



*Health Professional Councils Authority*

# Handbook – Council, Committee and Panel Members

Version 2

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## HANDBOOK – COUNCIL, COMMITTEE AND PANEL MEMBERS

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## **1. Overview of the National Registration & Accreditation Scheme in the NSW Context**

The *Health Practitioner Regulation National Law (NSW)* (the Law) provides the structure for the implementation of the National Registration and Accreditation Scheme (NRAS) in NSW. The Law sets out the regulatory framework for health practitioners.

### **1.1 National Registration and Accreditation Scheme (NRAS)**

The objectives of the NRAS are to:

- protect the public through the regulation of registered health practitioners and students by ensuring they are:
  - suitably trained
  - suitably qualified
  - competent
  - ethical
- facilitate mobility of the workforce
- facilitate access to services in the public interest, and
- enable the continuous development of a flexible, responsive and sustainable workforce.

The guiding principles and functions of the NRAS are:

- to operate in a transparent, accountable, efficient, effective and fair way
- to ensure that fees are reasonable
- that there are reduced restrictions of practice – restrictions are to relate only to safety and quality
- that there are consistent complaints management arrangements and processes for dealing with health, performance and conduct matters
- to encourage/manage mandatory reporting notifications
- to contribute to employer access to essential information
- to implement programs to support and develop practitioners with health and/or performance issues, and
- to balance privacy protections with the public good.

The Law provides for the registration at a national level of 14 health professions:

- Aboriginal and Torres Strait Islander health practice
- Chinese medicine
- chiropractic
- dentistry (including generalist and specialist dentists, dental hygienists, dental therapists, oral health therapists and dental prosthetists)
- medicine
- medical radiation practice
- nursing and midwifery (including enrolled nurses)
- occupational therapy
- optometry
- osteopathy
- pharmacy
- physiotherapy
- podiatry
- psychology



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A registered practitioner is registered to practise anywhere in Australia and is subject to the same standards and requirements nationally. The Law ensures that uniform processes and criteria exist for registering health practitioners and accrediting educational programs. This ensures that high standards are applied to the practice of health practitioners throughout Australia.

All students undertaking approved programs of study in these professions are required to be registered. The Councils have jurisdiction to manage complaints about students who have an impairment that may impact on their ability to safely undertake clinical training. Complaints can also be made about students who have been charged or convicted of a criminal offence or have breached conditions on their registration.

## **1.2 National Boards**

The National Boards for each profession are supported by the Australian Health Practitioner Regulation Agency (AHPRA) and are responsible for registering health practitioners and deciding the requirements for registration. The National Boards:

- develop and recommend standards
- develop and approve codes and guidelines for their respective health professions, and
- approve accredited programs of study which provide the necessary qualifications for registration.

In all states and territories, other than NSW, the Boards also manage complaints about the conduct, health and performance of registered practitioners and the conduct and health of registered students.

## **1.3 NSW Regulatory System**

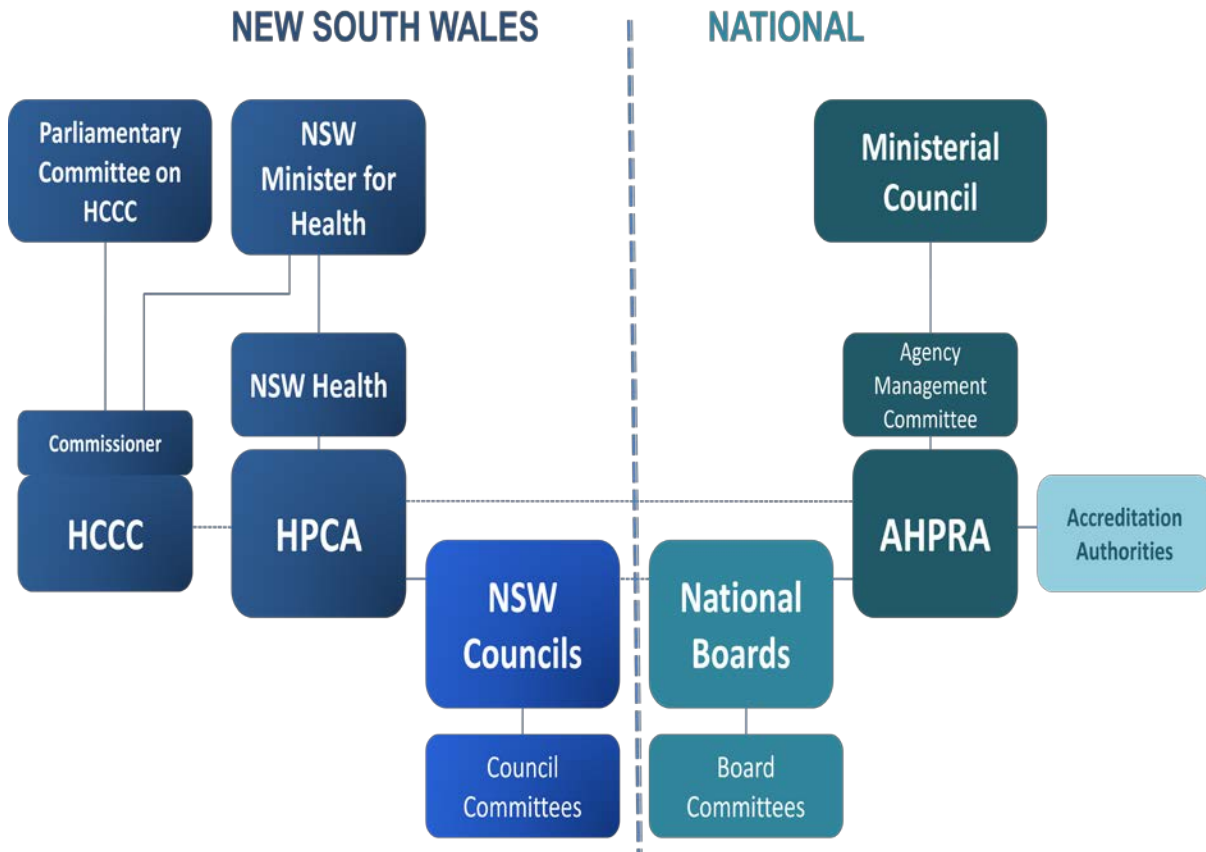
The complaints handling model for health practitioners in NSW is one which requires the NSW health professional Councils to jointly consider complaints with the independent Health Care Complaints Commission (HCCC) – it is known as a ‘co-regulatory model’.





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## NSW CO-REGULATORY ARRANGEMENTS





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## **2. MANAGING HEALTH, PERFORMANCE & CONDUCT**

This Chapter will assist members in managing complaints from initial receipt to closure of the complaint. The aim is to provide guidance to members to ensure that complaints that raise concerns about a practitioner are dealt with in accordance with the relevant provisions of the Law. This section should be read in conjunction with Part 8, Divisions 2 through to 5 of the Law.

The information in the Handbook for Council, Committee and Panel Members is not legal advice and is not a substitute for the provisions of the legislation or relevant case law.

Further information regarding staff administrative procedures is available in the *Regulation Handbook*, which is available on Boardbooks or from the Council Executive Officer.

### **2.1 Courses of action available to the Council**

Under Section 145B of the Law, the courses of action available to the Council in response to a complaint include:

- make any inquiries
- refer to the HCCC for investigation
- refer to the Tribunal (a complaint that may provide grounds for suspensions or cancellation of registration must be referred to the Tribunal). In practice, the matter is referred to the Tribunal by the HCCC following investigation.
- refer a practitioner/student for a health assessment or to an Impaired Registrants Panel (IRP)
- refer a practitioner for a performance assessment and to a Performance Review Panel (PRP)
- direct a practitioner/student to attend counselling
- refer to the HCCC for resolution or conciliation
- refer the notification to another entity, for example, the relevant National Board
- determine to take no further action (NFA).

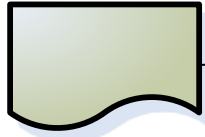
The Nursing and Midwifery Council and the Medical Council may also refer a complaint to a Professional Standards Committee. In practice, the matter is referred to a PSC by the HCCC following investigation.

The Councils, other than the Nursing and Midwifery Council and the Medical Council, may also refer a complaint to:

- an Assessment Committee or
- manage the matter by Inquiry at a meeting of the Council.

In urgent matters the Council has the power under section 150 to take immediate action to suspend or impose conditions on the registration of a practitioner (*see Regulation Handbook*).

# Process Map key



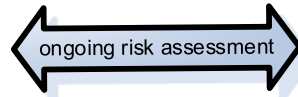
**Document:** A document based input or output. e.g. indicates the creation of a written decision following a hearing



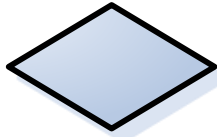
**Defined process:** A process that is defined in more detail in another process map



**Process:** An activity in the process, e.g. sending a letter to a practitioner



**Risk assessment:** Indicates the ongoing process of assessing risk when managing a matter, e.g. assessing whether the matter requires s150 action

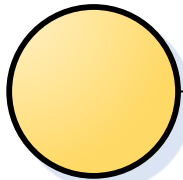


**Decision:** A point in the process where a decision determines the next step, e.g. whether s150 action is required



Send generic three month update letter to complainant (where required)

**Ongoing process:** Indicates the requirement to provide regular updates to the complainant when managing a matter, at least every three months

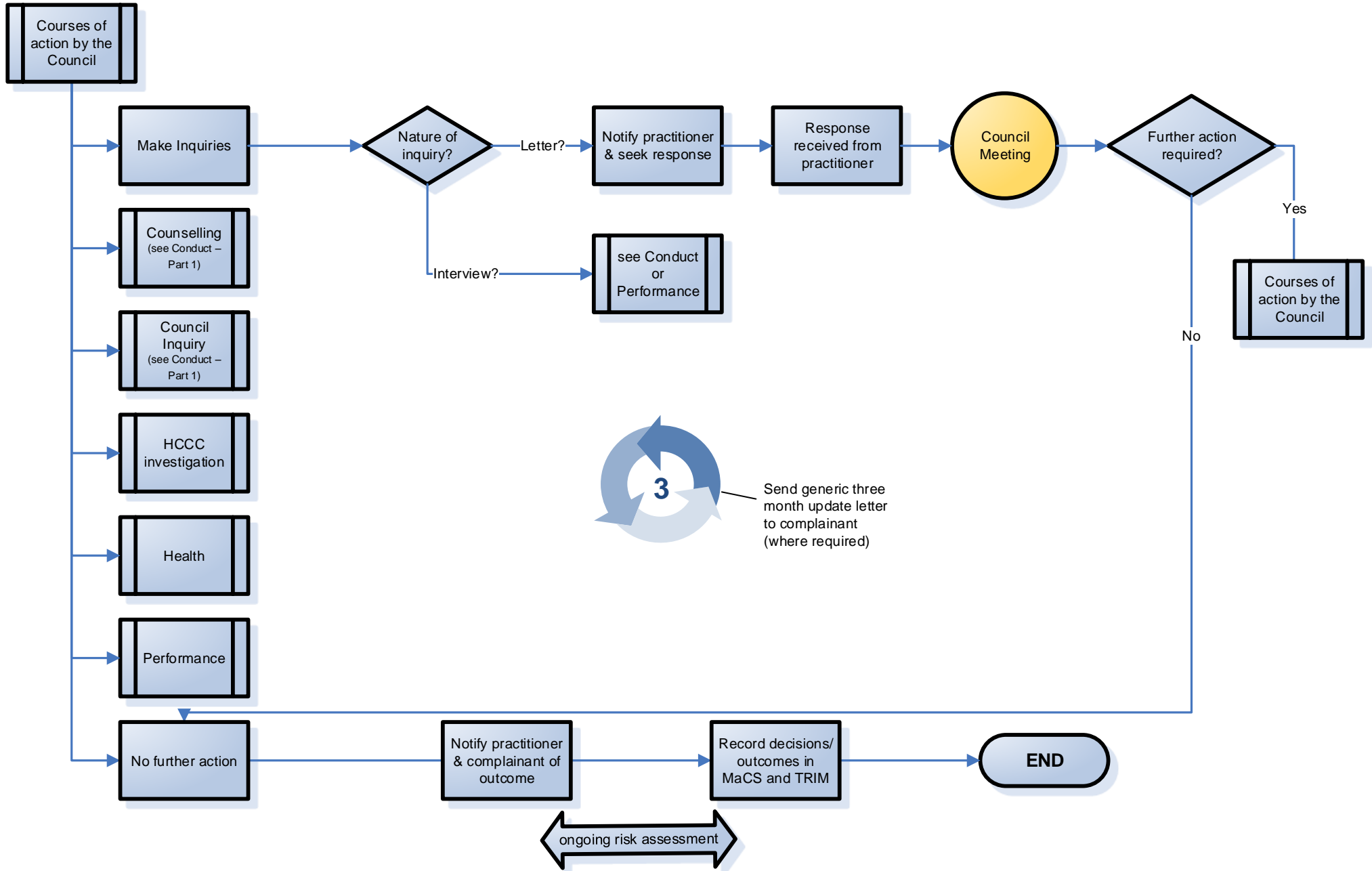


**Meeting:** A physical or virtual meeting for a group of people to discuss a matter, e.g. a consultation meeting between the Council and the HCCC

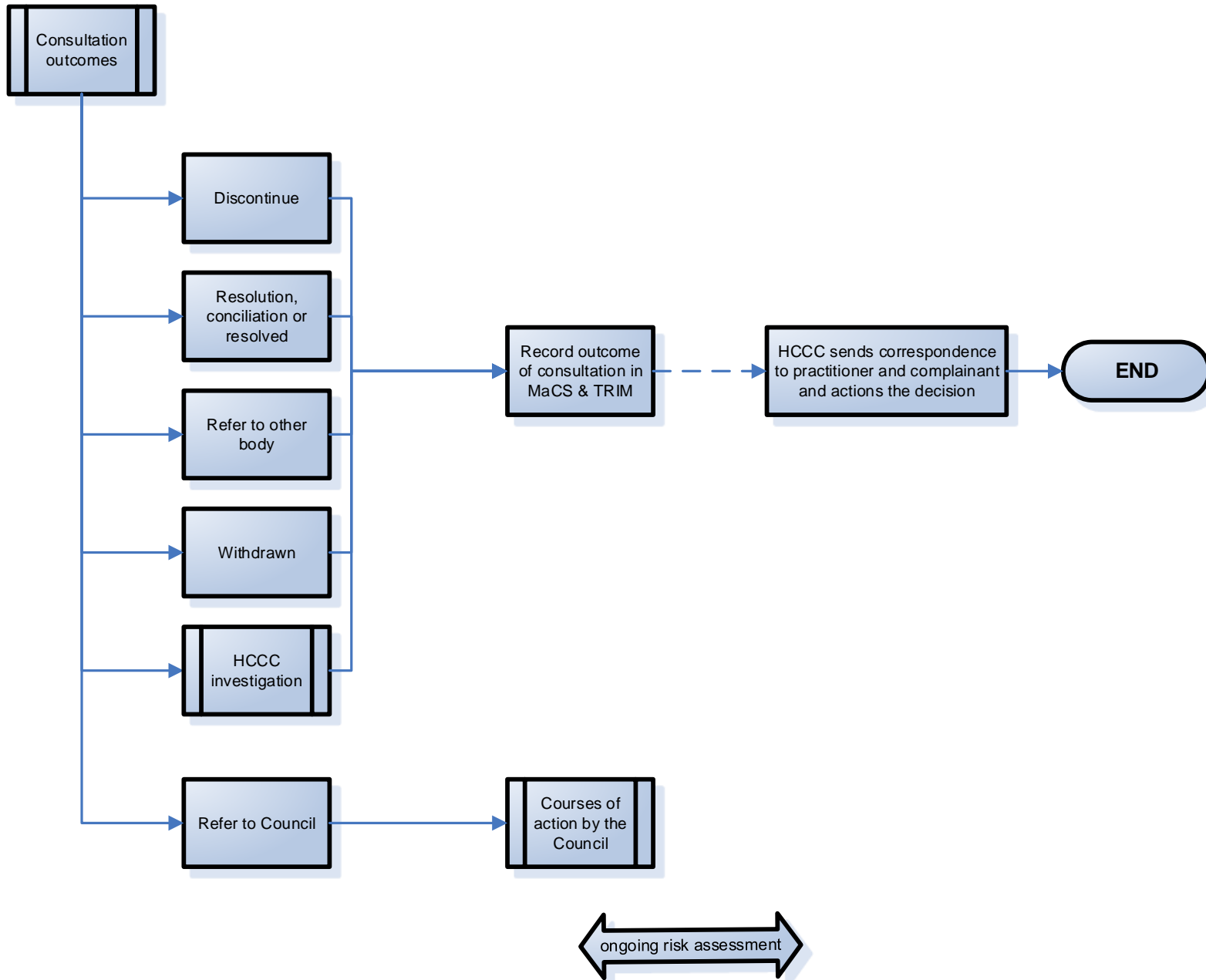


**Conclusion:** Indicates the conclusion of a particular process e.g. the point at which a complaint is closed

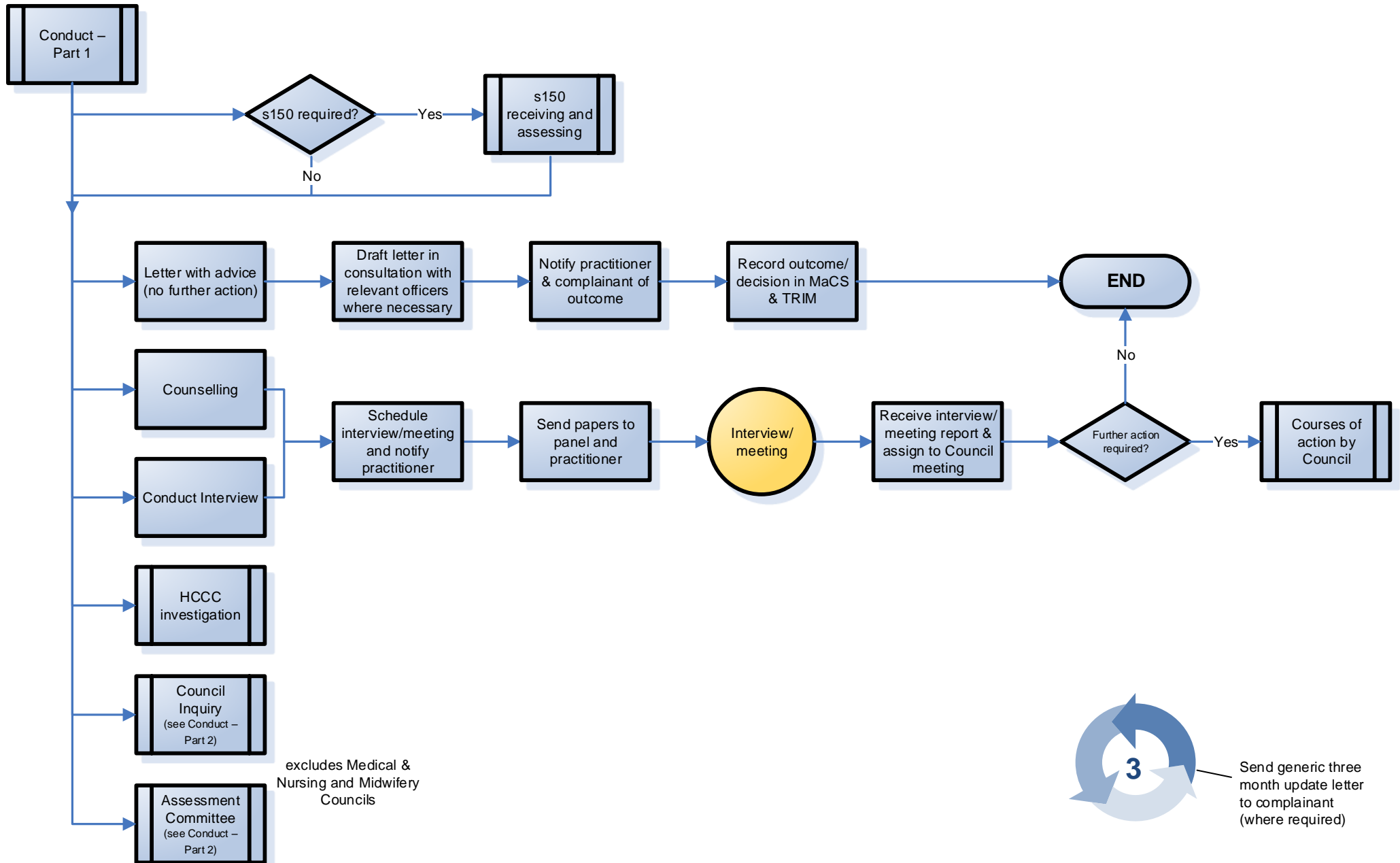
# Process Map – Courses of action by the Council



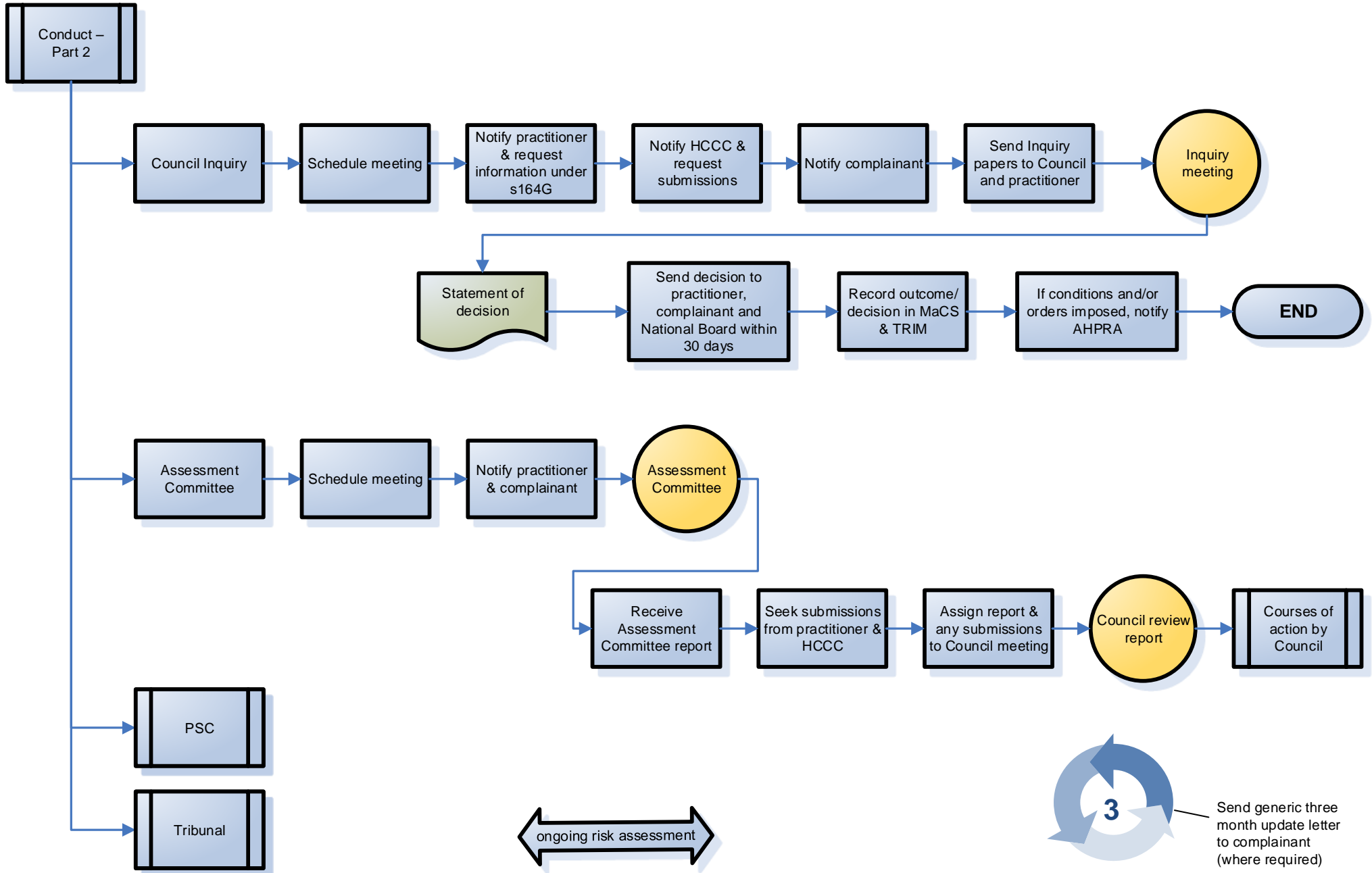
# Process Map - Consultation outcomes



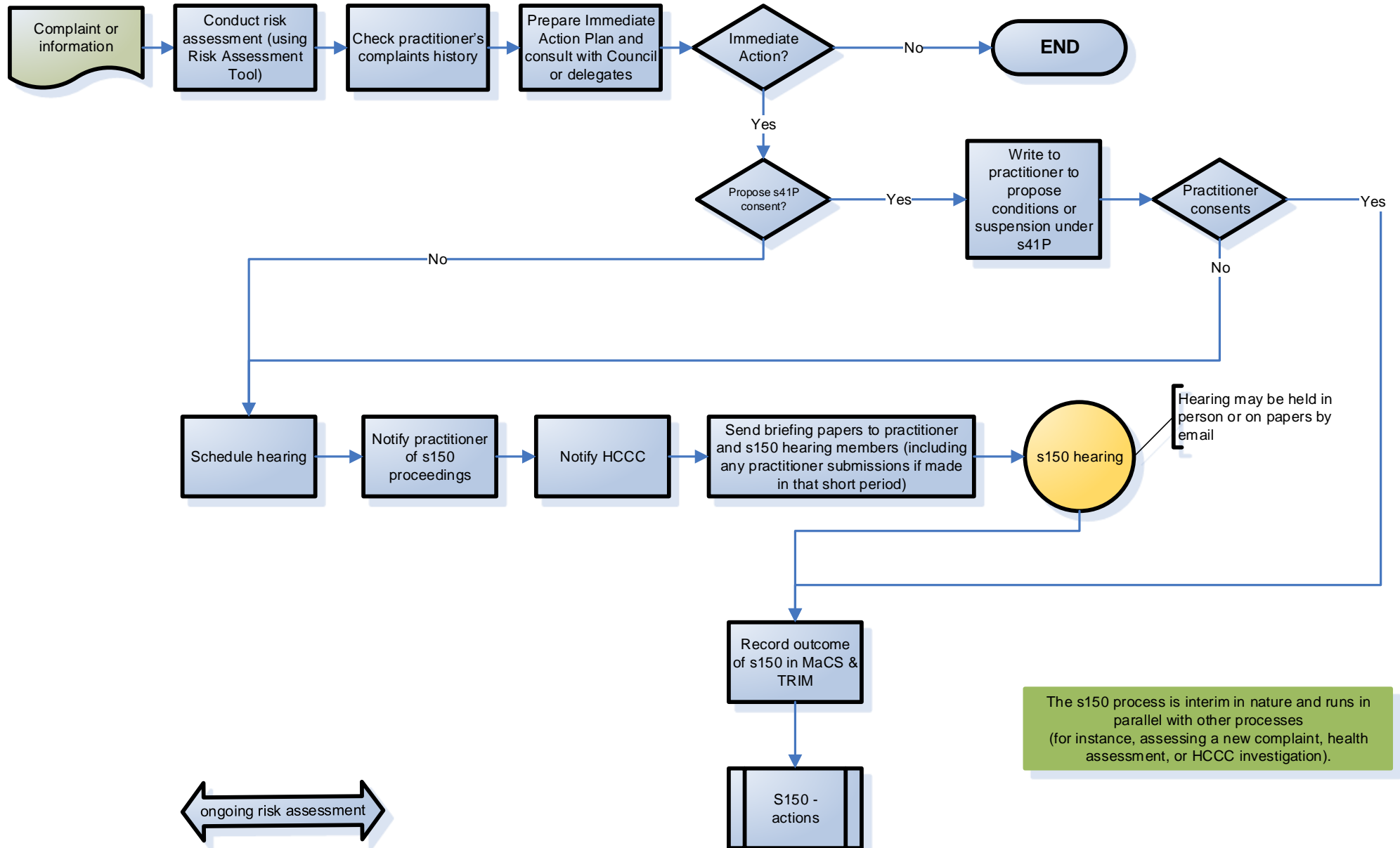
# Process Map – Conduct – Part 1



# Process Map – Conduct – Part 2

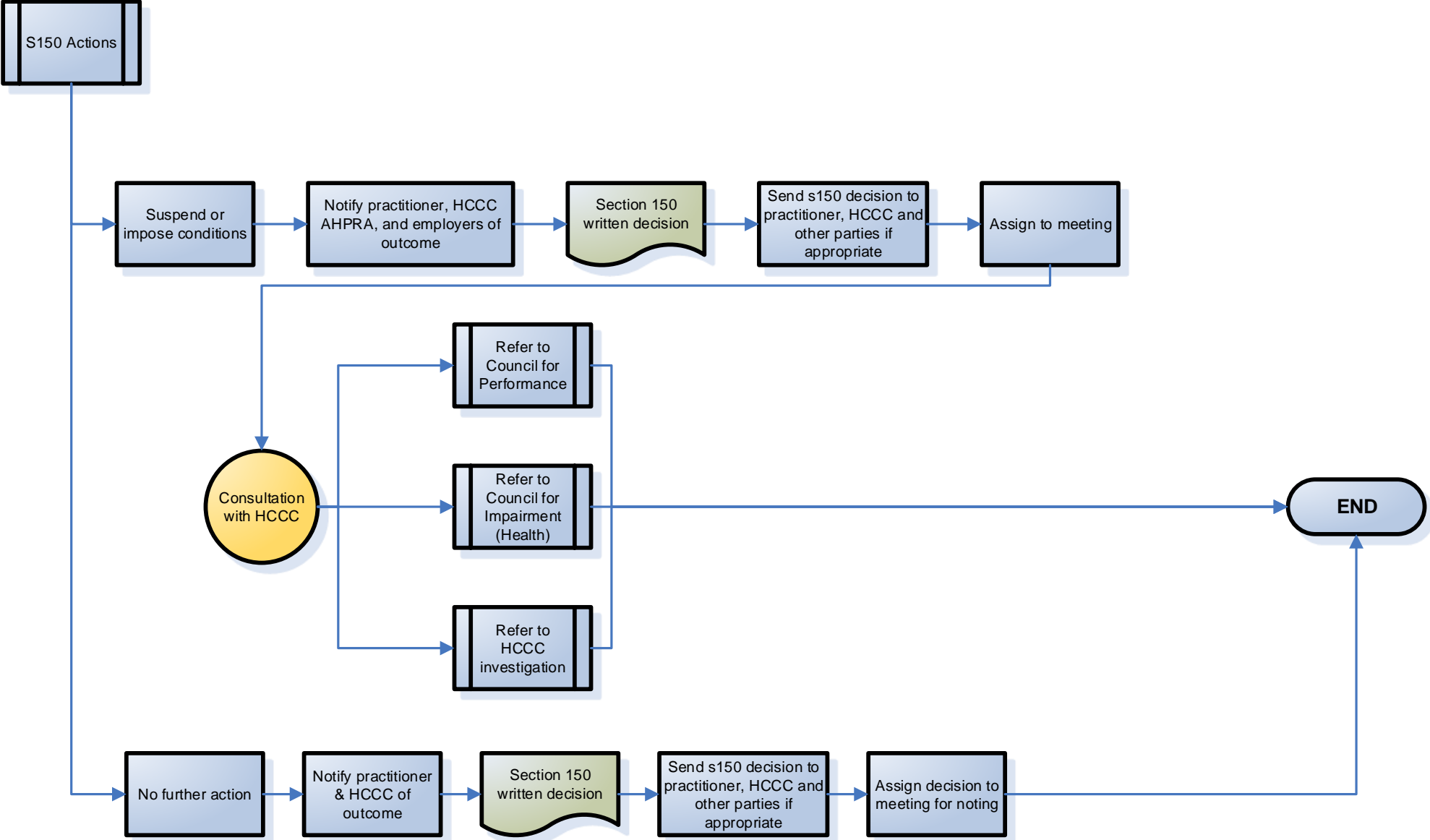


# Process Map – Section 150 – receiving and assessing





Process Map – Section 150 – actions



## **2.2 Immediate action proceedings (Section 150)**

### **2.2.1 Legislation**

Powers of the Council to suspend or impose conditions for the purpose of protecting the health or safety of any person or persons and/or public interest reasons are provided for in Part 8 Division 3 Subdivision 7 (sections 150 to 150J) of the Law. This subdivision includes review provisions, and section 159 of the Law provides for appeals against the Council's decisions under this subdivision.

### **2.2.2 Purpose and nature of section 150 powers**

The Councils have been provided with important powers under section 150 of the Law to suspend a practitioner's or student's registration or to impose conditions if it is considered that immediate action is appropriate.

These powers enable the Councils to take swift and effective action to restrict or even suspend a practitioner's practice. However, given the far reaching consequences that can result from the exercise of the Council's power under section 150, these powers should be exercised with care.

Before exercising powers under section 150 of the Law, the Council must be satisfied that it is appropriate to take action for the protection of the health or safety of any person or persons, or that it is in the public interest to do so. The Councils should be mindful that any action taken should be restricted to the minimum action required to achieve public protection in the circumstances or otherwise to serve the public interest.

Immediate action taken under section 150 is always interim as it is taken pending the outcome of either a formal investigation by the HCCC or referral for further management by the Council where the matter relates to a practitioner's health or performance (having first consulted with the HCCC about referral of the matter to the Council for management).

Action taken under section 150 can be the subject of an appeal and can also be reviewed at any time. Conditions made under section 150 remain in force until the matter is either finally disposed of, the conditions are varied or lifted by the Council or following a successful appeal, whichever happens first. Similarly a suspension imposed following a s.150 remains in force until the matter is either finally disposed of, the suspension is lifted by the Council or following a successful appeal, whichever happens first.

### **2.2.3 Procedures for exercising powers under section 150**

All relevant decisions must be documented. Further information is available in the *Regulation Handbook – section 150 Proceedings*.

#### **2.2.3.1 Delegation of exercise of powers under section 150**

A Council may consider delegating the exercise of its section 150 powers, to two or more delegates. This enables the Council to deal with matters requiring action under section 150 swiftly and without having to convene a full Council meeting outside the scheduled meeting dates.

If the Council delegates the exercise of its section 150 powers at least one of the delegates must be a person who is not and has never been a registered health practitioner or student in the profession. When approving delegates, the Council should consider the nature of the matter and whether there is a need for any particular knowledge or expertise.

### **2.2.3.2 The exercise of powers under Section 150**

On receipt of a matter that may require urgent action, the Executive Officer will first clarify with the Council whether section 150 action should be considered, having undertaken an assessment using the risk assessment tool.

In certain circumstances, such as a matter involving a practitioner who may be impaired, exploring matters with the practitioner face to face may assist in making an appropriate decision. Holding a face to face hearing is one way to promote procedural fairness. However provided a practitioner is informed of all the matters and material that will be considered and given an appropriate opportunity to respond, the “hearing” rule of procedural fairness will ordinarily have been satisfied. In considering the circumstances and gravity of the matter and the quality of the evidence before the Council, the Council may decide to request that the practitioner or any other witness attend the proceedings. Failure by the practitioner to attend when offered the opportunity to do so does not invalidate any decision taken.

### **2.2.3.3 Regard to other matters (section 410)**

When exercising section 150 powers, the Council must have regard to the following matters to the extent that they are relevant:

- any other complaint made to the Council (or former NSW Board) or the National Board, irrespective of the outcome (including no further action (NFA))
- previous findings or decisions of the Council Inquiry, Professional Standards Committee or Tribunal (this includes decisions that resulted in no findings or action), and
- any written reports made by a performance assessor or recommendations/decisions made by a PRP.

### **2.2.3.4 Notice to the practitioner or student**

If the Council or its delegates are of the view that the triggering matter may warrant taking action under section 150 of the Law, procedural fairness dictates that the practitioner or student be given notice of the Council's intention to consider exercising its powers under section 150.

The Council staff will telephone the practitioner or student to advise that the Council is considering exercising powers under section 150 of the Law, prior to providing written notice with the details of how the matter will be dealt with, and any time limitations for serving the Council with any additional documents or responses.

The practitioner and student must be provided with:

- the same information that caused the Council to consider exercising its section 150 powers.
- a reasonable opportunity to respond to the triggering matter such as providing submissions in writing, or being invited to attend any formal proceedings that are convened. Adequate notice depends on the seriousness of the matters before the Council and the level of risk to the public that the practitioner apparently poses. In the most serious cases adequate notice may be less than a day.

In addition, when notifying the practitioner or student they should be advised that if they fail to respond to the Council's letter, or fail to attend proceedings, the matter may be decided in their absence or without the Council having the benefit of their response.

In setting timeframes, the protection of the health and safety of the public is a primary consideration for the Council. Proceedings are not set down for the convenience of the practitioner or their advisors.

#### **2.2.3.5 Suspension or the imposition of conditions without notice**

Occasionally, the Council may decide that the particular circumstances require immediate suspension or the imposition of conditions without notice to the practitioner or student. The Councils should be aware that making a decision that is adverse to a practitioner or student without notice and an opportunity to respond, may amount to a denial of procedural fairness. Therefore, the Councils must be cautious in exercising their powers under section 150 of the Law in these circumstances.

In these cases, the Council must immediately advise the practitioner or student of any action taken and advise them of their review and appeal rights. Any action to suspend registration or impose conditions without notice should be quickly followed by an opportunity to conduct review proceedings (under section 150A or section 150C) at which the practitioner can present any information or submission they wish to make. (See *Regulation Handbook*).

#### **2.2.3.6 Obtaining further information, records and evidence (section 150J)**

If the Council is of the opinion that a person is capable of providing information, documents (including health records) or evidence that would assist the Council in making a decision about whether or not to take action or the nature of the action, the Council may require the person to:

- give a signed statement of information
- produce documents, and/or
- appear and give evidence at the section 150 proceedings.

The request is to be complied with despite any other Act or law. Non-compliance without reasonable excuse, and/or provision of false and misleading information is an offence under the Law.

#### **2.2.3.7 Conduct of section 150 by the Council delegates**

During any face to face proceedings, the practitioner or student will be informed of the format of the proceedings. Generally, the practitioner or student will be asked questions that will assist the Council or its delegates in their decision making and will be given the opportunity to be heard in relation to any relevant matters.

In conducting the proceedings, the Council or its delegates should be mindful of appropriate demeanour and questioning to avoid the perception of bias or apprehended bias.

#### **2.2.3.8 When a recording must be made**

It is a requirement that any face to face proceedings are audio recorded. The audio recording is not admissible in any civil proceedings, other than proceedings under the Law, nor is it admissible in an inquest or inquiry under the *Coroners Act 2009*.

#### **2.2.3.9 Practitioner can have support**

The attending practitioner or student (the subject of the proceeding) may have support, although the practitioner or student is not entitled to legal representation.

#### **2.2.3.10 Notification and referral of the Council's decision**

The practitioner or student must be provided with written notice of any action taken by the Council including:

- a statement setting out the Council's decision, and
- the practitioner or student's right of review or appeal against the decision.

The Council should also provide written reasons for its decision. The provision of those written reasons will allow the practitioner or student to understand the basis of the decision

and will also assist the Council or the Tribunal to hear a subsequent review or appeal application.

The Council must also, as soon as practicable, but no later than seven days after taking action under section 150:

- refer the matter to the HCCC for investigation or
- consult with the HCCC about referral of the matter to an IRP or for a performance assessment.

The HCCC is to be provided with all of the information obtained by the Council in connection with the exercise of functions under section 150, including any audio recording of the proceedings.

The Council must notify the National Board of action taken and may notify the practitioner's or student's employer and other relevant persons or agencies of any publicly recorded outcome.

#### **2.2.4 Review of the Council's decision**

A practitioner or student may, at any time, apply in writing to the Council for review of any orders made under section 150 of the Law.

The application should be addressed to the Executive Officer and include any relevant evidence or material in support of the application for review.

The Council may affirm or vary the decision, or set aside the decision and take any other action that the Council has power to take under section 150 of the Law. Such a variation or setting aside can only be made if the Council is satisfied that there has been a change in the practitioner's or student's circumstances that justify that change.

The nature of the review will be dependent on the circumstances of the matter and may consist of a review on the papers by the Council, or a face-to-face hearing which may be conducted by either the Council or delegates.

The Council may refuse to reconsider its decision if it is of the view that the application is frivolous or vexatious.

On occasions, the Council may itself decide to end a suspension, or alter or remove conditions imposed under section 150. This may be as a result of:

- being notified of changed circumstances which warrant a review.
- the imposition of a suspension, (should only proceed with proper attention to procedural fairness considerations).

#### **2.2.5 Appeal against the Council's decision**

A practitioner or student has a right to appeal to the Tribunal against a decision of the Council to take action under section 150. Appeals can also be made on a point of law and against the Council's refusal to alter or vary conditions imposed or lift a suspension.

An appeal against a Council decision, including a refusal to vary or alter conditions or lift a suspension, is conducted as a re-hearing of the matter by the Tribunal, and the Tribunal may exercise any power that the Council could have exercised under section 150.

#### **2.2.6 Ending of section 150 suspensions or conditions**

A suspension or conditions imposed under section 150 have effect until such time as the matter that gave rise to the section 150 action is finally disposed of or the Council decides to revoke the suspension or lift the conditions. A matter is finally disposed of when an

adjudication body, for example the Tribunal or a Council inquiry, makes a decision about a complaint including a decision that the complaint is not substantiated, or a Council resolves that no further action is to be taken on the complaint.

In the case of matters dealt with through an IRP process and where the practitioner or student agrees to the imposition of conditions as a result of the IRP, they may make an application for the imposed conditions to be altered or removed. The Council may choose to alter or remove the section 150 conditions and impose any conditions that have been recommended by the IRP and agreed to by the practitioner or student.

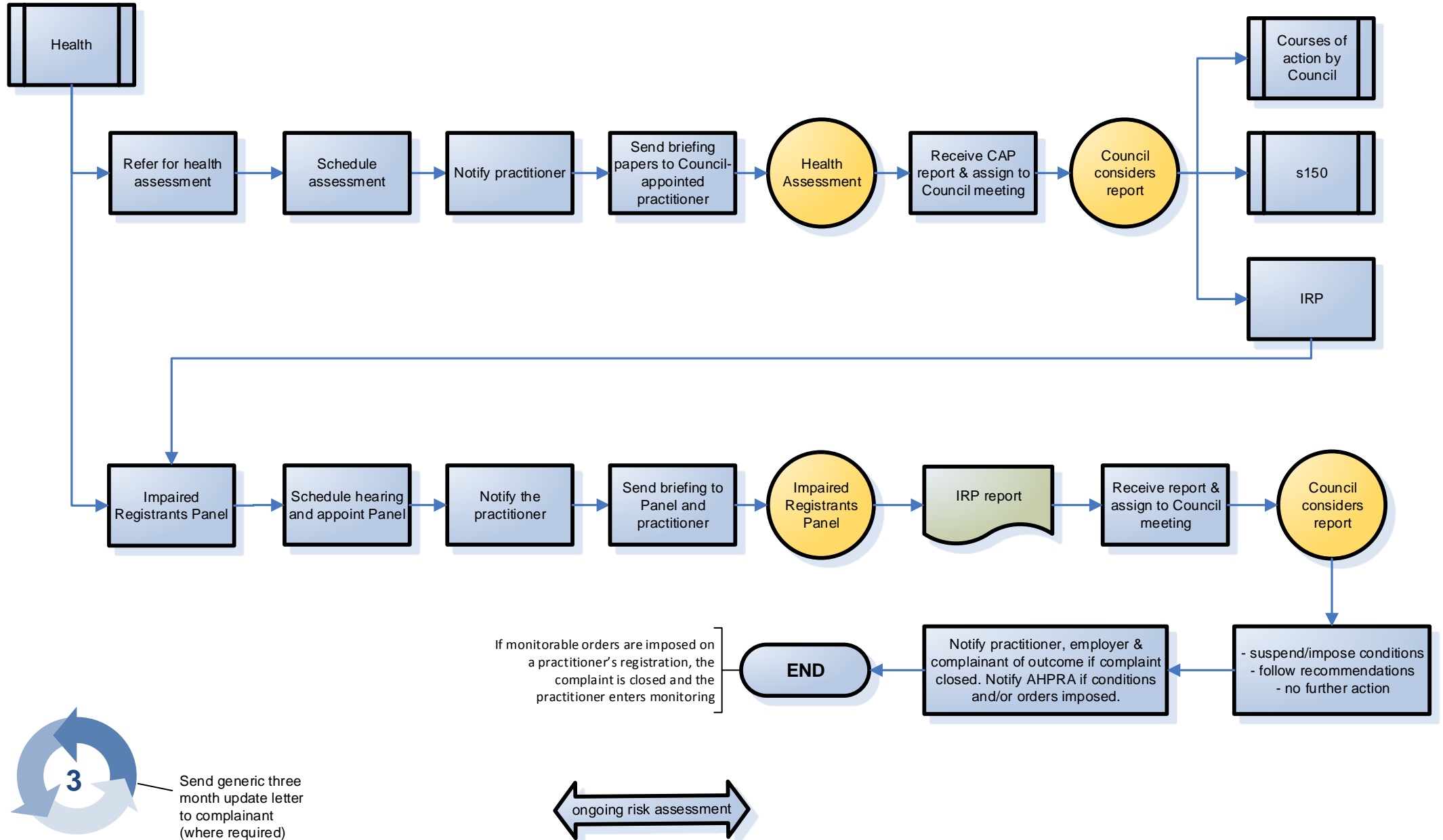
## **2.3 HEALTH**

### **2.3.1 Legislation**

Provisions relating to impairment of practitioners and students are found in Part 8 Division 4 (sections 152 – 152M) of the Law. Part 8 Division 13 (sections 173A and B) of the Law provides for establishment and decisions of IRPs.

Sections 140-143 of the Law deal with mandatory notifications, including the mandatory notification of practitioners with an impairment. (Please note that mandatory notifications must be made to AHPRA and are not made to the Councils). Rights of review and appeal are provided for in sections 152K and 159-159C of the Law.

# Process Map – Health





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### **2.3.2 Impairment**

Impairment as defined in section 5 of the Law includes a physical or mental impairment, disability, condition or disorder (including substance abuse or dependence) that detrimentally affects or is likely to detrimentally affect a registered practitioner's capacity to practise the profession or a student's capacity to undertake clinical training. A practitioner or student can be impaired without having a recognised diagnosis.

### **2.3.3 Health complaint**

Generally the Councils will become aware that a registered practitioner or student has or may have an impairment by way of a complaint to the Council, the HCCC or AHPRA.

A complaint or a notification regarding an impairment may be received from:

- any person who may have a concern about a practitioner or student
- the practitioner or student - self-notification, or
- under the mandatory notification provisions which require another health practitioner, employer or education provider to notify AHPRA if they form a reasonable belief that a practitioner or student has an impairment and has placed the public at risk of substantial harm or has practised while intoxicated by alcohol or drugs.

If the Council is of the opinion that the registered practitioner or student has or may have an impairment, the Council may refer the matter to an IRP. However it may be appropriate to first require the practitioner or student to undergo an assessment by a Council appointed practitioner (CAP). On receipt of a report from the CAP the Council can make an informed decision about whether to refer a matter to an IRP or not. In some cases the Council may decide to refer a practitioner for a CAP assessment and to an IRP at the same time.

Section 145E can also be used to direct a practitioner or student to undertake an assessment. Use of section 145E is rare but it may be useful when the HCCC has started investigating a matter and information subsequently suggests that it may be more appropriate to refer the matter back to the Council to be dealt with under its health program.

The Council may also on occasions convene section 150 proceedings ahead of an IRP if the Council is concerned a health matter appears to warrant immediate action.

### **2.3.4 Referral to the Council – Council Appointed Practitioner (CAP)**

CAPs are required to have a thorough understanding of the Council's role in public protection and their role in providing advice (a report) for the Council's consideration. Practitioners or students can only be directed to attend a CAP by the Council. The cost of the assessment and report are met by the Council.

Prior to the practitioner or student meeting with the CAP, the Council needs to brief the CAP by providing copies of all information relevant to the examination (such as the notification and any further documents about the practitioner's or student's health issues or history with the Council).

#### **2.3.4.1 Decision to require examination by CAP**

The Council may appoint a suitably qualified experienced CAP to assess the practitioner or student who may have issues with their health. The aim of the referral is to allow the Council to obtain independent advice to assist the Council in identifying the appropriate course of action.





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#### **2.3.4.2 Notice to the practitioner or student**

The Council must provide written notice to a practitioner or student who is required to undergo a CAP examination.

The written notice must state:

- that the practitioner or student is required to undergo an examination
- the name of the CAP
- the date, time and place of examination, and
- that a failure to attend by the practitioner or student may be viewed as:
  - evidence that the practitioner does not have sufficient physical or mental capacity to practise, and/or
  - specifically for a student, that failure to attend may result in suspension of the student's registration until he or she undergoes the examination.

#### **2.3.4.3 Examination report**

Once the Council obtains the CAP's report, the Council may:

- take no further action, such as when the CAP finds no evidence of impairment and the Council has no further concerns
- refer the matter to an IRP
- determine that the matter concerns the practitioner's performance or conduct (rather than health) and take any appropriate action, including making a complaint against the practitioner, and
- take immediate action under section 150 if the Council holds serious concerns regarding public health or safety.

The Council should provide a copy of the CAP's report to the practitioner or student. On occasion, if deemed necessary and in the interests of the practitioner's health, the Council can decide to do this by providing the report through a treating practitioner, solicitor, or other support person or adviser. In this way the subject practitioner or student has the opportunity to comment on the contents of the report in any subsequent proceedings.

A report prepared by a CAP about the examination of a registered practitioner or student is a "protected report". A person who is exercising functions under the Law may not disclose the report itself, or the information contained in the report to another person except for the purpose of exercising functions under the Law including disclosure to the HCCC.

A person cannot be compelled to produce or give evidence about a protected report in civil proceedings before a court. A protected report can only be used in civil proceedings if the report's author and the subject of the report both consent. (See [HPCA Legal Practice Note 6](#))

#### **2.3.5 Impaired Registrants Panel (IRP)**

An IRP must conduct an inquiry into the matter, unless the matter is the subject of an investigation by the HCCC. In these circumstances, the IRP must be suspended while the investigation is conducted.

##### **2.3.5.1 Membership of IRP**

The Council appoints either two or three persons to sit as the IRP. At least one panel member must be registered in the same health profession (and if the profession has divisions, in the same division of the health profession) as the practitioner or student attending the inquiry. The Panel must also include of at least one medical practitioner.



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An IRP does not have a chairperson and all members are of equal status.

A person may be appointed to sit on a panel whether or not the person is a Council member. However, a person who has dealt with the matter in their capacity as a member of the Council is not to be appointed as a panel member in that matter.

#### **2.3.5.2 Notice to the practitioner or student**

The Council must provide written notice to the practitioner or student referred to an IRP.

The written notice should provide:

- sufficient details of the matter. In practice this means the practitioner or student should be provided with the same documents as the Panel
- if the practitioner or student is expected to attend the IRP or provide submissions and include details regarding the information required, and
- appropriate time for the practitioner or student to comply.

If the practitioner or student does not attend, the Panel may still conduct the inquiry in their absence.

#### **2.3.6 IRP inquiry**

IRP inquiries are held in private. The Panel may obtain reports and/or other information concerning the matter from any source it considers appropriate. This may include asking the practitioner or student to attend the IRP for the purpose of providing information and to help the Panel make an assessment. However an IRP has no power to compel the attendance of the practitioner or student

The practitioner or student, the subject of the inquiry, is entitled to make oral or written submissions to the Panel about the matters which are subject of the inquiry.

##### **2.3.6.1 IRP report and recommendations**

The Panel provides a report to the Council. The report must detail the results of the inquiries, assessment and any recommendations. If the Panel members cannot reach an agreed position, details of the difference/s of opinion must be included in the report to the Council.

An IRP may counsel the practitioner or student or make the following recommendations as part of their report to the Council:

- counselling by the Council
- imposition of conditions or
- suspension of registration for a specified period, and/or
- any other actions.

The IRP report is a protected report.

(See [Legal Practice Note 6](#) and *Regulation Handbook*)

#### **2.3.7 Actions by the Council**

The Council may take any of the following action:

- impose conditions or suspend registration, if agreed to by the practitioner
- deal with the matter as a complaint in circumstances where the practitioner or student fails to agree with the IRP's recommendation, or
- deal with the matter as a complaint if the IRP makes that recommendation.



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The Council may also in appropriate cases decide to take action under section 150 when the matter is to be dealt with as a complaint.

The Council may by written order and without the agreement of the student:

- suspend registration, or
- impose conditions in the public interest.

Notice of such an order is to be given to the student's education provider and takes effect from the time of service and remains in force for no more than two years or until revoked by the Council.

### **2.3.8 Appeals and reviews**

A person whose registration has been suspended or who has had conditions imposed on their registration following an IRP has both appeal and review rights. They should be advised of these rights when the decision is handed down.

#### **2.3.8.1 Review**

A practitioner or student who has agreed to voluntary conditions or suspension of registration may seek a review at any time. The application for review must be in writing to the Council and the application may ask for the conditions to be altered or removed, or for the suspension to be terminated or shortened.

On receipt of an application for review, the Council must require an IRP to review the matter and provide the Council with a written report of its review. If the IRP recommends that the Council refuse the review application, the Council may do so. The practitioner or student is to be given written notice of the Council's decision and the Council may specify a period within which the practitioner or student is not to request a further review. Any further application for review that is made during such a period may be refused.

#### **2.3.8.2 Appeal**

The Council's decision not to alter or remove conditions or terminate or shorten a period of suspension following a review is appealable to the Tribunal, unless the application for the appeal was rejected because it was made during a period not permitted by the Council.

A practitioner may appeal to the Tribunal against conditions imposed by the Council following an IRP inquiry or against any alteration of those conditions. These appeal rights exist notwithstanding the practitioner's initial agreement to the conditions.

A student may also appeal against the Council's order to suspend or impose conditions.

Appeals must be made within 28 days of notice of the decision which is being appealed (or within a longer period as allowed by the Tribunal). Appeals are made directly to the NSW Civil and Administrative Tribunal (NCAT).

An appeal does not stay the effect of the decision being appealed against, although the person appealing may apply for a separate stay order from the Tribunal.

A Tribunal may on appeal:

- terminate, vary or confirm a suspension, or
- revoke, vary or confirm conditions.



## **2.4 PERFORMANCE**

### **2.4.1 Overview**

The professional performance of a registered health practitioner is a reference to the knowledge, skill or judgment possessed and applied by the practitioner in the practice of the practitioner's profession. A complaint or pattern of complaints that raises concerns about the practitioner's lack of knowledge, skill or judgment in treating patients may be sufficient for the Council to refer the practitioner for a performance assessment. Note that registered students cannot be dealt with via the performance pathway.

The processes available to the Council to manage complaints about a practitioner's performance rely on the cooperation of the practitioner. The key aims of the performance assessment are to:

- identify any areas in the practitioner's professional performance that may be unsatisfactory, and
- remediate any unsatisfactory areas of the practitioner's professional performance.

Key benefits for the practitioner are the:

- supportive approach that aims to keep practitioners practising their profession in a safe and appropriate manner, and
- confidential nature of the process.

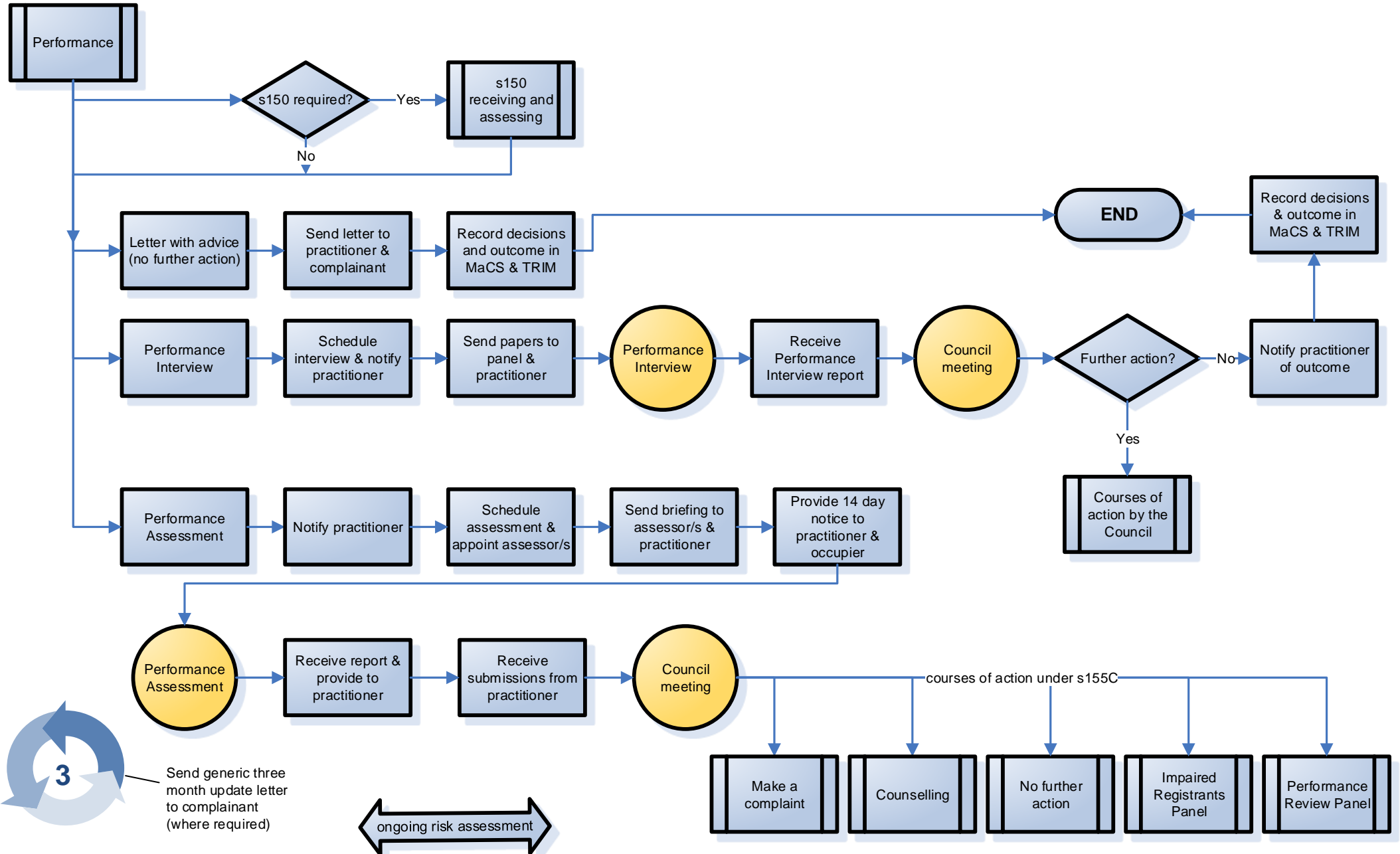
Key benefits for the Council and the public are that (compared with disciplinary processes) the process:

- develops cooperative strategies to improve or modify the practitioner's practise, and
- addresses deficiencies, or developing deficiencies, in a practitioner's professional performance before they deteriorate to a level that presents a risk of serious harm to patients.

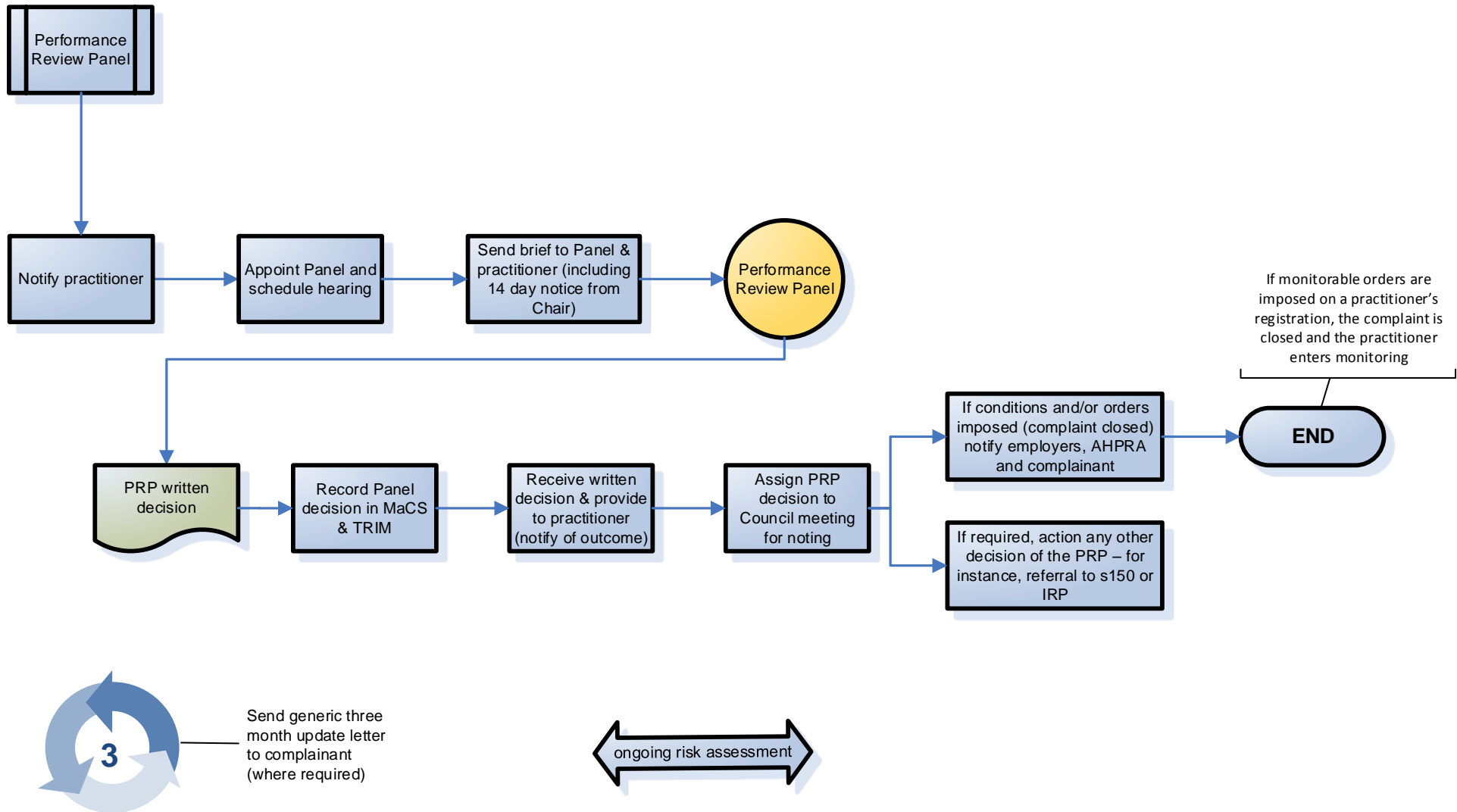
### **2.4.2 Legislation**

Provisions providing for performance assessment and performance review are found in Part 8 Division 5 (sections 153 - 157) of the Law, while Part 8 Division 14 (sections 174 - 174D) of the Law provides for appointment of performance assessors and establishment of PRP. Schedule 5B of the Law relates to powers and functions of performance assessors and performance reviews. Rights of appeal and review are provided for in sections 160, 160A and 163 - 163C of the Law.

# Process Map – Performance



# Process Map – Performance Review Panel





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### **2.4.3 Performance assessment**

The Council should consider whether or not the performance assessment is to cover the entire scope of the practitioner's practice or is to be limited to discrete aspects of performance. The Council should also consider the practicality of conducting a performance assessment in an actual clinical situation or whether a simulated setting is appropriate.

Referring a practitioner to undertake a performance assessment is a non-disciplinary course of action available to the Councils.

### **2.4.4 Performance assessment process**

Performance assessment should be conducted as quickly as practicable after the decision is made to refer the practitioner to a performance assessment. Where possible, performance assessments are to be conducted in the practitioner's practice environment.

Initially, the Council staff contact the practitioner by telephone to discuss the Council's decision to assess the practitioner's performance and determine the earliest possible date for the Performance Assessment to take place.

The performance assessment may consist of a combination of the following:

- pre-visit questionnaire
- interview with the practitioner and practice staff
- observing consultation and/or procedures
- review of records
- premise inspection
- clinical practice interview, and/or
- any other assessment tools that may be appropriate.

#### **2.4.4.1 Notice to the practitioner**

In addition to the initial telephone call to the practitioner, the Council must give the practitioner written notice of its decision to proceed to performance assessment. The notice must include details of the matter/s that gave rise to the assessment and information about how the performance assessment process is conducted. In some instances, it may be beneficial for the Council to invite submissions from the practitioner prior to making the decision to have the practitioner's performance assessed.

#### **2.4.4.2 Performance assessors**

The professional performance of a practitioner can be assessed by having one or more assessors conduct an assessment of the practitioner's professional performance, this could be either their entire scope of practice or limited to discrete aspects of performance.

A suitably qualified person/s is appointed by the Council to conduct the performance assessment. The assessor/s is to be provided with a certificate of authority. The certificate is signed by the Executive Officer authorising the assessor/s to act for the Council when conducting a performance assessment.

Assessors are to conduct performance assessments in accordance with the Council's directions. However, the assessor/s may assess other aspects of the practitioner's professional performance if, during the assessment they form the opinion that other aspects of the professional performance may be unsatisfactory and should be assessed.

Assessors are provided with powers to enter premises that they reasonably believe to be used by the practitioner in the course of their practice. However, before entering such premises the assessors must give at least 14 days notice to the occupier and practitioner of



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their intention to enter premises. Assessors may enter premises within a shorter notice period with the consent of the practitioner and occupier, however consent may be withdrawn at any time. It is generally best practice to maintain the 14 day notice period outlined in the Law.

Upon entry to premises, assessors have the power to:

- examine equipment
- take photographs
- require the production of and inspect any stocks of any substance or drugs
- require production of any records
- take copies of, or extracts or notes from, those records
- ask questions of any persons on those premises, and
- require provision of reasonable assistance from occupier/owner of the premises.

Patient privacy and disruption to the practice (including as to its future reputation) should be considered in undertaking a performance assessment.

#### **2.4.4.3 Performance assessment report**

The assessor/s provide a written report to the Council. The report should detail the assessments undertaken and outcome and must include recommendation/s.

Performance assessment reports are protected reports and may not be admitted or used in any civil proceedings before a court, unless the consent of both the assessor/s and the practitioner is obtained. (See *Legal Practice Note # 6*).

In keeping with the intended cooperative nature of the performance assessment process, on receipt of the performance assessment report, the Council provides the report to the practitioner and invites their response to the findings.

#### **2.4.5 After the performance assessment**

The Council considers the performance assessment report and any submissions made by the practitioner in response to the report and may:

- decide to take no further action
- counsel the practitioner, if there are only minor deficiencies in the practitioner's performance
- require a PRP to conduct a performance review
- make a complaint against the practitioner if the report raises a significant issue of public health and safety
- refer the matter to an IRP if the report raises issues relating to impairment/health of the practitioner or if the report indicates that performance issues cannot be adequately addressed due to concerns with the practitioner's health, or
- if the report indicates it may be appropriate to consider taking immediate action, the Council may decide to convene section 150 proceedings (see section 150 Guidelines).

#### **2.4.6 Membership of Performance Review Panel (PRP)**

The Council must appoint three persons to the PRP. The Panel is to include two registered practitioners in the same health profession as the practitioner to whom the proceedings relate, and one lay person to ensure that community interests are addressed in the panel's decision (the lay person must not be a registered health professional in the same profession). One person, either the lay member or a registered practitioner member, must be appointed as the Chairperson of the panel.





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#### **2.4.7 PRP**

The Council may decide to refer the matter to a PRP for review if the performance assessment report concludes that the professional performance of the practitioner is unsatisfactory (below the standard reasonably expected of a practitioner of an equivalent level of training or experience). The performance assessment report will be the key evidence before the PRP.

The principal question for PRP is whether or not the professional performance of the practitioner is unsatisfactory at the time of the PRP review.

The PRP must terminate if the Panel is of the opinion that the performance review raises a significant issue of public health or safety that requires investigation by the HCCC. In these circumstances, the Panel refers the matter back to the Council with a recommendation that a complaint be made to the HCCC. The Council must deal with the matter in accordance with the recommendation.

In addition, the PRP must not take any action if it becomes aware that the HCCC is investigating the complaint or another complaint about the practitioner, unless the HCCC agrees to the continuation of the performance review.

##### **2.4.7.1 Notice to the practitioner**

The Chairperson must provide written notice to the practitioner advising that a performance review hearing is to be conducted.

The written notice should provide:

- not less than 14 days prior to the performance review hearing
- details of the time and place of the hearing and
- a copy of all evidence and material that is to be considered by the Panel.

The practitioner can make a written submission to the Panel.

#### **2.4.8 Performance review hearing**

A PRP decides how the performance review hearing is to be conducted and must observe and comply with the principles of procedural fairness.

The performance review hearing is to be conducted with as little formality and technicality as the circumstances of the case allow and is to be conducted expeditiously.

The PRP is not bound by the rules of evidence, but has the power to summons witnesses and require a person appearing before the PRP to produce documents. For the purposes of conducting a review, PRP's may also obtain a report or expert advice from qualified or experienced person/s.

PRP hearings are to be held in private. The practitioner is entitled to attend the performance review hearing accompanied by a legal practitioner or other adviser, but is not entitled to be represented during the course of the review.

##### **2.4.8.1 Decision of PRP**

The PRP must give a written statement of its decision and include reasons for the decision and be submitted to the Council and the practitioner within one month after a decision is made.



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If the PRP finds that the professional performance or a particular aspect of the professional performance of the practitioner is unsatisfactory, it may:

- impose practice conditions (such as supervision by another practitioner, limits on nature or extent of practice)
- order completion of educational courses
- order the practitioner to report on their practice and/or seek advice in relation to the management of their practice
- make recommendations to the Council that the PRP considers appropriate, including the making of a complaint to the HCCC, or
- direct that the practitioner's professional performance be re-assessed at a future date.

(See *Regulation Handbook*).

#### **2.4.8.2 Monitoring by the Council**

Following the decision of the PRP, the Council is required to monitor the practitioner's compliance with any decisions or orders made by the PRP. This includes the evaluation of the effectiveness of those orders in improving the practitioner's professional performance and easing of conditions where permitted by the PRP.

#### **2.4.8.3 Appeals and reviews**

The practitioner may appeal to the New South Wales Civil and Administrative Tribunal (NCAT) against the decision or any order or direction imposed by the PRP. The appeal is heard by way of re-hearing and fresh evidence can be relied upon. The appeal application is to be made to NCAT within 28 days of notification of the decision, unless time is extended by the Tribunal.

Following a PRP decision, the practitioner may also appeal with respect to a point of law to the Tribunal. An appeal may be made prior to commencement of the performance review (but after the date the practitioner is informed of the performance review); during a performance review; or 28 days after the notification of the PRP decision.

If an appeal application on the point of law is made during the performance review, the PRP is not to continue with the review until the appeal is determined by the Tribunal.

A practitioner may also seek review of conditions imposed by a PRP. Unless the PRP specifies the Council as the appropriate review body, such a review must be conducted by the Tribunal.

### **2.5 PROFESSIONAL STANDARDS COMMITTEES (PSC) (only Medical and Nursing & Midwifery Councils)**

A Professional Standards Committee (PSC) is convened to deal with a formal complaint that has been referred to it under the Law. In most circumstances this consists of a complaint against a practitioner which is prosecuted by the HCCC acting as the nominal complainant.

#### **2.5.1 Legislation**

Provisions of the Law directly relevant to PSCs are:

- Part 8, Division 3, Subdivision 3 (Disciplinary Powers of Professional Standards Committees).
- Part 8, Division 11 (Professional Standards Committees).
- Schedule 5 D (Proceedings before Professional Standards committees or Tribunals [NSW]).



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### **2.5.2 Membership**

PSC members are appointed by the Council, however a PSC is a separately constituted body and is independent of the Council. The members of a PSC are:

- two registered health practitioners from the relevant profession
- one lay person appointed from the shared lay persons panel, and
- one legal practitioner who is appointed as the Chairperson of the PSC.

### **2.5.3 PSC process**

Matters are referred to a PSC by the HCCC.

The hearing is a public hearing, unless all or part of it is directed to be closed by the PSC. The hearing is conducted as an inquiry with all PSC members being free to ask relevant questions directly of the parties and any witnesses.

A PSC can deal with a complaint and make appropriate orders even if the practitioner is no longer registered.

A PSC does not have the power to suspend or cancel a practitioner's registration. If during an inquiry a PSC forms the opinion that the complaint may provide grounds for suspension or cancellation of registration the inquiry must be immediately terminated and the matter referred to the Tribunal.

Where a PSC considers that the practitioner should not be registered due to an impairment, it may make that recommendation to the Tribunal.

If a complaint before a PSC is proven, or if the practitioner admits the complaint in writing, a PSC has the power to do any one or more of the following:-

- caution the practitioner
- reprimand the practitioner
- order medical or psychiatric treatment or other counselling
- direct that conditions be imposed on the practitioner's registration (including specifying one or more conditions as critical compliance conditions)
- order that the practitioner complete educational courses
- order that the practitioner report on his or her practice
- order that the practitioner seeks and takes advice in relation to the management of his or her practice, and/or
- impose a fine (cannot be used in conjunction with any other order).

*(See Regulation Handbook)*

### **2.5.4 Written Statement of Decision by Professional Standards Committees**

There is a statutory requirement for the PSC to provide the practitioner, the complainant and the Council with a written statement of its decision within one month of the decision being made. The Council must make the statement of decision publicly available if the decision is in regard to a complaint that has been proven or admitted in whole or in part. PSC decisions are published on the Council's website.



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## **2.6 COUNCIL INQUIRY (excluding Medical and Nursing & Midwifery)**

The Council may hold an Inquiry when the nature of the complaint is sufficiently serious but would not lead to a finding of Professional Misconduct (which can lead to suspension or cancellation of the practitioner's registration).

When convening an Inquiry the Council technically becomes the complainant for procedural purposes, and makes a complaint of Unsatisfactory Professional Conduct against the practitioner. The areas that may be dealt with as a complaint of Unsatisfactory Professional Conduct and the specific issues of concern form the particulars of the complaint.

The Executive Officer, with the assistance of the Council, formulates the particulars of the complaint against the practitioner. The Councils may seek advice from HPCA Legal when drafting the Inquiry complaint particulars.

### **2.6.1 Arranging meeting and membership of inquiry**

An Inquiry is held by the Council – it cannot be delegated to non-Council members. A quorum of members, as for Council meetings, is required. Given that the Inquiry process may impact the practitioner's ability to practise, the Council staff will attempt to telephone the practitioner to advise of the Inquiry proceedings prior to sending written notice.

The Council must invite the HCCC to make a submission to the Council about the complaint and to attend the Inquiry for that purpose.

### **2.6.2 Conducting a Council inquiry**

During an Inquiry, the Council may inform itself on any matter in the way it thinks fit. However, it must proceed with as little formality and as much expedition as possible while affording the practitioner appropriate procedural fairness.

The Council is not bound by rules of evidence and may proceed to deal with the complaint in the absence of the practitioner. The practitioner attends the Inquiry and may be accompanied by a support person who can be an Australian lawyer, however the practitioner may not be legally represented.

### **2.6.3 Written decision**

Following the Inquiry, the Inquiry members must prepare the written decision of the inquiry. The written decision must give the Council's reasons for the decision, but is not required to contain confidential information in the statement.

The Inquiry decision must be provided within 30 days of the decision being made to:

- the practitioner
- the complainant
- the National Board, and
- any other person the Council nominates.

The written statement of the decision of the inquiry is not publicly available.

### **2.6.4 Inquiry outcomes**

The Council may take any one or more of the following actions after an inquiry:

- caution or reprimand the practitioner.
- impose conditions on the practitioner's registration, make orders such as an order to withhold or refund fees, undergo medical or psychiatric treatment, direct to



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counselling, complete an educational course, or to take advice in relation to the management of their practice.

- issue a fine of no more than 50 penalty units if there is no other appropriate combination of orders that is appropriate. The Council must not impose a fine if a fine or other penalty has already been imposed by a court in respect of the same conduct.
- make a recommendation to the Tribunal that it suspends or cancel the practitioner's registration where it is satisfied that the practitioner does not have sufficient physical and mental capacity to practise the practitioner's profession.

### **2.6.5 Conditions imposed by a Council inquiry**

Deciding on which conditions are appropriate to be imposed on the registration of a health practitioner is complex task. The aim is to create conditions that protect the health and safety of the public and also allow the health professional to practise his/her profession.

Conditions need to be constructed in a way that allows for the effective monitoring of the practitioner's ongoing compliance with them. The public is best protected if the Council can be satisfied a practitioner is demonstrating compliance with conditions and orders.

The *Conditions Handbook* is divided into two sections – the Explanatory Paper and the Template Conditions. The Explanatory Paper provides a guide through the practical considerations relevant when drafting conditions. The Template Conditions, although not exhaustive, have been formulated to suit most circumstances and can be adapted as required.

### **2.7 NSW Civil and Administrative Tribunal**

The Civil and Administrative Tribunal of New South Wales is responsible for exercising tribunal functions under the Law in NSW.

For the purposes of exercising functions under the law, the Tribunal comprises four persons being:

- a Division Member of the Tribunal nominated by the Health Practitioner List Manager
- two members of the relevant health profession selected by the Council and appointed to the Tribunal by the Tribunal President, and
- a lay member selected by the relevant Council and appointed to the Tribunal by the Tribunal President.

#### **2.7.1 Division Members**

Division Members of the Tribunal must be legal practitioners of at least seven years standing, for the medical profession they must be Judges or Acting Judges of the District Court or of Supreme Court status. Division Members are appointed to that office by the Governor on the recommendation of the Attorney General.

When a matter is referred to a Tribunal, the List Manager of the Health Practitioner List, within the Occupational Division of the Tribunal, nominates a Division Member, which may be the list manager, to preside over the Tribunal.

#### **2.7.2 Appointment of Members**

The Executive Officer of the relevant Council advises the Tribunal in writing of the Council's selection of two registered health practitioners and one lay member. Those members are then appointed by the President of the Tribunal as "Occasional Members".



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### **2.7.3 Tribunal outcomes**

If a complaint before the Tribunal is proven, or if the practitioner admits the complaint in writing, the Tribunal has the power to do any one or more of the following:-

- caution the practitioner
- reprimand the practitioner
- suspend the registration of the practitioner for a specified period
- cancel the registration of the practitioner
- may impose a prohibition order where the practitioner's registration is suspended or cancelled
- order medical or psychiatric treatment or other counselling
- direct that conditions be imposed on the practitioner's registration (including specifying one or more conditions as critical compliance conditions)
- order that the practitioner complete educational courses
- order that the practitioner report on his or her practice
- order that the practitioner seek and take advice in relation to the management of his or her practice, and/or
- impose a fine (cannot be used in conjunction with any other order).

### **2.7.4 Appeals**

Appeals can be made to a Tribunal in the following circumstances:

- the findings of a PSC and the exercise of any of its powers
- on a point of law from a PSC
- the finding and the exercise of powers of a Council Inquiry
- immediate action taken by the Council under section 150 including review of section 150 decisions
- against the decision by the National Board to refuse registration
- the finding of a PRP and the exercise of any of its powers
- the imposition by the Council of conditions imposed following an IRP, and
- a refusal by a Council to alter or remove conditions or a suspension imposed following an IRP and a request by the practitioner for a review.

### **2.7.5 Publication of decisions of Tribunals**

There is a statutory requirement to make Tribunal and PSC decisions publicly available. Tribunal decisions are published by the Tribunal on the NSW Case Law website <https://www.caselaw.nsw.gov.au/> and by the Australasian Legal Information Institute, [www.austlii.edu.au](http://www.austlii.edu.au). A link to NCAT decisions is provided from the Council's website.

### **2.8 Protection from liability**

The Law provides that the publication of a written statement of a decision made by the Council, a Committee, a Panel or the Tribunal does not subject a protected person to any liability (including liability in defamation) where the publication is in good faith. A protected person is broadly defined as:

- the Council, a Committee or a Panel or a member of any of those bodies, and
- the media.

The Law provides that a protected person is not personally liable for anything done or omitted to be done in good faith, in the exercise of a function under the Law, or in the reasonable belief that the act or omission was the exercise of a function under the Law. For the purposes of s.236A protected person means a person exercising functions under a NSW provision.



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## **2.9 Protected reports**

The Law states a person must not, directly or indirectly, disclose a protected report to another person that the person has obtained in the exercise of the person's functions under the Law or make a record of, or disclose to another person, information contained in a protected report that the person has obtained in the exercise of the person's functions under the Law. For detailed information on protected reports see *HPCA Legal Practice Note #6, Protected Reports*.



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## Quick Reference Guide to Important Provisions in the Law

### All hearings

<b>Objectives &amp; guiding principles</b>	Sections 3, 3A, 4
<b>Definitions</b>	Sections 5, 6, 138, Schedule 7
<b>Miscellaneous</b>	Sections 176 – 176
<b>Disclosure of information &amp; confidentiality</b>	Sections 214 – 221
<b>General Duties &amp; Protection from Liability</b>	Sections 234, 236A
<b>Interpretation</b>	Schedule 7

### Further provisions that relate to specific hearings

<b>Council section 150/150A/150C proceedings</b> (urgent interim action)	Section 41O; 41P Sections 150 – 150J
<b>Council Review hearings</b>	Sections 163 – 163C
<b>Impaired Registrant Panels</b>	Sections 152 – 152M Sections 159 – 159C Sections 173 – 173B Section 150I
<b>Performance Review Panels</b>	Sections 156 – 156F Sections 160, 160A Sections 163 -163A Sections 174 – 174D Schedule 5B Part 2 (clauses 8 -14)
<b>Professional Standards Committees</b> (Medical Practitioners, Nurses and Midwives only)	Sections 139 – 139H Sections 144, 144A Sections 146 – 146E Sections 158, 158A Sections 163 – 163A Sections 168 – 171F Schedule 5D
<b>Assessment Committees</b> (All professions except Medical Practitioners, Nurses and Midwives)	Sections 147 – 147E Sections 172 – 172C Schedule 5E
<b>Council Inquiries</b> (All professions except Medical Practitioners, Nurses and Midwives)	Sections 148 – 148I Schedule 5C, Part 3
<b>Tribunal – Prosecutions of complaints</b>	Sections 139 – 139H Sections 144, 144A Sections 149 – 149D Sections 163 – 163A Sections 165 – 167G Schedule 5D
<b>Tribunal – Review hearings</b>	Sections 163 - 163C Sections 165 – 167G Schedule 5D
<b>Tribunal – Appeals</b>	Sections 158 – 161B Sections 165 – 167G Sections 175 – 175C Schedule 5D





Health Professional Councils Authority

### 3 ABOUT COUNCILS, COMMITTEES AND PANELS

#### 3.1 Councils

##### 3.1.1 Role and obligations - the role of Councils (Section 41B)

The Law establishes a Council for each registered profession and provides that the list of Councils may be amended by an order of the Governor. The reason for allowing amendment by Governor's order is to facilitate the inclusion of additional professions in the Scheme.

The NSW health professional Councils provided in the Law are:

- Aboriginal and Torres Strait Islander Health Practice Council of NSW
- Chinese Medicine Council of NSW
- Chiropractic Council of NSW
- Dental Council of NSW
- Medical Council of NSW
- Medical Radiation Practice Council of NSW
- Nursing and Midwifery Council of NSW
- Occupational Therapy Council of NSW
- Optometry Council of NSW
- Osteopathy Council of NSW
- Pharmacy Council of NSW
- Physiotherapy Council of NSW
- Podiatry Council of NSW
- Psychology Council of NSW

The primary responsibility of the Councils is the protection of the health and safety of the public. Councils do this by managing complaints about the conduct, health or professional performance of registered practitioners. For registered students complaints can be made about their health, criminal charges and convictions, and breach of conditions on registration. The Councils also educate the profession, undertake research into regulatory practices and contribute to national and international discussions on regulation.

In relation to the management of complaints, the Councils and the Health Care Complaints Commission (HCCC) consult on the management and action to be taken in relation to all complaints received about registered health practitioners arising from their practice in NSW and health profession students registered in NSW.

In addition, the Pharmacy Council is responsible for the regulation of NSW pharmacy businesses and the maintenance of a Register of Pharmacies.

In exercising its complaints management functions, the Council

1. receives and manages complaints
2. consults with the HCCC in the management of complaints
3. publishes information regarding its activities, and
4. works collaboratively with the Boards.

Further information regarding the specific role and functions of the Councils is located in Section 2 – Managing Health, Performance and Conduct.



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## **3.2 Council membership and terms of appointment**

### **3.2.1 Membership of Councils (Section 41E; Schedule 5C Part 1)**

The Law and the *Health Practitioner Regulation (New South Wales) Regulation 2010*, prescribes the composition of each of the Councils.

The size and composition of each Council varies based on the size of the profession, the volume of work that the Council undertakes and the complexity of the matters that it manages. It aims to ensure that an appropriate level of expertise is brought to the decision-making process of managing complaints. All Councils include members who are registered practitioners in the relevant health profession and an Australian lawyer. Many of the Councils also include community representatives, who are appointed to bring balanced and independent judgement to the Council, based on their experience and expertise.

### **3.2.2 President and Deputy President (Schedule 5C Part 2)**

The Council President is a member who is a registered practitioner from the relevant profession and the Deputy President is a member who does not need to be a registered health practitioner. The President and Deputy President are appointed by the Governor on advice from the Minister.

The role of the President is to ensure that the Council acts as a cohesive and effective organisation and meets its obligations under the Law and other relevant legislation.

The President achieves this by:

- providing leadership and guidance to the Council in its activities
- acting as a catalyst for the development of new initiatives and proposals to ensure that the Council discharges its statutory obligations and works in a proactive way to fulfil its strategic goals
- representing the Council and ensuring that external stakeholders are appropriately engaged and managed
- chairing Council meetings, and ensuring that Council business is properly dealt with and that each Council member has the opportunity to contribute to the Council's deliberations
- monitoring the Council's performance to ensure that it meets its statutory responsibilities, and
- fostering trust and respect between the Council and its stakeholders including the public, the Minister of Health and other peak bodies.

The Deputy President may act in the office of President during the absence or illness of the President. In the absence of both the President and Deputy President the Minister may appoint another member to act in the office of President.

### **3.2.3 Presidents' Forum**

The Presidents of the Councils meet regularly with the HPCA executive to discuss topical issues. The Director, Legal and Regulatory Services, Ministry of Health also attends the meeting.

### **3.2.4 Members nominated by another body (such as a university or a professional body)**

Members are appointed to Councils because of their expertise and ability to fulfil the responsibilities of the Council. They are not appointed to represent the views of any particular stakeholder or interest group, even though a specific organisation or group may



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have nominated them. Collectively they are the statutory board of the Council. In *Bennetts v Board of Fire Commissioners* it was held that in the case of a statutory board:

*"Once a group has elected a member he assumes office as a member of the board and becomes subject to the overriding and predominant duty to serve the interests of the board, in preference, on every occasion upon which any conflict may arise, to serving the interests of the group which elected him."*

(*Bennetts v Board of Fire Commissioners of New South Wales* (1967) 87 W.N. (Pt 1) (NSW) 307 at 311).

### **3.2.5 Members' responsibility**

Members are expected to keep up-to-date with changes to the Law and other relevant policy and legislation related to the Council and its role, functions and activities. Members are also expected to participate in ongoing education programs provided by the Council and HPCA.

Council members should also be familiar with the Council's code of conduct, policies and guidelines, which are available on the Council website and from the Council Executive Officer.

### **3.2.6 Appointment and term of office (Schedule 5C Part 2)**

The Law sets out the provisions relating to members of Councils in NSW. Council members may hold office for a period not exceeding three years but are eligible for re-appointment, so long as they continue to satisfy the necessary requirements to be a member. A person may not hold office for consecutive terms totalling more than nine years.

The Law requires the election of five members to the Pharmacy Council.

If the office of any member of a Council becomes vacant, a person must be nominated by the Minister of Health and appointed by the Governor to fill the vacancy.

The Minister may appoint a person to act in the office of a member during the illness or absence of a member.

### **3.2.7 Member leave of absence (Schedule 5C Clause 15(1)(b))**

The Executive Officer or President should be advised of unplanned absences by a Council member as soon as possible.

A member who is absent (planned or unplanned) from four consecutive meetings of the Council automatically vacates office unless they have been granted leave by the Minister or has been excused by the Minister for that absence within four weeks after the last of those meetings. Vacation of office in these circumstances is governed by the statutory provisions and is not discretionary.

### **3.2.8 Delegations (Section 41J)**

The Law provides that a Council may delegate to a person or a group of persons the exercise of any of its functions, other than the power of delegation.

### **3.2.9 Meetings (Schedule 5C Part 3)**

The Law sets out the procedures for Councils. The procedure for the calling of meetings of the Council and for the conduct of business at those meetings is, subject to the Law, to be determined by the Council.



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A Council must keep full and accurate minutes of the proceedings of each meeting of the Council. Minutes are required to be accepted by the Council. Agendas and minutes are retained in TRIM.

A decision supported by a majority of the votes cast at a meeting of a Council at which a quorum is present is the decision of the Council.

There are special rules pertaining to spending money from the Councils' education and research accounts.

Council meeting dates are provided by the Council Executive Officer.

### **3.2.9.1 Quorum**

Except where provided by the Law, the quorum for a meeting of the Council is the number equal to half of the number of its members or, if half is not a whole number, the next highest whole number.

### **3.2.10 Performance of members**

Members of council may be subject to annual performance review undertaken by the President.

### **3.2.11 Performance indicators**

The HPCA is working towards establishing a suite of Key Performance Indicators (KPIs) in conjunction with Councils. The HPCA has developed a catalogue of potential indicators and, as a starting point, created a standard set of process indicators for analysing and comparing complaint handling performance within and across Councils. Data are available from 1 July 2014. Over time, these indicators will be refined and additional indicators considered for development. The HPCA is also liaising with AHPRA on its KPI development. Further information is available from the Council's Executive Officer.

## **3.3 Committees and panels**

### **3.3.1 Statutory Committees, Panels (Part 8)**

Part 8 of the Law prescribes the statutory committees and bodies that support Councils in undertaking their regulatory activities. Committees are generally established on an 'as-needs' basis. The table on the following page outlines specific Committees and Panels, legislative basis, by Council, membership and term of appointment.

### **3.3.2 Other Committees (Section 41F)**

A Council may establish other (non statutory) committees to assist it in connection with the exercise of any of its functions. The members of a committee need not be members of the Council. The process for appointment, remuneration and term of appointment is at the discretion of the Council.

Members of regulatory bodies, committees and panels are expected to:

- disclose any conflict of interest whether real or perceived as early as possible in order to avoid unnecessary inconvenience and expense
- abide by the principles of natural justice and procedural fairness, giving the practitioner a reasonable opportunity to present his or her case and to answer the case against him or her



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- be aware of barriers such as language, cultural background, or disability which may impede a party in presenting his or her case
- communicate clearly and make rational, timely decisions based on the facts, conduct proceedings efficiently, having regard to the cost consequences of their actions.



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### Committees and Panels

The functions and activities of these bodies are described in detail in Chapter 2, Managing Health, Conduct and Performance.

Committee / Panel	Legislative Basis	Relevant Councils	Membership	Appointment / Establishment Process	Term
Assessment Committees	Part 8 Division 3 Subdivision 4; Part 8 Division 12; Schedule 5E	Can be established for all Councils other than Medical and Nursing & Midwifery	Section 172B: <ul style="list-style-type: none"> <li>3 practitioners registered in the profession</li> <li>1 person from a panel nominated by Minister who is not and never has been a registered practitioner in the profession</li> </ul>	Nominees appointed by the Minister (Pending legislative amendment)	4 years
Impaired Registrants Panels	Part 8 Division 4; Part 8 Division 13	All Councils	Section 173A: <ul style="list-style-type: none"> <li>2 or 3 members – At least 1 member must be a medical practitioner, at least 1 member must be a practitioner registered in the profession</li> </ul>	Council	Case specific
Performance Review Panels	Part 8 Division 5 Subdivision 4; Part 8 Division 14	All Councils	Section 174A: <ul style="list-style-type: none"> <li>2 practitioners registered in the profession (at least 1 from same Division if applicable)</li> <li>1 person who is not and never has been registered as a practitioner or student in the profession</li> </ul>	Council	Case specific
Professional Standards Committees	Part 8 Division 3 Subdivision 3; Part 8 Division 11; Schedule 5D	Medical and Nursing & Midwifery only	Section 169B: <ul style="list-style-type: none"> <li>1 lawyer (chair) not registered in the profession</li> <li>2 practitioners registered in the profession</li> <li>1 person from a panel nominated by the Minister who is not and never has been a registered practitioner in the profession</li> </ul>	Council	Case specific

**Note:** The only Committees or Panels that require a “Lay Person” (that is someone on the lay member list appointed by the Minister) are the Tribunal, PSCs and assessment committees. Councils can establish other ad-hoc committees and otherwise delegate their functions. There is no statutory requirement for any such committee nor is there any restriction on the powers people may be delegated. The one limited exception is that section 150(7) requires that delegates exercising powers under section 150 must include a person who is not a registered health practitioner (this person does not need to be on the Ministerial appointed Lay Members Panel).



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### **3.4 Pecuniary interests and conflicts of interest (Schedule 5C Clause 16)**

The Law identifies the objectives and guiding principles of the National Registration and Accreditation Scheme. It includes public protection as an objective and requires that the Scheme is operated in a transparent, accountable, efficient, effective and fair manner.

The Law provides for disclosure of pecuniary interest by a Council member who has a direct or indirect pecuniary interest in a matter that is being considered, or about to be considered, in a meeting of the Council, or a thing being done or about to be done by the Council. The member must disclose the nature of the interest as soon as possible at a meeting of the Council.

Members are also requested to declare any conflict of interest or potential conflict of interest at the beginning of each Council meeting. Decisions as to how the identified conflict is managed by the Council must be recorded in the minutes of the meeting. Conflict of interest forms are available at Council meetings.

Council members are also required to complete a Pecuniary Interest Declaration at the commencement of their term of office and to review and update the declaration on an annual basis.

The Council's Conflict of Interest Register records information provided by members and is available for public inspection.

### **3.5 Indemnity insurance and statutory protection (Section 236A)**

The Law outlines the protection from personal liability for members exercising functions under the Law. Members are covered by the Council's insurance cover which is provided by the NSW Treasury Managed Fund.

#### **3.5.1 Liability of the Council and its members**

All Council members are responsible for the actions of the Council in the same way that company directors are liable for the actions of a company.

Councils are statutory bodies and may sue and be sued in their own name. All members must at all times exercise reasonable care, skill and diligence in carrying out their duties as a member of a Council. In the event that an action by a Council or a member was determined to not 'be in good faith', the Council and/or individual Council members could be held liable and not be covered by the Council's insurers.

### **3.6 Remuneration**

The remuneration of members of individual boards and committees is guided by the Public Service Commission *Classification and Remuneration Framework for NSW Government Boards and Committee* (the Framework). Proposed changes in remuneration rates that require Cabinet approval are covered by the Framework.

Members are entitled to receive payment for attending meetings and undertaking other official duties. To enable payment to be made, members must provide certain information to facilitate payments which are undertaken through the Ministry of Health payroll.

Members may claim reimbursement of reasonable expenses incurred on official business, however prior approval is required.



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All members are required to complete various forms when commencing, which are available from the Council Executive Officer or the Manager, Corporate Governance.

### **3.6.1 Members who are NSW Government employees**

Council members who are employed by NSW departments or agencies are reminded of the *NSW Government Board and Committee Guidelines, 2013* which states in *section 8.3 Payment to Public Sector Employees*:

*'..... public sector employees appointed to NSW government boards or committees do not receive remuneration'*.

The Premier has approved an exemption for NSW Government employees serving on the health professional Councils or committees to receive remuneration when:

- The work will take place outside working hours or approved leave without pay is taken, and
- There is no conflict of interest arising from the combination of their role as a public sector employee and their role on the Council or committee

NSW Government full time employees who are not entitled to receive sitting fees may nominate their employer to receive the payment.

### **3.7 Complaints about Councils, Committees, Panel and or their members**

The Policy – *Managing* complaints about a Council, Committee, Panel or member or its delegate is available on Boardbooks, the Council website and from the Council Executive Officer.

### **3.8 Executive Officer – role and responsibilities (section 41q)**

Each Council has an executive officer. The executive officer provides secretariat and administrative support to the Council in relation to:

- management of complaints
- monitoring of practitioners ensuring compliance with conditions and orders arising from a complaint<sup>1</sup>
- ensuring that the Council meets its statutory obligations, and
- preparing media releases, newsletters, the annual report and website content and presentations.

The executive officer may also exercise other functions delegated or imposed on the position by or under the Law or any other Act (for example the executive officer is the principal officer for the GIPA Act).

The executive officer must ensure a record is kept of all proceedings and decisions of the Council and its Committees

The executive officer may delegate functions in accordance with the Delegations Policy for the time being.

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<sup>1</sup> Some Councils have delegated the responsibility of monitoring and scheduling of health assessments to the Monitoring, Inspection and Scheduling Unit (MISU).





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### **3.9 Financial management**

#### **3.9.1 Revenue from registrants**

AHPRA collects the national registration fee from the registrants of all professions. In NSW, the Council for the relevant profession and the Minister for Health determine the amount required to manage complaints, known as the complaints component of the registration fee. This forms the basis of the Councils' main revenue source.

The HPCA receives the complaints component of the registration fee relating to NSW registrants from AHPRA on a monthly basis. The Finance Section is responsible for the accurate allocation of the income across all Councils as advised by AHPRA.

The Councils recommend to the Minister for Health the complaints element of the registration fee paid by NSW practitioners. AHPRA, on the National Boards' behalf, pays the Councils this complaints element of the fees received from NSW practitioners.

#### **3.9.2 Budget development process**

The HPCA prepares an annual budget on behalf of each Council in consultation with the Executive Officer. Budget development takes into account the Council's existing commitments and expenses and any proposed strategic funding requests for enhancements either to individual Council services or operations or improvements to shared corporate services, such as information and communications technology (ICT) upgrades or infrastructure and equipment needs.

The Council's annual budget is approved by the Council, usually in May / June.

#### **3.9.3 Cost allocation methodology (CAM)**

All direct expenses incurred by a Council are directly allocated to the relevant Council, which represents about 75% of each Council's budget. The remaining 25% of the Council's budget relates to indirect costs. These indirect costs relate to joint usage of resources by all Councils. The budget expense items for which indirect costs are allocated are indirect labour, indirect temporary labour and depreciation (all Councils) and occupancy, computer services, printing and stationery, and postage and communications (Pitt Street Councils). Indirect costs can be difficult to apportion, particularly where activity measures are not available to reflect usage.

The agreed cost allocation methodology forms part of the HPCA Service Level Agreement with all Councils.

#### **3.9.4 Education and Research Accounts (Section 41S)**

Under the Law, the Council may (but is not obliged to) establish an Education and Research Account. The Council may request Ministerial approval to transfer funds from its general account to a specified "*Education and Research Account*". Funds paid into this account may only be expended for, or towards, the following purposes, once authorised by a resolution of the Council supported by at least two-thirds of the members of the Council:

- any purpose relating to education and research about the health, performance and conduct of health practitioners or students registered in the health profession for which the Council is established, and/or
- meeting administrative expenditure incurred with respect to the Education and Research Account and the purposes for which it is used.



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### **3.9.5 Financial reports**

Monthly management reports are provided to Councils which provide information on the current and projected financial position of the Council, including complaints data.

The Finance Section is also responsible for the compliance and preparation of the audited annual statements of income and expenditure and, on Councils' behalf, liaising with the Audit Office of NSW in the preparation and auditing of the annual accounts. Additionally, the Finance Section provides support as necessary in the preparation of ad hoc analysis to support planning and decision-making by either the HPCA or the Councils. If Councils require any assistance in the understanding of their financial statements, Finance can discuss this directly with members or Councils.

### **3.9.6 Appropriate equity targets**

All Councils have been provided with a brief in relation to establishing an appropriate level of equity (reserves) as part of the of the 2015/16 Budget cycle and beyond. This information enables Councils to establish a process to achieve their respective equity target level over the next three years.

## **3.10 Governance**

### **3.10.1 Access to the Council's documents and information**

Each Council promotes transparency in decision making by making available information about its processes and policies on its website.

In addition Councils are required to comply with the *Government Information (Public Access) Act 2009* (GIPA). This means that, subject to statutory exemptions (for example in relation to personal health records), a Council must provide information (including records and correspondence) free of charge or at the lowest reasonable cost.

### **3.10.2 Audit and risk management**

All Councils have been granted an exemption from compliance with the NSW Treasury Audit and Risk Management Policy<sup>2</sup> (TPP09-05) on the grounds that they are small agencies for which the administrative burden and cost of compliance would be excessive. The HPCA considered the advice and established the HPCA Audit and Risk Committee in 2012. This Committee is made up of three independent members. Each Council may nominate an observer to attend meetings and discuss matters relevant to the Council. The Committee's procedures and terms of reference are modelled on the NSW Treasury Audit and Risk Management Policy.

Standing items on the Committee Agenda are:

- Internal and external audits such as audits undertaken by the Internal Audit Bureau (IAB) e.g. *Monitoring of Practitioners with Conditions* undertaken in 2013/14.
- External accountability e.g. to the Audit Office of NSW.
- Risk management e.g. the HPCA Risk Register which captures risk to the HPCA and the Councils.
- Future Strategic Risks such as new and amended legislation impacting on the HPCA and the Councils.

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<sup>2</sup> The Policy aims to ensure that department heads and governing boards of statutory bodies establish and maintain organisational arrangements that will provide additional assurance, independent from operational management, on internal audit and risk management.



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### **3.10.3 Codes of Conduct**

Each Council has a Code of Conduct by which Members are expected to abide. The Code of Conduct is available on Boardbooks and on Council websites and is available from Council Executive Officers.

In addition Council members are expected to display the general principles of good conduct that are referred to the NSW Department of Premier & Cabinet publication.

### **3.10.4 Confidentiality and Privacy (Section 216)**

The Law sets out the circumstances in which protected information may be disclosed. Protected information is information that comes to a person's knowledge during the course of, or because the person is, exercising functions under the Law. In general, information may be disclosed in the exercise of a function under, or for the purposes of, the Law. This includes provision of information to the HCCC, AHPRA or a National Board when exercising functions under a NSW provision. Information may also be disclosed:

- if required or permitted by law
- if agreed to by the person to whom the information relates
- if it is in the public domain, or
- the provision of information is in a de-identified form.

The inappropriate disclosure of protected information may incur a penalty as per section 216(1)(a) and (b) of the Law.

#### **3.10.4.1 Privacy**

Council and Committee hard copy papers must be securely disposed of the Executive Officer can assist, if required.

The Council is subject to the provisions of the *Privacy and Personal Information Protection Act 1998* and the *Health Records and Information Privacy Act 2002* and the HPCA also complies with the NSW Health Privacy Plan.

### **3.10.5 Legislative and government policy compliance**

Each Council is responsible for ensuring compliance with the Law.

The HPCA assists Councils in this regard and has developed a Compliance Checklist which identifies the Council's key compliance obligations and how they may be reported.

The Compliance Checklist is available on Boardbooks or from the Council Executive Officer.

### **3.11 Service Level Agreement (SLA)**

The Service Level Agreement is an agreement between HPCA and the Council for the provision of secretariat services by HPCA to the Council. While the agreement is not legally binding, it sets out for both parties agreement regarding the provision of support services.

### **3.12 Official travel**

The HPCA policy – *Official Travel* sets out the mandatory requirements for HPCA staff and Council members when undertaking official travel overseas and within Australia.

The policy is available on the websites, Boardbooks or is available from the Council Executive Officer.

## 4. THE HEALTH PROFESSIONAL COUNCILS AUTHORITY (HPCA) AND OTHER AGENCIES

### 4.1 The HPCA

#### 4.1.1 Roles and obligations

The HPCA is an administrative unit of the Health Administration Corporation (HAC) and is established to provide secretariat and corporate services to the Councils to support their regulatory responsibilities. The HPCA coordinates shared administrative, financial, legal, and policy services across the Councils to assist them to meet their legislative and policy requirements as statutory bodies.

The Executive Officer provides secretariat and administrative support to Councils to regulate registered health practitioners in NSW.

The HPCA, on behalf of the Councils liaises with:

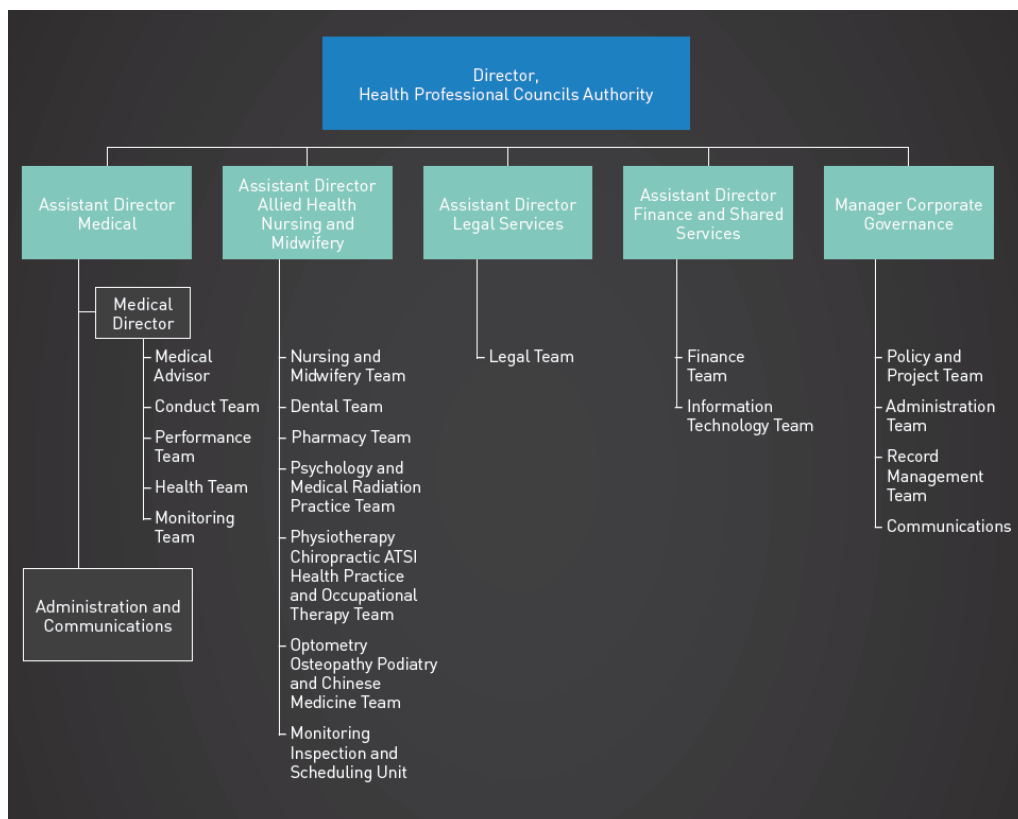
- AHPRA regarding financial, registration and reporting matters
- HCCC on complaints management issues, and
- Ministry of Health on human resource matters and to provide advice and responses to the Minister for Health and the Secretary on regulatory matters and appointments.

#### 4.1.2 Staff (Section 41C (2))

The HPCA staff who support the Councils are employed under the *Government Sector Employment Act* (GSE Act). The Law prescribes that a Council cannot employ staff.

The HPCA adopts Ministry of Health personnel policies and practices and ensures that staff have access to these policies and procedures.

### HPCA Organisational Chart





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#### **4.1.3 Finance support services**

The HPCA provides financial management services to the Councils, including the payment of accounts, budget and forecast preparation and monitoring and coordination of regular financial reporting.

The Finance Section is responsible for:

- providing the Councils with monthly financial accounting and activity reports
- ensuring accurate and timely payment of all invoices and expenses including payments to Council and hearing members, and
- meeting internal and external financial reporting requirements such as with the Audit Office of NSW regarding the audit of annual financial statements and abridged financial statements to the Audit and Risk Committee.

#### **4.1.4 IT systems and records**

HPCA and Councils are required to create, manage, retain and dispose of records in accordance with relevant legislation and regulations. The HPCA manages the Councils' corporate and regulatory records and information to ensure access and compliance with these requirements.

##### **4.1.4.1 TRIM**

All documents and records are captured in TRIM, the electronic recordkeeping system of the HPCA and Councils. TRIM is used to register, capture and track hardcopy and electronic files and documents which are received, generated or acted upon by the HPCA or a Council. Records are assigned levels of access and security with only the appropriate authorised staff having access, for example Nursing and Midwifery Council files can only be accessed by staff working on nursing and midwifery matters.

##### **4.1.4.2 Monitoring and Complaints System (MaCS)**

MaCS is a case management software application used by all Councils for managing complaints about health practitioners. The system allows for:

- complaints to be recorded
- assessment and hearing processes to be tracked
- outcomes recorded during the process, and
- the monitoring of orders and conditions imposed.

Registration data is transferred from AHPRA (Pivotal – further information included in section 4.4 AHPRA) to HPCA. Both the systems provide de-identified aggregate data that is used for management and performance reporting.

#### **4.1.5 Legal support services**

The HPCA employs legal officers who provide advice and assistance to Councils. Legal assistance is available to deal with:

- individual matters that may come before a Council, for example urgent action under section 150 of the Law
- statutory interpretation
- representing a Council before an adjudication body in appropriate cases
- instructing and liaising with the Crown Solicitor and barristers, and
- training resources for Councils, such as section 150 processes.

The Legal newsletter – *Legal News* summarises relevant cases, prohibition orders made by the HCCC and legislative changes. *Legal News* is accessible on the HPCA website and is



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circulated by email to interested persons including all staff. Executive Officers circulate the newsletter to Council members.

#### **4.2 Policy, procedures, guidelines & checklists**

While individual Councils develop policy, procedures, guidelines and checklists to address their own needs, the HPCA encourages the adoption of standardised policies and practices by Councils, where appropriate. This aims to:

- ensure consistent interpretation and application of the Law across health professions
- provide a professional and corporate presentation to clients, stakeholders, practitioners and the community in the provision of services and the administration of councils' regulatory obligations
- facilitate policy development and improve efficiency through resource sharing, and
- promote shared knowledge and expertise.

Approved Council policies and procedures are required to be published on the Council's website under the provisions of the *Government Information Public Access Act 2009* (GIPA). The Executive Officer is responsible for maintaining up to date information about Council policies and procedures.

Copies of policies are available from the Executive Officer and the Council's website.

#### **4.3 Plans**

The HPCA has plans for various purposes:

- project plans provide the structure to achieve or improve business such as the ICT Plan and the Process Improvement Plan. These plans provide the framework for initiatives and scope the issue/s, aim and purpose with set actions, responsibilities, and timeframes.
- plans that set out comprehensive arrangements to manage or respond to an issue such as a major incident.

The following Plans support the Council's regulatory functions

##### **4.3.1 Business Continuity Plan (BCP)**

The HPCA BCP sets out the actions in the event of a significant incident or disaster. Six key business processes of the HPCA have been identified as having the potential to result in a major impact on the Authority should they become unavailable. The timeframes indicated are the acceptable downtime during an emergency period.

The six key business processes are as follows:

- pay staff: maximum acceptable down time = 1 day
- provide support to the Councils to fulfil their immediate obligations (s150): maximum acceptable down time = 5 days
- monitor health practitioners' compliance with their conditions: maximum acceptable down time = 14 days
- action critical complaints including triage of complaints: maximum acceptable down time = 21 days
- provide administrative support to the Tribunal, Councils and Professional Standards Committees: maximum acceptable down time = 30 days, and
- notify AHPRA of complaints and outcomes: maximum acceptable down time = complaints: 30 days, outcomes: 1 day.



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The BCP can only be activated by the Director, HPCA or delegate if an incident or disaster is expected to result in the 'maximum acceptable downtime' being exceeded.

In the event of a significant incident or disaster the above business processes will be maintained, however there may be a departure from the routine timeframe.

#### **4.3.2 Strategic planning**

The three year combined Councils and HPCA Strategic Framework provides a coordinated structure with strategic directions. The HPCA Strategic three year plan comprises of three key focus areas:

1. people and their culture
2. organisational systems, and
3. quality improvement.

The HPCA Action Plan lists the priority actions and projects that will be undertaken.

Individual Councils determine the need for their own strategic or business plan.

The Plans can be accessed on the HPCA website.

#### **4.4 Australian Health Practitioner Regulation Agency (AHPRA)**

##### **4.4.1 Role and obligation**

In New South Wales, AHPRA deals with registration only. Complaints about registered health practitioners in other states and territories are dealt with by the respective AHPRA office and in Queensland may be dealt with by the Queensland Health Ombudsman.

AHPRA supports the operations of the National Boards and services the State/ Territory and regional Boards and Board Committees of the National Boards to ensure nationwide consistency across key functions including:

- receiving and dealing with applications for registration and renewal of registration
- maintaining an up-to-date and publicly accessible national register of registered health practitioners
- maintaining a register of students for each health profession (not publicly accessible)
- maintaining a list of practitioners who have had their registration cancelled since July 2010
- establishing general requirements for the development of professional standards and policies by the National Boards
- dealing with complaints about the health, conduct or performance of registered practitioners / students in jurisdictions other than NSW
- receiving mandatory notifications for registered practitioners (including those with NSW as their principal place of practice) and all students, and
- dealing with offences relating to contraventions of the advertising provisions or 'holding out' (where a non-registered person purports to be registered in a profession).

In NSW, AHPRA is required to ensure that the Health Care Complaints Commission (HCCC) and the Councils are advised of all complaints it receives. The Councils, in consultation with the HCCC, are responsible for responding to and dealing with these complaints.

The HPCA has a memorandum of understanding with AHPRA.



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#### 4.4.2 Pivotal

Pivotal is a software application used by AHPRA for storing and managing registration and complaints information about health practitioners throughout Australia.

#### 4.5 National & NSW Boards Of The National Board (Part 5)

Part 5 of the Law prescribes the establishment, powers, functions and membership of the National Boards. Functions of the National Boards include, but are not limited to, deciding on the requirements for registration and endorsement of registration, determining registration of suitably qualified and competent people in the profession, the development or approval of standards, codes and guidelines for the profession, such as accreditation standards and approval of accredited programs of study, recommendation of registration standards to the Ministerial Council, and the assessment of overseas trained applicants.

The following NSW State Boards have been established by the relevant National Board:

- NSW Board of the Medical Board of Australia
- NSW Board of the Nursing and Midwifery Board of Australia
- NSW Board of the Psychology Board of Australia

While the state Boards operate as Committees of the National Boards, the members of the State Boards are appointed by the NSW Minister for Health. Current members of the National and State Boards are located on the AHPRA website. <http://www.ahpra.gov.au/>

While there is no formal connection between the National Boards and the Councils, Councils maintain communications with the relevant National Board. Some National Board or NSW State Board members are also members of the Council regulating the same health professional.

#### 4.5.1 Management of cross-jurisdictional matters

There are a range of instances in which questions as to cross-jurisdictional management may arise. These include:

- cases where the conduct or activity giving rise to the notification occurred in more than one jurisdiction (for example, a practitioner with impairment or performance issues who practises in more than one jurisdiction)
- cases where the practitioner has moved jurisdictions after the conduct or incident(s) that gave rise to the notification occurred, and
- management of conditions<sup>1</sup>, imposed in another jurisdiction.

These matters can be complex and difficult to manage. However as a general rule, matters should be dealt with in the jurisdiction in which the relevant conduct occurred.

Further information relating to the management of cross-jurisdictional matters is available in the *Regulation Handbook – Receiving complaints*. Councils should seek assistance from HPCA legal officers in any cases where they are unsure of the most appropriate management of cross-jurisdictional matters.

#### 4.6 Health Care Complaints Commission (HCCC)

The Health Care Complaints Commission has an integral role in complaints management as the independent investigator and prosecutor of serious matters in NSW. The Councils and HCCC consult on the management of complaints.

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<sup>1</sup> Conditions in this context also include orders and undertakings.





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The HCCC and HPCA publication *Dealing with complaints: A guide for health service providers* explains the relationships and processes the HCCC and Councils use to manage complaints. A copy is on the HPCA website and is available from the Council Executive Officer.

#### **4.7 Minister for Health**

While Councils are independent statutory bodies established under the Law and are not subject to the direction of the Minister for Health or any other individual or body, Ministerial responsibilities apply.

Under the Law, the Minister has the following responsibilities:

- nominate certain categories of person for Council membership and appointment by the Governor
- approve the NSW complaints component of the national registration fee as decided by the Council
- make a recommendation, if necessary to the Governor for the removal of a member from office, for example a serious breach of a conflict of interest
- approve remuneration rates for Members of Councils, Assessment Committees and Panel members
- decide the amount a Council is to pay into its Education and Research Account from time-to-time, and
- appoint the members of the NSW State Boards of the National Boards.

Councils may be required to brief the Minister on key issues from time to time. Briefings usually take the form of written Ministerial briefings and occasionally face-to-face meetings. The Executive Officer prepares written briefings in consultation with the Council.

#### **4.8 Ministry of Health**

The Director of the HPCA reports to the Director, Legal and Regulatory Services, Ministry of Health. All HPCA and Council briefs, Ministerial briefs and correspondence are forwarded through either the Legal and Regulatory Services, Corporate Governance and Risk Management or Strategic Relations and Communications at the Ministry of Health for the Secretary and/or the Minister.



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## **5 ADMINISTRATIVE MATTERS**

### **5.1 Access to and communication with Councils**

The HPCA number is 1300 197 177

The HPCA email address is [mail@hpcanew.gov.au](mailto:mail@hpcanew.gov.au)

The Medical Council of NSW telephone number is 9879 2200

The Medical Council of NSW email address is [mcnsw@mcnsw.org.au](mailto:mcnsw@mcnsw.org.au)

### **5.2 Work Health and Safety (WHS)**

The *Work Health and Safety Act 2012* states that it is the duty of every employer to ensure the health, safety and welfare at work for all employers and employees.

Members should advise the Executive Officer as soon as possible in the event of injury while on Council business and incidents that could result in injury.

### **5.3 Zero tolerance to violence in the workplace**

The HPCA has adopted a zero tolerance approach to violence in the workplace.

All HPCA staff and people who visit HPCA offices have a right to conduct work in a violence free environment. This includes all members of Councils, Committees, Panels, staff, participants in Council programs, support people, witnesses and other people assisting or supporting Council programs.

### **5.4 Managing unpredictable people**

The HPCA Policy and Procedure - Managing Unpredictable People outlines the standard risk management strategies that are to be applied to all activities held on HPCA premises and useful processes for appropriately identifying and responding to risk.

It is also designed to support the development of appropriate strategies to minimise the possibility of physical or psychological harm arising from the actions of practitioners or complainants or other third parties.

### **5.5 Disaster preparedness and emergency evacuation procedure – fire, bomb threat and other emergency**

#### **Disaster Preparedness**

The HPCA has a business continuity plan which ensures there are mechanisms for key business processes to continue in a disaster.

A 'live' feed will be on the HPCA website for all staff and visitors to the HPCA to access up to date information. This is to ensure the safety of members of Councils, Committees, Panels and staff to provide up to date information about evacuations, when the building is safe for staff to return and any other relevant information.

#### **Emergency Evacuation Procedures**

All effort is made to provide for the safety and welfare of anyone working at or visiting the HPCA at Pitt St and at Gladesville. In the event of an evacuation, the fire warden will check



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that everyone is cleared from the floor or their area of responsibility. **Do not** use lifts in an evacuation.

**You must follow the direction of the Chief, Floor and Fire Wardens.** In the event of an emergency situation, all authority is passed on to the Chief, Floor and Fire wardens.

#### *Identifying the Wardens*

Chief Warden – White hat of the site (not HPCA workers).

Area Warden – Yellow hat (one staff member per site).

Fire Warden – Red hat (approx. 5 staff members per site).

All HPCA staff (Pitt St and Gladesville) must be familiar with the building emergency procedures, equipment and facilities and have participated in training regarding emergency exits, fire evacuation designated areas, how to raise an alarm in an emergency, etc.

This knowledge enables staff and visitors to:

- React safely in an emergency e.g. exit the building by your closest and safest emergency exit calmly, turn your mobile telephone off, (except for wardens) and only take your personal belongings (if there is time) and access permits.
- Know how to raise an alarm in an emergency and who to notify, and
- Help prevent emergencies.

From time to time evacuation exercises are conducted in the workplace. All members and staff must take these exercises seriously and follow instructions provided by the floor and fire wardens. This includes proceeding to the designated area identified by the wardens. See below for the designated evacuation areas.

**Remember: the primary responsibility of staff and visitors is to evacuate the building safely.**

#### **Gladesville – fire alarm**

- The **first alarm** is a **BEEP, BEEP, BEEP** sound. This is an **alert only** to stand by. Put away any important documents and close file cupboards. **Stay or return to your desk and await further instructions.**
- The **second alarm** is a **WHOO, WHOO, WHOO** sound. This is the **evacuation sound** and you should immediately proceed to your nearest Emergency Exit (Fire Stairs) at the rear of the building and await further instruction from your floor warden. Fire doors at the front of the building will automatically close.
- **Do not take food or drink with you** but, if time and access permits, you may take your personal belongings with you.
- Assist any mobility-impaired employees or visitors to the Fire Stairs. **Do not use the lift.**
- **Exit the building** in a calm and orderly, but quick fashion. Maintain one clear step between the person in front of you on the stairwell to prevent stumbling and proceed in a single file. Food, laptops and other objects should not go in fire stairs.
- **Proceed to designated assembly area** outside Digby House.



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## Pitt St – fire alarm

### On hearing the Alert tone (**BEEP, BEEP, BEEP**)

- Collect personal belongings, only if you are at your work area and have time
- Secure vital documents/cash/computer as directed
- Stand by for further instruction, and
- Await directions from Wardens.

### On hearing the Evacuation tone (**WHOOOP, WHOOOP, WHOOOP**)

- Follow all instructions
- Proceed to your nearest safe exit or exit as designated by a Warden
- Proceed directly to the Assembly Area in Belmore Park, and
- Report to your Floor Warden at the Assembly Area for roll call. Await further instruction.

### Primary Assembly Area: Belmore Park

- This area is a safe distance away from the building
- Controlled intersections should be used when crossing roads
- The Assembly area is managed by the wardens collectively, and
- All staff **MUST** go directly to the warden holding area. There is a banner identifying the HPCA location. You must not leave the area until instructed to do so.





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## 7 GLOSSARY

<b>Adjudication body</b>	<p>Under the Law this includes:</p> <ul style="list-style-type: none"><li>• a panel</li><li>• a responsible tribunal</li><li>• a Court</li><li>• Professional Standards Committee</li><li>• a Council</li><li>• a Performance Review Panel</li></ul>
<b>Australian Health Practitioner Regulation Agency (AHPRA)</b>	<p>The Australian Health Practitioner Regulation Agency (AHPRA), in conjunction with the National Boards, is the agency responsible for the implementation of the National Registration and Accreditation Scheme across Australia, and for dealing with the registration of health practitioners.</p>
<b>Cancellation</b>	<p>Refers to the cancellation of a practitioner's registration.</p> <p>A Council or PSC may recommend to the Tribunal:</p> <ul style="list-style-type: none"><li>• cancellation of a practitioner's registration if the practitioner does not have sufficient physical and mental capacity to practice the profession.</li><li>• cancellation of a student's registration if the student has an impairment.</li></ul> <p>The Tribunal:</p> <ul style="list-style-type: none"><li>• may order the cancellation of a practitioner's or student's registration if it is satisfied that the practitioner is not competent to practise or is guilty of professional misconduct, or if the practitioner/student is unfit in the public interest to practise/to undertake clinical training or is not a suitable person for registration in the profession</li><li>• must cancel a practitioner's or student's registration if he/she has contravened a critical compliance order or condition</li></ul> <p>AHPRA publishes a list of practitioners who have had their registration cancelled since July 2010.</p>
<b>Caution</b>	<p>A caution is a formal warning intended to act as a deterrent to a practitioner not to repeat conduct. A caution is a less serious outcome than a reprimand, and is not usually recorded on the National Register.</p>
<b>Complaint (See Mandatory Notification)</b>	<p>A concern arising from the delivery of a health service (or information about the suitability or competence of a practitioner).</p>
<b>Complaint – closed</b>	<p>A complaint is closed when a final outcome/decision has been determined by the Council or other adjudication body under the Law, such as a Tribunal, Professional Standards Committee, Performance Review Panel or Court. This decision disposes of the matter. After a complaint is closed, practitioners with orders are monitored for compliance by the Councils).</p>
<b>Complainant</b>	<p>Anyone may make a complaint to a Council, including:</p> <ul style="list-style-type: none"><li>• the person who received the treatment</li><li>• a parent, guardian, child, carer, or relative of the person who received the treatment</li></ul>



- 
- another health care provider, or an employer or colleague of a registered health practitioner
  - the Council and HCCC.

The individual or entity responsible for making the complaint is considered to be the complainant and recorded accordingly in MaCS.

**Complaint – open**

A complaint remains open while it is being investigated / prosecuted by the HCCC or being considered by the Council. It remains open until such time as a final outcome/decision is determined by the Council or other adjudication body under the Law, such as the Tribunal, Professional Standards Committee, Performance Review Panel or Court. This decision disposes of the matter.

**Conciliation**

The Council may refer a complaint to the HCCC for conciliation, whereby the parties involved can negotiate a resolution.

**Condition  
(see also: Private Condition;  
Public Conditions; Order)**

A restriction or requirement placed on a practitioner's registration by an adjudication body, to protect the health and safety of the public. Conditions are displayed on the AHPRA National Register of Health Practitioners, which is available to the public online.

A condition relating to a practitioner's health is considered a 'private condition', and is generally not published on the National Register. The register states that other conditions apply but are not published due to privacy considerations.

**Conditions Handbook**

A set of template conditions and guidance (specific to each Council) used by hearing members when drafting conditions and orders.

**Conduct (see also  
unsatisfactory professional  
conduct; professional  
misconduct)**

Conduct is defined under s138 of the Law as 'any act or omission', and includes the deliberate elements of a practitioner's behaviour. This includes low level conduct concerns, and more serious conduct, characterised by reckless, unethical, negligent or criminal behaviour, which may constitute unsatisfactory professional conduct and professional misconduct.

**Conduct – unsatisfactory  
professional**

Unsatisfactory Professional Conduct is defined under s139B of the Law as including:

- conduct significantly below reasonable standards
  - contravention of the Law or regulations
  - contravention of conditions of registration
  - failure to comply with order/decision of a Professional Standards Committee or Tribunal
  - accepting or offering a benefit for referral or recommendation to a health service provider or a health product,
  - engaging in over servicing,
  - failure to disclose pecuniary interest in giving a referral or recommendation
  - permitting assistants not registered in the profession to provide services requiring professional discretion or skill, or
-



- other unethical or improper behaviour.

Additional matters apply to medical practitioners and pharmacists.

The unsatisfactory professional conduct that is of a sufficiently serious nature may justify suspension or cancellation of the practitioner's registration.

**Conduct Interview**

The Council has powers under s145B (1)(a) to make any inquiries about a complaint the Council thinks appropriate. A Conduct Interview is a face to face meeting between the practitioner and the Council, to make further inquiries about a complaint concerning the practitioner's conduct.

**Confidentiality**

Refers to the rules and principles, set out in the Law and relevant privacy legislation, which govern the release of private or sensitive information in the course of managing complaints. 'Confidential information' is defined under s139A of the Law.

**Consultation (HCCC Consultation)**

Consultation refers to the process whereby the Council and HCCC discuss a complaint to see if agreement can be reached as to the course of action to be taken.

**Council members**

The Law and the Health Care Complaints Act requires the Council and HCCC to consult on all complaints.

Includes the office holders and members of the individual Health Professional Councils and their associated Committees.

**Councils (health professional)**

Refers to the health professional Councils established under section 41B of the Health Practitioner Regulation National Law (NSW).

**Counselling (including Counselling Interview)**

A course of action available to the Council under s145B(1)(g) of the Law.

Counselling occurs when there are issues of concern to the Council which may constitute a minor departure from acceptable standards of practice. The nature of counselling is specified by the Council and typically involves the practitioner attending counselling in person, conducted by members of the Council or delegated persons. A face to face meeting between the Council and practitioner is known as a Counselling Interview.

**Delegation (including instrument of delegation)**

The Council may nominate a person/s to exercise any of its functions on its behalf, under s41J of the Law.

An instrument of delegation is the documentation which identifies the relevant powers and functions which the Council has determined to delegate, and to which person/s.

**Divisions within a profession**

A division is a sub-category of a health profession. A practitioner can be registered in more than one division within a profession, and not all professions have divisions. For example, a Chinese Medicine Practitioner may hold registration as an Acupuncturist or a Chinese herbal dispenser, both of which are divisions of the profession.

**Dual registration**

Refers to a practitioner holding registration within two or more different health professions, for example, as a



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	Medical Practitioner and Dental Practitioner.
<b>Health Care Complaints Commission (HCCC)</b>	<p>Note: Nurse and Midwife are separate professions</p> <p>The Health Care Complaints Commission is an independent complaints handling body in New South Wales, established in 1994 under the Health Care Complaints Act. The Law and the HCC Act require the Council and HCCC to consult on complaints in order to determine what course of action should be taken. This is known as co-regulation.</p> <p>Further information is available in Chapter 3 – Assessment and Consultation with the HCCC</p>
<b>HCCC consultation</b>	See ‘consultation’.
<b>Health (impairment)</b>	<p>Impairment has a specific, statutory definition in s5 of the Law. Impairment refers to a practitioner’s physical or mental impairment, disability, condition or disorder (including substance abuse or dependence) that detrimentally affects or is likely to detrimentally affect a registered health practitioner’s capacity to practise the profession or a student’s capacity to undertake clinical training.</p> <p>Impairment includes, for instance, cognitive impairment, drug or alcohol addiction, or a mental illness.</p> <p>Further information is available in <i>Chapter x – Health</i>.</p>
<b>Health practitioner</b>	An individual who practices a health profession.
<b>Health practitioner - registered</b>	<p>An individual who:</p> <ul style="list-style-type: none"><li>• Is registered under the Law to practise a health profession, other than as a student, or</li><li>• Holds a non practising registration under the Law in the health profession.</li></ul>
<b>Health program</b>	<p>Is the phrase/term used to refer to the process/mechanisms by which the Council manages complaints about practitioner’s which concern their health. For instance, a practitioner who has conditions imposed following an Impaired Registrants Panel and whose conditions are subject to monitoring is referred to as being in the ‘health program’.</p> <p>When conditions are removed this may also be referred to as ‘exiting the health program’.</p> <p>The health program is a non-disciplinary/non punitive program which is confidential.</p> <p>Not all health matters result in intervention by a Council.</p>
<b>Health Practitioner Regulation National Law (NSW) (the Law)</b>	<p>The Health Practitioner Regulation National Law (NSW) is the legislation which governs the practice of registered health practitioners in New South Wales.</p> <p>New South Wales did not adopt Part 8 of the National Law.</p>



<b>Holding out</b>	A member of the public who misrepresents themselves as a registered health practitioner. Also includes the use of protected titles for example midwife.
<b>HPCA Records Management Policy and Guideline</b>	This Policy sets out the requirements, roles and responsibilities for ensuring compliance with the legislation and benefits of good recordkeeping practices. Compliance enables the HPCA and individual Councils to meet their business needs, accountability and governance requirements and protects the interests of the HPCA and Government and the rights of employees and the community.
<b>Impairment</b>	See 'health'.
<b>Immediate action (s150 action)</b>	When a complaint is of a serious nature and requires an immediate response from the Council under s150 of the Law which may result in the: <ul style="list-style-type: none"><li>• suspension or imposition of a condition on the health practitioner's or student's registration, or</li><li>• accepting the surrender of the health practitioner's or student's registration.</li></ul>
<b>Legal practice note</b>	Legal practice notes provide a legal perspective on an issue which relates to the Law and draws on matters for example – Orders and conditions, and s175 Appeals.
<b>Mandatory reporting</b>	Mandatory reporting is when an entity is required to make Mandatory report when a health practitioner is practising while intoxicated, engaging in sexual misconduct, placing the public at risk of substantial harm due to an impairment or a significant departure from accepted professional standards.
<b>MaCS (Monitoring and Complaints System)</b>	The MaCS (case management) database which records all actions associated with complaints and monitoring.
<b>National Board</b>	Each health profession that is part of the National Registration and Accreditation Scheme is represented by a National Board. The functions of the National Boards include: <ul style="list-style-type: none"><li>• registering practitioners and students</li><li>• developing standards, codes and guidelines for the professions</li><li>• handling notifications, complaints, investigations and disciplinary hearings (in jurisdictions other than NSW)</li><li>• assessing overseas trained practitioners who wish to practise in Australia</li><li>• approving accreditation standards and accredited courses of study.</li></ul>
<b>NSW Civil and Administrative Tribunal (NCAT)</b>	NCAT replaced the profession specific tribunals from January 2014. The Occupational Division of NCAT hears proceedings involving health practitioners. The Council nominates professional and lay members to NCAT on a case by case basis.  The HPCA and the NCAT have a Memorandum of Understanding which outlines the responsibilities of the



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<b>Order</b>	agencies and Councils. An order is a decision, condition or restriction placed on a practitioner's registration or practice.
<b>Performance/Unsatisfactory performance</b>	Professional performance of a registered health practitioner is a reference to the knowledge, skill or judgment possessed and applied by the practitioner in the practice of the practitioner's health profession. The professional performance of a registered health practitioner is unsatisfactory if it is below the standard reasonably expected of a practitioner of an equivalent level of training or experience.
<b>Performance assessment and interview</b>	A performance assessment typically involves assessors who interview and observe the practitioner in their own work environment and includes: <ul style="list-style-type: none"><li>• observing real patient consultations</li><li>• reviewing clinical records</li><li>• conducting a clinical interview</li><li>• interviewing staff and colleagues</li><li>• writing a report to the Council</li></ul>
<b>Principal place of practice</b>	The address at which the practitioner predominately practises the profession or the practitioner's place of residence. The principal place of practice is used to determine whether a NSW Council or a National Board supported by AHPRA is responsible for managing a complaint or for monitoring orders or conditions imposed by an adjudication body.
<b>Professional officers</b>	The HPCA employs and engages professional officers to undertake specific work related to their profession for example pharmacists are employed as professional officers to undertake inspections of pharmacies.
<b>Registered health practitioner</b>	See 'health practitioner – registered'.
<b>Reprimand</b>	<p>A reprimand is a formal rebuke or chastisement for inappropriate and unacceptable conduct and appears on a practitioner's registration and is published on the public register.</p> <p>The Medical Board of Australia and the Psychology Board of Australia have determined to remove a reprimand from the register after five years.</p>
<b>Staff</b>	Includes permanent, temporary, casual, contractors or consultants, working in a full-time or part-time capacity, at all levels of the HPCA.
<b>State Records Act 1998 (NSW)</b>	The State Records Act 1998 (NSW) requires full and accurate records of the activities and decisions of the Councils and the Health Professional Councils Authority (HPCA) to be created, managed, retained and disposed of appropriately.

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Health Professional Councils Authority

## 8 LEGISLATION & REGULATIONS

*Children and Young Persons (Care and Protection) Act 1998*

*Government Information (Public Access) Act 2009 (GIPA Act)* ct to GIPA.

*Health Care Complaints Act 1993*

*Health Practitioner Regulation National Law (NSW).*

*Health Practitioner Regulation (New South Wales) Regulation 2010*

*Health Records and Information Privacy Act 2002*

*Health Records and Information Privacy Code of Practice 2005*

*Health Records and Information Privacy Regulation 2006*

*Independent Commission Against Corruption Act 1998*

*Mental Health Act 2007*

*Ombudsman Act 1974*

*Poisons and Therapeutic Goods Act 1966*

*Poisons and Therapeutic Goods Regulation 2008*

*Privacy and Personal Information Protection Act 1998*

*Public Finance and Audit Act 1983*

*Public Health Act 2010*



Health Professional Councils Authority

## 9 RESOURCES

### **Annual Reports - Council**

Located on the Council websites

**HPCA Regulation Handbook (2015)** (available from Executive Officers or the Manager, Corporate Governance)

### **HPCA policies, procedures and other documents**

(available from Executive Officers or the Manager, Corporate Governance)

- Audit and Risk Committee Charter
- Business Continuity Plan
- Code of conduct
- Conflict of interest
- Gifts and benefits
- GIPA Information Guide
- Information for parties seeking to serve subpoena, summons, notice to produce like documents on NSW health professional Councils
- Managing complaints about a Council, Committee, Panel, Delegate or staff member (in their capacity of undertaking regulation activities)
- Member remuneration and payment policy with forms
- Official travel
- Public Interest Disclosure
- Reporting corrupt conduct
- Managing unpredictable people
- Media and Communications Policy and Procedure
- New and appointed members
- Policy and legislation compliance checklist
- Procedure for capturing, recording and using electronic signatures
- Security – Visitors policy and procedures
- Strategic and action plan

**HPCA Legal Practice Notes** (available from Executive Officers or the Legal officers)

### **NSW Government**

- NSW Department of Premier & Cabinet  
[Boards and Committees](#)