

POLICY FOR HANDLING COMPLAINTS ABOUT THE COUNCIL

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Summary: Support the Nursing and Midwifery Council of New South Wales to respond effectively to complaints concerning the Council's policies, procedures, member conduct, communication, access to information or quality of service.

Applies to: Nursing and Midwifery Council of New South Wales
Members of the Council, its committees and associated regulatory bodies

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Related legislation, Awards, Policy and Agreements:

- Health Practitioner Regulation National Law (NSW) No 86a
- Ombudsman Act 1974
- Privacy and Personal Information Protection Act 1998
- Government Information (Public Access) Act 2009
- Public Interest Disclosures Act 1994

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The Nursing and Midwifery Council of New South Wales (the Council) acknowledges that the trust and confidence of the public are essential to its role. The Council therefore sets itself a high standard of professionalism and places ethical conduct at the core of its business.

The Council values all forms of feedback. Feedback may be about a service, procedure, practice or policy, and has the power to drive improvement. Complaints and compliments provide unique information about the quality of the Council's services and processes from the perspective of customers and stakeholders, including complainants, practitioners, other agencies and the public.

Management of a complaint provides the opportunity for complainants to have their issues resolved effectively. It ensures that any identified risks are managed appropriately; that action is taken to minimise or eliminate those risks and that there is ongoing quality improvement in processes to fulfil responsibilities.

Fixing a problem early not only increases stakeholder satisfaction, it makes the most effective use of the Council's resources. A key function of any complaints process is to help identify areas that need improvement. Careful analysis of complaint sources and trends will assist decisions about planning and resourcing those improvements.

PURPOSE

This policy establishes procedures for responding to complaints concerning the Council's operations; policies; procedures; member conduct; communication; access to information or quality of service. It provides guidelines and a process for managing complaints and the internal monitoring of complaint handling and outcomes.

The objective is to improve the Council's capacity to manage and resolve complaints in a fair, efficient and consistent manner; identify opportunities to improve performance through collection and analysis of complaint information and provide a mechanism for internal review of a complaint.

When people make a complaint they usually want to:

- be heard and understood;
- be respected;
- be taken seriously;
- be given support and assistance if required;
- have their concerns dealt with effectively and efficiently;
- be informed of the process, progress, findings and outcome; and,
- have appropriate action taken as a result of their complaint.

Making a complaint under this policy does not take away from any other rights a complainant may have in respect of the Council.

What this policy covers

This policy applies to all complaints made by members of the public or external organisations about the Council's activities, service delivery, policies and procedures.

A complaint may be made in relation to any one or more of the following, although complaints may not necessarily be limited to these issues:

1. That the Council has not been timely, accountable, transparent or fair in the conduct of its business or decision-making.
2. That the Council or a member has failed to perform their responsibilities with the necessary integrity, impartiality, honesty, conscientiousness, care, skill or diligence.
3. That a Council member has failed to declare or disclose an interest including any pecuniary or non-pecuniary or personal interest, which is or may be relevant to the activities or deliberations of the Council.
4. That a Council member has used information acquired in his or her role on the Council not in accordance with the requirements of the Law and/or otherwise improperly.

The policy also includes a process for internal review of a complaint and improvements implemented as a result of a complaint.

What this policy does not cover

This policy does not relate to managing complaints about a health practitioner or student. It does not apply to the outcome or decision made by a health professional Council, its committees or associated regulatory bodies as a result of a complaint about a health practitioner. These matters are handled under the *Health Practitioner Regulation National Law (NSW) No. 86a* (the Law). However, a complaint may be made about the Council's handling of a complaint, as outlined above.

There are separate policies available regarding complaints about the HPCA's corporate and secretariat support for the Council and the process for review of a Council decision.

KEY DEFINITIONS

Members includes any member of a health professional Council, a Council governance committee or an associated regulatory body such as Assessment Committee, Professional Standards Committee, Impaired Registrants Panel, Performance Review Panel or Tribunal, appointed under the Law.

Staff includes permanent, temporary or casual employees, contractors or consultants, working in a full-time or part-time capacity, at all levels of the HPCA.

Complaint manager is the person appointed to formally investigate a complaint and recommend its resolution.

What is a complaint?

A complaint is, generally, any expression of dissatisfaction with the Council's policies and procedures, quality of service, or communication. It can be about any aspect of the functions provided, or not provided by the Council.

MANDATORY REQUIREMENTS

Any person may make a complaint and any Council or staff member may receive a complaint. To enable the timely consideration of a complaint, specific details of the incident, conduct or behaviour giving rise to the complaint should be obtained. Every effort should be made to resolve an issue or concern at the point of contact or with the individual or organisation involved.

All minor complaints and disputes should be resolved promptly and without using formal procedures. Whenever possible, informal resolution should be attempted initially in all matters assessed as less serious.

All complaints are to be logged in the Complaints Register and acknowledged either verbally or in writing within the specified timeframes. Upon accepting a complaint, the complainant should be asked to clarify the outcome he or she is seeking, especially when that has not been clearly specified.

RESPONSIBILITIES

The **President** has overall responsibility for ensuring that complaints about the Council or a member are fully investigated and resolved. The President will liaise with the **Executive Officer** to determine how complaints will be managed.

The President and/or the Executive Officer are responsible for determining whether an investigation will take place. It may require the assignment of a complaint manager who reports back to the President or Executive Officer.

The Deputy President or the Assistant Director, Allied Health, Nursing and Midwifery will manage a complaint about the President or HPCA staff.

MANAGING COMPLAINTS

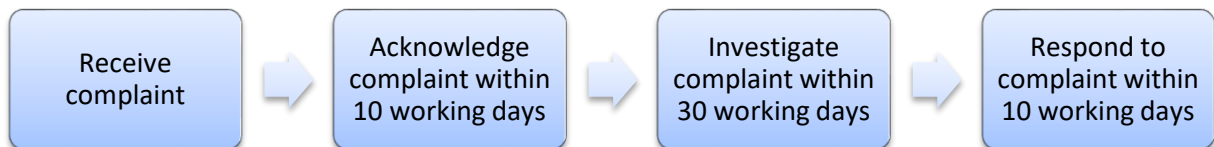
All complaints about the Council or a member must be referred to the President who will determine how the complaint will be managed, usually in consultation with the Executive Officer.

Complaints about a regulatory body or one of its members should be referred in the first instance to the relevant Chairperson.

The management of a complaint will be guided by the following principles:

1. A complainant will be treated fairly.
2. A complaint will be acknowledged promptly, assessed and assigned priority.
3. The officer handling the complaint will provide updates and information relating to the investigation of the complaint to the person who commissioned the investigation.
4. Where an investigation is required it will be planned with an established timeline.
5. The investigation will be objective, impartial and managed confidentially in accordance with privacy obligations.
6. The investigation will aim to resolve factual issues and consider options for complaint resolution and future improvement.
7. The response to the complaint will be timely, clear and informative.
8. If the complainant is not satisfied with the response, internal review of the decision will be offered and information provided about external review options.

The process for managing and resolving complaints is:



Receiving a complaint

When members or staff are approached by a person wishing to make a complaint they should consider the following:

- What are the complainant's expectations?
- Does the complainant need assistance in making the complaint?

The complainant's expectations

A person making a complaint will have expectations as to how their complaint should be handled and may require assistance in making the complaint. To manage complainant expectations, the person receiving the complaint should:

- explain the complaint handling process to the complainant or tell them where to get information about the process;
- confirm with them that their complaint has been fully understood and inquire what outcome they are seeking;
- outline the possible outcomes, including whether or not the outcome they are seeking is reasonable;
- advise of timeframes for dealing with the matter;

- provide assistance with access to relevant forms, procedures, or other information;
- advise them if the matter is to be dealt with under another policy or referred to another person or government agency and explain to whom and why; and,
- ensure that any commitments made are followed through.

If the complaint cannot be dealt with immediately or by informal resolution, the complainant should be requested to lodge the complaint in writing, preferably on the complaint form on the website.

Acknowledging a complaint

The complaint must be acknowledged in writing within 10 working days. The acknowledgement should inform the complainant of the investigation process, contact details of the complaint manager and the likely timeframe for completion.

Investigating a complaint

A complaint may be investigated in a number of ways, depending on the nature and seriousness of the complaint and whether this policy is the most appropriate for dealing with it. The aim of deciding how to deal with a complaint should be to satisfy the complainant and to resolve the matter as quickly and appropriately as possible.

Assessing a complaint

When a complaint is made it will be assessed to determine what action needs to be taken. Steps taken in assessing a complaint are:

- determining the level of seriousness of the complaint;
- identifying whether or not the complaint is a special case, that should be referred to an external agency such as ICAC, NSW Ombudsman, or NSW Police; and,
- selecting the appropriate course of action.

All complaints must be checked to ensure that the correct policy and procedure is followed. This must occur before any further action is taken.

Deciding how to deal with a complaint

There are three questions to be considered when determining how to deal with a complaint:

1. Is the complaint serious?
 - If the complaint is considered less serious, informal resolution is appropriate.
 - If the complaint is about a person and is serious, the formal resolution procedure will apply.
 - If the complaint is serious or cannot be resolved informally then consider whether an alternative policy, process or referral to another body is more appropriate.

2. Is the complaint about a service, procedure or system, or is it about the conduct of a person?
 - If the complaint is about a service, procedure or system, it may be that internal processes need to be reviewed, updated and implemented.
 - If the complaint is about a person but is less serious, it may be dealt with by informal resolution.
3. Is the complaint a special case or a matter which is excluded from this policy that must be either referred to someone else or dealt with under another policy?
 - If the complaint must be referred to an external agency, make the appropriate referral/s.
 - If the complaint is covered by another policy, use that policy to deal with the matter.

Informal resolution

The single most effective way to resolve an issue or concern is to discuss it with the complainant. The Council encourages that this is done in person or by telephone wherever possible. Often a simple explanation or apology can go a long way to resolving an issue. Not only is this the most efficient way to resolve a problem but it is also the most service-focused option.

If necessary, guidance can be sought from the President, Executive Officer or other member, or the matter referred to a third party with the authority to take further action.

Informal resolution should be used to resolve any matter which is not identified as a special case and which is assessed as 'less serious', such as minor complaints and disputes. There could be exceptions that need to be taken into account when considering the use of informal resolution, such as when one party is fearful or intimidated by the other party.

While the President has specific responsibilities for handling and attempting to resolve such matters, the complainant, the Council and/or individual member also have a responsibility to resolve the matter and to seek and accept realistic outcomes. The Council Code of Conduct and the Audit Office of NSW publication, *On Board*, clarify the standards of behaviour that are expected of members in the performance of their duties. Members have a responsibility to foster harmonious and productive relations; therefore there is an expectation that differences will be resolved amicably.

For informal resolution to succeed, the parties need to be prepared to recognise that there is a problem, aim to be conciliatory and recognise that resolution may require compromise by all involved.

The recommended procedure is that the parties be provided the opportunity to:

- state the cause of their concern;

- exchange facts and beliefs;
- clarify events;
- listen;
- acknowledge and if necessary apologise for any behaviour that may have distressed the other party;
- explain their point of view;
- consider the other person's point of view; and,
- recognise that this is an opportunity to change processes and/or behaviour that is perceived as unsuitable.

A written record should be made of the issue and any resulting actions. If informal resolution does not succeed, then the formal resolution process may be used.

Formal resolution – Managing a complaint through investigation

A formal complaint investigation should be considered only when informal resolution is not possible or is unsuccessful in resolving the issue to the satisfaction of the complainant. This procedure outlines the steps for a competent and fair investigation of complaints.

The purpose of a complaint investigation is to establish and document relevant facts, reach appropriate conclusions based on the available evidence, and determine a suitable response. The nature and scope of the investigation will depend on the circumstances of each case and any relevant statutory requirements.

The decision that an investigation will take place may be made by the President or Executive Officer. It may require the assignment of a complaint manager who will advise the complainant that he/she is investigating the matter, and report back to the President or Executive Officer. An investigation may also be conducted by an independent external person or agency.

An investigation should incorporate the following principles:

- procedural fairness for both complainant and respondent;
- confidentiality for all parties, where practicable and appropriate;
- timeliness, to minimise the opportunity for further misconduct; the potential for dissatisfaction and to limit the opportunity to breach the confidentiality to which complainants and respondents are entitled; and,
- meticulous recordkeeping, including recording of reasons for all significant investigation-related decisions.

In most circumstances an investigation should be completed within 30 working days. More time may be required to investigate depending on the nature and complexity of the complaint, or the level of Council involvement required. The Council will communicate its expectations where a longer period is required, and the complainant must be advised of any variation to the anticipated timeframes or process for managing the complaint.

Responding to complaints

As much as possible, a response to the complaint should be provided within 10 working days of completing the investigation. The Council must ensure that the outcome and any recommendations are clearly communicated to the complainant, members, staff and other relevant parties. An appropriate response should include the outcome of the complaint; a clear explanation of how and why decisions were made; changes implemented as a result of the complaint (if applicable), and options for review.

Reviews

When notified of the outcome of the complaint the complainant should be advised of the ability to seek a review of the decision and the timeframe for doing so.

There are two grounds for the complainant to seek a review:

- incorrect use of the complaint procedure to the detriment of the complainant; and/or,
- the outcome/decision is unreasonable, inconsistent, made without obvious relationship to the facts or circumstances, or is irrational.

A complainant can request one internal review through the President. The President will appoint a person to review the decision, taking into account if that person should be excluded on the grounds of conflict of interest or perception of partiality. The President may request the review to be undertaken by another Council member, another Council President or the Director, HPCA.

The request for a review must be lodged in writing within 30 working days of the advice of the decision. The request must detail the grounds for the review. Where necessary, a person wishing to request a review should be assisted to put the request in writing.

The person conducting the review shall:

- review all relevant material;
- make further inquiries, as necessary;
- make a determination, if possible, within 20 working days of receipt. If the decision is delayed, advise the complainant and President, with reasons;
- advise the parties in writing of the decision and the reasons for the decision within 10 working days;
- meet with the parties, as necessary; and,
- determine whether further action is necessary.

If meetings with the parties are held, the parties may have a support person present.

The person conducting the review will determine whether or not the outcome of the decision that is being reviewed will be put on hold until the review is complete.

What if a complainant remains dissatisfied with the Council's response?

The complainant may refer the matter to another person or body such as the NSW Ombudsman in relation to allegations of maladministration or the Independent Commission Against Corruption for matters related to corrupt conduct.

Vexatious complaints

The Council may refuse to investigate a complaint if it is considered to be trivial, frivolous or vexatious. This decision is at the discretion of the President. A complaint may be considered vexatious when the purpose of the complaint is to harass, annoy, delay or cause detriment. If a complaint is considered vexatious the President or complaints manager may choose to limit or cease correspondence with the complainant. This decision will be communicated to the complainant in writing.

Privacy and personal information

The Council is committed to handling complaints in a manner that respects the confidentiality and privacy of those involved. All complaints investigated will comply with the obligation to protect privacy and personal information under the [Privacy and Personal Information Protection Act 1998](#).

It is important to note however, that in order to appropriately address complaints, it may be necessary for those handling the complaint to contact others to seek and clarify information.

If the complainant has any concerns relevant to the confidentiality and privacy of their complaint, these need to be immediately made known to those responsible for handling the complaint.

Public Interest Disclosures

The [Public Interest Disclosures Act 1994](#) acknowledges the difficulty members may face when making a report about another public official. The Act provides certain protections against reprisals against members who report such matters and makes it an offence for detrimental action to be taken against a person for making a disclosure (but not for vexatious or malicious complaints).

RECORD KEEPING

Complaints will be tracked by the Executive Officer on behalf of the Council. The Executive Officer and complaint manager are responsible for ensuring the complete and accurate recording of all material related to a complaint in accordance with the [State Records Act 1998](#) and the Records Management Policy.

Each complaint file must contain all correspondence, file notes of any telephone conversations, interviews and findings from investigations, recommendations and internal approvals. The file must also contain evidence of the methodology used to consider the complaint and an explanation for the actions taken.

The file will be available for internal and external review, subject to privacy and GIPA considerations.

Complaint form

The complaint form is available from the HPCA or Council website and a hard copy provided on request.

Complaints Register

All complaints will be logged by the person receiving the complaint and recorded in the HPCA Complaints Register, which is used to record complaints, the decisions and outcomes. It is maintained by the HPCA Manager, Corporate Governance.

IMPLEMENTATION AND MONITORING

The outcomes and approved recommendations arising from the complaint must be considered in relation to quality improvement systems through appropriate implementation and subsequent review of effectiveness.

Complaints will be discussed at Council meetings when necessary to ensure each complaint is quickly and suitably resolved. The outcome and monitoring of service and process improvements will be reported to the Council.

REPORTING REQUIREMENTS

The Executive Officer will undertake a six monthly audit of all complaints; and report to the Council on the extent and main features of complaints, and the services improved or changed as a result. This information will be reported in the Council's Annual Report as required by the *Annual Reports (Statutory Bodies) Act 1984*.

REFERENCES

1. Audit Office of NSW (1998), [*On Board, Guide to Better Practice for Public Sector Governing and Advisory Boards*](#).
2. Commonwealth Ombudsman (2009), [*Better Practice Guide to Complaint Handling*](#).
3. NSW Ombudsman (2010), [*Effective complaint handling guidelines*](#).
4. NSW Ombudsman (2009), [*Managing Unreasonable Complainant conduct-practice manual*](#).

Attachment 1: Implementation Checklist

Use this Checklist to outline the steps required for implementation of the policy and progress made. It can also be used to evaluate the success of implementation or ongoing compliance.

Assessed by:		Date of Assessment:	
IMPLEMENTATION REQUIREMENTS	Not commenced	Partial compliance	Full compliance
Policy signed off at a meeting of the Council.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<u>Notes:</u>		
Policy and complaint form included on Council website, and noted in Council handbook.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<u>Notes:</u>		
Staff and members periodically advised of policy and procedures.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<u>Notes:</u>		
Executive Officer audits complaints every 6 months and reports to Council.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<u>Notes:</u>		
Complaints and complaint handling outcomes and procedures reported in the Council Annual Report.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<u>Notes:</u>		