



IHACPA

Cost-Shifting and Cross-Border Dispute Resolution Policy

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Cost-Shifting and Cross-Border Dispute Resolution Policy – Version 6.0 June 2023

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Acronyms and abbreviations

CEO	Chief Executive Officer of the Independent Health and Aged Care Pricing Authority
IHACPA	Independent Health and Aged Care Pricing Authority
MSAC	Medical Services Advisory Committee
NEP	National efficient price
PBAC	Pharmaceutical Benefits Advisory Committee
Pricing Authority	The governing body of IHACPA established under the <i>National Health Reform Act 2011</i> (Cwlth)
The Addendum	Addendum to National Health Reform Agreement 2020–2025
The Administrator	Administrator of the National Health Funding Pool
The NHR Act	<i>National Health Reform Act 2011</i> (Cwlth)
This Policy	<i>Cost-Shifting and Cross-Border Dispute Resolution Policy</i>

Definitions

Activity based funding 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 Health and Aged Care Pricing Authority (IHACPA), as outlined in the Addendum to the National Health Reform Agreement 2020–25.

An activity based funding activity may take the form of a separation, presentation or service event.

Cost-shifting dispute Defined by section 138(1) of the *National Health Reform Act 2011* (Cwth) (the NHR Act) as one that arises if:

- a) a health minister believes that costs to his or her jurisdiction (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 another jurisdiction (the ‘respondent jurisdiction’); and
- b) within two months after being requested to do so, the respondent jurisdiction has not reimbursed those costs.

Cross-border dispute Defined by section 138(2) of the NHR Act as one that arises if:

- a) a state or territory health minister believes that:
 - i. costs to his or her jurisdiction (the ‘applicant jurisdiction’) in relation to health care services are attributable to the provision of public hospital services to residents of another jurisdiction (the ‘respondent jurisdiction’); and
 - 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 respondent jurisdiction; and
- b) after being requested to do so, the respondent jurisdiction has not reimbursed those costs:
 - i. within two months after the jurisdictions agree on the number of health care services involved; or
 - ii. within six months after the last of those services was provided.

Cross-border agreement or arrangement An intergovernmental agreement or an agreement between states or states and territories that details the agreed scope, prices, methodology for charging and processes for estimating and acquitting activity for the relevant jurisdictions.

Health care services	<p>Defined as 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"> • all admitted programs, including hospital in the home programs; • all emergency department services; and • non-admitted services that meet the criteria for inclusion on the IHACPA General List of In-Scope Public Hospital Services.
High cost, highly specialised therapies	<p>Defined by the Addendum to the National Health Reform Agreement 2020–25 (the Addendum) as Therapeutic Goods Administration approved medicines and biologicals delivered in public hospitals where</p> <ul style="list-style-type: none"> • the therapy and its conditions of use are recommended by Medical Services Advisory Committee (MSAC) or Pharmaceutical Benefits Advisory Committee (PBAC); and • the average annual treatment cost at the commencement of funding exceeds \$200,000 per patient (including ancillary services) as determined by the MSAC or PBAC with input from the IHACPA; and • where the therapy is not otherwise funded through a Commonwealth program or the costs of the therapy would be appropriately funded through a component of an existing pricing classification.
Highly-specialised services	<p>Defined by the Addendum as high cost, low volume services that require a highly skilled and specialised workforce and require a national population catchment to ensure quality and safety is maintained.</p>
Pricing Authority	<p>The governing body of IHACPA established under the NHR Act.</p>
Provider jurisdiction	<p>The jurisdiction providing services in their own state or territory for a resident of another jurisdiction.</p>
Resident jurisdiction	<p>The jurisdiction which has responsibility for the provision of public hospital services to those residents receiving services in another state or territory.</p>

1. Executive summary

1.1 Background

The Independent Health and Aged Care Pricing Authority (IHACPA) played a pivotal role in the introduction of national activity based funding. IHACPA's functions are outlined in the *National Health Reform Act 2011* (Cwlth) (the NHR Act) and the Addendum to the National Health Reform Agreement 2020–2025 (the Addendum). These functions include managing cost-shifting and cross-border disputes under section 138 of the NHR Act and clauses A110–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 agreements or 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 within six months of receiving activity data from the Administrator of the National Health Funding Pool (the Administrator).

IHACPA'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 costs relating to health care services incurred by a jurisdiction that are attributable to one or more changes that have been made to the policies, programs or practices of another jurisdiction, or 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 IHACPA for resolution.

1.2 Purpose

The *Cost-Shifting and Cross-Border Dispute Resolution Policy* (this Policy) 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. This Policy also outlines the process jurisdictions may wish to undertake to make a complaint or enquire about IHACPA's legislative functions or the performance of these functions.

1.3 Timeframes

Section 139(3) of the NHR Act states that jurisdictions should ensure compliance with any relevant intergovernmental agreements.

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 be considered as failing to make reasonable efforts to resolve the dispute.

Neither the NHR Act nor the Addendum prescribes timeframes by which IHACPA must conduct investigations or prepare the draft and final assessments.

However, subject to the receipt of an application with the required supporting documents, IHACPA 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 IHACPA will review this Policy, including associated documentation, annually or as required.

This Policy was last reviewed in May 2023.

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.

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

Table 1. Dispute resolution principles and mechanisms

Dispute resolution principles		Dispute resolution mechanisms
1.	Clear sense of role and purpose	Carry out responsibilities related to resolving disputes between jurisdictions in line with IHACPA's defined role and purpose in the NHR Act and the Addendum.
2.	Transparent communication	Promote transparency through clear dispute resolution principles, processes and communication with those parties involved in the dispute and where relevant, the Administrator and the National Health Funding Body.
3.	Ethical, fair 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 NHR Act and the Addendum. Act in accordance with the <i>Disclosure of Interests Policy</i> .
4.	Effective and efficient investigations	Undertake dispute resolution investigations in accordance with the dispute resolution processes outlined in the NHR Act, the Addendum, this Policy and internal procedure manuals and templates.
5.	Timely, balanced and evidence-based assessments and recommendations	Make dispute resolution assessments and recommendations based on a balance of 'evidence-based' factors and on a timely basis, adhering to timeframes outlined in the NHR Act, the Addendum and this Policy.
6.	Quality and risk is recognised and managed in the investigation process	Establish a sound system within IHACPA of risk management and quality oversight (guided by the <i>Risk Management Framework</i> , <i>Data Quality Assurance Framework</i> and other relevant policies).

3. Cost-shifting dispute resolution

3.1 Scope

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

- regarding costs relating to health care services incurred by a jurisdiction that are 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 IHACPA's establishment (15 December 2011), when its dispute resolution responsibilities commenced.

3.2 Submissions

A health minister may apply to IHACPA 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, IHACPA will ensure that the requirements are met for all applicant jurisdictions. In particular:

- IHACPA must be satisfied that the 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 IHACPA and provided to the health minister of each jurisdiction party to the dispute
- the final assessment is prepared by IHACPA and provided to the health minister of each jurisdiction party to the dispute.

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

The applicant jurisdiction 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 are detailed in **Table 2**. Throughout this process, all references to specified number of days are considered to be calendar days.

Table 2. Overview of cost-shifting dispute resolution process

Stage	Process Details
Stage 1: Request for assessment	(1a) Jurisdictions undertake reasonable efforts to resolve the dispute
	(1b) The applicant jurisdiction requests an assessment by IHACPA
Stage 2: Assessment	(2a) IHACPA undertakes an initial assessment of the dispute
	(2b) IHACPA 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 IHACPA about the dispute within 60 days
	(2d) IHACPA provides a copy of any written response received from the respondent jurisdiction to the applicant jurisdiction
Stage 3: Investigation	(3a) IHACPA investigates the dispute
	(3b) IHACPA requests additional information to assist the investigation (as required)
Stage 4: Draft assessment	(4a) IHACPA prepares the draft assessment and provides it to the health ministers of the jurisdictions party to the dispute for review
	(4b) The health ministers provide IHACPA with written comments within 30 days
	(4c) IHACPA reviews the written comments about the draft assessment
	(4d) IHACPA clarifies the written comments with the health ministers (if required)
Stage 5: Final assessment	(5a) IHACPA determines the final assessment and provides it to the health ministers of the jurisdictions party to the dispute
	(5b) IHACPA publishes the final assessment on its 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 the 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 and offering to discuss with the respondent jurisdiction the issues in dispute, 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.

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

(1b) The applicant jurisdiction requests an assessment by IHACPA

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 IHACPA.

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

- copies of any relevant intergovernmental agreements, or arrangements between the Commonwealth, states and/or territories
- relevant information, data and documents to enable IHACPA 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.

IHACPA has developed guidance (**Appendix A**) to assist jurisdictions with preparing an application for assessment by IHACPA.

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

Stage 2: Initial assessment

(2a) IHACPA undertakes an initial assessment of the dispute

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

IHACPA will only investigate the dispute if it is satisfied the information provided is sufficient and demonstrates how each of the conditions have been met. This includes consideration of previous evidence provided to IHACPA regarding the dispute. If IHACPA is not satisfied that these conditions have been met, or requires further information to support the investigation, 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 IHACPA to determine whether it will investigate the dispute
- seeking additional information to enable IHACPA to make this decision.

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

Where IHACPA 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 for an assessment; and
- an invitation to make a written submission about the dispute within 60 days of receiving the invitation.

In instances where IHACPA requests additional information from the health minister of the applicant jurisdiction as provided by Stage 2(a) of this process, IHACPA will provide written notification of the request for assessment to the respondent jurisdiction at the same time.

(2c) The respondent jurisdiction makes a written submission to IHACPA 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 IHACPA'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. IHACPA will consult with the health minister of the applicant 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, IHACPA 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 IHACPA 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 IHACPA considers relevant.

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

If IHACPA 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 NHR Act.

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

If IHACPA receives a written submission from the respondent jurisdiction about the dispute within 60 days after receiving the invitation, IHACPA will provide a copy of the response to the applicant jurisdiction within 14 days of receipt unless agreed otherwise.

If applicable, IHACPA will provide any additional information received from the applicant jurisdiction in response to IHACPA's request as per Stage 2(a) of this process, to the respondent jurisdiction.

Stage 3: Investigation

(3a) IHACPA investigates the dispute

In undertaking the investigation, IHACPA will assess the submissions received from the jurisdictions party to the dispute.

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

Where required and appropriate, IHACPA will:

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

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

Stage 4: Draft assessment

(4a) IHACPA prepares the draft assessment and provides it to the health ministers of the jurisdictions party to the dispute for review

Following the investigation, IHACPA 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 of the jurisdictions party to the dispute to provide IHACPA 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;
- IHACPA's draft assessment of the dispute, that is, 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; and
- reasons supporting the assessment.

(4b) The health ministers provide IHACPA with written comments within 30 days

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

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

(4c) IHACPA reviews the written comments about the draft assessment

IHACPA will review the comments received by health ministers of the jurisdictions party to the dispute with regard to the draft assessment.

(4d) IHACPA clarifies the written comments with the health ministers (if required)

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

Stage 5: Final assessment

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

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

(5b) IHACPA publishes the final assessment on its website if the investigation identifies that cost-shifting has occurred

If the investigation 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 the IHACPA website.

4. Cross-border dispute resolution

4.1 Scope

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

- about the reimbursement of costs relating to health care services incurred by the applicant state or territory that are 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 IHACPA's establishment (15 December 2011) when its dispute resolution responsibilities commenced.

Although capital is not explicitly priced by IHACPA, 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 or 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 or territory funding contributions will not increase to offset the reduced Commonwealth contribution for those services
- where a patient is transferred from their resident state or 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 or territory for treatment the resident state or territory is to meet the costs of medical transfers
- patient out-of-pocket costs related to discharge home from the provider state or territory will be met through the patient's resident state or territory travel assistance scheme where appropriate
- payment flows (both Commonwealth and state or territory) associated with cross-border services should be administratively simple, and where possible consistent with the broader arrangements of the Addendum
- the cross-border payment arrangements should not result in any unintended goods and services tax (GST) distribution effects

- states and territories recognise their commitment under the Medicare Principles¹ which require medical treatment to be prioritised on the basis of clinical need
- both states and 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 agreements or arrangements should be developed between jurisdictions that experience significant cross-border flows and where one of the parties requests an agreement be in place. Agreements or arrangements should endeavour to set out estimated activity levels, including the cost of provision of highly-specialised services, providing the capacity for both parties to contribute to planning of cross-border activity. Agreements or arrangements should also set out the agreed reconciliation methodology and timeframes for exchange of data and payment between jurisdictions for each year.

IHACPA will aim to resolve cross-border disputes in line with any cross-border agreements or arrangements in place. If no agreement or arrangement is in place at the time of the dispute and the investigation finds funds should be reimbursed, the costs in dispute would be calculated and recommended using the relevant national weighted activity unit and national efficient price (NEP), unless otherwise agreed by the parties to dispute. In circumstances where costs in dispute are associated with highly-specialised services that as defined in clause A120 of the Addendum, calculation of these costs will be based on costs advised by the treating jurisdiction and any other relevant information² If clauses within cross-border agreements or arrangements do not align with the principles for the treatment of cross-border hospital activities as outlined in clause A110 the Addendum, the cross-border principles in the Addendum will take precedence.

4.3 Process

The six key stages in the cross-border dispute resolution process are detailed in **Table 3** below. Throughout this process, all references to specified number of days are considered to be calendar days.

¹ As outlined in clause 8 of the Addendum, states and territories will provide health and emergency services through the public hospital system, based on the following Medicare Principles:

- eligible persons must be given the choice to receive public hospital services free of charge as public patients;
- access to public hospital services is to be on the basis of clinical need and within a clinically appropriate period; and
- arrangements are to be in place to ensure equitable access to such services for all eligible persons, regardless of their geographic location.

² Highly-specialised services are defined by the Addendum as high cost, low volume services that require a highly skilled and specialised workforce and require a national population catchment to ensure quality and safety is maintained. Clause A120 of the Addendum outlines the implications for pricing outlier patients requiring highly-specialised services which includes specific parameters for identifying and pricing highly-specialised services in the context of cross-border arrangements. High cost, highly specialised therapies, as provided under clause C11 of the Addendum, may be considered as one type of highly-specialised services.

Table 3. Overview of cross-border dispute resolution process

Stage	Process Details
Stage 1: Request for assessment	(1a) Jurisdictions undertake reasonable efforts to resolve the dispute
	(1b) The applicant jurisdiction provides IHACPA with a written request for recommendations
Stage 2: Initial assessment	(2a) IHACPA undertakes an initial assessment of the dispute
	(2b) IHACPA 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 IHACPA about the dispute within 60 days
	(2d) IHACPA provides a copy of any written response received from the respondent jurisdiction to the applicant jurisdiction
Stage 3: Investigation	(3a) IHACPA investigates the dispute
	(3b) IHACPA requests additional information to assist the investigation (as required)
Stage 4: Draft recommendations	(4a) IHACPA prepares the draft recommendations and provides it to the health ministers party to the dispute for review
	(4b) The health ministers party to the dispute provide IHACPA with written comments within 30 days
	(4c) IHACPA reviews the written comments from the health ministers with regards to the draft recommendations
	(4d) IHACPA clarifies the written comments with the health ministers (if required)
Stage 5: Final assessment	(5a) IHACPA determines the final recommendations and provides it to the health ministers party to the dispute
Stage 6: Implementation of recommendations	(6a) Jurisdictions party to the dispute implement the recommendations
	(6b) IHACPA monitors compliance with the recommendations
	(6c) IHACPA provides advice to the Commonwealth to adjust funding (if required)

Further details on each stage are provided below.

Stage 1: Request for recommendations

(1a) Jurisdictions undertake reasonable efforts to resolve the 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 IHACPA with a written request for recommendations

Following the lapse of the relevant time period (two or six months as outlined in section 2a) where the respondent jurisdiction has failed to reimburse the applicant jurisdiction, a health minister may refer the dispute to IHACPA for recommendations.

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

- copies of any cross-border agreements or arrangements between states or states and territories
- relevant information, data and documents to enable IHACPA 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.

IHACPA has developed guidance at **Appendix B** to assist jurisdictions in preparing a written submission to request IHACPA 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 IHACPA.

Stage 2: Initial assessment

(2a) IHACPA undertakes an initial assessment of the dispute

IHACPA assesses whether the jurisdictions party to the dispute have satisfied all of the following conditions:

1. A jurisdictional health minister believes:
 - a) 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); and

- b) an intergovernmental agreement³, or an arrangement⁴ between states or states and territories, provides for those costs to be reimbursed, wholly or partly, by the respondent jurisdiction.
2. After being requested to do so, the respondent jurisdiction has not reimbursed those costs
 - a) within two months after the jurisdictions party to the dispute agree on the number of health care services involved; or
 - b) within six months after the last of those services was provided.
 3. The jurisdictions party to the dispute have complied with any relevant requirements set out in cross-border agreements or arrangements between them.
 4. The jurisdictions party to the dispute have made reasonable efforts to resolve the dispute.

IHACPA will only investigate and make recommendations where the applicant jurisdiction outlines in the request how each of the above conditions have been met and IHACPA is satisfied that this information is sufficient. This includes consideration of previous evidence provided to IHACPA regarding the dispute. If IHACPA is not satisfied that these conditions have been met or requires further information to support the investigation, 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 IHACPA to determine whether it will investigate the dispute; and
- seeking additional information to enable IHACPA to make this decision.

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

Once IHACPA starts to investigate the dispute and as soon as practicable after starting the investigation, IHACPA 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.

In instances where IHACPA requests additional information from the health minister of the applicant jurisdiction as provided by Stage 2(a) of this process, IHACPA will provide written notification of the request for assessment to the respondent jurisdiction at the same time.

³ An 'intergovernmental agreement' as it appears in section 138(2)(a)(ii) of the NHR Act includes the Addendum. In addition, as IHACPA is able to calculate funding contributions that need to be made by a resident state following IHAPA'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 NHR Act.

⁴ If no agreement or arrangement is in place at the time of the dispute, IHACPA will proceed with its assessment with due regard to the cross-border principles outlined in clause A110 of the Addendum, prior recommendations made by IHACPA and any previous agreements, if at all. If the investigation finds funds should be reimbursed, the costs in dispute would be calculated and recommended using the relevant national weighted activity unit and NEP.

(2c) The respondent jurisdiction makes a written submission to IHACPA 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 IHACPA'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. IHACPA will consult with the health minister of the applicant 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, IHACPA 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 IHACPA 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 IHACPA considers relevant.

Where IHACPA grants an extension, both jurisdictions will be advised in writing.

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

IHACPA will provide a copy of the response received from the respondent jurisdiction to the applicant jurisdiction within 14 days of receipt unless agreed otherwise.

If applicable, IHACPA will provide any additional information received from the applicant jurisdiction in response to IHACPA's request as per Stage 2(a) of this process, to the respondent jurisdiction.

Stage 3: Investigation

(3a) IHACPA undertakes investigation of the dispute

In undertaking the investigation, IHACPA will assess submissions received from the jurisdictions party to the dispute.

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

Where required, IHACPA will:

- request additional evidence (for example, data, information, agreements) to clarify conflicting views, facts and other ambiguities and to support the investigation
- consult further with affected jurisdictions

- request data or advice from the National Health Funding Body
- seek expert input or 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) IHACPA prepares the draft recommendations and provides it to the health ministers party to the dispute for review

Following the investigation, IHACPA will:

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

The draft recommendations will include the following information:

- a summary of the cross-border dispute between the jurisdictions party to the dispute, including their respective positions
- an overview of the evidence assessed in undertaking the investigation
- limitations to the scope of the investigation
- IHACPA's recommendations, that is, whether the 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 party to the dispute will include a copy of any submissions received by IHACPA and will be in accordance with the IHACPA *Confidential Data Management Policy*.

(4b) The health ministers party to the dispute provide IHACPA with written comments within 30 days

Health ministers should aim to provide IHACPA 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 IHACPA 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 all parties to the dispute.

(4c) IHACPA reviews the written comments from the health ministers with regards to the draft recommendations

IHACPA will review the comments received by the health ministers party to the dispute with regard to the draft recommendations, 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) IHACPA clarifies the written comments with the health ministers (if required)

Where there are comments that require explanation or clarification, IHACPA will request this in writing from the health ministers party to the dispute. To support the timeliness of the final recommendation, IHACPA will request the provision of a response within 30 days of receiving the request for clarification.

Stage 5: Final recommendations

(5a) IHACPA determines the final recommendations and provides it to the health ministers party to the dispute

IHACPA will prepare the final recommendations, obtain endorsement from the Pricing Authority, and provide it to the health ministers party to the dispute, and the Administrator for information only.

Stage 6: Implementation of recommendations

(6a) Jurisdictions implement the recommendations

The Commonwealth, states and territories agree that they will:

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

(6b) IHACPA monitors compliance with the recommendations

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

(6c) IHACPA provides advice to the Commonwealth to adjust funding (if required)

Three months after IHACPA has made recommendations and any element of the recommendations have not been complied with, IHACPA 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.⁵

The states and territories agree to fund from their own resources any reduction in Commonwealth payments to local hospital networks.

⁵ As stipulated in section 141 of the NHR Act.

5. Complaint and enquiry process

5.1 Internal review process

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

- jurisdictions make a complaint or enquiry in writing to the IHACPA CEO and Pricing Authority Chair
- IHACPA will acknowledge the complaint or enquiry in writing
- if an investigation is required by IHACPA 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 Policy
- any systemic issues that arise as a result of the complaint or enquiry will be considered by IHACPA.

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 IHACPA and actions reasonably incidental to the performance of such functions could be subject to an investigation by the Commonwealth 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, IHACPA 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

Item	Evidence
Contact details	Key person contact details to allow for clarification of any matters relating to the dispute.
Dispute particulars	<p>Particulars of the cost-shifting dispute, including scope, key dates and any positions of the jurisdiction.</p> <p>Overview of any relevant intergovernmental agreements or agreements between the Commonwealth, states and/or territories.</p> <p>Relevant background/contextual information to support IHACPA in understanding the issues involved.</p> <p>Details of any risks identified.</p>
Compliance with agreement(s)	Evidence to support interpretation of and compliance with relevant requirements set out in relevant intergovernmental agreements or agreements between the Commonwealth, states and/or territories.
Prior efforts to resolve the dispute	<p>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.</p> <p>Examples of ‘reasonable efforts’ that parties may outline in the statement may include:</p> <ul style="list-style-type: none"> • 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. <p>Attempting to negotiate with the other party with a view to resolving some or all of the issues in dispute.</p>

Supporting documentation	Any evidence which may support IHACPA in its investigation of the dispute (for example, data, information, agreements). Copies of any relevant intergovernmental agreements or agreements between the Commonwealth, states and/or territories.
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Appendix B: Cross-border – Guidance on the evidence required to support an application for dispute resolution

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

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

Item	Evidence
Contact details	Key person contact details to allow for clarification of any matters relating to the dispute.
Dispute particulars	<p>Particulars of the cross-border dispute, including scope, key dates and any positions of the jurisdiction.</p> <p>Overview of any intergovernmental agreements or agreements between states or states and territories.</p> <p>Relevant background/contextual information to support IHACPA in understanding the issues involved, for example:</p> <ul style="list-style-type: none"> • cost and activity data, estimates and analysis of variations • evidence of where patients reside • resident jurisdictions contribution to capital funding • patient pathways • planning for cross-border activity • cross-border payment arrangements • health service plans • precedents based on previous agreements <p>Details of any risks identified.</p>
Compliance with agreement(s)	Evidence to support interpretation of and compliance with any relevant requirements set out in intergovernmental agreements or agreements between states or states and territories.

<p>Prior efforts to resolve the dispute</p>	<p>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. Examples of ‘reasonable efforts’ that parties may outline in the statement may include:</p> <ul style="list-style-type: none"> • 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.
<p>Supporting documentation</p>	<p>Any evidence which may support IHACPA in its investigation of the dispute (for example, data, information, agreements). This should include information that demonstrates that the state or territory’s position aligns with the intent of the cross-border principles outlined in clause A110 of the Addendum.</p> <p>Copies of any intergovernmental agreements or agreements between states or states and territories.</p>



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