

Attachment 4

Relevant sections of the National Law relating to board members

National Board members

The following sections of the National Law set out the legislative requirements for appointment of National Board members:

33 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 decide 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. The practitioner members of a National Board must consist of—
 - a. at least one member from each large participating jurisdiction; and
 - b. at least one member from a small participating jurisdiction.
6. At least 2 of the members of a National Board must be persons appointed as community members.
7. At least one of the members of a National Board must live in a regional or rural area.
8. A person cannot be appointed as a member of a National Board if the person is a member of the Agency Management Committee.
9. One of the practitioner members of the National Board is to be appointed as Chairperson of the Board by the Ministerial Council.
10. Schedule 4 sets out provisions relating to a National Board.
11. In this section—

large participating jurisdiction means any of the following States that is a participating jurisdiction—

- a. New South Wales;
- b. Queensland;
- c. South Australia;
- d. Victoria;
- e. Western Australia.

small participating jurisdiction means any of the following States or Territories that is a participating jurisdiction—

- a. the Australian Capital Territory;
- b. the Northern Territory;
- c. Tasmania.

34 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—
 - a. is not a registered health practitioner in the health profession for which the Board is established; and
 - b. has not at any time been registered as a health practitioner in the health profession under this Law or a corresponding prior Act.
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 registered as a health practitioner in the health profession for which the Board is established, whether before or after the commencement of this Law, as a result of the person's misconduct, impairment or incompetence; or
 - 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.

The following clauses in Schedule 4 of the National Law are also relevant to the appointment of National Board members:

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 member's creditors or makes an assignment of the member's 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 the member's functions as a member.

5 Vacancies to be advertised

1. Before the Ministerial Council appoints a member of a National Board, the vacancy to be filled is to be publicly advertised.
2. The National Agency may assist the Ministerial Council in the process of appointing members of a National Board, including in the advertising of vacancies.
3. 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 6 confer power to appoint acting members of a National Board.

6 Extension of term of office during vacancy in membership

1. If the office of a member becomes vacant because the member has completed the member's 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 the member's 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 the member's term of office is 6 months.

State and Territory Boards

The relevant sections of the National Law relating to State and Territory Boards are:

36 State and Territory Boards

1. A National Board may establish a committee (a State or Territory Board) for a participating jurisdiction to enable the Board to exercise its functions in the jurisdiction in a way that provides an effective and timely local response to health practitioners and other persons in the jurisdiction.
2. A State or Territory Board is to be known as the "[Name of participating jurisdiction for which it is established] Board" of the National Board.

3. The members of a State or Territory Board are to be appointed by the responsible Minister for the participating jurisdiction.

Example.

- a. The Nursing and Midwifery Board of Australia decides to establish a State or Territory Board for New South Wales. The State or Territory Board will be known as the New South Wales Board of the Nursing and Midwifery Board of Australia. The members of the State or Territory Board will be appointed by the responsible Minister for New South Wales.
 - b. The Psychology Board of Australia decides to establish a State or Territory Board for South Australia, the Northern Territory and Western Australia. The State or Territory Board will be known as the South Australia, the Northern Territory and Western Australia Regional Board of the Psychology Board of Australia. The members of the State or Territory Board will be appointed jointly by the responsible Ministers for South Australia, the Northern Territory and Western Australia.
4. In deciding whether to appoint a person as a member of a State or Territory Board, the responsible Minister is to have regard to the skills and experience of the person that are relevant to the Board's functions.
 5. At least half, but not more than two-thirds, of the members of a State or Territory Board must be persons appointed as practitioner members.
 6. At least 2 of the members of a State or Territory Board must be persons appointed as community members.
 7. Before a responsible Minister appoints a member of a State or Territory Board the vacancy to be filled is to be publicly advertised.
 8. The National Agency may assist a responsible Minister in the process of appointing members of a State or Territory Board, including in the advertising of vacancies.
 9. It is not necessary to advertise a vacancy in the membership of a State or Territory Board before appointing a person to act in the office of a member.

Note.

The general interpretation provisions applicable to this Law under section 6 confer power to appoint acting members of a State or Territory Board.

The following clauses in Schedule 7 of the National Law are relevant to the appointment of all board members:

27 Acting appointments

1. If this Law authorises a person or body to appoint a person to act in an office, the person or body may, in accordance with this Law, appoint—
 - a. a person by name; or
 - b. a particular officer, or the holder of a particular office, by reference to the title of the office concerned;to act in the office.
2. The appointment may be expressed to have effect only in the circumstances specified in the instrument of appointment.
3. The appointer may—
 - a. determine the terms and conditions of the appointment, including remuneration and allowances; and
 - b. terminate the appointment at any time.
4. The appointment, or the termination of the appointment, must be in, or evidenced by, writing signed by the appointer.
5. The appointee must not act for more than 1 year during a vacancy in the office.
6. If the appointee is acting in the office otherwise than because of a vacancy in the office and the office becomes vacant, then, subject to subclause (2), the appointee may continue to act until—
 - a. the appointer otherwise directs; or
 - b. the vacancy is filled; or
 - c. the end of a year from the day of the vacancy;whichever happens first.
7. The appointment ceases to have effect if the appointee resigns by writing signed and delivered to the appointer.
8. While the appointee is acting in the office—
 - a. the appointee has all the powers and functions of the holder of the office; and
 - b. this Law and other laws apply to the appointee as if the appointee were the holder of the office.
9. Anything done by or in relation to a person purporting to act in the office is not invalid merely because—
 - a. the occasion for the appointment had not arisen; or
 - b. the appointment had ceased to have effect; or

- c. the occasion for the person to act had not arisen or had ceased.
10. If this Law authorises the appointer to appoint a person to act during a vacancy in the office, an appointment to act in the office may be made by the appointer whether or not an appointment has previously been made to the office.

28 Powers of appointment imply certain incidental powers

1. If this Law authorises or requires a person or body to appoint a person to an office—
 - a. the power may be exercised from time to time as occasion requires; and
 - b. the power includes—
 - i. power to remove or suspend, at any time, a person appointed to the office; and
 - ii. power to appoint another person to act in the office if a person appointed to the office is removed or suspended; and
 - iii. power to reinstate or reappoint a person removed or suspended; and
 - iv. power to appoint a person to act in the office if it is vacant (whether or not the office has ever been filled); and
 - v. power to appoint a person to act in the office if the person appointed to the office is absent or is unable to discharge the functions of the office (whether because of illness or otherwise).
2. The power to remove or suspend a person under subclause (1)(b) may be exercised even if this Law provides that the holder of the office to which the person was appointed is to hold office for a specified period.
3. The power to make an appointment under subclause (1)(b) may be exercised from time to time as occasion requires.
4. An appointment under subclause (1)(b) may be expressed to have effect only in the circumstances specified in the instrument of appointment.