

Instrument of Delegation

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

Preliminary

- 1.1 The Chinese Medicine Board of Australia (the Board), pursuant to s 37 of the National Law, resolved to delegate its functions as specified in this instrument of delegation (instrument) on 27 June 2017.
- 1.2 This instrument is a complete record of the Board's resolution with respect to the delegation of its functions. The Board resolved to revoke all prior delegations on 27 June 2017.
- 1.3 The Board resolved to authorise the Chair of the Board to sign this instrument as evidence of the Board's decision to delegate its functions in compliance with Clause 29(3) to Schedule 7 of the National Law.

Definitions

- 2.1 **National Law** means:
 - 2.1.1 the Health Practitioner Regulation National Law (Queensland) in Queensland
 - 2.1.2 the Health Practitioner Regulation National Law (ACT) in the Australian Capital Territory
 - 2.1.3 the Health Practitioner Regulation National Law (Victoria) in Victoria
 - 2.1.4 the Health Practitioner Regulation National Law (South Australia) in South Australia
 - 2.1.5 the Health Practitioner Regulation National Law (NT) in the Northern Territory
 - 2.1.6 the Health Practitioner Regulation National Law (Tasmania) in Tasmania

- 2.1.7 the Health Practitioner Regulation National Law (NSW) in New South Wales
- 2.1.8 the Health Practitioner Regulation National Law (Western Australia) in Western Australia.
- 2.2 **ACT Act** means the Health Practitioner Regulation National Law (ACT)
- 2.3 **NSW Act** means the *Health Practitioner Regulation National Law (NSW)*
- 2.4 **Qld Act** means the *Health Practitioner Regulation National Law Act (Qld)*
- 2.5 **SA Act** means the *Health Practitioner Regulation National Law (South Australia)*
- 2.6 **WA Act** means the *Health Practitioner Regulation National Law (Western Australia) Act 2010*
- 2.7 **Tas Act** means the *Health Practitioner Regulation National Law (Tasmania) Act 2010*
- 2.8 To avoid doubt, any section cited in this instrument refers to the section in the National Law in force in each jurisdiction unless:
- 2.8.1 the section is contained within Part 8 of the NSW Act; or
- 2.8.2 it is otherwise indicated by this instrument that the National Law specific to a particular participating jurisdiction applies.
- 2.9 **AHPRA** means the Australian Health Practitioner Regulation Agency, established by section 23 of the National Law.
- 2.10 **National Board (Board)** means the Chinese Medicine Registration Board of Australia, established by the section 31 of the National Law.
- 2.11 **Participating jurisdiction** has the same meaning as in section 5 of the National Law.
- 2.12 **Registration and Notifications Committee** means the committee established by the Board pursuant to Clause 11 of Schedule 4 to the National Law constituted according to its terms of reference.
- 2.13 **Immediate Action Committee** means the committee established by the Board pursuant to Clause 11 of Schedule 4 to the National Law constituted according to its terms of reference
- 2.14 **Appellable decision** has the same meaning as in section 199 of the National Law meaning:
- 2.14.1 a decision to refuse to register the person;
- 2.14.2 a decision to refuse to endorse the person's registration;

- 2.14.3 a decision to refuse to renew the person's registration;
- 2.14.4 a decision to refuse to renew the endorsement of the person's registration;
- 2.14.5 a decision to impose or change a condition on a person's registration or the endorsement of the person's registration, other than –
 - (i) a condition relating to the person's qualification for general registration in the health profession; and
 - (ii) a condition imposed by section 112(3)(a);
- 2.14.6 a decision to refuse to change or remove a condition imposed on the person's registration or the endorsement of the person's registration;
- 2.14.7 a decision to refuse to change or revoke an undertaking given by the person to the Board;
- 2.14.8 a decision to suspend the person's registration.

2.15 **Relevant Event** means any health, performance or conduct notification action taken against the registrant in relation to an adverse disclosure on renewal of registration, new information returned on a criminal history check, a confirmed breach of restrictions, or where the practitioner has been the subject of action under Part 8 of the National Law or its equivalent in a co-regulatory jurisdiction. This includes receipt of any new notification irrespective of whether action was taken.

Delegation of Board functions

3.1 Principles of delegation:

- 3.1.1 The purpose of this instrument is to allow the Board to discharge its functions as set out in s 35 of the National Law.
- 3.1.2 To the extent that the Board's functions are capable of being delegated, the Board delegates its functions to AHPRA and the committees of the Board as set out below.
- 3.1.3 A delegate may in the performance of a delegated function do anything that is incidental to the delegated function.
- 3.1.4 A delegation does not derogate from the power of the Board to act itself in the matter, so long as the delegate has not yet exercised the function or power.
- 3.1.5 A delegate may only exercise a function, or make a decision, subject to the limitations imposed on the delegated function. If the decision to be made is not within the limitation which applies to the delegated function, or the delegate is not sure what the decision should be, the delegate must not make the decision. The delegate may, however, make recommendations to the National Board or another delegate.

3.2 Powers and functions that have not been delegated by the Board are in Column C to the Schedule.

- 3.3 The Board delegates to the Registration and Notifications Committee the following functions of the Board:
 - 3.3.1 The functions listed in Column D to the Schedule, subject to the limitations (if any) in Column G.
 - 3.3.2 All functions delegated to AHPRA.
- 3.4 The Board delegates to the Immediate Action Committee the following functions of the Board:
 - 3.4.1 The functions listed in Column E to the Schedule, subject to the limitations (if any) in Column G.
- 3.5 The Board delegates to AHPRA the following functions of the Board:
 - 3.5.1 The provision of notice(s), whether or not expressly provided for in this instrument and whether from the Board or a committee of the Board, to any entity or person; and,
 - 3.5.2 The publishing of information on the website, whether or not expressly provided for in this instrument
 - 3.5.3 The functions listed in Column F to the Schedule, subject to the limitations (if any) in Column G.
 - 3.5.4 AHPRA may not exercise any function that is an appellable decision unless specified otherwise.

Signature

As signed

Charlie Xue

Chair, Chinese Medicine Board of Australia

Date: 27 June 2017

Schedule

Accreditation functions

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

Registration functions

A	B	C	D	E	F	G
Part and Division	Description of Division	Not delegated by National Board	Registration and Notifications Committee		AHPRA	Limitations on delegation
Part 7 Registration						

A	B	C	D	E	F	G
Part and Division	Description of Division	Not delegated by National Board	Registration and Notifications Committee		AHPRA	Limitations on delegation
Div 1	General registration	56	54			.
Div 2	Specialist registration	61	59			
Div 3	Provisional registration	64				
Div 4	Limited registration	72				
Div 5	Non-practising registration	76				
Div 6	Application for registration		78(1) 79 80(1)(a)(i) 80(1)(a)(ii) 80(1)(b) 80(1)(c) 80(1)(d) 80(1)(e) 80(2) 81(1) 82(1)(a) 82(1)(b) 82(1)(c) 83		77(2) 78(1) 79 80(1)(a)(i) 80(1)(a)(ii) 80(1)(b) 80(2) 81(1) 82(1)(a) 82(1)(c) 83 84 85	<p>AHPRA to seek the approval of the Chair of the Board (or a nominee of the Chair) when approving a form.</p> <p>AHPRA may only register an applicant if the applicant is: eligible, qualified, suitable and meets all requirements for registration in the applicable registration standards.</p> <p>Eligible means the applicant meets all the requirements in s 52 or 57 or 62 or 65 or 73.</p> <p>Qualified means the applicant meets the requirements in s 53(a), (b), (c), (d) or has a qualification recognised by the Board, or substantially equivalent to a recognised qualification, for the purposes of s 303(1)(a) or (b). AHPRA may only decide a person is qualified</p>

A	B	C	D	E	F	G
Part and Division	Description of Division	Not delegated by National Board	Registration and Notifications Committee		AHPRA	Limitations on delegation
						<p>under s 303(1)(c) after consulting with a practitioner member of the Registration Committee or the National Board.</p> <p>Suitable means the applicant is not an unsuitable person within the meaning of s 55 or 60 or 63 or 70 or 74.</p> <p>AHPRA may only impose conditions on registration under s 83 if:</p> <ol style="list-style-type: none"> 1. the applicant agrees to the proposed conditions or does not provide a submission in response to a notice of the proposed condition; and, 2. the conditions relate to supervision and refer to Board's approved supervision guidelines; or, 3. the conditions relate to compliance with the English language registration standard; or 4. the conditions relate to requiring completion of a Board approved program of study. <p>AHPRA may not grant limited registration apart from</p>

A	B	C	D	E	F	G
Part and Division	Description of Division	Not delegated by National Board	Registration and Notifications Committee		AHPRA	Limitations on delegation
						<p>limited registration in the public interest, and only until 30 June 2013.</p> <p>AHPRA is delegated the power to refuse an application for registration only in the following circumstances:</p> <ul style="list-style-type: none"> the applicant has been given notice of a proposal to refuse registration under s.81; and the applicant has not made any submissions in response to that notice, or has indicated that he or she agrees with the proposed refusal decision.
Div 7/1	Student registration	87 88(4) 89(4)			88(1) 89(1)(a) 89(1)(b) 89(4)	An application must be in the form approved by the National Board
Div 7/2	Other persons				91(4)	An application must be in the form approved by the National Board
Div 7/3	General provisions re students				92(2)	An application must be in the form approved by the National Board
Div 8/1	Endorsement of registration – scheduled medicines		94			

A	B	C	D	E	F	G
Part and Division	Description of Division	Not delegated by National Board	Registration and Notifications Committee		AHPRA	Limitations on delegation
Div 8/2	Endorsement for nurse practitioner	N/A	N/A		N/A	
Div 8/3	Endorsement for midwifery	N/A	N/A		N/A	
Div 8/4	Endorsement for acupuncture		97(1)			
Div 8/5	Endorsement for area of practice		98(1)			
Div 8/6	Application for endorsement		100(1) 101 102 103		99(2) 100(1)(a) 100(1)(b) 100(1)(c) 102(1)	<p>AHPRA to seek the approval of the Chair of the Board (or a nominee of the Chair) when approving a form.</p> <p>AHPRA is delegated the power to refuse an application for endorsement only in the following circumstances:</p> <ul style="list-style-type: none"> the applicant has been given notice of a proposal to refuse endorsement under s.101; and the applicant has not made any submissions in response to that notice, or has indicated that he or she agrees with the proposed refusal decision.
Div 9	Renewal of registration		110 (functions corresponding to 80(1)(a)(i))		107(4)(a) 110 (functions corresponding to	AHPRA to seek the approval of the Chair of the Board (or

A	B	C	D	E	F	G
Part and Division	Description of Division	Not delegated by National Board	Registration and Notifications Committee		AHPRA	Limitations on delegation
			80(1)(a)(ii) 80(1)(b) 80(1)(c) 80(1)(d) 80(1)(e) 80(2) 111(1) 112		80(1)(a)(i) 80(1)(a)(ii) 80(1)(b) 80(1)(c) 80(2) 112(1) 112(3)	<p>a nominee of the Chair) when approving a form.</p> <p>AHPRA may only renew a practitioner's registration if s 111 does not apply, but this does not prevent AHPRA from imposing a condition on registration as set out below.</p> <p>AHPRA is delegated the power to refuse an application for renewal of registration, or to impose a new condition on registration, only in the following circumstances:</p> <ul style="list-style-type: none"> • the applicant has been given notice of a proposal to refuse renewal, or to impose a condition on registration, under s.111; and • the applicant has not made any submissions in response to that notice, or has indicated that he or she agrees with the proposed refusal decision or imposition of the new condition. <p>AHPRA may not grant limited registration.</p>

A	B	C	D	E	F	G
Part and Division	Description of Division	Not delegated by National Board	Registration and Notifications Committee		AHPRA	Limitations on delegation
Div 10	Title and practice protections					
Div 11/1	Certificate of registration				124	
Div 11/2	Review of conditions and undertakings		125(4) 125(5) 126(1) 126(5) 127		125(3) 125(4) 125(5) 125(6) 126(2)	<p>AHPRA to seek the approval of the Chair of the Board (or a nominee of the Chair) when approving a form.</p> <p>AHPRA may only exercise powers under ss 125(4) and (5) in the following circumstances:</p> <p>1) AHPRA may remove a condition that requires the registered health practitioner or student to achieve a certain level of English language proficiency, but only where the practitioner or student has successfully completed an English language test consistent with the requirements set out in Part 1B of the <i>English language skills registration standard</i>.</p> <p>2) AHPRA may remove a condition that requires a practitioner or student to complete an approved program of study, but only where the practitioner or</p>

A	B	C	D	E	F	G
Part and Division	Description of Division	Not delegated by National Board	Registration and Notifications Committee		AHPRA	Limitations on delegation
						<p>student has successfully completed the approved program of study required under the condition, and only until 1 July 2017.</p> <p>3) AHPRA may change a condition so as to grant an extension of time within which the condition must be fulfilled. AHPRA may only grant an extension: once in relation to a particular condition for a particular practitioner or student; for a period of 12 months or less; and only until 1 July 2017.</p> <p>Delegation of s. 125(4) and (5) to AHPRA limited to matters where conditions were imposed in response to a breach of s. 133 (Advertising offences).</p> <p>AHPRA can only grant applications under s. 125(5) where the practitioner has:</p> <ul style="list-style-type: none"> • complied with conditions on their registration regarding the breach of s. 133 (re advertising); and

A	B	C	D	E	F	G
Part and Division	Description of Division	Not delegated by National Board	Registration and Notifications Committee		AHPRA	Limitations on delegation
						<ul style="list-style-type: none"> provided material to AHPRA to demonstrate that they clearly understand the advertising requirements in the National Law. <p>If advertising is assessed as continuing to be non-compliant, a decision to refuse to remove the conditions remains with the Registration and Notification Committee, and is not delegated to AHPRA.</p> <p>s 125(7) sets out the contents of a notice to refuse to grant an application.</p>
Div 11/3	Obligations of registered health practitioners and students		129(2)		129(2) 132(1)	
Div 11/5	Boards powers to check identity and criminal history				134 135(1)	
Div 116	General				137	

Notification functions

A	B	C	D	E	F	G
Part and Division	Description	Not delegated by National Board	Registration and Notifications Committee	Immediate Action Committee	AHPRA	Limitations on delegation
Part 8						
Notifications						
Div 1	Persons formerly registered under this Law					
Div 2	Mandatory Notifications					
Div3	Voluntary notifications					
Div4	Making a Notification					
Div 5	Preliminary assessment		149(1)(a), (b) and (c) (excl Qld Act) 149(3) (excl Qld Act) 150 (excl Qld Act) 151 152 (excl Qld Act) 150(1)(a) and (b) (Qld Act) 150(3) (Qld Act)	149(1)(a), (b) and (c) (excl Qld Act) 150(1)(a) and (b) (Qld Act)	149(1)(a),(b),(c) (excl Qld Act) 149(3) (excl Qld Act) 150(excl Qld Act) 151(1)(e) (excl Qld Act) 152(excl Qld Act) 150(1)(a) and (b) (Qld Act) 150(3) (Qld Act)	AHPRA may not decide that a notification/referred matter does not relate to a ground for a notification Delegation of s. 151(1)(e) to AHPRA limited to situations where the Board's delegate and the health complaints entity ('HCE') have agreed that the HCE will deal with the subject matter of the notification, under s. 150(3).
Div 6	Other matters		153 154(2)	153 154(2)		
Div 7	Immediate action		156 157(3) 158(1)(b) 159(2)(b) & (c)	156 157(3) 158(1)(b) 159(2)(b) & (c)	157(1) 158(1)(a)	
Div 8	Investigations		160 161(4)	160 161(4)	160(1) 160(2) 161(1),(2),(3) & (4) 81(1) (SA Act)	Delegation of s 160(1) to AHPRA limited to situations where: <ul style="list-style-type: none"> • s 150(4)_ applies to require an investigation; or • where a notification is made to AHPRA or the

A	B	C	D	E	F	G
Part and Division	Description	Not delegated by National Board	Registration and Notifications Committee	Immediate Action Committee	AHPRA	Limitations on delegation
						Board without patient consent to obtain records relevant to the notification.
Div 8	Investigators				163, 164(1)	
Div 8	Procedure after investigation		167 167(1) (ACT)		166(3) (ACT) 167(1) (ACT) 167(3) (ACT)	
Div 9	Health and performance assessments		169 170 171 172 176(1)(b) 176(3) 177 (note: in Qld Act, s.177 applies subject to Div 12, Subdiv 1 of Part 8)	169 170	175(2) (ACT) 177(1) (ACT) 177(2) (ACT) 177(4) (ACT)	
					171(1) 172(1) 176(1)(a), 176(3)	AHPRA may only provide a copy of the report once the relevant committee or State Board has determined whether s 176(1)(b) applies. AHPRA does not have the power to appoint performance assessors under s.171(1).
Div 10	Action by National Board		178 179		178(2)(c) 178(4) (ACT) 179(1) 179(2)(a) 180(1)	AHPRA is limited to deciding to propose action to impose conditions that relate to an apparent breach of s. 133 (advertising offences). AHPRA is limited to proposing standard conditions in relation to

A	B	C	D	E	F	G
Part and Division	Description	Not delegated by National Board	Registration and Notifications Committee	Immediate Action Committee	AHPRA	Limitations on delegation
						apparent breaches of s. 133 (advertising offences). AHPRA may only decide to take no further action under s. 179(2)(a) in relation to apparent breaches of s. 133 (advertising offences).
Div 11	Panels	183	181 182 192		181(1) 182(1) 184(3) (ACT) 192(2) 192(2) 192(3A) (ACT)	AHPRA may only select persons to be on the panel and may not establish the panel. AHPRA limited to maintaining the list of approved persons. AHPRA does not have power to approve people. AHPRA to give notice at the direction of panel members AHPRA to give notice to reflect the Panel's decision
Div 12	Referring matter to tribunal		193 (excl Qld Act) 193 (Qld Act) 193A(1),(2) and (4) (Qld Act) 193B(1), (2) and (3) (Qld Act)		193(2)(b) (excl Qld Act)	
Div 13	Appeals					
Div 14	Miscellaneous				205, 206 206A(2) (Qld Act) 206B(3) (Qld Act)	
Div 14B (NSW Act)	Health, performance and conduct (Miscellaneous)				176B (NSW Act)	

A	B	C	D	E	F	G
Part and Division	Description	Not delegated by National Board	Registration and Notifications Committee	Immediate Action Committee	AHPRA	Limitations on delegation
Part 10						
Div 2	Disclosure of information and confidentiality		220		217, 220	
Div 3	Registers (registered health practitioners)		226 (2) & (3)	226 (2) & (3)	222 223 225 226 227	<p>AHPRA is only delegated the power to decide to remove information that a registered health practitioner has been reprimanded from the National Register or Specialists Register under s. 226(3) where:</p> <ul style="list-style-type: none"> - the reprimand has been published for 5 years or longer; and - there has not been a 'Relevant Event' in the preceding 5 years regarding the practitioner. <p>AHPRA is only delegated the power to refuse a request to remove a reprimand under s. 226(3) where the Board or a duly authorised Committee (as the case may be) has issued a written notice to the registered health practitioner proposing to refuse to remove the reprimand and the practitioner does not provide a response in the time required by the notice or indicates they intend to make no submission in relation to the notice.</p>

A	B	C	D	E	F	G
Part and Division	Description	Not delegated by National Board	Registration and Notifications Committee	Immediate Action Committee	AHPRA	Limitations on delegation
Div 4	Registers (students)				229 , 230	
Div 5	Other records				231 , 232	
Div 6	Unique identifier				233	
Part 11						
Div 2	Inspectors				239 81(2) (SA Act) 240	
Part 12						
Div 13	Complaints, notifications, disciplinary proceedings		289, 291, 17(WA Act) 18 (Tas Act)		289, 291, 17(WA Act) 18 (Tas Act)	AHPRA may only give notice under this division.
Part 13 (Qld Act)						
N/A	Transitional (Qld)				310(1) and (2) (Qld Act)	

Change Table

Part and Division	Description	Change	Date Change Made
Clause 2.15	Removal of reprimands	<p>Insert the following definition at clause 2.15:</p> <p>Relevant Event means any health, performance or conduct notification action taken against the registrant in relation to an adverse disclosure on renewal of registration, new information returned on a criminal history check, a confirmed breach of restrictions, or where the practitioner has been the subject of action under Part 8 of the National Law or its equivalent in a co-regulatory jurisdiction. This includes receipt of any new notification irrespective of whether action was taken.</p>	June 2017
Part 10, Div 3	Registers (registered health practitioners)	<p>Insert the following limitation on the delegation of s. 226(3) to AHPRA:</p> <p>AHPRA is only delegated the power to remove information that a registered health practitioner has been reprimanded from the National Register or Specialists Register under s. 226(3) where:</p> <ul style="list-style-type: none"> - the reprimand has been published for 5 years or longer; and - there has not been a Relevant Event in the preceding 5 years regarding the practitioner. <p>AHPRA is only delegated the power to refuse a request to remove a reprimand under s. 226(3) where the Board or a duly authorised Committee (as the case may be) has issued a written notice to the registered health practitioner proposing to refuse to remove the</p>	June 2017

		reprimand and the practitioner does not provide a response in the time required by the notice or indicates they intend to make no submission in relation to the notice.	
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