



Hearing members professional development



The legal framework

Quick reference guide

About this guide

This quick reference guide is designed to support you when carrying out your role as a professional or community member.

The guide outlines how the Health Practitioner Regulation National Law (NSW) (the National Law, (NSW)) and regulations made under it:

- Set the parameters for the regulation of nurses, midwives and students in NSW.
- Require the protection of the health and safety of the public to be the paramount consideration.
- Govern the work of the Nursing and Midwifery Council of NSW (the Council).
- Guide how the Council engages with key regulatory partners and stakeholders.
- Together with the Health Care Complaints Act 1993, govern how complaints are managed by the Council and the Health Care Complaints Commission (HCCC).
- The regulations include information about infection control requirements, record keeping for medical practitioners, requirements for pharmacy premises and membership of councils.



The legislation

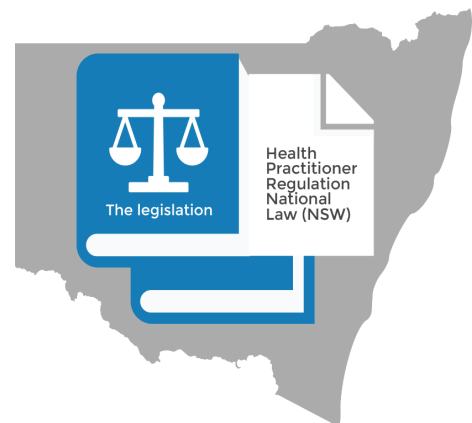
The National Law (NSW) commenced on 1 July 2010.

The National Law (NSW) and regulations made under it set the parameters for the regulation of registered health practitioners and students in NSW.

For each registered health profession in NSW, there is a health professional council. Each council deals with complaints against the members of that profession.

The objectives, functions and powers of the Nursing and Midwifery Council of NSW are defined in the National Law (NSW).

When carrying out your role, the law requires the protection of the health and safety of the public to be your paramount consideration. For this reason, the Council works in a 'protective jurisdiction'.



The legal framework

Quick reference guide

Effective regulation in NSW

Effective regulation of nurses, midwives and students in NSW requires collaboration between the following regulatory bodies:

- Nursing and Midwifery Board of Australia
- Australian Health Practitioner Regulation Agency (AHPRA)
- Nursing and Midwifery Council of NSW
- NSW Health Care Complaints Commission (HCCC)

The Health Professional Councils Authority (HPCA) is an executive agency of the NSW Ministry of Health providing secretariat and corporate support services to the councils.



The Nursing and Midwifery Board of Australia and AHPRA

Registration

The Nursing and Midwifery Board of Australia registers Australian nurses and midwives including those in NSW. AHPRA supports the Nursing and Midwifery Board and maintains the register for the profession.

Management of complaints in most states and territories other than NSW

In most states and territories other than NSW, the Nursing and Midwifery Board manages complaints about nurses, midwives and students with the support of AHPRA.



The Council and the HCCC

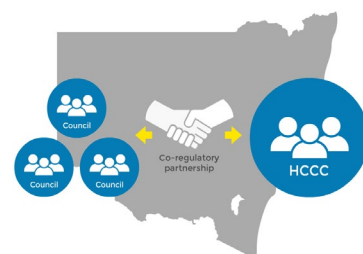
Management of complaints in NSW

In NSW, the management of registered nurses, midwives, and students is the job of the Council in consultation with the HCCC.

Co-regulatory partnership with the HCCC

The Council works in partnership with the HCCC to manage complaints about nurses, midwives and students.

The HCCC conducts all investigations in NSW and prosecutes the most serious breaches of professional standards. The Council deals with complaints about registered practitioners and students where the safety of the public may be at risk, and intervention may be required to assure public safety. Co-regulation occurs through consultation and clear regulatory functions as outlined in the National Law (NSW) for the Council and the Health Care Complaints Act for the HCCC.



The legal framework

Quick reference guide

What the Council does

The Council has the power to deal with complaints relating to a practitioner's health, performance and conduct. Most of these provisions are found in Part 5A and Part 8 of the National Law (NSW).

The aim is not to punish a practitioner, but to protect the public by ensuring a practitioner can practise safely, and maintain appropriate standards of professional practice. The Council does this by assessing whether the practitioner is able to practise within accepted standards, and if not whether this can be achieved by way of conditions or orders. In some cases, suspension of registration may be required.

To assist them in their evaluation, the Council can:

- Seek further information in writing, or by interview
- Direct the practitioner to attend a health assessment (including drug and alcohol screening) or performance assessment

If concerns continue, further review or action may be required.

Action may include professional counselling or if necessary, placing conditions on the practitioner's registration. Conditions are designed to ensure the practitioner can continue to work safely although they may have the effect of limiting the extent, hours or area of practice.

As the Council monitors and enforces the practitioner's compliance, conditions must be expressed in a way that enables that to happen.

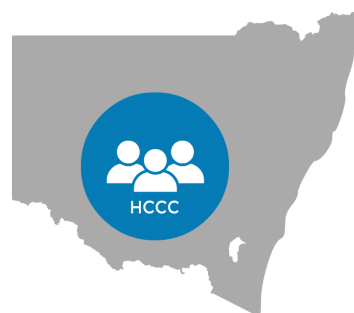
While the aim is not to punish practitioners, in many instances the results may seem punitive to practitioners, particularly in Professional Standards Committee and NSW Civil and Administrative Tribunal processes.



What the HCCC does

Established under the Health Care Complaints Act, the HCCC independently investigates and prosecutes serious complaints in consultation with the Council.

The HCCC's Director of Proceedings decides whether to prosecute practitioners, either before a Professional Standards Committee or the NSW Civil and Administrative Tribunal.



The legal framework

Quick reference guide

What the Council does not do

To understand what the Council does in NSW, it can be helpful to look at what it does not do. The Council focuses on protecting the health and safety of the NSW public.

The Council does *not* deal with complaints about:



Registered practitioners based outside NSW



Unregistered practitioners providing a health service



Unregulated health workers



Organisations providing health services, like hospitals or clinics



Industrial issues



Fees charged by registered practitioners



Medicare

The Nursing and Midwifery Board of Australia manages advertising issues and complaints about a person practising while unregistered or using a title when not qualified to do so.

The HCCC manages and resolves complaints about unregulated health workers and health service organisations. The HCCC can also decide whether to continue to investigate a person who has become unregistered prior to or during an investigation.

NSW Fair Trading manages complaints about fees, claims for compensation and refunds.

The legal framework

Quick reference guide

How complaints are managed

The National Law (NSW) and the Health Care Complaints Act govern how the Council and the HCCC manage complaints.

Receive and assess a complaint

The Council receives a complaint and assesses the risk it may present before deciding whether action is required.

Assess the risk to public safety

In serious cases, immediate action may be necessary. Where this occurs, the Council convenes a committee of Council delegates to decide whether under section 150 of the National Law (NSW):

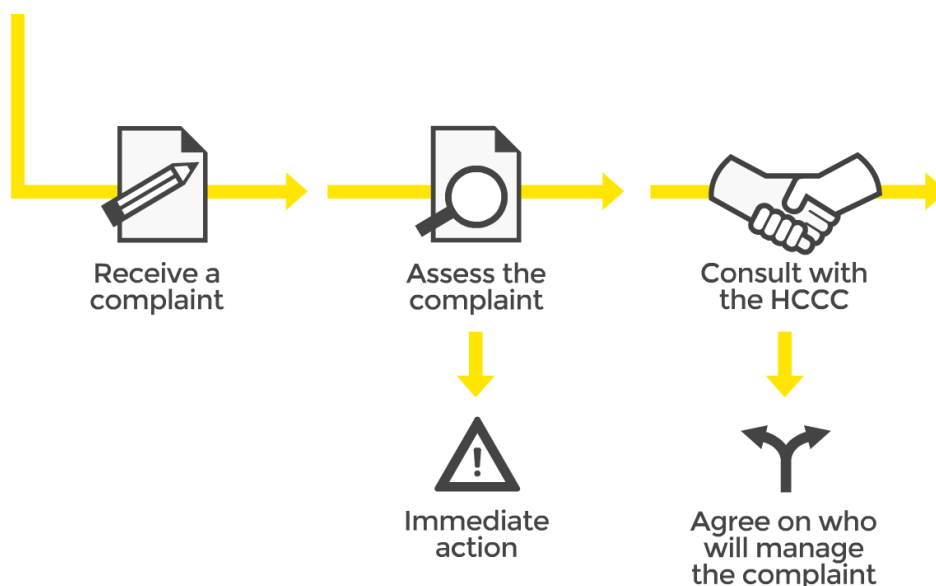
- There is a risk to the health or safety of any person, or
- It is otherwise in the public interest to take action

The Council has no power to investigate, although it may ask for further information. An immediate action decision is taken on the basis of available information.

If the Council takes immediate action, it must refer the matter to the HCCC for investigation. A complaint may, with agreement from the HCCC, also be dealt with by the Council through its health or performance pathways.

Consult with the HCCC and agree on who will manage the complaint

If immediate action is not necessary, the Council consults with the HCCC and they agree on which of them will manage the complaint.



The legal framework

Quick reference guide

How complaints are managed

The Council and the HCCC may agree to close the complaint

Following consultation, the Council and the HCCC may decide to take no action and close the complaint.



The Council and the HCCC may agree the HCCC facilitates a resolution meeting

Alternatively, the Council and the HCCC may agree the HCCC facilitates a resolution meeting.



The Council and the HCCC may agree the Council manages the complaint

The Council and the HCCC may agree that the Council should manage the complaint within one or more pathways:

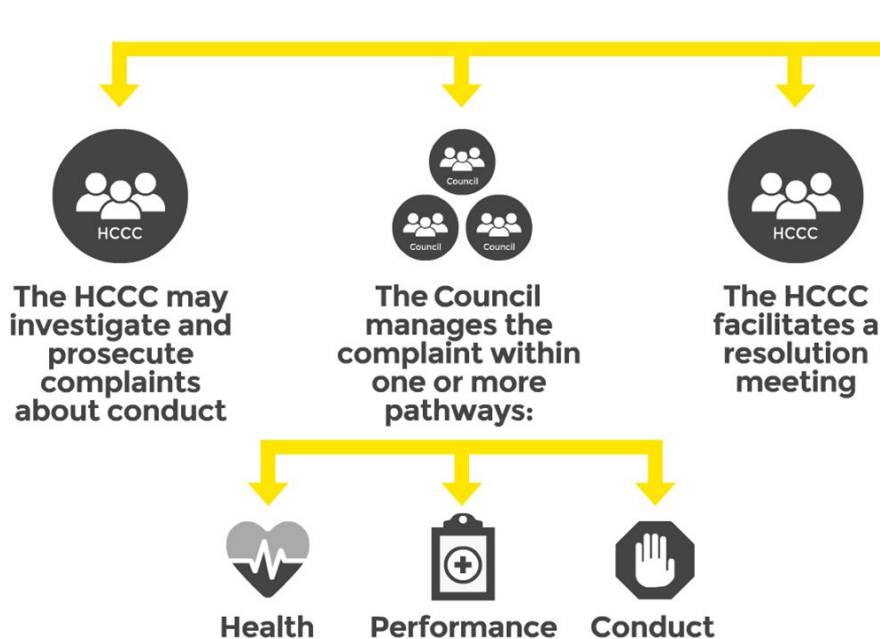
- Health
- Performance
- Conduct

The Council and the HCCC may agree the HCCC investigates the complaint

In a small number of cases, the Council and the HCCC may agree the HCCC investigates and potentially prosecutes complaints about serious misconduct.

What happens if the Council and the HCCC do not agree?

On the rare occasions where the Council and the HCCC may not agree, and a complaint is referred for investigation by either the Council or the HCCC, it must be investigated by the HCCC.



The legal framework

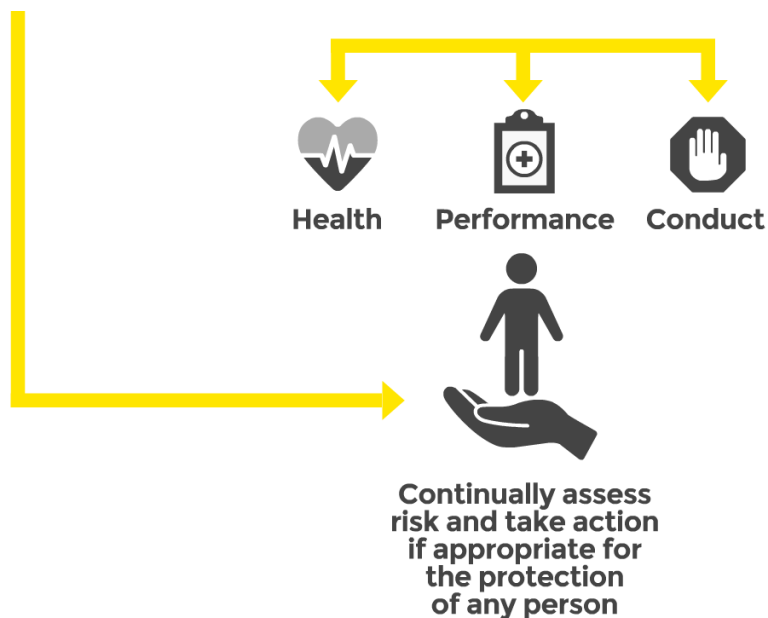
Quick reference guide

How complaints are managed

The Council continually assesses the risk to public safety

Throughout this process, the Council continually assesses risk. The Council must take immediate action if satisfied it is appropriate for the protection of any person or otherwise in the public interest.

Also, if during the HCCC's investigation identifies issues of immediate concern, the HCCC brings this to the Council's attention. The Council will consider taking action under section 150. This may happen before the investigation is finalised.



The legal framework

Quick reference guide

Pathways - Health, Performance, Conduct

Health pathway

The Council's health pathway manages risk while supporting practitioners whose professional practice may be impaired as a result of physical or mental health problems. This includes drug and alcohol addiction which can impair a practitioner and their capacity to practise safely.

This pathway supports practitioners while ensuring measures are in place, such as restrictions on practice and monitoring, to protect the safety of public.



Health

Performance pathway

The Council's performance pathway deals with practitioners whose professional performance may be unsatisfactory as a result of factors such as:

- Unsafe practise
- Communication issues
- Infection control breaches
- Inadequate clinical patient records

In the performance pathway, the Council will work with the practitioner to ensure they are practising safely. For example, through the imposition of education and supervision conditions.



Performance

Non-disciplinary pathways

The health and performance pathways aim to provide non-disciplinary pathways as an alternative to a disciplinary process while ensuring a practitioner can practise safely.

Conduct pathway

The Council's conduct pathway deals with unprofessional behaviour by practitioners. This includes:

- Criminal charges and convictions
- Allegations of sexual and non-sexual boundary crossing
- Breaches of patient confidentiality and non-compliance with a registration condition

Practitioners may have conditions imposed in more than one pathway.



Conduct

The legal framework

Quick reference guide

Summary

The Council, together with other regulators, protect the public by managing risk in response to complaints about NSW health practitioners and students.

The Council aims to ensure practitioners practise safely and the public maintains trust in the profession. It does this by restricting or suspending a practitioner's right to practise and supporting good professional practice.

In the exercise of your functions as a hearing member, public protection is at the heart of everything you do.

Further resources

- **The Health Practitioner Regulation National Law (NSW):**
<https://www.legislation.nsw.gov.au/#/view/act/2009/86a>
- **The Nursing and Midwifery Council of NSW website:**
 - Who we are:
<https://www.nursingandmidwiferycouncil.nsw.gov.au/who-we-are-nmc>
 - How we work:
<https://www.nursingandmidwiferycouncil.nsw.gov.au/how-we-work-nmc>
 - How we manage complaints:
<https://www.nursingandmidwiferycouncil.nsw.gov.au/how-we-manage-complaints-0>
 - Our policies:
<https://www.nursingandmidwiferycouncil.nsw.gov.au/node/692/>
 - Legal information:
<https://www.nursingandmidwiferycouncil.nsw.gov.au/legal-information>
 - Glossary:
<https://www.nursingandmidwiferycouncil.nsw.gov.au/glossary>
 - Fact sheets:
<https://www.nursingandmidwiferycouncil.nsw.gov.au/fact-sheets-nmc>

