

## Application Guide

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July 2014

### List of approved persons for appointment to panels – Optometry Board of Australia

#### Guide for practitioners

This information package includes:

- information about the role of panel members under the Health Practitioner Regulation National Law (the National Law), as in force in each state and territory,
- selection criteria,
- selection process,
- sitting fees and remuneration information, if application is successful, and
- relevant sections of the National Law.

Please also refer to the attached application documents:

- application form with declarations (*Attachment 1*)
- National Criminal History Check- application form and information sheet (*Attachment 2*)

## Information for potential candidates

### Introduction

The Optometry Board of Australia (the National Board) seeks applications from suitably qualified and experienced practising 'general' registered optometrists interested in being included on a list of approved persons for potential appointments to health panels and performance and professional standards panels. The panels are established from time to time by the National Board under the *Health Practitioner Regulation National Law*, as in force in each state or territory (the National Law).

Under the National Registration and Accreditation Scheme (the National Scheme), anyone with a concern about a health practitioner can make a notification to the Australian Health Practitioner Regulation Agency (AHPRA), which, if appropriate, instigates a process of investigation and further actions.

During the notifications process, the National Board, working closely with the relevant state/territory health complaints entity (such as the Queensland Health Quality and Complaints Commission), may decide that the practitioner who is the subject of the notification needs to be referred to a panel.

In preparation for this the National Board has a list of approved persons for appointment to panels who may be called on to be part of a health panel or performance and professional standards panel if required. The National Board is now inviting interested persons to apply to be added to this list of approved persons for appointment to panels. Appointments to the list of approved persons for appointment to panels are for up to three years, with eligibility for re-appointment.

Under the National Law, panels must have a certain number of members from the relevant health practitioner profession and community members.

Recruitment in accordance with s183(2) of the National Law, to the extent practicable, will exclude individuals whose residence or principal place of practice is in a co-regulatory jurisdiction (i.e. NSW).

### The purpose of the panels

The panels make independent decisions on the information before them, which may include reports and assessments about the health professional who is the subject of the notification and subsequent investigation.

A panel may make a number of decisions under the National Law, including dismissing the matter, imposing conditions on a health practitioner's registration, suspending the practitioner's registration, or, for a performance and professional standards panel, cautioning or reprimanding the practitioner.

### What is involved?

If you are selected by the National Board to be part of the list of approved persons for appointment to panels, you may or may not be called on to be part of a panel.

If you are called on to be part of a panel, you will be contacted by AHPRA staff who will explore your availability and check that you do not have a conflict of interest in relation to the particular matter. AHPRA staff will also provide advice about the location and timeframe of the panel hearing.

There is an expectation that approved panel members are available to potentially sit on at least five panel hearings per year, with no more than one panel per month. It is unlikely for the optometry profession this will be required due to the number of registrants. In addition to the hearing itself, each hearing would include approximately half to one day of preparation time to review the documentation supplied by the notifier, practitioner and the investigator.

### AHPRA

AHPRA supports the National Boards in managing the registration and notifications for health practitioners and students across Australia.

AHPRA has a national office based in Melbourne and offices in every state and territory to support local boards and committees.

## National Boards

The following 14 National Boards regulate the corresponding health professions under the National Law:

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

## Panels

The National Law provides for the establishment of health panels and performance and professional standards panels by National Boards where required to undertake hearings into specific health, performance or conduct matters. Such panels will consist of members chosen from a list of persons approved by National Boards. The relevant provisions of the National Law relating to panels are set out in Division 11 of Part 8 of the National Law. Relevant extracts are reproduced in this information package.

### Health panels

Section 181 of the National Law provides for the establishment of health panels consisting of at least three members. At least one member must be a registered health practitioner in the relevant health profession for which the Board is established; at least one member must be a medical practitioner; and at least one member must never have been a registered health practitioner in the health profession for which the Board has been established. If possible, panel members must be chosen from the jurisdiction in which the matter the subject of the hearing occurred.

### Performance and professional standards panels

Section 182 of the National Law provides for the establishment of performance and professional standards panels consisting of at least three members. At least half, but no more than two-thirds, of the members of the panel must be registered health practitioners in the health profession for which the Board is established; and at least one member must be a community member. If possible, panel members must be chosen from the jurisdiction in which the matter the subject of the hearing occurred.

### List of approved persons for appointment to panels

Section 183 of the National Law provides for National Boards to appoint individuals to a list of persons approved to be appointed as members of panels.

## Selection criteria

In selecting candidates for appointment by the Optometry Board of Australia to a list of persons approved to be appointed as panel members, the criteria listed below will be taken into account:

1. a demonstrated high level of performance in a relevant field including, if applicable, in the relevant health profession. Demonstrated leadership, teamwork and/or management skills would be beneficial, and previous board, tribunal, panel hearings, committees and/or senior management experience would be an advantage
2. demonstrated integrity and a good reputation in the community is essential
3. capacity to demonstrate impartiality, open-mindedness, sound judgment, and fairness and a knowledge of, or an ability to acquire knowledge of, the rules of procedural fairness and natural justice
4. appreciation of the need for quality and consistency in decision-making
5. a clear understanding of the objectives, roles, duties and obligations of members of hearing panel lists
6. capacity to develop sound knowledge and understanding of legislation relevant to the National Board including the Health Practitioner Regulation National Law, as in force in each state and territory
7. an appreciation of appropriate standards of professional care and the role of health practitioner registration boards in protecting the public
8. an understanding of the health sector, broader health issues and how these relate to the health profession regulated by the National Board
9. interpersonal and communication skills including:
  - a. oral and written communication skills and effective interviewing and listening skills of a high order
  - b. highly developed analytical skills
  - c. ability to prepare high quality written decisions
  - d. ability to show respect, tact and empathy when dealing with the various people and issues involved in a panel hearing
  - e. ability to work effectively as a member of a multidisciplinary team
10. to the extent practicable, registered health practitioner applicants should not have their principal place of practice in a co-regulatory jurisdiction, or otherwise be individuals who live in a co-regulatory jurisdiction (ie. in NSW ) (Section 183 of the National Law).

A *health practitioner* must be a registered health practitioner with a minimum of five years current and recent practice experience and of good standing in the health profession for which the National Board is established.

## Selection process

Shortlisted applicants may be interviewed and assessed to ensure that they have the necessary qualifications, skills and experience for the position. Applicants are also required to provide information on whether they are current members of other government or statutory bodies.

Applicants will be required to provide proof of identity, and if shortlisted undergo probity checks, which include:

- a national criminal history check by CrimTrac
- an Australian Securities and Investments Commission disqualification register check, and
- a National Personal Insolvency Index check conducted through the Insolvency and Trustee Service Australia.

Where the panel member is a practitioner, a check of National Board records will be undertaken to ensure that the practitioner is of good standing.

Copies of relevant documents are included in this package for your information, however the *Declaration of private interests* form does not need to be completed until you are notified by AHPRA that you have progressed to the next stage of the recruitment process.

### Referee reports

Referee reports are an important part of the selection process and at least one report will be obtained for all shortlisted applicants. Shortlisted applicants are asked to nominate two to three referees who can support the application relevant to the key selection criteria and duties of the position.

### Sitting fees

#### Remuneration

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

The current 2014 remuneration (daily sitting fee) is detailed in the table below.

The full day rate applies to all meetings and other assignments in excess of four hours in a day. The fees paid are assessable under the Income Tax Assessment Act 1997.

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

Under the *Superannuation Guarantee (Administration) Act 1992* you are eligible to receive contributions at 9.25% of your total annual remuneration to a superannuation fund of your choice, payable when you are paid more than \$450 in fees in a calendar month. From 1 July 2014 contributions will increase to 9.5 per cent of your total annual remuneration.

#### Expenses

Panel members are entitled to claim travel, accommodation and subsistence expenses incurred as part of participating on a panel.

More information on allowances and the process of payments and claims will be provided if you are appointed.

#### Remuneration for Health Panels and Professional Standards Panels

Role	Attendance (Fee includes preparation and up to 4 hours travel time)	Extra travel time	
	Daily sitting fee (more than 4 hours in a day)	Between 4-8 hours	Over 8 hours
Panel Member	\$590	\$295	\$590

For meetings that are less than 4 hours, half the daily fee is payable.

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

## Relevant sections of the National Law

### The Health Practitioner Regulation National Law

#### Objectives and guiding principles

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

- (1) The object of this Law is to establish a national registration and accreditation scheme for:
  - (a) the regulation of health practitioners; and
  - (b) the registration of students undertaking:
    - (i) programs of study that provide a qualification for registration in a health profession; or
    - (ii) clinical training in a health profession.
- (2) The objectives of the national registration and accreditation scheme are:
  - (a) to provide for the protection of the public by ensuring that only health practitioners who are suitably trained and qualified to practise in a competent and ethical manner are registered; and
  - (b) to facilitate workforce mobility across Australia by reducing the administrative burden for health practitioners wishing to move between participating jurisdictions or to practise in more than one participating jurisdiction; and
  - (c) to facilitate the provision of high quality education and training of health practitioners; and
  - (d) to facilitate the rigorous and responsive assessment of overseas-trained health practitioners; and
  - (e) to facilitate access to services provided by health practitioners in accordance with the public interest; and
  - (f) to enable the continuous development of a flexible, responsive and sustainable Australian health workforce and to enable innovation in the education of, and service delivery by, health practitioners.
- (3) The guiding principles of the national registration and accreditation scheme are as follows:
  - (a) the scheme is to operate in a transparent, accountable, efficient, effective and fair way;
  - (b) fees required to be paid under the scheme are to be reasonable having regard to the efficient and effective operation of the scheme;
  - (c) restrictions on the practice of a health profession are to be imposed under the scheme only if it is necessary to ensure health services are provided safely and are of an appropriate quality.

### Division 11 Panels

#### 181 Establishment of health panel

- (1) A National Board may establish a health panel if—
  - (a) the Board reasonably believes, because of a notification or for any other reason, that a registered health practitioner or student has or may have an impairment; and
  - (b) the Board decides it is necessary or appropriate for the matter to be referred to a panel.
- (2) A health panel must consist of the following members chosen from a list referred to in section 183—
  - (a) at least one member who is a registered health practitioner in the health profession for which the Board is established;
  - (b) at least one member who is a medical practitioner with expertise relevant to the matter the subject of the hearing;
  - (c) at least one member who is not, and has not been, a registered health practitioner in the health profession for which the Board has been established.
- (3) In choosing members of the panel, the National Board must, if possible, choose a member from the jurisdiction in which the matter the subject of the hearing occurred.
- (4) No more than half of the members of the panel may be registered health practitioners in the health profession for which the Board is established.

- (5) However, if the registered health practitioner the subject of the hearing is a medical practitioner, a member of the panel referred to in subsection (2)(b) is not to be considered to be registered in the health profession for which the Board is established for the purposes of subsection (4).
- (6) A person cannot be appointed to the panel if the person has been involved in any proceedings relating to the matter the subject of the hearing by the panel.

#### 182 Establishment of performance and professional standards panel

- (1) A National Board may establish a performance and professional standards panel if—
  - (a) the Board reasonably believes, because of a notification or for any other reason, that—
    - (i) the way a registered health practitioner practises the health profession is or may be unsatisfactory; or
    - (ii) the registered health practitioner's professional conduct is or may be unsatisfactory; and
  - (b) the Board decides it is necessary or appropriate for the matter to be referred to a panel.
- (2) A performance and professional standards panel must consist of at least 3 members.
- (3) In choosing members of the panel, the National Board must, if possible, choose a member from the jurisdiction in which the matter the subject of the hearing occurred.
- (4) At least half, but no more than two-thirds, of the members of the panel must be persons who are registered health practitioners in the health profession for which the Board is established, and chosen from a list approved under section 183.
- (5) At least one member must be a person who represents the community and chosen from a list approved under section 183.
- (6) A person may not be appointed to the panel if the person has been involved in any proceedings relating to the matter the subject of the hearing by the panel.

#### 183 List of approved persons for appointment to panels

- (1) A National Board may appoint individuals to a list of persons approved to be appointed as members of panels.
- (2) To the extent practicable, individuals appointed under subsection (1) should not—
  - (a) for registered health practitioners, be individuals whose principal place of practice is in a co-regulatory jurisdiction; or
  - (b) otherwise, be individuals who live in a co-regulatory jurisdiction.\

#### 184 Notice to be given to registered health practitioner or student

- (1) A panel must give notice of its hearing of a matter to the registered health practitioner or student the subject of the hearing.
- (2) The notice must state—
  - (a) the day, time and place at which the hearing is to be held; and
  - (b) the nature of the hearing and the matters to be considered at the hearing; and
  - (c) that the registered health practitioner or student is required to attend the hearing; and
  - (d) that the registered health practitioner may be accompanied at the hearing by an Australian legal practitioner or other person; and
  - (e) that if the registered health practitioner or student fails to attend the hearing the hearing may continue, and the panel may make a decision, in the practitioner's or student's absence; and
  - (f) the types of decision the panel may make at the end of the hearing.

#### 185 Procedure of panel

- (1) Subject to this Division, a panel may decide its own procedures.
- (2) A panel is required to observe the principles of natural justice but is not bound by the rules of evidence.

- (3) A panel may have regard to—
  - (a) a report prepared by an assessor about the registered health practitioner or student; and
  - (b) any other information the panel considers relevant to the hearing of the matter.

#### 186 Legal representation

- (1) At a hearing of a panel, the registered health practitioner or student the subject of the hearing may be accompanied by an Australian legal practitioner or another person.
- (2) An Australian legal practitioner or other person accompanying the registered health practitioner or student may appear on behalf of the practitioner or student only with the leave of the panel.
- (3) The panel may grant leave for an Australian legal practitioner or other person to appear on behalf of the registered health practitioner or student only if the panel considers it appropriate in the particular circumstances of the hearing.

#### 187 Submission by notifier

If a matter the subject of a hearing before a panel relates to a notification, the notifier may, with the leave of the panel, make a submission to the panel about the matter.

#### 188 Panel may proceed in absence of registered health practitioner or student

At a hearing, a panel may proceed in the absence of the registered health practitioner or student the subject of the proceedings if the panel reasonably believes the practitioner or student has been given notice of the hearing.

#### 189 Hearing not open to the public

A hearing before a panel is not open to the public.

#### 190 Referral to responsible tribunal

A panel must stop hearing a matter and require the National Board that established the panel to refer the matter to a responsible tribunal under section 193 if, at any time—

- (a) the practitioner or student the subject of the hearing asks the panel for the matter to be referred to a responsible tribunal under section 193; or
- (b) if the subject of the hearing is a registered health practitioner—
  - (i) the panel reasonably believes the evidence demonstrates the practitioner may have behaved in a way that constitutes professional misconduct; or
  - (ii) the panel reasonably believes the evidence demonstrates the practitioner's registration may have been improperly obtained because the practitioner or someone else gave the Board information or a document that was false or misleading in a material particular.

#### 191 Decision of panel

- (1) After hearing a matter about a registered health practitioner, a panel may decide—
  - (a) the practitioner has no case to answer and no further action is to be taken in relation to the matter; or
  - (b) one or more of the following—
    - (i) the practitioner has behaved in a way that constitutes unsatisfactory professional performance;
    - (ii) the practitioner has behaved in a way that constitutes unprofessional conduct;
    - (iii) the practitioner has an impairment;
    - (iv) the matter must be referred to a responsible tribunal under section 193;
    - (v) the matter must be referred to another entity, including, for example, a health complaints entity, for investigation or other action.
- (2) After hearing a matter about a student, a health panel may decide—
  - (a) the student has an impairment; or

- (b) the matter must be referred to another entity, including, for example, a health complaints entity, for investigation or other action; or
  - (c) the student has no case to answer and no further action is to be taken in relation to the matter.
- (3) If a panel decides a registered health practitioner or student has an impairment, or that a practitioner has behaved in a way that constitutes unsatisfactory professional performance or unprofessional conduct, the panel may decide to do one or more of the following—
- (a) impose conditions on the practitioner's or student's registration, including, for example, in relation to a practitioner—
    - (i) a condition requiring the practitioner to complete specified further education or training within a specified period; or
    - (ii) a condition requiring the practitioner to undertake a specified period of supervised practice; or
    - (iii) a condition requiring the practitioner to do, or refrain from doing, something in connection with the practitioner's practice; or
    - (iv) a condition requiring the practitioner to manage the practitioner's practice in a specified way; or
    - (v) a condition requiring the practitioner to report to a specified person at specified times about the practitioner's practice; or
    - (vi) a condition requiring the practitioner not to employ, engage or recommend a specified person, or class of persons;
  - (b) for a health panel, suspend the practitioner's or student's registration;
  - (c) for a performance and professional standards panel, caution or reprimand the practitioner.
- (4) If a panel decides to impose a condition on a registered health practitioner's or student's registration, the panel must also decide a review period for the condition.
- (5) A decision by a panel that a registered health practitioner has no case to answer in relation to a matter does not prevent a National Board or adjudication body taking the matter into consideration at a later time as part of a pattern of conduct or practice by the health practitioner.

#### 192 Notice to be given about panel's decision

- (1) As soon as practicable after making a decision under section 191, a panel must give notice of its decision to the National Board that established it.
- (2) The National Board must, within 30 days after the panel makes its decision, give written notice of the decision to—
  - (a) the registered health practitioner or student the subject of the hearing; and
  - (b) if the hearing related to a notification, the notifier.
- (3) The notice given to the registered health practitioner or student must state—
  - (a) the decision made by the panel; and
  - (b) the reasons for the decision; and
  - (c) that the registered health practitioner or student may appeal against the decision; and
  - (d) how an application for appeal may be made and the period within which the application must be made.
- (4) The notice to the notifier must include information about the decision made by the panel but only to the extent the information is available on the National Board's register.