

# Fact sheet

## Panel hearings



Australian Health Practitioner Regulation Agency

Aboriginal and Torres Strait  
Islander health practice  
Chinese medicine  
Chiropractic  
Dental  
Medical  
Medical radiation practice  
Nursing and Midwifery  
Occupational therapy  
Optometry  
Osteopathy  
Pharmacy  
Physiotherapy  
Podiatry  
Psychology

June 2014

### What you need to know about panel hearings

Under Division 11 of the National Law<sup>1</sup>, a National Board has the power to establish two types of panel depending on the type of notification. There are health panels (for health matters) and performance and professional standards panels (for conduct and performance issues). The two types of panel have different membership requirements and slightly different outcomes available. Please note that a student can only be referred to a health panel; a student cannot be referred to a performance and professional standards panel.

#### Health panel

A National Board may establish a health panel if it decides it is necessary or appropriate to do so and believes that a registered practitioner or student has, or may have, an impairment.

A health panel consists of at least three members selected from a list of people approved by the National Board, including:

- at least one member who is a registered practitioner in the relevant health profession
- at least one member who is a medical practitioner with expertise\* relevant to the matter subject to the hearing, and
- at least one member who is not, and has never been, a registered health practitioner.

\*Relevant expertise includes, for example, specialist qualifications in psychiatry, drug and alcohol addiction or neurology.

#### Performance and professional standards panel

A National Board may establish a performance and professional standards panel if it decides it is necessary or appropriate to do so and believes that because of a notification, or for any other reason, that:

- the way a registered practitioner practises is, or may be, unsatisfactory, or
- the registered practitioner's professional conduct is, or may be, unsatisfactory.

A performance and professional standards panel consists of at least three members, selected from a list of people approved by the National Board:

- at least half, but no more than two-thirds, of the members of the panel must be registered practitioners in the same profession as the practitioner, and
- at least one person must represent the community.

**Note: The procedures below also apply to students, but only in relation to health panels.**

#### Notice of panel hearing

AHPRA gives written notice of the hearing to the practitioner. The information provided includes what the hearing is about and details of the matters to be considered. AHPRA also gives the notifier this information.

AHPRA gives practitioners enough time and notice so they can consider the allegations, prepare a response or arguments about the issues in question, or explain why, for example, their conduct was reasonable in the circumstances.

The notice of panel hearing must also state:

- the day, time and place the hearing is to be held
- that the practitioner is required to attend the hearing
- that the practitioner may be accompanied by an Australian legal practitioner or other person

<sup>1</sup> The Health Practitioner Regulation National Law, as in force in each state and territory (the National Law).

- that if the practitioner fails to attend the hearing, the hearing may continue and the panel may make a decision in their absence, and
- the type of decision the panel may make at the end of the hearing.

### Procedure of a panel

The panel decides its own procedures, consistent with the principles of natural justice. The panel will ask questions and listen to submissions, but the proceedings are not formal like a court or tribunal. AHPRA has developed legal practice notes about a range of legal issues to make sure panels apply the National Law consistently.

These are published on the AHPRA website at [www.ahpra.gov.au/Legislation-and-Publications/legal-practice-notes.aspx](http://www.ahpra.gov.au/Legislation-and-Publications/legal-practice-notes.aspx) and may be of interest to practitioners involved in panel hearings.

### Before the hearing

AHPRA will tell the practitioner the names of the panel members who will be conducting the hearing. This gives the practitioner the opportunity to tell AHPRA about any concerns about or conflicts with selected panel members.

The panel is given all the relevant information supplied by the notifier and practitioner and obtained by the investigator during the investigation, or as a result of a health or performance assessment. This includes information the Board relies on when initially making its decision to refer the matter to a hearing. The material may also include supplementary information such as expert reports or formal witness statements.

Panel members read all the material before the hearing. During the hearing, the panel may refer to a report prepared by an assessor about the practitioner, and to any other information it considers relevant to the hearing.

The practitioner who is the subject of the hearing is provided with the same material as the panel, so that the practitioner has had the opportunity to read all the material and to prepare a response.

### During the hearing

At the start of the hearing, one of the panel members (usually the chair) will introduce panel members, state the purpose of the hearing and explain the allegations to be considered. The chair will also explain the procedures that will apply at the hearing.

To gain the information it needs, the panel can interview the practitioner, the notifier or other parties (such as experts) during the course of the hearing. The practitioner is given the opportunity to discuss the allegations with the panel and to make submissions.

Sometimes, the practitioner, student or their lawyer wants to ask the notifier or witness questions. Each panel will decide case by case if this is appropriate.

During the hearing, the panel may decide it needs further information about a specific issue and may need to adjourn the hearing to get this. If this happens the practitioner will be given the opportunity to comment on any new material that is adverse to their case.

### Referral to a tribunal

The panel must stop hearing a matter and require the Board to refer the matter to a tribunal if:

- the practitioner who is the subject of the hearing asks the panel for the matter to be referred to the responsible tribunal, or
  - the panel reasonably believes the evidence demonstrates the practitioner may have behaved in a way that constitutes professional misconduct\*, or
  - 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 way.

\* Professional misconduct of a registered health practitioner is defined in the National Law as including:

- unprofessional conduct by the practitioner that amounts to conduct that is substantially below the standard reasonably expected of a registered health practitioner of an equivalent level of training and experience; and
- more than one instance of unprofessional conduct that, when considered together, amounts to conduct that is substantially below the standard reasonably expected of a registered health practitioner of an equivalent level of training and experience; and
- conduct of the practitioner, whether occurring in connection with the practice of the health practitioner's profession or not, that is inconsistent with the practitioner being a fit and proper person to hold registration in the profession.

### Presence of others at the hearing

There are not usually witnesses at a panel hearing. Panels tend to rely on witness statements and other written material.

The National Law allows a practitioner to be accompanied by a legal practitioner or another person. Practitioners can ask the panel, through AHPRA before the hearing, if they want to have a lawyer or another person speak on their behalf.

The panel decides, as part of its procedures, whether or not the legal representative or another person may speak for the practitioner at the hearing. AHPRA will tell practitioners this before the hearing. The panel is likely to consider factors such as the practitioner's ability to participate in the process, the complexity of the material to be considered, the seriousness of the allegations and the nature of the notification.

By law, panel hearings are not open to the public.

### The standard of proof in a panel hearing

The standard of proof for a panel hearing is the civil standard known as 'satisfaction on the balance of probabilities' that the alleged behaviour occurred. This means that the panel must be reasonably satisfied that the practitioner actually behaved in the way that is alleged, but does not mean that the panel must be satisfied 'beyond reasonable doubt'.

### Decision of a panel

After the hearing, the panel may decide that the practitioner has no case to answer and to take no further action. Alternatively, it can decide that:

- the practitioner has behaved in a way that constitutes unsatisfactory professional performance and/or
- the practitioner has behaved in a way that constitutes unprofessional conduct and/or
- the practitioner has an impairment and/or
- the matter must be referred to a responsible tribunal, and/or
- the matter must be referred to another entity for investigation or other action.

After hearing a matter about a **student**, a health panel may decide the student:

- has no case to answer and no further action is to be taken or
- has an impairment, or
- that the matter must be referred to another entity for investigation or other action.

If a panel decides that a **practitioner** or **student** has an impairment, or that the **practitioner** has behaved in a way that constitutes unsatisfactory professional performance or unprofessional conduct, the panel may decide to:

- impose conditions on the registration of the practitioner or student and/or
- for a **health panel**, suspend the registration of the practitioner or student, and/or
- for a **performance and professional standards panel**, caution or reprimand the practitioner.

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

In some cases, the chair of the panel may advise the practitioner of the panel's decision immediately after the hearing. The panel must give formal written notice of its decision to the Board as soon as possible after making the decision.

The Board must, within 30 days after the panel makes its decision, give written notice of it to the practitioner or student who is the subject of the hearing. This notice includes:

- a written copy of the decision made by the panel
- the reasons for the decision
- advice that the practitioner or student may appeal against the decision
- information about how to apply for an appeal, and
- the period within which the application must be made.

An **appeals information sheet** is also available.

[This document will be reviewed in June 2015.](#)