

National Professional Standards Panel Regulations



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Part A: Authority and interpretation

Regulation 1 Authority

1.1 These Regulations are made under the Association's Constitution.

1.2 If any provision of these Regulations is inconsistent with the Constitution, the Constitution applies to the extent of the inconsistency.

Regulation 2 Definitions

In these Regulations:

Ahpra Code of Conduct the Code of conduct for registered health practitioners published by Ahpra and adopted by the Physiotherapy Board of Australia, as in force from time to time.

APA Code of Conduct the Association's code of conduct for its Members, as amended by the Board from time to time.

Association the Australian Physiotherapy Association.

Board the Board of Directors of the Association.

CEO the Chief Executive Officer of the Association.

Complaints Management Procedure the procedure approved by the CEO for managing complaints/concerns about Members, including evaluation categories and the decision tool.

Constitution the Association's Constitution.

Delegated Staff staff delegated by the CEO to support the NPSP.

Mandatory Notification a notification that meets the Ahpra definition of a mandatory notification under the National Law.

Member a current member of the Association.

Member Services the Association's Member Services function.

NAC the Association's National Advisory Council.

National Law the Health Practitioner Regulation National Law as applied in each Australian state and territory.

NPSP the National Professional Standards Panel established under the Constitution.

Regulatory Authority any of the following: Ahpra; the Physiotherapy Board of Australia; the New South Wales Health Professions Councils Authority; the Physiotherapy Council of NSW; the Queensland Office of the Health Ombudsman; or any other agency with statutory authority to investigate registered health practitioners.

Part B: Purpose and functions

Regulation 3 Purpose

3.1 The NPSP is the Association's expert body on physiotherapist conduct, ethics and registration risk. Its purpose is to:

- (a) educate, encourage and assist Members to achieve and uphold the professional and ethical standards set out in the APA Code of Conduct and the Ahpra Code of Conduct;
- (b) support Members who are dealing with a Regulatory Authority notification, or any other conduct difficulty;
- (c) evaluate concerns received by the Association and, where appropriate, redirect them to the Regulatory Authority best placed to deal with them; and
- (d) review the small subset of matters that may warrant an APA membership decision, and make recommendations to the Board.

3.2 The NPSP does not duplicate the role of a Regulatory Authority with regard to concerns investigations and/or management.

3.3 The NPSP has no power to enter premises, to compel the production of evidence that is not publicly available, including but not limited to clinical documentation and witness statements, or to compel a person to cooperate with it or to attend before it. The NPSP may ask a Member to provide evidence voluntarily so that it can review a matter.

Regulation 4 Functions of the NPSP

4.1 The NPSP has four functions. They are:

- (a) Complaints Evaluation. The NPSP evaluates every concern about a Member's conduct that comes to the Association and makes a recommendation for how it should be managed (Regulation 26).
- (b) Member support. The NPSP supports Members who are facing conduct, regulatory or registration difficulty (Regulation 28).
- (c) Membership Review. The NPSP reviews matters that may warrant an APA membership decision, and membership applications where conduct or fitness are in question, and makes a recommendation to the Board or the APA executive as appropriate. (Regulations 29 to 32).
- (d) Consultancy. The NPSP provides guidance and information about ethics and professional standards to Members and Association staff, on request or as part of the functions above, and may identify and facilitate education initiatives drawing on trends in concerns, notifications and regulatory or legislative changes.

Part C: Composition, appointment and office bearers

Regulation 5 Composition

5.1 The NPSP consists of up to six NPSP Members: a Chair and up to five other Members appointed by the Board.

5.2 The NPSP may appoint a Deputy Chair from among the NPSP Members. The NPSP may operate without a Deputy Chair.

5.3 In the absence of a Deputy Chair, and where the Chair is absent, the NPSP members may appoint an acting Chair from among the NPSP Members for a period of up to three months.

Regulation 6 Appointment and term

6.1 Any Member is eligible to be appointed to the NPSP, except a Member who is a Director of the Association.

6.2 Nominations for NPSP are received via EOI advertised to the APA Membership. The NPSP shortlists applicants and makes a recommendation to the Board, taking into consideration the benefit of a broad mix of skills and experience.

6.3 Appointments are made by the Board.

6.4 The term of an NPSP Member begins on the date of their Board appointment and runs for three years.

6.5 A Member may serve no more than two consecutive three-year terms on the NPSP, after which they are not eligible to be reappointed for at least one year.

Regulation 7 Chair

7.1 The NPSP elects one NPSP Member as its Chair.

7.2 The Chair:

- (a) oversees the ordinary business of the NPSP;

- (b) allocates each new matter to a support track or a review track under Regulation 22;
- (c) promotes and upholds the role and responsibilities of the NPSP;
- (d) is the NPSP's representative to the NAC; and
- (e) is a member of the Association's Insurance and Safety Committee (see Regulation 11) and attends other APA Board committees at the direction of the CEO.

7.3 The Chair's term begins on the date of their election and runs for two years. So far as practicable, the NPSP should time the election of the Chair so that the term commences on 1 January, to align with the NAC appointment calendar, but a term may commence on another date where circumstances require. A person may serve no more than two consecutive terms as Chair.

7.4 If an election of the Chair results in a tied vote between two or more nominees, the Board will appoint the Chair from among those nominees.

Regulation 8 Deputy Chair

8.1 If the NPSP has a Deputy Chair, the Deputy Chair assists the Chair and acts in the Chair's absence.

8.2 The Deputy Chair's term begins on the date of their appointment and runs for two years. So far as practicable, the NPSP should time the appointment of the Deputy Chair so that the term commences on 1 January, to align with the Chair's term, but a term may commence on another date where circumstances require. A person may serve no more than two consecutive terms as Deputy Chair.

Regulation 9 Cessation, resignation and removal

9.1 A Member ceases to be an NPSP Member if they:

- (a) cease to be a Member of the Association;
- (b) are elected or appointed as a Director of the Association;
- (c) are absent without reasonable excuse from three consecutive meetings of the NPSP;
- (d) are found by a Regulatory Authority to have engaged in professional misconduct; or
- (e) are removed from office under Regulation 9.3.

9.2 An NPSP Member may resign at any time by written notice to the Chair. The Chair may resign with written notice to the CEO. Resignation takes effect on the date specified in the notice.

9.3 The Chair or the Deputy Chair may be removed from office by a resolution of at least 75 per cent of the NPSP Members. The CEO must be notified of the resolution. The Board may, at its sole discretion, remove the Chair, the Deputy Chair or any NPSP Member at any time.

Regulation 10 Casual vacancies

10.1 If a position on the NPSP becomes vacant before the end of a term, the Board may appoint a Member to fill the casual vacancy.

10.2 If the position of Chair becomes vacant before the end of a term, the NPSP must elect an NPSP Member as Chair at its next meeting.

Regulation 11 Insurance and Safety Committee NPSP Representative

11.1 The Chair attends the Association's Insurance and Safety Committee (ISC).

11.2 The Chair's role on the ISC is to

- (a) bring insights on concerns, regulatory matters, and clinical and professional risks to the ISC to help inform risk management strategy; and

- (b) contribute to discussions and decisions about the Association's Member Professional Indemnity Insurance program.

Regulation 12 NAC Representative

- 12.1** The Chair is the NPSP's representative to the NAC.
- 12.2** The NAC Representative must comply with the regulations of the NAC.
- 12.3** The Chair's role at NAC is to contribute expertise on professional standards as relevant, and to contribute as a general Association member, bringing their own experience, knowledge and insights to NAC discussions. The Chair's contribution at NAC is not restricted to NPSP matters.

Part D: Meetings of the NPSP

Regulation 13 Calling meetings

- 13.1** The NPSP meets as often as needed to discharge its functions, up to ten times a year. The schedule for the year is set by the NPSP on or before its first meeting of the year.
- 13.2** The Chair or Delegated Staff must give NPSP Members at least five days' written notice of each meeting. The notice must include the date, time, place (or technology used), and the business of the meeting.
- 13.3** Delegated Staff also attend NPSP meetings but are not required to be present for the meeting to proceed. The Chair may request that the Delegated Staff absent themselves from some or all of a meeting for sensitive matters.

Regulation 14 Method of meetings

- 14.1** A meeting may be held in person, by video, by phone, or by any combination, provided all NPSP Members at the meeting can participate in discussion.

Regulation 15 Cancellation of meetings

- 15.1** The Chair or Delegated Staff may cancel a meeting by giving NPSP Members at least one day's written notice.

Regulation 16 Business of meetings

- 16.1** The business of any meeting must fall within the functions of the NPSP set out in Regulation 4.
- 16.2** The NPSP may agree to discuss business not listed in the notice of meeting.

Regulation 17 Quorum

- 17.1** A quorum is more than half the NPSP Members.
- 17.2** A meeting may proceed without a quorum, but no resolution may be passed unless a quorum is present. The Chair may direct that any motion considered at a meeting without a quorum be circulated to all NPSP Members for their consideration within seven days of the meeting.

Regulation 18 Chairing

- 18.1** The Chair chairs each meeting of the NPSP.
- 18.2** If the Chair is not present within ten minutes of the scheduled start of a meeting, is unwilling to chair, or the position is vacant, the Deputy Chair chairs the meeting. If the Deputy Chair is also unavailable or unwilling, the NPSP chooses an NPSP Member or Delegated Staff to chair.

Regulation 19 Voting

19.1 Each NPSP Member is entitled to one vote.

19.2 A resolution is passed if more than 50 per cent of the NPSP Members present vote in favour. The Chair has a casting vote in the event of a tie.

Regulation 20 Resolution outside a meeting

20.1 A resolution agreed in writing by more than 50 per cent of the NPSP Members is valid as if passed at a meeting.

Regulation 21 Meeting minutes

21.1 Delegated Staff or the Chair must prepare meeting minutes and circulate them to NPSP Members within fourteen days of each meeting. The minutes must:

- (a) list the items on the meeting agenda;
- (b) summarise the outcomes of discussion;
- (c) not identify comments by individual NPSP Members;
- (d) record decisions and resolutions; and
- (e) reflect any resolution of the NPSP about what to include or exclude.

21.2 NPSP Members may propose amendments to the meeting minutes within ten days of the meeting. Delegated Staff must circulate the amended minutes.

21.3 Meeting minutes are an internal record. They are not intended for general distribution.

Part E: Cordon and recusal

The NPSP both supports Members and reviews Members. The same NPSP Member must not do both for the same Member. The cordon is the separation this Part creates between the two roles: an NPSP Member who supports a Member is recused from any review of that Member, but remains free to act in all their other NPSP capacities. Recusal at the level of the individual matter is the mechanism that maintains the cordon.

Regulation 22 Allocation of matters

22.1 When a matter comes to the NPSP, the Chair allocates it to:

- (a) the support pathway (Part G, Regulation 28);
- (b) the review pathway (Part H, Regulation 29); or
- (c) both, with different NPSP Members allocated to each track.

22.2 Allocation decisions are recorded.

Regulation 23 Matter-level recusal

23.1 An NPSP Member who has provided substantial, case-specific support to a Member is recused, permanently, from any review of that Member by the NPSP. Support that is general or incidental, such as a single signposting or wellbeing conversation, does not of itself require recusal, but must be declared under Regulation 23.2.

23.2 An NPSP Member must declare any other actual, potential or perceived conflict of interest in relation to a matter, and the Chair decides whether the NPSP Member should be recused.

23.3 Recusal applies to participation in any discussion, deliberation or vote. A recused NPSP Member must not be present for the relevant business of a meeting.

Regulation 24 Recusal records

24.1 Delegated Staff must keep a record of:

- (a) each matter received by the NPSP and the track to which it was allocated;
- (b) the NPSP Members allocated to each matter; and
- (c) each recusal, including the reason and the date.

24.2 The recusal record is available to the Board on request.

Regulation 25 Delegated Staff

25.1 Delegated Staff are appointed by the Association to provide administrative and operational support to the NPSP.

25.2 The Delegated Staff responsibilities are:

- (a) provide a conduit for communication between the NPSP and relevant Association staff;
- (b) facilitate the meeting schedule and meetings administration;
- (c) maintain records of NPSP business in accordance with Association processes, including the storage of sensitive or confidential information in secure files;
- (d) prepare reports on NPSP activities to Association staff or the Board as requested; and
- (e) other duties as directed by the relevant division General Manager.

Part F: Evaluation of incoming matters

Regulation 26 Pathway decision

26.1 Every concern about a Member's conduct received by the Association is first screened by Delegated Staff. At screening, Delegated Staff may close or redirect a concern only where it clearly does not relate to a current Member of the Association, is not about a Member's conduct, is already being dealt with by a Regulatory Authority, or is plainly a commercial or employment dispute of the kind described in Regulation 26.4(b). If there is any doubt, the concern comes to the NPSP for a pathway decision. Delegated Staff record every screening outcome and report all screened-out concerns to the Chair and to the NPSP at its next meeting, and the NPSP may direct that any such concern be brought forward for a pathway decision.

26.2 The NPSP must decide on one or more of the following:

- (a) The concern is within the remit of Ahpra or another Regulatory Authority (not the NPSP) and the person raising the concern is advised to redirect the concern accordingly;
- (b) No further action is required; or
- (c) The concern is to be managed under Part H (Review); or
- (d) The Member is offered support under Part G (Member support), including where the concern relates to a notification to Ahpra or another Regulatory Authority that is underway.

26.3 The Complaints Management Procedure sets out the categories of concern that fall into each of the options in Regulation 26.2 and the decision tool used by the NPSP to apply them.

26.4 The NPSP must decide to take no further action if the NPSP reasonably believes the concern:

- (a) is frivolous, vexatious, misconceived or lacking in substance;
- (b) relates primarily to an independent dispute between Members, including (but not limited to) employment terms, sale or purchase of a practice, or location of a practice, unless the conduct in question goes to the integrity or reputation of the physiotherapy profession (for example, billing fraud, over-servicing, or NDIS roting by an employer), in which case the NPSP will consider the matter; or

(c) does not fall within the categories that the NPSP may review under Regulation 29.

26.5 If a Regulatory Authority is investigating the matter, the NPSP does not investigate the same matter while the Regulatory Authority's investigation is on foot. The NPSP may continue to support the Member under Part G.

26.6 The NPSP must make a pathway decision within thirty days of the concern being referred to the NPSP following screening under Regulation 26.1. If the NPSP cannot make a pathway decision within that period, the Chair must record the reason and a revised target date.

Regulation 27 Mandatory notifications

27.1 If the NPSP reasonably believes a concern meets the threshold for a Mandatory Notification, the NPSP must encourage the person raising the concern to make a voluntary notification to Ahpra, or if the person raising the concern is a registered health professional, the NPSP must remind them of their legal obligation to make a Mandatory Notification.

27.2 Whether or not the person raising the concern makes their own notification, the NPSP must make a Mandatory Notification to Ahpra in accordance with the National Law. Delegated Staff lodge the Mandatory Notification on behalf of the NPSP.

27.3 The NPSP must maintain current knowledge of Mandatory Notification circumstances, thresholds and requirements as described by Ahpra.

27.4 The Chair of the NPSP must notify Delegated Staff when a concern meets the criteria for a Mandatory Notification. Delegated Staff lodge the Mandatory Notification and may request support and information from the NPSP in doing so.

Part G: Member support

Regulation 28 Member support function

28.1 The NPSP supports Members who are dealing with an Ahpra or other Regulatory Authority notification, or any other conduct difficulty. Support is offered without interfering in any Regulatory Authority process.

28.2 The support the NPSP may offer includes:

- (a) a confidential conversation in which the NPSP listens and signposts the Member to appropriate resources;
- (b) assistance in understanding what a Regulatory Authority may be asking and what appropriate actions the Member may consider, without giving legal advice or interfering in any way in the investigative process including preparation of written responses;
- (c) a wellbeing check-in, including proactive check-ins where the NPSP is aware that a Member is experiencing difficulties; and
- (d) referral to the Association's Employee Assistance Program where appropriate.

28.3 Support is not legal advice and is not a substitute for the Member obtaining their own legal advice.

Part H: Review and recommendations

Regulation 29 Matters the NPSP may review

29.1 The NPSP may conduct a review of a Member's conduct only where the matter relates to one or more of the following and is not concurrently under investigation by a Regulatory Authority or other law enforcement agency:

- (a) alleged conduct or action prejudicial to the interests of the Association, its Members or the physiotherapy profession;

- (b) alleged conduct or action that brings the Association, its Members or the physiotherapy profession into disrepute;
- (c) alleged conduct or action that fails to comply with the Constitution or the APA Code of Conduct;
- (d) conduct that a Regulatory Authority has determined constitutes professional misconduct, unprofessional conduct or unsatisfactory professional performance (or similar); or
- (e) conduct that has led to disciplinary action by a Regulatory Authority.

29.2 If a Regulatory Authority has fully investigated a matter, the NPSP may decide that no further investigation by the NPSP is required. In that case, the NPSP may consider the circumstances of the concern together with the findings of the Regulatory Authority in deciding what (if anything) to recommend to the Board.

Regulation 30 Conduct of a review

30.1 A review is conducted in accordance with the principles of natural justice, including procedural fairness.

30.2 A review is conducted with as little formality as a fair and proper consideration of the matter permits. The NPSP focuses on the substance of the matter and gives the Member a genuine opportunity to be heard.

30.3 The review is conducted in accordance with the Complaints Management Procedure.

30.4 A written record of the review must be made in the manner the Chair decides.

30.5 The Member whose conduct is the subject of the review is entitled to:

- (a) written notice of the review, setting out the reasons for the review and how the alleged conduct relates to the APA Code of Conduct;
- (b) a reasonable opportunity to make written or oral submissions;
- (c) be accompanied at any hearing by a support person.

30.6 The NPSP must ask the Member to provide evidence relevant to the review. The Member is not obliged to do so, but the NPSP may draw reasonable inferences from a failure to respond to a request.

30.7 The Member whose conduct is the subject of the review may request a copy of the written record by written request to the CEO within thirty days of the review. The CEO must provide the record within thirty days of receiving the request.

30.8 The NPSP must use its best endeavours to complete a review within six months of the matter being allocated to the review pathway. If a review cannot be completed within that period, the Chair must record the reason and a revised target date.

Regulation 31 Outcomes following pathway or review

31.1 If the NPSP decides, after a pathway decision or review, that the matter does not warrant an APA membership decision, the NPSP may:

- (a) decide that no further action be taken by the Association; or
- (b) encourage the parties to resolve any dispute through independent mediation or another lawful dispute resolution process.

These decisions are made by the NPSP and notified to management. They are not recommendations to the Board.

31.2 Only the Board may make a membership determination. If a review concludes that the Member's conduct warrants an APA membership response, the NPSP may recommend to the Board one or more of the following:

- (a) a reprimand or formal letter on file;

- (b) suspension of the Member's membership for a period not exceeding twelve months; or
- (c) cancellation of the Member's membership under clause 15 of the Constitution.

Where the Board suspends or cancels a Member's membership under paragraph (b) or (c), the Association completes the administration of the determination, including advising the Member in writing of the status of their Member Professional Indemnity Insurance, if they are part of the Association's Member Insurance Program.

31.3 Where a Regulatory Authority has already set remediation requirements for the Member, the NPSP must not duplicate those requirements.

Part I: Membership application advice

Regulation 32 Advice to Member Services

32.1 On request from Member Services, the NPSP may provide advice on a membership application (new or renewing) where the applicant has declared any change to membership eligibility or any pending or actual criminal charges and/or unresolved disciplinary proceedings regarding professional conduct by a Regulatory Authority, or any other matter that raises a question about conduct, fitness or suitability for membership.

32.2 Advice under this Regulation is provided on an ad hoc basis. It is consultation, not determination. The decision on the application sits with the CEO and (where applicable) the Board.

32.3 An NPSP Member who has supported the applicant in any other capacity must not participate in advice under this Regulation about that applicant.

Part J: Appeals

Regulation 33 Member's right of appeal

33.1 If the Board makes a decision based on a recommendation by the NPSP under Regulation 31, the Member may appeal the decision.

33.2 An appeal must be made in writing to the Association within thirty days of the date the Member receives notice of the Board's decision.

Regulation 34 Board review of an appeal

34.1 The Board must consider an appeal at its next meeting after the appeal is received, if reasonably possible, or out of session on the papers if required.

34.2 The Board may:

- (a) reconsider the matter in accordance with the Complaints Management Procedure; or
- (b) affirm the original decision.

34.3 The Association must notify the Member in writing of the Board's decision on the appeal within fourteen days of the Board making the decision.

34.4 The Board's decision on the appeal is final.

Part K: Confidentiality and records

Regulation 35 Confidentiality

35.1 Concerns received by the NPSP, the conduct of any evaluation, support or review, and the outcomes of any NPSP decision or recommendation are confidential to the parties, the NPSP, Delegated Staff and (where applicable) the Board.

35.2 An NPSP Member and Delegated Staff must not disclose information about a matter except:

- (a) as required to discharge a function under these Regulations;
- (b) as required by law, including under the National Law; or
- (c) with the written consent of the Member whose conduct is the subject of the matter.

35.3 Nothing in this Regulation prevents the NPSP from publishing de-identified information about trends in concerns, notifications or outcomes for the purpose of education under Regulation 4.1(d).

Regulation 36 Records

36.1 The Association must keep a record of each concern received by the NPSP, including the pathway decision, any review conducted, any persons involved in the review, any recommendation made to the Board, and the outcome.

36.2 Records under Regulation 36.1 must be kept for at least seven years from the date the matter is closed.

36.3 A Member may request access to records about a matter concerning that Member by written request to the CEO. The CEO must respond within thirty days.