to be a registered health practitioner in the health profession for which the Board is established, in any participating jurisdiction, as a result of the person's misconduct, impairment or incompetence; or

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- (b) in any case, the person has, at any time, been found guilty of an offence (whether in a participating jurisdiction or elsewhere) that, in the opinion of the Ministerial Council, renders the person unfit to hold the office of member.

#### **40 Vacancies to be advertised**

- (1) Before the Ministerial Council appoints any member of a National Board, the vacancy or vacancies to be filled are to be publicly advertised.
- (2) For the first members of a National Board, it is sufficient compliance with this section if the vacancies are publicly advertised before the enactment of this Law.
- (3) The National Agency may assist the Ministerial Council in the process of appointing members of a National Board, including in the advertising of vacancies.
- (4) It is not necessary to advertise a vacancy in the membership of a National Board before appointing a person to act in the office of a member.

*Note—*

The general interpretation provisions applicable to this Law under section 5 confer power to appoint acting members of a National Board.

#### **41 Members to act in public interest**

- (1) A member of a National Board is to act impartially and in the public interest in the exercise of his or her functions as a member.
- (2) Accordingly, a member of a National Board is to put the public interest before the interests of particular health practitioners or any body or organisation that represents health practitioners.

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## **Division 2                      Functions and powers of National Boards**

### **42            Functions of National Boards**

- (1) The functions of a National Board are as follows—
- (a) to oversee the development of health profession standards for the health profession for which the Board is established for approval by the Ministerial Council;
  - (b) 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 for the health profession for which it is established;
  - (c) to provide advice to the Ministerial Council on issues relating to the development and implementation of the national registration and accreditation scheme for the health profession for which it is established;
  - (d) when requested by the Ministerial Council, to give to the Ministerial Council any assistance or information reasonably required by the Ministerial Council in connection with the development and implementation of the national registration and accreditation scheme;
  - (e) in anticipation of the commencement of the national registration and accreditation scheme, to do anything else that is necessary or convenient for the purpose of preparing the National Board to exercise any other function that the COAG Agreement provides is to be conferred on the National Board under the scheme.

*Note—*

The functions that the COAG Agreement provides are to be conferred on a National Board or its committees include—

- (a) approving a list of accredited courses of study that meet the qualifications for registration as a health practitioner; and
- (b) overseeing the registration of persons as health practitioners; and
- (c) overseeing the assessment of overseas trained health practitioners; and

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- (d) conducting investigations and disciplinary hearings in relation to the conduct, competence or impairment of health practitioners, and monitoring conditions imposed on the practice of health practitioners.
- (2) A National Board has the other functions conferred or imposed on it—
  - (a) by or under this Law; and
  - (b) by or under any law of this or any other participating jurisdiction.
- (3) A National Board is to exercise its functions in accordance with any directions given by the Ministerial Council under a power conferred by this Law.

*Note—*

This Law permits the Ministerial Council to give policy directions to a National Board and to give directions for the purpose of resolving disputes over health profession agreements. The COAG Agreement provides that the Ministerial Council will not have power under the scheme to intervene in any registration or disciplinary decisions relating to individuals or decisions relating to the accreditation of particular courses.

#### **43 Powers of National Boards**

A National Board has the powers necessary to enable it to perform its functions.

#### **44 Boards may obtain assistance**

A National Board may, for the purposes of exercising its functions, obtain the assistance of or advice from any local registration authority or any other person or body having knowledge of matters relating to the health profession for which it is established.

#### **45 Committees**

- (1) A National Board may establish committees to do any of the following—

- (a) to develop health profession standards with respect to a particular health profession;
  - (b) to exercise any functions of the Board or to provide assistance to the Board in the exercise of its functions.
- (2) A health profession standard that is developed by a committee of a National Board is to be submitted to the National Board for its consideration.

*Note—*

The Ministerial Council can approve a health profession standard only if its approval is recommended by the National Board.

- (3) Members of a committee are to be selected and appointed in accordance with a procedure approved by the Ministerial Council.

#### **46 Delegation of functions**

- (1) A National Board may delegate any of the functions of the National Board to any of its committees or to the National Agency, other than this power of delegation.
- (2) The Agency Management Committee may subdelegate any function delegated to the National Agency by a National Board to any member of staff of the National Agency.

## **Part 6 Finance**

#### **47 Australian Health Practitioner Regulation Agency Fund**

- (1) The Australian Health Practitioner Regulation Agency Fund is established.
- (2) The Agency Fund is a fund to be administered by the National Agency.
- (3) The National Agency may establish accounts with any financial institution for money in the Agency Fund.

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- (4) The Agency Fund does not form part of the consolidated fund of any jurisdiction.

#### **48 Payments into Agency Fund**

There is payable into the Agency Fund—

- (a) all money appropriated by the Parliament of any participating jurisdiction or the Commonwealth for the purposes of the fund; and
- (b) the proceeds of the investment of money in the fund; and
- (c) all money directed or authorised to be paid into the fund by or under this Law, any law of a participating jurisdiction or any law of the Commonwealth.

#### **49 Payments out of Agency Fund**

Payments may be made from the Agency Fund, subject to any directions of the Ministerial Council, for the purpose of—

- (a) paying any costs or expenses, or discharging any liabilities, incurred by the National Agency in the exercise of its functions; and
- (b) paying any costs or expenses, or discharging any liabilities, incurred, in the exercise of functions under this Law, by a National Board, any of its committees or any person or body appointed to develop health profession standards under this Law; and
- (c) paying any remuneration or allowances of staff of the National Agency or the members of the Agency Management Committee, the National Boards or any of their committees.

#### **50 Investment of money in Agency Fund**

The National Agency may invest money in the Agency Fund in any manner approved by the Ministerial Council.

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**51 Duties of National Agency and Boards with respect to financial management**

- (1) The National Agency must—
- (a) ensure that its operations are carried out efficiently, effectively and economically; and
  - (b) keep proper books and records in relation to the Agency Fund; and
  - (c) ensure that expenditure is made from the Agency Fund for lawful purposes only and, as far as possible, reasonable value is obtained for moneys expended from the fund; and
  - (d) ensure that its procedures, including internal control procedures, afford adequate safeguards with respect to—
    - (i) the correctness, regularity and propriety of payments made from the Agency Fund; and
    - (ii) receiving and accounting for payments made to the Agency Fund; and
    - (iii) prevention of fraud or mistake; and
  - (e) take any action necessary to ensure the preparation of accurate financial statements for inclusion in its annual report; and
  - (f) take any action necessary to facilitate the audit of those financial statements in accordance with this Law; and
  - (g) arrange for any further audit by a qualified person of the books and records kept by the National Agency in relation to the Agency Fund, if directed to do so by the Ministerial Council.
- (2) A National Board must—
- (a) ensure that its operations are carried out efficiently, effectively and economically; and

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- (b) take any action necessary to ensure that the National Agency is able to comply with this section in relation to the funding of the National Board and its committees.

## **Part 7                      Miscellaneous**

### **52      General duties of persons engaged in the administration of this Law**

- (1) A person engaged in the administration of this Law must, when exercising his or her functions under this Law, act honestly and with integrity.
- (2) A person engaged in the administration of this Law must exercise his or her functions under this Law—
  - (a) in good faith; and
  - (b) in a financially responsible manner; and
  - (c) with a reasonable degree of care, diligence and skill.
- (3) A person engaged in the administration of this Law must not make improper use of his or her position, or of information that comes to the person's knowledge in the course of, or because of, the person's engagement in the administration of this Law—
  - (a) to gain an advantage for himself or herself or another person, or
  - (b) to cause a detriment to the development, implementation or operation of the national registration and accreditation scheme.

### **53      Duty of confidentiality**

- (1) A person who is, or has been, a person engaged in the administration of this Law must not disclose to another person protected information.

Maximum penalty—\$3,000.

- (2) However, subsection (1) does not apply if the information is disclosed—
  - (a) in the exercise of a function under, or for the purposes of, this Law; or
  - (b) for the purposes of a legal proceeding; or
  - (c) as authorised or required by any law of this or any other participating jurisdiction; or
  - (d) as otherwise authorised by the Ministerial Council.
- (3) In this section—

*protected information* means information that comes to a person's knowledge in the course of, or because of, the person's engagement in the administration of this Law.

#### **54 Protection from personal liability**

- (1) A protected person is not personally liable for anything done or omitted to be done in good faith—
  - (a) in the exercise of a function under this Law; or
  - (b) in the reasonable belief that the act or omission was the exercise of such a function.
- (2) Any liability resulting from an act or omission that would, but for subsection (1), attach to a protected person attaches instead to the National Agency.
- (3) In this section—

*protected person* means any of the following—

- (a) a member of the Agency Management Committee;
- (b) a member of a National Board or a committee of the National Board;
- (c) a member of staff of the National Agency.

## **Schedule 1      Constitution and procedure of Advisory Council**

section 17

### **Part 1              General**

#### **1            Definitions**

In this schedule—

*Chairperson* means the Chairperson of the Advisory Council.

*member* means a member of the Advisory Council.

### **Part 2              Constitution**

#### **2            Terms of office of members**

Subject to this schedule, a member holds office for the period (not exceeding 3 years) specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for reappointment.

#### **3            Remuneration**

A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Ministerial Council may from time to time determine with respect to the member.

#### **4            Vacancy in office of member**

- (1) The office of a member becomes vacant if the member—
- (a) completes his or her term of office; or

- (b) resigns the office by instrument in writing addressed to the Chairperson of the Ministerial Council; or
  - (c) is removed from office by the Chairperson of the Ministerial Council under this clause; or
  - (d) dies.
- (2) The Chairperson of the Ministerial Council may remove a member from office if—
- (a) the member has been found guilty of an offence (whether in a participating jurisdiction or elsewhere) that, in the opinion of the Chairperson of the Ministerial Council, renders the member unfit to continue to hold the office of member; or
  - (b) the member ceases to be a registered health practitioner as a result of the member's misconduct, impairment or incompetence; or
  - (c) the Advisory Council recommends the removal of the member, on the basis that the member has engaged in misconduct or has failed or is unable to properly exercise his or her functions as a member.
- (3) In addition, the Chairperson of the Ministerial Council may remove the Chairperson of the Advisory Council from office as a member if the Chairperson of the Advisory Council becomes a registered health practitioner.

**5 Extension of term of office during vacancy in membership**

- (1) If the office of a member becomes vacant because the member has completed his or her term of office, the member is taken to continue to be a member during that vacancy until the date on which the vacancy is filled (whether by reappointment of the member or appointment of a successor to the member).
- (2) However, this clause ceases to apply to the member if—
- (a) the member resigns his or her office by instrument in writing addressed to the Chairperson of the Ministerial Council; or

- (b) the Chairperson of the Ministerial Council determines that the services of the member are no longer required.
- (3) The maximum period for which a member is taken to continue to be a member under this clause after completion of his or her term of office is 6 months.

## **6 Disclosure of conflict of interest**

- (1) If—
  - (a) a member has a direct or indirect pecuniary or other interest in a matter being considered or about to be considered at a meeting of the Advisory Council; and
  - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter;

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

- (2) Particulars of any disclosure made under this clause must be recorded by the Advisory Council in a book kept for the purpose.
- (3) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Ministerial Council or the Advisory Council otherwise determines—
  - (a) be present during any deliberation of the Advisory Council with respect to the matter; or
  - (b) take part in any decision of the Advisory Council with respect to the matter.
- (4) For the purposes of the making of a determination by the Advisory Council under subclause (3), a member who has a direct or indirect pecuniary or other interest in a matter to which the disclosure relates must not—
  - (a) be present during any deliberation of the Advisory Council for the purpose of making the determination; or

- (b) take part in the making by the Advisory Council of the determination.
- (5) A contravention of this clause does not invalidate any decision of the Advisory Council.

## **Part 3 Procedure**

### **7 General procedure**

The procedure for the calling of meetings of the Advisory Council and for the conduct of business at those meetings is, subject to this Law, to be as determined by the Advisory Council.

### **8 Quorum**

The quorum for a meeting of the Advisory Council is a majority of its members for the time being.

### **9 Presiding member**

The Chairperson (or, in the absence of the Chairperson, a person elected by the members of the Advisory Council who are present at a meeting of the Advisory Council) is to preside at a meeting of the Advisory Council.

### **10 Transaction of business outside meetings or by telephone**

- (1) The Advisory Council may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Advisory Council for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Advisory Council.
- (2) The Advisory Council may, if it thinks fit, transact any of its business at a meeting at which members (or some members)

Schedule 1

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participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.

- (3) For the purposes of—
  - (a) the approval of a resolution under subclause (1); or
  - (b) a meeting held in accordance with subclause (2);the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Advisory Council.
- (4) A resolution approved under subclause (1) is, subject to any directions of the Ministerial Council, to be recorded in the minutes of the meetings of the Advisory Council.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile, email or other transmission of the information in the papers concerned.

## **11 First meeting**

The Chairperson may call the first meeting of the Advisory Council in any manner the Chairperson thinks fit.

## **Schedule 2      Constitution and procedure of Agency Management Committee**

section 24

### **Part 1              General**

#### **1              Definitions**

In this schedule—

*Chairperson* means the Chairperson of the Committee.

*Committee* means the Agency Management Committee.

*member* means a member of the Committee.

### **Part 2              Constitution**

#### **2              Terms of office of members**

Subject to this schedule, a member holds office for the period (not exceeding 3 years) specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for reappointment.

#### **3              Remuneration**

A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Ministerial Council may from time to time determine with respect to the member.

**4 Vacancy in office of member**

- (1) The office of a member becomes vacant if the member—
  - (a) completes a term of office; or
  - (b) resigns the office by instrument in writing addressed to the Chairperson of the Ministerial Council; or
  - (c) is removed from office by the Chairperson of the Ministerial Council under this clause; or
  - (d) is absent, without leave first being granted by the Chairperson of the Committee, from 3 or more consecutive meetings of the Committee of which reasonable notice has been given to the member personally or by post; or
  - (e) dies.
- (2) The Chairperson of the Ministerial Council may remove a member from office if—
  - (a) the member has been found guilty of an offence (whether in a participating jurisdiction or elsewhere) that, in the opinion of the Chairperson of the Ministerial Council, renders the member unfit to continue to hold the office of member; or
  - (b) the member ceases to be a registered health practitioner as a result of the member's misconduct, impairment or incompetence; or
  - (c) the member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
  - (d) the Committee recommends the removal of the member, on the basis that the member has engaged in misconduct or has failed or is unable to properly exercise his or her functions as a member.
- (3) In addition, the Chairperson of the Ministerial Council may remove the Chairperson of the Committee from office as a

member if the Chairperson of the Committee becomes a registered health practitioner.

**5 Extension of term of office during vacancy in membership**

- (1) If the office of a member becomes vacant because the member has completed his or her term of office, the member is taken to continue to be a member during that vacancy until the date on which the vacancy is filled (whether by reappointment of the member or appointment of a successor to the member).
- (2) However, this clause ceases to apply to the member if—
  - (a) the member resigns his or her office by instrument in writing addressed to the Chairperson of the Ministerial Council; or
  - (b) the Chairperson of the Ministerial Council determines that the services of the member are no longer required.
- (3) The maximum period for which a member is taken to continue to be a member under this clause after completion of his or her term of office is 6 months.

**6 Disclosure of conflict of interest**

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

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

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

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- (3) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Ministerial Council or the Committee otherwise determines—
  - (a) be present during any deliberation of the Committee with respect to the matter; or
  - (b) take part in any decision of the Committee with respect to the matter.
- (4) For the purposes of the making of a determination by the Committee under subclause (3), a member who has a direct or indirect pecuniary or other interest in a matter to which the disclosure relates must not—
  - (a) be present during any deliberation of the Committee for the purpose of making the determination; or
  - (b) take part in the making by the Committee of the determination.
- (5) A contravention of this clause does not invalidate any decision of the Committee.

## **Part 3 Procedure**

### **7 General procedure**

The procedure for the calling of meetings of the Committee and for the conduct of business at those meetings is, subject to this Law, to be as determined by the Committee.

### **8 Quorum**

The quorum for a meeting of the Committee is a majority of its members for the time being.

**9 Chief executive officer may attend meetings**

The chief executive officer of the National Agency may attend meetings of the Committee and may participate in discussions of the Committee, but is not entitled to vote at a meeting.

**10 Presiding member**

- (1) The Chairperson (or, in the absence of the Chairperson, a person elected by the members of the Committee who are present at a meeting of the Committee) is to preside at a meeting of the Committee.
- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

**11 Voting**

A decision supported by a majority of the votes cast at a meeting of the Committee at which a quorum is present is the decision of the Committee.

**12 Transaction of business outside meetings or by telephone**

- (1) The Committee may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Committee for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Committee.
- (2) The Committee may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of—
  - (a) the approval of a resolution under subclause (1); or
  - (b) a meeting held in accordance with subclause (2);

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the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Committee.

- (4) A resolution approved under subclause (1) is, subject to any directions of the Ministerial Council, to be recorded in the minutes of the meetings of the Committee.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile, email or other transmission of the information in the papers concerned.

**13 First meeting**

The Chairperson may call the first meeting of the Committee in any manner the Chairperson thinks fit.

**14 Defects in appointment of members**

A decision of the Committee is not invalidated by any defect or irregularity in the appointment of any member of the Committee.

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## Schedule 3      Constitution and procedure of National Boards

section 38

### Part 1              General

#### 1      Definitions

In this schedule—

*Chairperson* means the Chairperson of a National Board.

*community member* means a member of a National Board appointed as a community member.

*member* means a member of a National Board.

*practitioner member* means a member of a National Board appointed as a practitioner member.

### Part 2              Constitution

#### 2      Terms of office of members

Subject to this schedule, a member holds office for the period (not exceeding 3 years) specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for reappointment.

#### 3      Remuneration

A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Ministerial Council may from time to time determine with respect to the member.

**4 Vacancy in office of member**

- (1) The office of a member becomes vacant if the member—
  - (a) completes a term of office; or
  - (b) resigns the office by instrument in writing addressed to the Chairperson of the Ministerial Council; or
  - (c) is removed from office by the Chairperson of the Ministerial Council under this clause; or
  - (d) is absent, without leave first being granted by the Chairperson of the Board, from 3 or more consecutive meetings of the National Board of which reasonable notice has been given to the member personally or by post; or
  - (e) dies.
- (2) The Chairperson of the Ministerial Council may remove a member from office if—
  - (a) the member has been found guilty of an offence (whether in a participating jurisdiction or elsewhere) that, in the opinion of the Chairperson of the Ministerial Council, renders the member unfit to continue to hold the office of member; or
  - (b) the member ceases to be a registered health practitioner as a result of the member's misconduct, impairment or incompetence; or
  - (c) the member ceases to be eligible for appointment to the office that the member holds on the National Board; or
  - (d) the member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
  - (e) the National Board recommends the removal of the member, on the basis that the member has engaged in misconduct or has failed or is unable to properly exercise his or her functions as a member.

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**5 Extension of term of office during vacancy in membership**

- (1) If the office of a member becomes vacant because the member has completed his or her term of office, the member is taken to continue to be a member during that vacancy until the date on which the vacancy is filled (whether by reappointment of the member or appointment of a successor to the member).
- (2) However, this clause ceases to apply to the member if—
  - (a) the member resigns his or her office by instrument in writing addressed to the Chairperson of the Ministerial Council; or
  - (b) the Chairperson of the Ministerial Council determines that the services of the member are no longer required.
- (3) The maximum period for which a member is taken to continue to be a member under this clause after completion of his or her term of office is 6 months.

**6 Disclosure of conflict of interest**

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

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the National Board.
- (2) Particulars of any disclosure made under this clause must be recorded by the National Board in a book kept for the purpose.
- (3) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Ministerial Council or the National Board otherwise determines—
  - (a) be present during any deliberation of the National Board with respect to the matter; or

- (b) take part in any decision of the National Board with respect to the matter.
- (4) For the purposes of the making of a determination by the National Board under subclause (3), a member who has a direct or indirect pecuniary or other interest in a matter to which the disclosure relates must not—
  - (a) be present during any deliberation of the National Board for the purpose of making the determination; or
  - (b) take part in the making by the National Board of the determination.
- (5) A contravention of this clause does not invalidate any decision of the National Board.
- (6) This clause applies to a member of a committee of a National Board and the committee in the same way as it applies to a member of the National Board and the National Board.

## **Part 3                      Procedure**

### **7            General procedure**

The procedure for the calling of meetings of the National Board and for the conduct of business at those meetings is, subject to this Law, to be as determined by the National Board.

### **8            Quorum**

The quorum for a meeting of the National Board is a majority of its members for the time being at least one of whom is a community member.

### **9            Presiding member**

- (1) The Chairperson (or, in the absence of the Chairperson, a person elected by the members of the National Board who are

present at a meeting of the National Board) is to preside at a meeting of the National Board.

- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

## **10 Voting**

A decision supported by a majority of the votes cast at a meeting of the National Board at which a quorum is present is the decision of the National Board.

## **11 Transaction of business outside meetings or by telephone**

- (1) The National Board may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the National Board for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the National Board.
- (2) The National Board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of—
  - (a) the approval of a resolution under subclause (1); or
  - (b) a meeting held in accordance with subclause (2);the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the National Board.
- (4) A resolution approved under subclause (1) is, subject to any directions of the Ministerial Council, to be recorded in the minutes of the meetings of the National Board.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile, email or other transmission of the information in the papers concerned.

**12 First meeting**

The Chairperson may call the first meeting of the National Board in any manner the Chairperson thinks fit.

**13 Defects in appointment of members**

A decision of the National Board or of a committee of the National Board is not invalidated by any defect or irregularity in the appointment of any member (or acting member) of the National Board or of a committee of the National Board.