

Independent Hospital Pricing Authority

# Cost-Shifting and Cross-Border Dispute Resolution Framework

April 2021



IHPA

## Cost-Shifting and Cross-Border Dispute Resolution Framework – Version 4.0 April 2021

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# Acronyms and abbreviations

<b>CEO</b>	Chief Executive Officer of the Independent Hospital Pricing Authority
<b>IHPA</b>	Independent Hospital Pricing Authority
<b>NEP</b>	National efficient price
<b>Pricing Authority</b>	The governing body of IHPA established under the <i>National Health Reform Act 2011</i> (Cwlth)
<b>The Act</b>	<i>National Health Reform Act 2011</i> (Cwlth)
<b>The Addendum</b>	Addendum to National Health Reform Agreement 2020–2025
<b>The Framework</b>	Cost-Shifting and Cross-Border Dispute Resolution Framework

# Definitions

<b>Activity based funding</b>	<p>Refers to a system for funding public hospital services provided to individual patients using national classifications, cost weights and nationally efficient prices developed by the Independent Hospital Pricing Authority (IHPA), as outlined in the Addendum to the National Health Reform Agreement 2020–25 (the Addendum).</p> <p>An activity based funding activity may take the form of a separation, presentation or service event.</p>
<b>Cost-shifting dispute</b>	<p>Defined by section 138(1) of the <i>National Health Reform Act 2011</i> (Cwth) (the Act) as one that arises if:</p> <ul style="list-style-type: none"> <li>a) a health minister believes that costs to his or her jurisdiction (the ‘first jurisdiction’) in relation to health care services are attributable to one or more changes that have been made to the policies, programs or practices of another jurisdiction (the ‘second jurisdiction’); and</li> <li>b) within 2 months after being requested to do so, the second jurisdiction has not reimbursed those costs.</li> </ul>
<b>Cross-border dispute</b>	<p>Defined by section 138(2) of the Act as on that arises if:</p> <ul style="list-style-type: none"> <li>a) a state / territory health minister believes that: <ul style="list-style-type: none"> <li>i. costs to his or her jurisdiction (the ‘first jurisdiction’) in relation to health care services are attributable to the provision of public hospital services to residents of another jurisdiction (the second jurisdiction); and</li> <li>ii. an intergovernmental agreement, or an agreement between states or states and territories, provides for those costs to be reimbursed, wholly or partly, by the second jurisdiction; and</li> </ul> </li> <li>b) after being requested to do so, the second jurisdiction has not reimbursed those costs: <ul style="list-style-type: none"> <li>i. within 2 months after the jurisdictions agree on the number of health care services involved; or</li> <li>ii. within 6 months after the last of those services was provided.</li> </ul> </li> </ul>
<b>Cross-border agreement / arrangement</b>	<p>Details the agreed scope, prices, methodology for charging and processes for estimating and acquitting activity for the relevant jurisdictions.</p>

<b>Health care services</b>	<p>Services provided by public hospitals. From 1 July 2013, the scope of public hospital services eligible for Commonwealth funding are:</p> <ul style="list-style-type: none"><li>• All admitted programs, including hospital in home programs. Forensic mental health inpatient services are included;</li><li>• All emergency department services; and</li><li>• Non-admitted services that meet the criteria for inclusion on the IHPA General List.</li></ul>
<b>Pricing Authority</b>	<p>The governing body of IHPA established under the Act.</p>
<b>Provider jurisdiction</b>	<p>The jurisdiction providing services in their own state/territory for a resident of another jurisdiction.</p>
<b>Resident jurisdiction</b>	<p>The jurisdiction which has responsibility for the provision of public hospital services to those residents receiving services in another state/territory.</p>

# 1. Executive summary

## 1.1 Background

The Independent Hospital Pricing Authority (IHPA) played a pivotal role in the national introduction of activity based funding. IHPA's functions are outlined in the *National Health Reform Act 2011* (Cwlth) (the Act) and the Addendum to National Health Reform Agreement 2020–2025 (the Addendum). These functions include managing cost-shifting and cross-border disputes under section 138 of the Act and clauses A110 to A126 of the Addendum.

Since 1 July 2012, the Commonwealth, and state and territory funding contributions flow to the Local Hospital Networks through the National Health Funding Pool. For cross-border arrangements, funding contributions by the resident jurisdiction are made to the provider jurisdiction through the National Health Funding Pool either on a regular basis throughout the year or an ad-hoc basis reflecting actual activity.

IHPA's role is to deliver fair funding for hospitals across the country through the setting of the national efficient price (NEP) for public hospital services, whilst taking into account factors such as safety and quality and the cost of services in regional hospitals.

When there is a dispute about the reimbursement of health care services provided in a jurisdiction where the patient is not a resident, an application can be made to IHPA for resolution.

## 1.2 Purpose

The Cost-Shifting and Cross-Border Dispute Resolution Framework (the Framework) outlines the processes to investigate and make recommendations to resolve cost-shifting and cross-border disputes following a request by a health minister, to ensure the timely, equitable and transparent management of these disputes.

## 1.3 Timeframes

Section 139(3) of the Act states that jurisdictions should ensure compliance with any relevant inter-jurisdictional agreements that stipulate timeframes by which to bring disputes to IHPA.

In addition, where a jurisdiction has known about the circumstances giving rise to a dispute, and has delayed taking steps to resolve that dispute for an extended period, this may amount to failing to make reasonable efforts to resolve the dispute.

Neither the Act nor the Addendum prescribes timeframes by which IHPA must conduct investigations or prepare the draft and final assessment.

However, subject to the receipt of an application with the required supporting documents, IHPA will provide an assessment of the issues in contention to the health minister of the jurisdictions party to the dispute, within six months.

## **1.4 Review**

The Pricing Authority and Chief Executive Officer (CEO) of IHPA will review the Framework, including associated documentation, annually or as required.

The Framework was last reviewed in April 2021.



## 2. Dispute resolution principles

To ensure the effectiveness and integrity of the process, jurisdictions party to a dispute are obligated to fully disclose the information required for dispute resolution within the identified timeframes, to participate and cooperate in the process, and to genuinely seek resolution.

IHPA's dispute resolution principles are outlined in Table 1, along with the key mechanisms by which IHPA meets these principles.

**Table 1. Dispute resolution principles and mechanisms**

No.	Dispute resolution principles	Dispute resolution mechanisms
1	Clear sense of purpose and role	IHPA's role and mandate with regards to dispute resolution is defined in the Act and the Addendum. This Framework guides the timely, equitable and transparent processes to investigate both cross-border and cost-shifting disputes following a request by a health minister.
2	Transparent communication	Promote transparency through clear dispute resolution principles, processes and communication with those parties involved in the dispute.
3	Promote ethical, fairness and responsible decision making	Actively promote ethical and responsible decision making (code of conduct, conflict of interest management). Focus on promoting improved efficiency and access to public hospital services and minimising susceptibility to gaming. Focus on fairness in decision making and good outcomes for resolution based on legislative and other requirements, including the Act and the Addendum. IHPA staff, contractors and Pricing Authority Members are bound by the <i>Disclosure of Interests Policy</i> .
4	Investigations are undertaken in an effective and efficient manner	Dispute investigations undertaken in accordance with the dispute resolution processes. IHPA procedure manuals and templates to guide the efficient dispute resolution process.
5	Make timely, balanced and evidenced based assessments / recommendations	Dispute resolution assessments and recommendations to be made on a timely basis. Where disputes are complex, an 'evidence based' balance of factors will be taken into account in making assessments / recommendations.
6	Recognise and manage quality and risk in the investigation process	Establish a sound system within IHPA of risk management and quality oversight (guided by the <i>Risk Management Framework</i> , <i>Data Quality Assurance Framework</i> , etc.).

# 3. Cost-shifting dispute resolution

## 3.1 Scope

IHPA's role in investigating and making assessments on cost-shifting disputes is limited to disputes:

- regarding 'costs' attributable to one or more changes that have been made to the policies, programs or practices of another jurisdiction as opposed to dispute resolution with respect to provision of services
- arising on or after IHPA's establishment (15 December 2011), when its dispute resolution responsibilities commenced.

## 3.2 Submissions

A health minister may apply to IHPA for an assessment of a cost-shifting dispute where changes in one jurisdiction have a cost impact on multiple other jurisdictions. Affected jurisdictions may jointly request an assessment of the cost-shifting in dispute.

In this instance, IHPA will ensure that the requirements are met for all applicant jurisdictions. In particular:

- IHPA must be satisfied that applicant jurisdiction has made reasonable efforts to resolve the dispute and submit the required documents to support their application for assessment
- the initial assessment is prepared by IHPA and provided to the health minister of each jurisdiction party to the dispute
- the final assessment is prepared by IHPA and provided to the health minister of each jurisdiction party to the dispute.

It should be noted that an applicant jurisdiction may withdraw from or elect not to proceed with the dispute resolution process at any stage without penalty. In this instance, IHPA will inform the jurisdictions party to the dispute that the application for dispute resolution will not be progressing.

The applicant may recommence the dispute resolution process on the same issue at a later date.

## 3.3 Process

The five key stages in the cost-shifting dispute resolution process include request for assessment, draft assessment, investigation and final assessment. These key stages are detailed in Table 2 below.

**Table 2. Overview of cost-shifting dispute resolution processes**

<b>Stage 1: Request for assessment</b>	(1a) Jurisdictions undertake reasonable efforts to resolve dispute (1b) The applicant jurisdiction requests an assessment
<b>Stage 2: Initial assessment</b>	(2a) IHPA undertakes an initial assessment of the dispute (2b) IHPA provides written notification of the request for assessment to the respondent jurisdiction (as soon as practicable) (2c) The respondent jurisdiction makes a written submission to IHPA about the dispute within 60 days (2d) IHPA provides a copy of any written response received from the respondent jurisdiction to the applicant jurisdiction
<b>Stage 3: Investigation</b>	(3a) IHPA investigates the dispute (3b) IHPA requests additional information to assist the investigation (as required)
<b>Stage 4: Draft assessment</b>	(4a) IHPA drafts the assessment and provides it for review by the health ministers of the jurisdictions party to the dispute (4b) The jurisdictional health ministers provide IHPA with written comments within 30 days (4c) IHPA reviews the written comments from the jurisdictions about the draft assessment (4d) IHPA clarifies the written comments with jurisdictions (if required)
<b>Stage 5: Final assessment</b>	(5a) IHPA determines the final assessment and provides it to the health ministers of jurisdictions party to the dispute (5b) IHPA publishes the final assessment on the website if the investigation identifies that cost-shifting has occurred

Further details on each stage are provided below.

### **Stage 1: Request for assessment**

#### **(1a) Jurisdictions undertake reasonable efforts to resolve dispute**

The applicant jurisdiction must include a statement detailing the 'reasonable efforts' they have taken to resolve the dispute with the respondent jurisdiction, or the reasons why no such steps were taken.

Some examples of 'reasonable efforts' include:

- notifying the respondent jurisdiction of the issues in dispute and offering to discuss with them, with a view to resolution
- providing relevant information and documents to the respondent jurisdiction to enable them to understand the issues involved and how the dispute might be resolved
- considering possible resolution through alternative dispute resolution processes
- attempting to negotiate with the respondent jurisdiction with a view to resolving some or all of the issues in dispute.

IHPA supports parties to the dispute in deciding what steps are most appropriate in their circumstances.

### **(1b) The applicant jurisdiction requests an assessment**

After at least two months have elapsed where the respondent jurisdiction has failed to reimburse the applicant jurisdiction costs, the health minister of the applicant jurisdiction may refer the dispute to IHPA.

The application must be in writing and at a minimum include the following supporting information:

- copies of any inter-governmental agreements, or arrangements between the Commonwealth, states and territories
- relevant information, data and documents to enable IHPA to understand the issues involved
- a statement detailing the 'reasonable efforts' taken to resolve the dispute with the respondent jurisdiction, including steps required by agreements, or the reasons why no such steps were taken.

IHPA has developed guidance (see [Appendix A](#)) to assist jurisdictions with preparing an application for assessment by IHPA.

The applicant jurisdiction may provide a copy of its written submission to the respondent jurisdiction when it makes an application to IHPA for assessment.

## **Stage 2: Initial assessment**

### **(2a) IHPA undertakes an initial assessment of the dispute**

IHPA assesses the application to ensure it complies with the conditions set out in Stage 1.

IHPA will only investigate the dispute if it is satisfied the information provided is sufficient and demonstrates how each of the conditions have been met. If IHPA is not satisfied that these conditions have been met, the request for assessment will be referred back to the health minister of the applicant jurisdiction:

- explaining that insufficient information has been provided to enable IHPA to determine whether it will investigate the dispute
- seeking additional information to enable IHPA to make this decision.

### **(2b) IHPA provides written notification of the request for assessment to the respondent jurisdiction (as soon as practicable)**

Where IHPA decides to progress to an investigation of the dispute it must provide the health minister of the respondent jurisdiction (in writing):

- notice of the request, including a copy of the application
- an invitation to make a written submission about the dispute within 60 days of receiving the invitation.

IHPA may also provide a copy of the application for an assessment to the minister of the respondent jurisdiction.

**(2c) The respondent jurisdiction makes a written submission to IHPA about the dispute within 60 days**

If the respondent jurisdiction declines the invitation to provide a written submission, it must do so in writing.

If the respondent jurisdiction is unable to provide a written submission within 60 days, they may seek an extension to make a submission. Extensions are provided at IHPA's discretion. The period of any extension will be as short as is reasonably appropriate in the circumstances.

A request for an extension should be made in writing and include reasons for seeking such an extension. IHPA will consult with the health minister of the other affected jurisdiction when deciding on the request for extension and in relation to the proposed length of said extension. In making its decision on the request for an extension, IHPA will take into account:

- the reasons given by the respondent jurisdiction, including whether the extension is requested because of circumstances outside of their control (for example, delays in obtaining information from third parties needed to prepare the submission)
- the level of detail provided to enable IHPA to understand the basis of the request
- the terms of the submission received from the applicant jurisdiction
- what is fair and reasonable to both parties in the circumstances of the particular case
- any other matters IHPA considers relevant.

Where IHPA decides to grant an extension of time, a copy of the letter advising the respondent jurisdiction of the extended timeframes will also be provided to the applicant jurisdiction.

If IHPA does not receive a written submission, a request for extension, or a letter advising the respondent jurisdiction will not be providing a response within 60 days, it will continue to exercise its functions under part 4.3 of the Act.

**(2d) IHPA provides a copy of any written response received from the respondent jurisdiction to the applicant jurisdiction**

If IHPA receives a written submission from the respondent jurisdiction about the dispute within 60 days after receiving the invitation, IHPA will provide a copy of the response to the applicant jurisdiction.

**Stage 3: Investigation****(3a) IHPA investigates the dispute**

In undertaking the investigation, IHPA will assess the submissions received from the jurisdictions.

**(3b) IHPA requests additional information to assist the investigation (as required)**

Where required and appropriate, IHPA will:

- request additional evidence from jurisdictions (e.g. data, information, agreements, etc.) to clarify conflicting views, facts and other ambiguities in the investigation process
- consult further with affected jurisdictions
- seek expert input/advice.

To support the timeliness of the investigation, jurisdictions should provide additional information within 30 days of receiving the written request.

#### **Stage 4: Draft assessment**

##### **(4a) IHPA drafts the assessment and provides it for review by the health ministers of the jurisdictions party to the dispute**

Following the investigation, IHPA will:

- prepare a draft assessment
- obtain endorsement of the draft assessment by the Pricing Authority
- provide the draft assessment to the health ministers of the jurisdictions party to the dispute
- invite the health ministers to provide IHPA with written comments on the draft assessment within 30 days of receiving it.

The draft assessment will include:

- a summary of the cost-shifting dispute between the jurisdictions, including the position of each jurisdiction party to the dispute
- an overview of the evidence assessed in undertaking the investigation
- limitations to the scope of the investigation
- IHPA's draft assessment of the dispute (i.e. whether the costs of the applicant jurisdiction in relation to health care services are attributable to one or more changes that have been made to the policies, programs or practices of the respondent jurisdiction)
- reasons supporting the assessment.

The health ministers of jurisdictions responding to a draft assessment will include a copy of any submissions received by IHPA.

##### **(4b) The jurisdictional health ministers provide IHPA with written comments within 30 days**

Health ministers must provide IHPA with their written comments on the draft assessment within 30 days and where unable to do so, they may seek an extension.

Extensions are granted by IHPA as a matter of discretion, following consultation with the health minister of jurisdictions party to the dispute (including the proposed length of any extension) and are granted unilaterally to all jurisdictions party to the dispute.

##### **(4c) IHPA reviews the written comments from the jurisdictions about the draft assessment**

IHPA will review the comments received by health ministers with regard to the draft assessment.

##### **(4d) IHPA clarifies the written comments with jurisdictions (if required)**

Where there are comments that require explanation or clarification, IHPA will request this in writing from health ministers party to the dispute. Responses are required within 30 days of receipt of the request.

## **Stage 5: Final assessment**

### **(5a) IHPA determines the final assessment and provides it to the health ministers of jurisdictions party to the dispute**

IHPA will develop a final assessment, obtain endorsement from the Pricing Authority and provide it to the health ministers of jurisdictions party to the dispute.

### **(5b) IHPA publishes the final assessment on the website if the investigation identifies that cost-shifting has occurred**

If the assessment confirms cost-shifting has occurred and that costs to the applicant jurisdiction in relation to health care services are attributable to one or more changes that have been made to the policies, programs or practices of the respondent jurisdiction, the final assessment will be published on IHPA's website.

# 4. Cross-border dispute resolution

## 4.1 Scope

IHPA's role in investigating and making recommendations on cross-border disputes is limited to disputes:

- about the reimbursement of 'costs' attributable to the provision of public hospital services to residents of another jurisdiction (as opposed to dispute resolution with respect to provision of services)
- arising on or after IHPA's establishment (15 December 2011) when its dispute resolution responsibilities commenced.

Although capital is not explicitly priced by IHPA, cross-border dispute resolution can include disputes in relation to the resident jurisdiction's contribution to capital funding relating to health service infrastructure.

## 4.2 Cross-border activity

As outlined in clause A110 of the Addendum, the Commonwealth, states and territories have agreed that the treatment of cross-border hospital activities will be governed by the following principles:

- the state/territory where a patient would normally reside should meet the cost of services (exclusive of the Commonwealth contribution arrangements discussed below) where its resident receives hospital treatment in another jurisdiction
- in instances where quality and safety penalties have been applied the state/territory funding contributions will not increase to offset the reduced Commonwealth contribution for those services
- where a patient is transferred from their resident state/territory to another jurisdiction for treatment the referring hospital is to meet the costs of medical transfers
- where a patient is transferred from another jurisdiction to their resident state/territory for treatment the resident state/territory is to meet the costs of medical transfers
- patient out-of-pocket costs related to discharge home from the provider state/territory will be met through the patient's resident state/territory travel assistance scheme where appropriate
- payment flows (both Commonwealth and state/territory) associated with cross-border services should be administratively simple, and where possible consistent with the broader arrangements of this Addendum
- the cross-border payment arrangements should not result in any unintended goods and services tax (GST) distribution effects



- states/territories recognise their commitment under the Medicare principles which require medical treatment to be prioritised on the basis of clinical need
- both states/territories should have the opportunity to engage in the setting of cross-border activity estimates and variations, in the context that this would not involve shifting of risk
- there should be transparency of cross-border flows.

Cross-border arrangements are to be developed between jurisdictions that experience significant cross-border flows and where one of the parties requests an agreement be in place. Agreements must set out estimated activity levels providing the capacity for both parties to contribute to planning of cross-border activity.

### 4.3 Process

The six key stages in the cross-border dispute resolution process include request for assessment, initial assessment, investigations, draft recommendations, final recommendations and ongoing monitoring. These stages are detailed in Table 3 below.

**Table 3. Overview of cross-border dispute resolution processes**

<p><b>Stage 1: Request for assessment</b></p>	<p>(1a) Jurisdictions undertake reasonable efforts to resolve dispute (1b) The applicant jurisdiction provides IHPA with a written request for recommendations</p>
<p><b>Stage 2: Initial assessment</b></p>	<p>(2a) IHPA undertakes an initial assessment of the dispute (2b) IHPA provides a written notification of the request for recommendations to the respondent jurisdiction (as soon as practicable) (2c) The respondent jurisdiction makes a written submission to IHPA about the dispute within 60 days (2d) IHPA provides a copy of any written response received from the respondent jurisdiction to the applicant jurisdiction</p>
<p><b>Stage 3: Investigation</b></p>	<p>(3a) IHPA undertakes investigation of the dispute (3b) IHPA requests additional information to assist the investigation (as required)</p>
<p><b>Stage 4: Draft recommendations</b></p>	<p>(4a) IHPA drafts the recommendations and provides to the disputing jurisdictional health ministers for review (4b) The jurisdictional health ministers provide IHPA with written comments within 30 days (4c) IHPA reviews the written comments from the jurisdictions with regards to the draft recommendations (4d) IHPA clarifies the written comments with jurisdictions (if required)</p>
<p><b>Stage 5: Final recommendations</b></p>	<p>(5a) IHPA determines the final recommendation and provides to the disputing jurisdictional health ministers</p>

<b>Stage 6: Implementation of recommendations</b>	(6a) Jurisdictions implement recommendations (6b) IHPA monitors jurisdiction compliance with recommendations (6c) IHPA provides advice to the Commonwealth to adjust funding (if required)
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Further details on each stage are provided below.

## Stage 1: Request for assessment

### (1a) Jurisdictions undertake reasonable efforts to resolve dispute

As part of the submission process, the applicant jurisdiction must include a statement detailing the 'reasonable effort' to resolve the dispute with the respondent jurisdiction, or the reasons why no such steps were taken.

Some examples of 'reasonable efforts' include:

- notifying the other party of the issues in dispute and offering to discuss them with a view to resolving the dispute
- providing relevant information and documents to the other party to enable them to understand the issues involved and how the dispute might be resolved
- considering possible resolution through alternative dispute resolution processes
- attempting to negotiate with the other party with a view to resolving some or all of the issues in dispute.

### (1b) The applicant jurisdiction provides IHPA with a written request for recommendations

Following the lapse of the relevant time period (two or six months) where the respondent jurisdiction has failed to reimburse the applicant jurisdiction, a health minister may refer the dispute to IHPA for recommendations.

The request must be in writing and the jurisdiction is encouraged at a minimum to provide the following information to support the request:

- copies of any intergovernmental agreements, or arrangements between states/territories
- relevant information, data and documents to enable IHPA to understand the issues involved
- statement detailing the 'reasonable efforts' taken to resolve the dispute with the respondent jurisdiction, including steps in accordance with any applicable agreements, or the reasons why no such steps were taken.

IHPA has developed guidance at [Appendix B](#) to assist jurisdictions in preparing a written submission to request IHPA resolve disputes.

The applicant jurisdiction may provide a copy of its written submission to the respondent jurisdiction at the same time that it sends its request and written submission to IHPA.

## Stage 2: Initial assessment

### (2a) IHPA undertakes an initial assessment of the dispute

IHPA assesses whether the jurisdictions have satisfied the following conditions:

1. a jurisdictional health minister believes that costs to his or her jurisdiction in relation to health care services are attributable to the provision of public hospital services to residents of another jurisdiction (the respondent jurisdiction)
2. a jurisdictional health minister believes that an intergovernmental agreement<sup>1</sup>, or an agreement between states or states and territories, provides for those costs to be reimbursed, wholly or partly, by the respondent jurisdiction.
3. after being requested to do so, the respondent jurisdiction has not reimbursed those costs
  - within two months after the jurisdictions agree on the number of health care services involved; or
  - within two months after the funding contribution assessed on an ad hoc basis in accordance with; or
  - within six months after the last of those services was provided.
4. jurisdictions have complied with any relevant requirements set out in intergovernmental agreements, or agreements between jurisdictions
5. jurisdictions have made reasonable efforts to resolve the dispute.

IHPA will only investigate and make recommendations where the applicant jurisdiction outlines in the request how each of the above conditions have been met and IHPA is satisfied that this information is sufficient. If IHPA is not satisfied that these conditions have been met, the request for assessment will be referred back to the health minister of the applicant jurisdiction:

- explaining that insufficient information has been provided to enable IHPA to determine whether it will investigate the dispute
- seeking additional information to enable IHPA to make this decision.

### (2b) IHPA provides a written notification of the request for recommendations to the respondent jurisdiction (as soon as practicable)

Once IHPA starts to investigate the dispute and as soon as practicable after starting the investigation, IHPA must give the health minister of the respondent jurisdiction (in writing):

- notice of the request, including a copy of the submission
- an invitation to make a written submission about the dispute within 60 days of receiving the invitation
- a copy of the submission that accompanied the request.

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<sup>1</sup> An 'intergovernmental agreement' as it appears in section 138(2)(a)(ii) of the Act includes the Addendum. In addition, as IHPA is able to calculate funding contributions that need to be made by a resident state following IHPA's receipt of the quarterly submissions detailing actual activity, then the Addendum itself meets the requirement set out in section 138(2)(a)(ii) of the Act.

**(2c) The respondent jurisdiction makes a written submission to IHPA about the dispute within 60 days**

If the respondent jurisdiction declines the invitation to provide a written submission, this must be advised in writing.

If the respondent jurisdiction is unable to provide a written submission within 60 days, they may seek an extension. Extensions will be considered at IHPA's discretion. The period of any extension will be as short as is reasonably appropriate in the circumstances.

Any request for an extension should be made in writing and include reasons for the request. IHPA will consult with the health minister of the other affected jurisdiction (including in relation to the proposed length of any extension) when deciding on the request for extension.

In making its decision on the request for an extension, IHPA will consider:

- the reasons given by the respondent jurisdiction, including whether the extension is requested because of circumstances outside of their control (for example, delays in obtaining information from third parties needed to prepare the submission)
- the level of detail provided to enable IHPA to understand the basis of the request
- the terms of the response received from the applicant jurisdiction
- what is fair and reasonable to both parties in the circumstances of the particular case
- any other matters IHPA considers relevant.

Where IHPA grants an extension of time, both jurisdictions will be advised in writing.

**(2d) IHPA provides a copy of any written response received from the respondent jurisdiction to the applicant jurisdiction**

IHPA will provide a copy of the response of the respondent jurisdiction to the applicant jurisdiction.

**Stage 3: Investigation****(3a) IHPA undertakes investigation of the dispute**

In undertaking the investigation, IHPA will assess submissions received from the jurisdictions.

**(3b) IHPA requests additional information to assist the investigation (as required)**

Where required, IHPA will:

- request additional evidence (e.g. data, information, agreements, etc.) to clarify conflicting views, facts and other ambiguities and to support the investigation
- consult further with affected jurisdictions
- seek expert input / advice.

To support the timeliness of the investigation, jurisdictions should provide additional information within 30 days of receiving the written request.

## Stage 4: Draft recommendations

### **(4a) IHPA drafts the recommendations and provides to the disputing jurisdictional health ministers for review**

Following the investigation, IHPA will:

- prepare draft recommendations and obtain endorsement from the Pricing Authority
- provide the draft recommendations to the disputing jurisdictional health ministers
- invite the health ministers to give IHPA written comments on the draft recommendations within 30 days of receiving them.

The draft recommendations will include:

- a summary of the cross-border dispute between the jurisdictions, including the position of each jurisdiction with regard to the dispute
- an overview of the evidence assessed in undertaking the investigation
- limitations to the scope of the investigation
- IHPA's recommendations (i.e. costs to a jurisdiction are attributable to the provision of public hospital services to residents of another jurisdiction)
- reasons supporting the recommendations.

The draft recommendations sent to the jurisdictional health ministers will include a copy of any submissions received by IHPA and will be in accordance with IHPA's *Management of Confidential Jurisdictional Information Protocol*.

### **(4b) The jurisdictional health ministers provide IHPA with written comments within 30 days**

Health ministers should aim to provide IHPA with their written comments on the draft recommendations within 30 days. Where they are unable to do so, they may seek an extension.

Extensions are considered by IHPA as a matter of discretion, following consultation with the health minister of the other affected jurisdiction (including the proposed length of any extension). In this instance this extension will be granted to both jurisdictions.

### **(4c) IHPA reviews the written comments from the jurisdictions with regards to the draft recommendations**

IHPA will review the comments received by jurisdictional health ministers with regard to the draft recommendation, in particular to ensure that the comments provided do not challenge the factual accuracy of the evidence assessed in undertaking the investigation and the reasons supporting the cross-border dispute recommendation.

### **(4d) IHPA clarifies the written comments with jurisdictions (if required)**

Where there are comments that require explanation or clarification, IHPA will request this in writing from jurisdictional health ministers. To support the timeliness of the final recommendation, this response will be requested to be provided within 30 days of receiving the request for clarification.

## **Stage 5: Final recommendations**

### **(5a) IHPA determines the final recommendation and provides to the disputing jurisdictional health ministers**

IHPA will prepare the final recommendations, obtain endorsement from the Pricing Authority, and provide it to the disputing jurisdictional health ministers and the Administrator of the National Health Funding Pool for information only.

## **Stage 6: Implementation of recommendations**

### **(6a) Jurisdictions implement recommendations**

The Commonwealth, states and territories agree that they will:

- accept and implement any recommendations made by IHPA in relation to cross-border disputes
- provide additional funding to the other party in a dispute if this is required.

### **(6b) IHPA monitors jurisdiction compliance with recommendations**

Two months after IHPA has advised disputing jurisdictions of the final recommendations, it will request an update on implementation of these recommendations. A response by the jurisdictions will be requested within 30 days.

### **(6c) IHPA provides advice to the Commonwealth to adjust funding (if required)**

Three months after IHPA has made recommendations and any element of the recommendations have not been complied with, IHPA may at the request of the applicant jurisdiction advise the Commonwealth Treasurer of any adjustments to Commonwealth payments to the National Health Funding Pool required to give effect to the recommendations.<sup>2</sup>

The states and territories agree to fund from their own resources any reduction in Commonwealth payments to Local Hospital Networks.

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<sup>2</sup> As stipulated in section 141 of the Act.

# 5. Complaint and enquiry process

## 5.1 Internal review

The following process should be followed where an affected jurisdiction wishes to make a complaint or enquire about IHPA's legislative functions or how the performance of these functions::

- jurisdictions make a complaint or enquiry in writing to the IHPA CEO and Pricing Authority Chair
- IHPA will acknowledge the complaint or enquiry in writing
- if an investigation is required by IHPA about the performance of its legislative functions, it will aim to resolve factual issues and consider options for resolution
- if the jurisdiction is not satisfied with the response, external review may be sought as outlined in section 5.2 of this document
- any systemic issues that arise as a result of the complaint or enquiry will be considered by IHPA.

## 5.2 External review options

The external review options which may be available to affected jurisdictions are summarised below.

### Commonwealth Ombudsman

The performance of functions by IHPA and actions reasonably incidental to the performance of such functions could be subject to an investigation by the Ombudsman under the *Ombudsman Act 1976*, should a review be requested by an affected jurisdiction.

### Judicial review

Judicial review options may be available under the *Administrative Decisions (Judicial Review) Act 1977* and under common law.

## Appendix A: Cost-shifting – Guidance on the evidence required to support an application for dispute resolution

To assist jurisdictions in preparing an application for assessment and resolution of a cost-shifting dispute, IHPA has developed the guidance in Table 4.

**Table 4: Guidance on the evidence required to support an application for assessment of a cost-shifting dispute**

Topic	Evidence
Contact details	<ul style="list-style-type: none"> <li>key person contact details to allow for clarification of any matters relating to the dispute.</li> </ul>
Dispute particulars	<ul style="list-style-type: none"> <li>particulars of the cost-shifting dispute, including scope, key dates and any positions of the jurisdiction</li> <li>overview of any intergovernmental agreements or agreements between states/territories</li> <li>relevant background/contextual information to support IHPA in understanding the issues involved</li> <li>details of any risks identified.</li> </ul>
Compliance with agreement/s	<ul style="list-style-type: none"> <li>evidence to support compliance with relevant requirements set out in intergovernmental agreements or agreements between the Commonwealth, states/territories.</li> </ul>
Prior efforts to resolve the dispute	<ul style="list-style-type: none"> <li>statement detailing what 'genuine steps' have been taken to resolve the dispute with the respondent jurisdiction, or the reasons why no such steps were taken.</li> <li>examples of 'reasonable efforts' that parties may outline in the statement may include: <ul style="list-style-type: none"> <li>notifying the other party of the issues in dispute and offering to discuss them with a view to resolving the dispute</li> <li>providing relevant information and documents to the other party to enable them to understand the issues involved and how the dispute might be resolved</li> <li>considering possible resolution through alternative dispute resolution processes</li> </ul> </li> <li>attempting to negotiate with the other party with a view to resolving some or all of the issues in dispute.</li> </ul>
Supporting documentation	<ul style="list-style-type: none"> <li>any evidence which may support IHPA in its investigation of the dispute (e.g. data, information, agreements)</li> <li>copies of any intergovernmental agreements or agreements between the Commonwealth, states and territories.</li> </ul>



## Appendix B: Cross-border – Guidance on evidence required to support an application for dispute resolution

To assist jurisdictions in preparing an application for to resolve a cross-border dispute, IHPA has developed the guidance in Table 5.

**Table 5: Guidance on evidence required to support an application for cross-border dispute resolution**

Topic	Evidence
Contact details	<ul style="list-style-type: none"> <li>• key person contact details to allow for clarification of any matters relating to the dispute.</li> </ul>
Dispute particulars	<ul style="list-style-type: none"> <li>• particulars of the cross-border dispute, including scope, key dates and any positions of the jurisdiction</li> <li>• overview of any intergovernmental agreements or agreements between states or states and territories</li> <li>• relevant background/contextual information to support IHPA in understanding the issues involved, for example:                             <ul style="list-style-type: none"> <li>– cost and activity data, estimates and analysis of variations</li> <li>– evidence of where patients reside</li> <li>– resident jurisdictions contribution to capital funding</li> <li>– patient pathways</li> <li>– planning for cross-border activity</li> <li>– cross-border payment arrangements</li> <li>– health service plans</li> <li>– precedents based on previous agreements</li> </ul> </li> <li>• details of any risks identified.</li> </ul>
Compliance with agreement/s	<ul style="list-style-type: none"> <li>• evidence to support compliance with any relevant requirements set out in intergovernmental agreements or agreements between states or states and territories.</li> </ul>
Prior efforts to resolve the dispute	<ul style="list-style-type: none"> <li>• statement detailing what 'genuine steps' have been taken to resolve the dispute with the respondent jurisdiction, or the reasons why no such steps were taken</li> <li>• examples of 'reasonable efforts' that parties may outline in the statement may include:                             <ul style="list-style-type: none"> <li>– notifying the other party of the issues in dispute and offering to discuss them with a view to resolving the dispute</li> </ul> </li> </ul>

Topic	Evidence
	<ul style="list-style-type: none"><li data-bbox="480 338 1315 427">– providing relevant information and documents to the other party to enable them to understand the issues involved and how the dispute might be resolved</li><li data-bbox="480 450 1219 510">– considering possible resolution through alternative dispute resolution processes</li><li data-bbox="480 533 1206 593">– attempting to negotiate with the other party with a view to resolving some or all of the issues in dispute.</li></ul>
Supporting documentation	<ul style="list-style-type: none"><li data-bbox="443 622 1235 683">• any evidence which may support IHPA in its investigation of the dispute (e.g. data, information, agreements)</li><li data-bbox="443 705 1302 766">• copies of any intergovernmental agreements or agreements between states or states and territories.</li></ul>

**Independent Hospital Pricing Authority**

**Level 6, 1 Oxford Street  
Sydney NSW 2000**

**Phone 02 8215 1100  
Email [enquiries.ihpa@ihpa.gov.au](mailto:enquiries.ihpa@ihpa.gov.au)  
Twitter [@IHPAnews](https://twitter.com/IHPAnews)**

**[www.ihpa.gov.au](http://www.ihpa.gov.au)**



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