

**The management of notifications
about Single Court Appointed Expert
Psychologists in Family Law Courts
proceedings: Interim Policy**



RETIRED DOCUMENT

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Summary

Single Court Appointed Experts (**Experts**) are appointed through Family Court of Australia, the Federal Magistrates Court of Australia and the processes of the Family Court of Western Australia (**Court**) to provide expert opinion in relation to parties and children in Court proceedings.

This Interim Policy (**Policy**) sets out how notifications to the Australian Health Practitioner Regulation Agency (**AHPRA**) about Experts should be managed.

The Policy recognises the jurisdiction of the Court to control proceedings before it, and also to provide guidance on the discharge of the functions of the Psychology Board of Australia's (**Board**) management of notifications about psychologists appointed as Experts.

For the purpose of this policy, 'psychologist' means a person who holds registration as a psychologist under Part 7 of the *Health Practitioner Regulation National Law Act* as in force in each state and territory of Australia (the **National Law**).

Scope of policy

This interim policy applies to notifications about registered psychologists appointed by the Court as single experts in court proceedings.

Policy

The Board was established under the National Law and exercises all functions for which it was established. Under the National Law, the Board has a range of powers to take action to protect the public after receiving a notification about a registered practitioner and assessing the available evidence about a specific matter. This includes the power to take 'immediate action' to restrict or limit the registration of a psychologist if this is necessary to protect the health and safety of the public. The Board may also decide to take no further action in relation to a notification.

In relation to psychologists who have been appointed as Experts, the Board **must** seek leave of the Court before exercising its powers under the National Law in relation to a registered practitioner who is a Court appointed Expert. Leave **may** be sought when the Board considers it is necessary to proceed with an investigation of a practitioner and it is not in the public interest to defer the investigation until the Court proceedings have concluded.

This policy is given effect as follows:

1. When a notification is received by AHPRA about a registered psychologist who has been appointed an Expert in proceedings before a court, the Board:

- 1.1 **must** perform any relevant functions required under s 35 the National Law, including receipt, assessment and investigation of notifications about specified health practitioners (s 35(g)). (Note that both AHPRA and the Board **must** perform their respective obligations in relation to 'Preliminary assessment' as set out in Division 5 of Part 8 of the National Law)
- 1.2 **may** decide to take no further action in relation to a notification, pursuant to s 151 of the National Law, in specified circumstances, including if the Board reasonably believes the notification is frivolous, vexatious, misconceived or lacking in substance, or if the subject matter of the notification is being dealt with, or has already been dealt with, adequately by another entity
- 1.3 **may** take immediate action if s 156 of the National Law applies, specifically, the Board reasonably believes that because of the registered health practitioner's conduct, performance or health, the practitioner poses a serious risk to persons and it is necessary to take immediate action to protect public health or safety, but
- 1.4 **must not** undertake an investigation, or any further action (excluding a decision to take no further action) in relation to the notification, unless:
 - 1.4.1 leave of the relevant court is obtained, or
 - 1.4.2 the matter before the court has concluded, whichever occurs first.

'May' and 'must' should be interpreted in accordance with clause 14 of Schedule 7 to the National Law.

Policy basis and legislative objectives

Section 3(2) of the National Law provides that an objective of the national registration and accreditation scheme is 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'.

Section 4 requires an 'entity that has functions under this Law [is] to exercise its functions having regard to the objectives and guiding principles of the national registration and accreditation scheme'. The Board's powers to manage notifications about practitioners, including powers to conduct an investigation, have been conferred on it for the purpose of achieving this objective.

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The Court has jurisdiction to control proceedings before it, and this includes management of Experts appointed by the Court. The Court also retains ownership of documents generated for its purposes or by orders. To date, the Family Court of Australia and Family Court of Western Australia have not issued specific practice notes or protocols in relation to complaints against Experts.

Authorisation

The Psychology Board of Australia resolved to adopt this policy on 21 October 2011.

Review

This policy will take effect from 30 January 2012. The Board will review this interim policy within 12 months and thereafter, at least every three years.

