



Proposed Process for the determination of Fee Norms by the Medical and Dental Professional Board

Proposed process to be followed in the determination of the fee to be used as a norm in terms of section 53 of the Health Professions Act, 1974 (Act No. 56 of 1974) (“the Health Professions Act”)

October 2013

CONTENTS

1. INTRODUCTION	1
2. MANDATE OF THE PROFESSIONAL BOARD	2
3. COMPETITION ACT	3
4. PROCESS FOR THE DETERMINATION OF ADMINISTERED FEE NORMS IN 2014	4
5. OVERVIEW OF THE PROCESS FOR THE DETERMINATION OF FEE NORMS FOR 2015 AND SUBSEQUENT YEARS	5
6. PARTICIPANT CONFERENCE	8
7. TECHNICAL PANEL DETERMINATIONS	12
8. GENERAL CONSULTATION	13
9. FINAL DETERMINATION BY THE PROFESSIONAL BOARD	14
10. TIME PERIODS	14
11. PUBLICATION OF FEE NORMS	14

TABLES AND FIGURES

Table 1: Schedule for the determination of Fee Norms for 2014	5
Figure 1: Process to Determine Professional Fees	6
Figure 2: General structure of the Participant Conference	9

1. INTRODUCTION

- 1.1. To give effect to **section 53** of the **Health Professions Act 56 of 1974** (the Act), **the Medical and Dental Professional Board** of the Health Professions Council of South Africa (HPCSA) must be in a position to determine the appropriate fee chargeable to any member of the public by a health professional. **Section 53(3)(d)** of the Act mandates the Professional Board to determine a set of fees that can be used as a norm to aid it in making any such determination. This document therefore seeks to outline a process by which the Professional Board is able to determine the set of fees that would enable it to properly and fairly consider instances where an aggrieved member of the public or a medical scheme raises a complaint in respect of the fees charged by a medical or dental professional.
- 1.2. Norms provide a set of benchmarks for what could be regarded as reasonable from the perspective of both the patient and the treating health professional. The establishment of a norm must therefore offer proper weight to both the reasonable remuneration of the treating health professional and a household's ability to afford the payments. This requires that the Professional Board combine technical work with consultation with affected parties, stakeholders and role-players. Household affordability constraints must be considered in the determination of norms. It is essential to be mindful that risk pooling through medical schemes does not establish an unlimited budget for health services.
- 1.3. To date the Professional Board has engaged in a consultative process to assist in developing an approach to achieve this objective. This document reflects the change of approach from that initially envisaged and is cognisant of the consultations the Tariff Committee has had with affected stakeholders. Whereas consultation was initially requested on the appropriateness of a specific tariff schedule it became clear that the *process* for determining the norms was an important first step. As a consequence the Professional Board is now proposing to release, for the purposes of consultation, a proposed *process* for the establishment of norms. An important consideration in the determination of the proposed *process* is the need to integrate substantive consultation with technical considerations.
- 1.4. Substantive consultation is here understood to require that affected parties are represented and empowered to participate in an organised deliberation on what is fair and reasonable for all. The process therefore needs to take account of what is happening on the ground and

properly consider how the norms may positively or negatively affect any party and reach appropriate determinations on what is reasonable and fair. In the proposal reflected here much thought has been given to the design of the engagement with relevant stakeholders and how the process is able to finally converge on valid decisions within reasonable time periods.

1.5. In developing the processes outlined in the document the following was therefore taken into account:

- 1.5.1. The legislative mandate of the Professional Board;
- 1.5.2. Related legislation in the form of the Medical Schemes and Competition Acts;
- 1.5.3. The requirement for substantive and efficient consultation;
- 1.5.4. The need to update norms timeously on an annual basis;
- 1.5.5. The ability to incorporate evidence on:
 - Relevant and justified annual input cost changes;
 - Relevant and justifiable changes in relative costs;
 - Relevant and appropriate household and funder budget constraints; and
 - Moral hazard considerations related to insured benefits, including prescribed minimum benefits and catastrophic coverage.

2. MANDATE OF THE PROFESSIONAL BOARD

2.1. The Professional Board is required, in terms of **section 53(3)(a)** to adjudicate complaints made by members of the public regarding excessive charging by health professionals regulated by the Act.

“The patient may, within three months after receipt of the account referred to in subsection (2), apply in writing to the Professional Board to determine the amount which in the opinion of the Professional Board should have been charged in respect of the services to which the account relates, and the Professional Board shall, as soon as possible after receipt of the application, determine the said amount and notify the practitioner and the patient in writing of the amount so determined: Provided that before the Professional Board determines the

said amount, it shall afford the practitioner concerned an opportunity to submit to it in writing his or her case in support of the amount charged.”

- 2.2. Any such adjudication must be made regardless of whether or not the patient was informed about the charge in terms of **section 53(1)**. In other words, the amount charged is distinct from the legal requirement for informed consent in the circumstances referred to in the Act.
- 2.3. In making a finding the Professional Board can make reference to a set of published fees to be used by the Professional Board (**section 53(3)(d)**):

“The Professional Board may from time to time determine and publish the fees used by the Professional Board as norm for the determination of amounts contemplated in paragraph (a).”

- 2.4. Seen together with the provisions for informed consent, the Act seeks to provide complete protection for any party from excessive charges by health professionals. It is recognized that merely being informed about a charge provides inadequate protection from excessive pricing in the case of health care services.
- 2.5. As the determination of a norm can have important implications for both members of the public and health professionals, the professional board must exercise its power to determine and publish fees with proper consideration of all affected parties. Its power to determine such a fee schedule is however clear and is central to its ability to carry out its public responsibilities in terms of **section 53(3)(a)**.

3. COMPETITION ACT

- 3.1. Input will be sought from the Competition Commission regarding the proposed process.
- 3.2. It is the understanding of the Professional Board that the Competition Act, 1998 (Act No. 89 of 1998) (“the Competition Act”) does not apply to the process as the envisaged activities are governed by the Health Professions Act which permits the development of a fee schedule for the express purpose of making public interest determinations of excessive charging by health professionals.

- 3.3. The conduct of **Participants** cannot be construed as concerted conduct of a harmful nature as the intended result seeks to protect and not collude against or harm the public.
- 3.4. The envisaged process will eventually result in a fee schedule that enables a regulatory authority to make determinations on overcharging, which substantially removes the harm that could occur by commercially oriented **Participants** using the process to charge collusively determined fees.
- 3.5. However, it should be noted that any party that exchanges commercially sensitive information with competitors for a purpose other than the establishment of the **Fee Norms** and outside of the process set out in this document may be in conflict with the Competition Act and will not be protected. For instance, where a group of providers collude on how to impose their fees in excess of the **Fee Norms**, they could be pursued in terms of the Competition Act.

4. PROCESS FOR THE DETERMINATION OF ADMINISTERED FEE NORMS IN 2014

- 4.1. The full development of the process envisaged in this document is complex and cannot be achieved to ensure the timeous publication of **Fee Norms** for 2014. Given the long period during which there has been tariff uncertainty¹, there is an urgent need for the **Professional Board** to determine **Fee Norms** for 2014 in accordance with its mandate.
- 4.2. This section describes the process which will be followed for the determination of **Fee Norms** for 2014, while section 5 describes the envisaged process for subsequent years.
- 4.3. Table 1 below describes the process which will be followed for the determination of 2014 **Fee Norms**.

¹

The process to develop tariff norms must be cognisant that the previous centralised bargaining system used by the BHF and provider representatives to negotiate tariffs was found to be in contravention of the Competition Act, which led to fines against BHF, SAMA and HASA and the cessation of centralised bargaining in 2004. This resulted in the CMS published the NHRPL (National Health Reference Price List) in 2005 and 2006. After regulations were made in terms of the National Health Act, the Department of Health published the RPL (Reference Price List) until both the RPL and the regulations under which they were published, were set aside by the High Court in July 2010.

A consultative process whereby the Department of Health and the Council for Medical schemes proposed the development of a centralised bargaining process in 2011 was not completed.

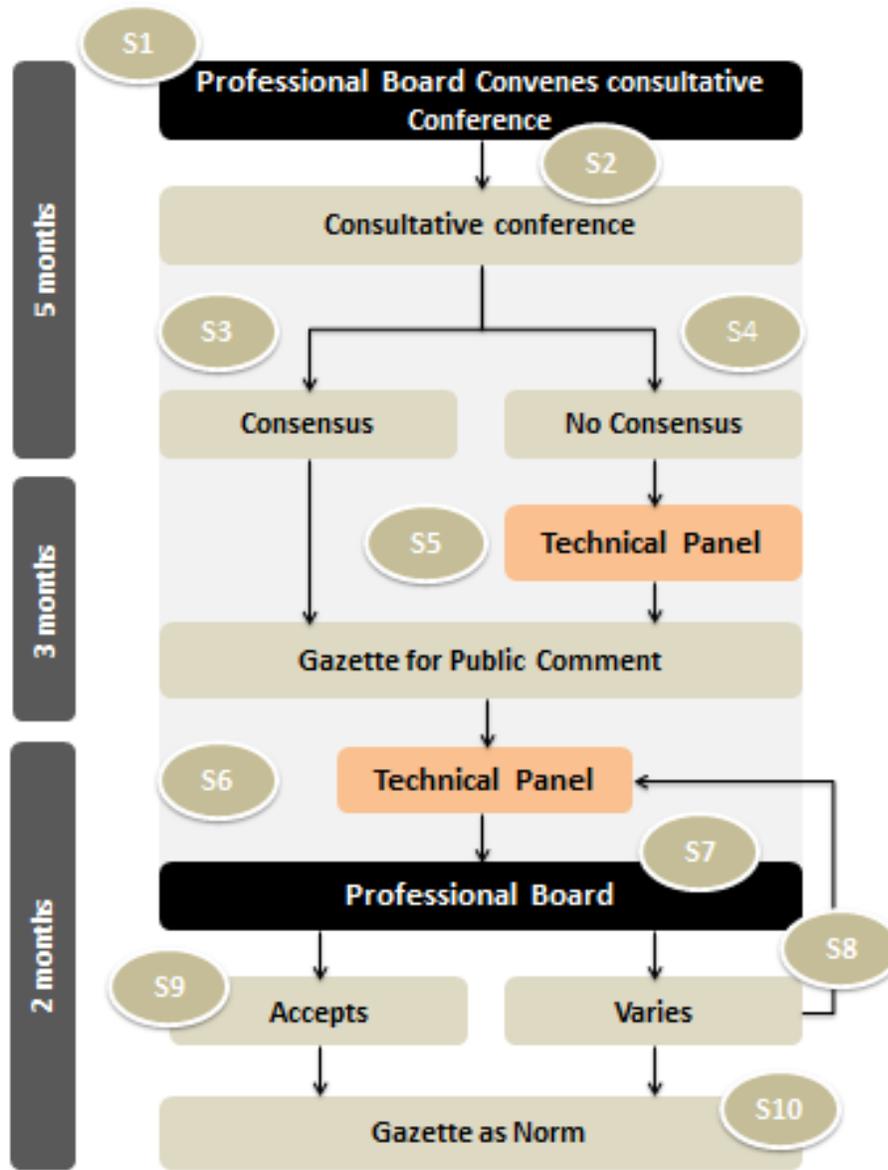
Table 1: Schedule for the determination of Fee Norms for 2014

October 2013	Finalise 2014 process document. Publish process document and request affected stakeholders to make submissions for the 2014 Fee Norms .
November 2013	Stakeholder preparation of submissions.
December 2013	Tariff committee engages with the submissions and consults with affected parties. Tariff committee recommends Fee Norms to the Professional Board . The Professional Board considers the recommendations and gazettes the 2014 norms for public comment.
January/February 2014	
March 2014	Public preparation of comments.
April 2014	The tariff committee engages with public comments on gazetted proposed tariffs, and makes a recommendation to the Professional Board .
May 2014	The Professional Board publishes the Fee Norms for 2014, and the 2015 fee-norm process starts.

5. OVERVIEW OF THE PROCESS FOR THE DETERMINATION OF FEE NORMS FOR 2015 AND SUBSEQUENT YEARS

- 5.1. After due consideration of the inputs resulting from the consultation process thus far the professional board has decided to implement a process which involves direct participation of stakeholders in deliberations with the objective of achieving a broad consensus on a fair and reasonable tariff schedule to be used as a norm. Where this consensus cannot be achieved in reasonable time, however, the **Professional Board** will appoint a panel to make a recommendation on a fee schedule taking account of all information submitted to the consultation process.
- 5.2. All information submitted to the consultation will be available to all affected parties, who will thus be placed in a position to properly deliberate thereon and validate any evidence presented. All recommendations made by the **Technical Panel** and determinations by the **Professional Board** will be made with reasons provided to the public.

Figure 1: Process to Determine Professional Fees



5.3. **Step 1:** Through the **Tariff Committee**, the **Professional Board** invites **Participants** to a **Consultative Conference** to determine a set of **Fee Norms**.

The **Tariff Committee** will also select and recommend a **Technical Panel** to deliberate on disputes (step 5) and review inputs from the public (step 6).

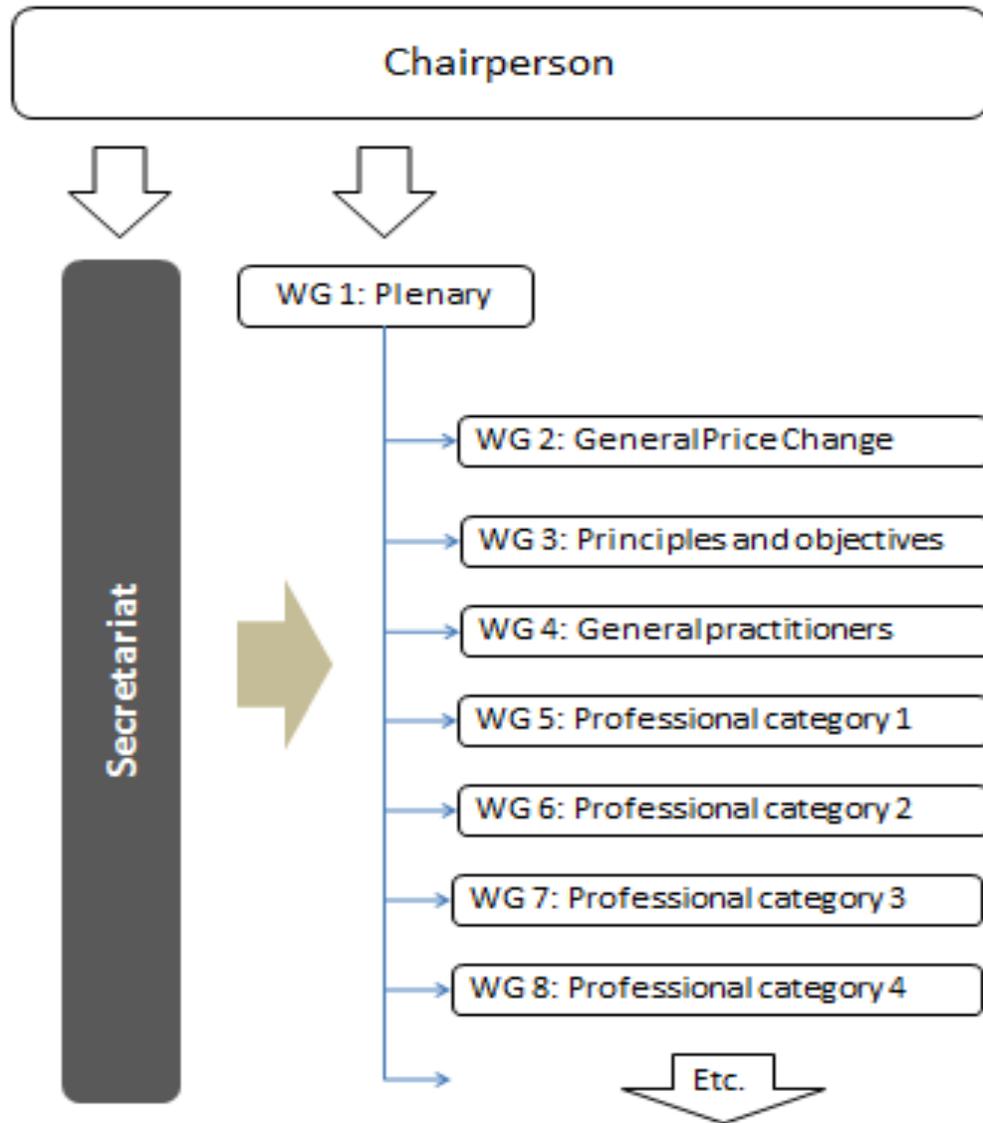
The **Technical Panel** is appointed by the **Professional Board** on the recommendation of the **Tariff Committee**.

- 5.4. **Step 2:** The **Consultative Conference** engages on the **Fee Norms** in Working Groups defined by the Tariff Committee (after consultation with selected constituencies) with a view to achieving a consensus amongst **Participants**. The deliberations are public at all times. All evidence presented to achieve a consensus is made public.
- 5.5. **Step 3:** If a consensus is achieved the resulting Fees are gazetted for public comment.
- 5.6. **Step 4:** If no consensus is achieved the positions of the **Participants** are compiled and presented to a **Technical Panel** to make a recommendation to the Tariff Committee for consideration and presentation to **Professional Board**.
- 5.7. **Step 5:** The **Technical Panel** recommends **Fee Norms** based on the submissions, and must provide written reasons for its recommendations.
- 5.8. The professional board approve and publish the fee Norms for comment in the gazette as recommended by the Technical Panel.
- 5.9. **Step 6:** Public comments are reviewed by the Tariff Committee in consultation with the **Technical Panel**. Written reasons for any changes to the gazetted draft fees must be submitted to the **Professional Board**. The proposed Fees and written reasons for changes must be available to the public once referred to the **Professional Board**.
- 5.10. **Step 7:** The **Professional Board** deliberates on the recommended Fees. In considering the Fees the **Professional Board** must ensure that all conflicts of interest with **Participants** are eliminated.
- 5.11. **Step 8:** Where the **Professional Board** has concerns with any recommendations made by the Panel they must be referred back to the Tariff Committee who must consult the **Technical Panel** for further deliberations. Any such referral will be in writing and be available to the public. The Fees will only be finalised for gazetting once the **Professional Board** has duly considered the recommendations of the Tariff Committee.
- 5.12. **Step 9:** Once the **Professional Board** has approved the Fees they are submitted for gazetting. Any recommendation of the Tariff Committee and determination by the **Professional Board** must be in writing and available to the public once made.
- 5.13. **Step 10:** The final Fee Norms are gazetted for comment.

6. PARTICIPANT CONFERENCE

- 6.1. The **Participant Conference** is made up of a representative grouping of parties most directly affected by a schedule of Fees established in terms of **section 53(3)(d)** and represents the part of the process which is most consultative in nature.
- 6.2. The **Participant Conference** has as its prime objective the achievement of a consensus amongst all parties and role players of a set of Fees which can be used to differentiate between appropriate and inappropriate charging by health professionals regulated by the Act.
- 6.3. The **Participant Conference** proceedings will be supervised by a **chairperson**, appointed by the **Professional Board**. The operations of the Conference will be supported by a secretariat appointed by the HPCSA.
- 6.4. The various aspects of the Fee Schedule will be dealt with in Working Groups, which will include a cross-cutting plenary Working Group required to accept the Fees in their totality. (Figure 2).
- 6.5. The Conference will have a fixed period in which to generate a consensus, failing which all final positions of **Participants** will be compiled, by **Participants**, and submitted to the **Technical Panel** for a recommendation. Only information used in the Conference process will be included in the submissions. All information will be publicly available.

Figure 2: General structure of the Participant Conference



Terms of Reference and Rules for the Conference

6.6. The **Conference** will operate strictly in accordance with Terms of Reference (TOR) developed by the **Professional Board**. The draft TOR are as follows:

6.6.1. Invited **Participants** are required to achieve a consensus on a set of **Fee Norms**, as envisaged in **section 53(3)d** of the Act and, failing which, to submit dissenting

positions to the **Technical Panel** to make a recommendation to the **Professional Board**, taking into account the following:

- The remuneration of health professionals;
- The affordability constraints of households; and
- Moral hazard behaviour, with an impact on costs, by both health professionals, health funders (medical schemes and associated intermediaries) and households.

6.6.2. *Inter alia*, with respect to **par 6.6.1, Participants** are expected to deliberate on:

- All descriptors, consultation fees, billing rules, procedure codes;
- All components of a fee of any kind used to establish a final fee;
- Any aspect of a fee structure that can have a behavioural effect in incentivising unnecessary utilisation; and
- Any aspect of a fee that could undermine the continued insurability of a benefit.

6.6.3. Invited **Participants** can make any submissions they wish in any format they wish to best make their case (see **par 6.16 and 6.17**)

6.6.4. All proceedings are to be conducted in a cordial and polite manner with any offending person likely to be excluded from the process.

Chairperson and Secretariat

6.7. A full-time chairperson will be selected by the **Professional Board** to direct the proceedings of the **Conference**. The chairperson's role is restricted to that of an impartial supervisor with the responsibility to adjudicate only on matters of process.

6.8. The chairperson will have the authority to disqualify individuals from the **Conference** on the following grounds:

- 6.8.1. Non-compliance with the rules of the **Conference**; and
- 6.8.2. Unruly conduct.

- 6.9. The chairperson will not have the authority to remove representative groups from the **Conference**. Where an individual has been removed the relevant representative group will be free to nominate a replacement. The **Professional Board** will be able to remove a representative party from the Conference (**par 6.14**).
- 6.10. A full-time secretariat will be assigned by the HPCSA to support the Conference. The secretariat will be expected to:
- 6.10.1. Record proceedings;
 - 6.10.2. Collate and disseminate submissions;
 - 6.10.3. Manage minutes of all official proceedings; and
 - 6.10.4. Prepare all administrative requirements for all official meetings.

Conference Participation

- 6.11. Conference **Participants** will be invited by the **Professional Board** to participate.
- 6.12. Invitations will be sent to relevant organisations together with a return letter incorporating the rules of participation. A **Participant** will only be accepted into the process once they have duly signed the letter of acceptance agreeing to the rules of participation.
- 6.13. An organisation not willing to sign the letter will not be permitted to participate in the Conference, but will be able to provide inputs in the general consultation process.
- 6.14. A **Participant** organisation that is found to flout the agreed rules of the **Conference** will be removed from further participation by the **Professional Board**, after consultation with the Conference chairperson.
- 6.15. The envisaged Conference **Participants** are as follows:
- 6.15.1. Medical professionals (various organisations);
 - 6.15.2. Medical schemes (various organisations);
 - 6.15.3. Consumers in general (various organisations);
 - 6.15.4. At least two civil society organisations with an explicit mandate to represent the public interest;

6.15.5. Public authorities:

- Department of Health;
- Health Professions Council;
- Council for Medical Schemes; and
- Other relevant stakeholders.

Evidence to Support Positions

6.16. It is expected that **Participants** motivate their various positions using evidence. The specific form of the evidence submitted is fully at the discretion of the Participant. **Participants** must therefore make their own case on the strength of their inputs.

6.17. All information collated or disseminated in the process will be regarded as public domain and open to scrutiny by all **Participants** without restriction. An open access website will be dedicated to the Conference which will publish all submissions.

Effect of Non-participation

6.18. Direct Participation in the Conference is regarded by the **Professional Board** as a useful, but not essential requirement for effective consultation. Invitees who choose not to participate, or who withdraw, are therefore free to do so and will still be able to make submissions to the general consultation process. They will merely lose the right to directly argue for a consensus position, or to submit dissenting arguments to the **Technical Panel**.

6.19. Parties that choose not to participate will be regarded as having done so of their own free will with full knowledge of any prejudice for their constituency.

Consensus Requirements

6.20. For a consensus to be registered all (100%) **Participants** must assent in writing to a final position. A consensus could apply to a part or all of the matters under deliberation.

6.21. Any invited Participant can refuse to assent to all or part of the Fee schedule requiring that the **Technical panel** make a recommendation.

7. TECHNICAL PANEL DETERMINATIONS

- 7.1. The **Technical Panel** is expected to make recommendations in two instances, on referral from the **Conference** and subsequent to the period of **General Consultation**. The manner in which decisions are made in each instance is different and discussed further below. However, the criteria to be used will be the same in both and is the same as that required of the **Conference** itself (see **pars 6.6.1 and 6.6.2**).

Determination 1

- 7.2. If there is no consensus from the Conference, the recommendation of the Technical Panel is developed on referral from the Conference based on the submissions received. The Technical Panel recommendation, together with reasons are then published subject to the Board approval process. Technical panel
- 7.3. The time to a final recommendation is restricted to one month to allow for the expeditious publication of **Fee Norms** – which need to be annual to properly serve the public interest.

Determination 2

- 7.4. The **Technical Panel** is also required to evaluate the inputs resulting from the general consultation and make recommendations for adjustments to the **Fee Norms**. The Committee would only be able to recommended adjustments arising from the consultation inputs and must disregard all prior inputs. Prior inputs can be used to assess inputs arising from the General Consultation, i.e. where evidence from the prior process refutes or validates a new input.
- 7.5. The time for the final recommendation is also restricted to one month, with a draft set of **Fee Norms** submitted to the **Professional Board** for final approval.
- 7.6. The **Professional Board** can refer the **Fee Norms** back to the **Technical Panel** based on evidence-based concerns.

8. GENERAL CONSULTATION

- 8.1. The **Fee Norms** arising from the Conference, whether directly or via the **Technical Panel**, will be gazetted for general consultation for a period of two months. Any member of the public will be able to make a written submission. The **Technical Panel** will evaluate the submissions and make final proposals in accordance with Recommendation 2 process outlined in section 7.

9. FINAL DETERMINATION BY THE PROFESSIONAL BOARD

- 9.1. The **Professional Board** completes the overall process by approving the final **Fee Norms** submitted by the **Technical Panel**. Any member of the **Professional Board** that has a conflicted relationship with any of the **Participants** must be recused from any deliberation as their positions will have already been accounted for by the process.
- 9.2. Where the **Professional Board** wishes to amend any part of the **Fee Norms** it must do so with evidence-based reasons.
- 9.3. . The determination of the **Fee Norms** by the **Professional Board**, as permitted by the Act, is consequently understood to be inclusive of the entire process of consultation and technical review. If the **Professional Board**'s determinations differ from the recommendations of the **Technical Panel**, the **Professional Board** must provide clear and cogent reasons for doing so.
- 9.4. All determinations and reasons for decisions of the **Professional Board** will be made public.

10. TIME PERIODS

- 10.1. As the time periods are to be set only subsequent to a period of consultation, only the final framework is to be proposed here.
- 10.2. Complete annual cycle:
 - 10.2.1. **Consultative Conference:** February to June
 - 10.2.2. *Deliberation by the **Technical panel**:* July
 - 10.2.3. *General comment period:* August and September
 - 10.2.4. *Deliberation by the **Technical panel**:* October
 - 10.2.5. *Approval by the **Professional Board**:* November

11. PUBLICATION OF FEE NORMS

- 11.1. The final **Fee Norms** will be published annually after completion of the process outlined. The norms will be published together with all the process documents and inputs provided as part of the process.